**Why the Comparative Utility Argument is a** **Red Herring**

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In what follows, I will respond to an objection to American slave reparations that is *prima* *facie* quite serious, but that many scholars have been hesitant to address. One possible reason for this hesitancy is that the objection is offensive enough that many people recoil from addressing it for fear of legitimizing it. I am confident the response I put forth here is sufficient to outweigh any worry of legitimizing the objection.

 The argument, sometimes called the *Comparative Utility Argument*, has been defended by Booker T. Washington and David Horowitz, and proceeds as follows: The descendants of African slaves in the America are not owed any compensation because they have not been harmed by slavery. Rather, slavery in America was *beneficial* to the descendants of slaves because they are now able to live in a country (the USA[[1]](#footnote-1)) that is considerably richer today than any of the African countries from which slaves were taken are today (Congo, Ghana, Nigeria, etc.). And even though the descendants of slaves have a smaller share of that wealth than other Americans, they are still better off, economically, than most people living in Western Africa. So, by bringing Africans to America, European and American slavers may have harmed the slaves themselves, but they inadvertently *helped* those slaves’ descendants by making it possible for them to live in America. And if those descendants were helped by slavery, then it would be nonsensical to compensate them for it.

To quote Booker T. Washington (1901):

[W]e must acknowledge that, notwithstanding the cruelty and moral wrong of slavery, the ten million Negroes inhabiting this country, who themselves or whose ancestors went through the school of American slavery, are in a stronger and more hopeful condition, materially, intellectually, morally, and religiously, than is true of an equal number of black people in any other portion of the globe. (p. 16)

And David Horowitz (2001):

If slave labor created wealth for Americans, then obviously it has created wealth for black Americans as well, including the descendants of slaves. The GNP of black America is so large that it makes the African-American community the 10th most prosperous "nation" in the world. American blacks on average enjoy [per capita incomes](http://income) in the range of twenty to fifty times that of blacks living in any of the African nations from which they were taken. (§2)

The initial reaction of many is to be deeply offended by the suggestion that the descendants of slaves are in some way indebted to American slavers. And it is offensive. But an argument’s being offensive is no guarantee that it is morally or legally unsound. Sometimes the truth hurts. So I take it that the onus is on defenders of slave reparations not just to complain that the comparative utility argument is offensive, but that it is also unsound, or otherwise illegitimate.

Note that this argument is distinct from the so-called *non-identity problem*, which says that nobody is ever harmed by events that occurred before their conception, since their very existence is causally (or even metaphysically) dependent on those events. The comparative utility argument is the much bolder claim that the descendants of slaves were actually *helped* by slavery. As such, many of the responses to the non-identity problem (e.g. Sher 2005, Cohen 2009) will not be sufficient to refute the comparative utility argument.

Robert Chrisman and Ernest Allen Jr. (2005) have offered up a response to Horowitz. They criticize Horowitz’s use of the term GNP to in describing a sub-national group, along with the fact that he “confuses disposable income and ‘consumer power’ with the generation of wealth” (pp. 399-400). But however confused Horowitz may be about the economic terminology he uses, his and Washington’s more general point remains. Black Americans are generally better off economically than people in West and Central African nations.

Of course, cross-border comparisons like these are fraught with difficulties, especially since the UN Human Development Index (HDI) does not subdivide countries into their racial groups, but we should be able to get some handle on the situation by comparing the sort of data used in the HDI from West and Central African Nations to the same (or similar) data we have about Black Americans. For example, the life-expectancy of Black Americans is about 75.3 years[[2]](#footnote-2), which is between 11.1 and 27.5 years higher than any country in West or Central Africa.[[3]](#footnote-3) And those countries’ average years of school completed (by adulthood) range from 1.3 to 7.5, while the average adult (25+) African American has completed more than 13.5 years of school.[[4]](#footnote-4) Finally, the median household income of African Americans is $32,645 in 2011 dollars[[5]](#footnote-5), whereas the average of the median household incomes of countries in West and Central Africa is just $3,625[[6]](#footnote-6) (adjusting for purchasing power in both cases). Of course, these numbers don’t tell the whole story, but I hope to have given enough data to convince you that Washington’s and Horowitz’s claims about relative wealth and standard of living are not to be rejected as a simple confusion about economic terms.

In what follows, I will show that it is a mistake even to engage in questions of the relative wealth of Americans and Africans. It concedes far too much to Washington and Horowitz. I will instead argue that the entire comparative utility argument is a red herring because it focuses on the wrong wrong--the wrong of forced relocation rather than the wrong of slavery. Then, in the final section, I will address the question of whether the unequal economic situations cited by Washington and Horowitz might themselves be a result of the very same injustice(s) for which reparations are sought, and discuss the uncomfortable rhetorical position into which this puts them.

**Assumptions and Clarifications**

Before I refute the comparative utility argument, I should begin by stating my assumptions and clarifying my goals.

 First, I am not here presenting any positive argument for slave reparations. I am only arguing against one objection to them. To that end, I will be assuming that there is at least a *prima* *facie* good argument for slave reparations, but that is only an assumption, and I do not commit myself to any particular argument.[[7]](#footnote-7)

 Second, in what follows I will be setting aside all other objections to slave reparations in order to focus on the comparative utility argument. In particular, there is a question concerning whether people in the present can ever be owed compensation for wrongs committed before their birth by people long dead. I will be assuming without argument that they *can* be owed such compensation, and that slave reparations are no more metaphysically problematic than a case of compensation for a wrong involving two living people.

Third, I will be focusing specifically on reparations for slavery itself, not on the myriad other wrongs suffered by Black Africans and Americans in the last few centuries. Arguments can be given for Jim-Crow reparations[[8]](#footnote-8), for example. I will set those arguments aside for now, though I believe their advocates might find what I have to say helpful. I should note, however, that my response presupposes that the reparations in question are justified by some past wrong that was committed against a person or persons. I assume that it is not the *mere* fact that there is inequality that matters, but the historical wrongs that caused it.

**Why the Comparative Utility Argument is a Red Herring**

The problem with the comparative utility argument is that it ignores the fact that slave reparations are intended to be compensation for *slavery*, not for the forced relocation that brought the slaves to America. We can grant Washington and Horowitz their claim that bringing Africans to America resulted in a comparative economic advantage for those Africans’ descendants. But the best that gets them is an objection to “forced-relocation reparations.” It tells us nothing about the question of *slave* reparations.

 Slavery continued long after the African slaves were brought to America, resulting in severe economic disadvantage for its victims. Some of those victims came from Africa, and many more were born in America, but either way, the wrong of slavery was committed against them after they were already in America. It is *that* wrong and the hereditary economic disadvantage it gave its victims, that is the subject of slave reparations, *not* the forced relocation that preceded it. The offense here is slavery, and the question relevant to whether reparations are owed is

(1) What would present-day black Americans’ economic status be had their American ancestors not been enslaved?

It is *not*

(2) What would present-day black Americans’ economic status be had their African ancestors not been brought to America?

These are both interesting questions, but only (1) bears directly on the issue of slave reparations.

Perhaps the comparative utility arguer will say that the two offenses are tightly linked. After all, most Africans wouldn’t have been brought to America if it weren’t for American slavery, so how can we pretend to focus just on the slavery, but not the forced relocation, or vice versa? They are two parts of the same practice. I concede that they are linked, and that in the nearest possible world in which there was never slavery in America, there might be far fewer descendants of Africans living in America. Nevertheless, when addressing compensation for wrongdoing, it is often necessary to hold certain circumstances fixed while evaluating the wrong in question. And in this case, we ought to hold the relocation fixed when determining the effects of the slavery. To see why, I will argue by analogy first from a simple case that is at most superficially similar to slavery, and then from a more detailed case tailored to resemble the situation of American slaves in all morally relevant respects.

First the simple case. Suppose I maliciously punch a blind man in the face and thereby inadvertently restore his vision. Here my malice has resulted (however unintentionally) in a great advantage to the man. My act is still a criminal act, and I could be punished for it, but we might think it odd for the court to award him damages in a civil suit, since my action resulted in a net benefit to him. Whether or not the courts side with me on that issue, does the fact that I (accidentally) restored his vision give me a right to punch him again the next day? Of course not. And if I did punch him a second time and broke his nose, he would have a moral and legal right to seek compensation from me for the broken nose. If I argued that I don’t owe him anything because he’s better off with a broken nose and restored vision than he is with neither, I would be laughed out of court. Past benefits do not justify future harms, and they are not relevant to the level of compensation for future harms.

I find this simple case sufficiently compelling to show that we ought to hold the location of the slaves fixed when evaluating the wrong of slavery. Thus, the comparative utility argument is misguided because it focuses on the consequences of the wrong wrong: the wrong of forced relocation rather than the wrong of slavery. To make the example more concrete, and to show that these ought to be seen as separate wrongs (as in the case of the blind man), we need only imagine how the courts would respond if both transgressions occurred more recently as, unfortunately, they still do. Consider this fictional (but sadly realistic) scenario:

A wealthy man, Smith, kidnaps a 12-year-old girl, Jones, from Sierra Leone and brings her back to America. Smith then forces her into a life of prostitution and makes a lot of money off of her suffering. Jones manages to escape from her enslavement at the age of 20, at which point she is uneducated and has been infected with HIV. Once she escapes, Jones seeks legal help, and her lawyer files a suit against Smith. She seeks damages not only for her past pain and suffering, but also consequential damages—compensation for the future harm that Jones will suffer as a result of her HIV and of being denied an education.

Smith’s lawyer argues that these consequential damages are *not* owed to Jones because neither her future earning potential nor her life expectancy has been diminished by Smith’s actions. After all, the life-expectancy of a 20-year old American with (diagnosed and treated) HIV is about 70 years, whereas the life expectancy of an average 20-year old in Sierra Leone is only about 60 years. Furthermore, the average income of a poorly-educated American is over $20,000, while the average overall income in Sierra Leone is only about $1,000.[[9]](#footnote-9) Smith may have harmed Jones for 8 years of her life, but on the whole, his actions were to her advantage, and so there is simply no long-term harm to justify the consequential damages.

Question: Does Smith owe Jones the consequential damages? It seems clear to me that any judge or jury would have to say yes, of course he does. Smith intentionally and knowingly enslaved Jones, resulting in a quantifiable negative economic impact on her, and Smith should be required to make Jones whole—to restore her to (roughly) the economic position she would have been in had the years of slavery and forced prostitution not occurred. Smith’s lawyer is simply wrong if he thinks that Smith need only restore Jones to the position she would have been in if she had stayed in Sierra Leone. Once Jones set foot in America, the relevant “would-haves” become American “would-haves,” not Sierra Leonean “would-haves.”

Remember that Jones is *not* suing Smith for the kidnapping. It is not even clear that she *could* sue in an American court for a kidnapping that took place in another country. She is suing (and could only be suing) Smith for the subsequent enslavement. So we should hold the kidnapping fixed in our counterfactuals.

Note that if we accept Smith’s lawyer’s argument, we are implicitly agreeing that nobody can be liable for damages unless the harm they have committed outweighs all of the benefits they have provided their victim in the past. This would mean that if I give my nephew a $5,000 gift on his 18th birthday, then I could suffer no civil penalties if I slashed his car tires on his 19th and 20th birthdays. It also means that my daughters could never sue me for *anything*, even if I slashed their car tires on a daily basis. After all, they wouldn’t have anything at all if it weren’t for me. Perhaps some will find that argument compelling, but I don’t, my daughters don’t, and I suspect that the average judge and jury wouldn’t either.

So Smith’s argument is untenable. And it should be clear how the Smith and Jones case relates to slave reparations, since it *is* a case of slave reparations, just with some of the other difficulties removed. In this case, as in the general slave reparations case, there is an injured party (or parties) who suffers two separate wrongs at the hands of an offender (or offenders), who successfully uses the injured party to promote his own economic situation. The first of these wrongs (the kidnapping) leads to a long-term advantage to the victim, but the second wrong (the slavery) leads to a long-term disadvantage. In the Smith and Jones case, we agree that Jones is owed damages for the second wrong even if Smith’s lawyer is right that Jones’s total association with Smith was a net positive. So Black Americans *can* be owed compensation for slavery even if their total historical association with white Europeans and Americans has been a net positive.

**Objection: Slavery and Colonialism**

One might object that thinking of reparations arguments as akin to ordinary legal arguments in a civil court is wrongheaded. When the “litigants” are as geographically and temporally separated as the participants in (both sides of) slavery were, it is only natural that we consider the history as a whole, rather than try to separate out the different injustices involved. So the forced relocation and the slavery should be considered together, as one historical event, rather than as separate acts.

I think there might be cases where this sort of logic makes sense (say, between two constantly warring countries), but I do not think slavery is such a case. In this case, we have a clearly one-sided historical injustice, and lots of information about how, when, and to whose ancestors it occurred. There is no serious historical difficulty in separating out various kinds of wrongs we know were committed, and no difficulty imagining how Africans would have fared if they had been treated like other races when they reached American shores. All we need do is look at the economic situation of the descendants of (e.g.) various Irish and English people who were brought to the Americas, often involuntarily or semi-voluntarily. It was pretty clearly the centuries of *slavery* that held black Americans back, and that has continued to hurt their descendants to this day.

But if defenders of Horowitz and Washington are right that we should look at history as a whole, rather than as separate actions, then things might be even worse for them. If we are to bundle slavery together with forced relocation, since they are inseparable, then we must bundle it together with the myriad other social, military, and economic factors that drove the world at the time, and made both practices possible. American slavery was only one cog in the giant machine that was European colonialism. And so, the relevant counterfactual should not be (1) or (2), but rather

(3) What would present-day black Americans’ economic status be had European nations not conquered and controlled much of the world (especially Africa)?

This is such a big question that we probably can’t even begin to answer it for certain. But here are a few partial answers that seem plausible: First, the economic situation in Africa today is a pretty direct result of the centuries of European interference. Second, the economic situation in America today is also a result of European colonialism. So, there is little reason to think that, had European colonialism not occurred, America would have been rich and Africa poor. Left to its own devices, African nations might have thrived economically, and without the trade and influx of people made possible by European colonialism, America would surely have grown much slower than it did. So perhaps in the closest possible world in which all people and nations were treated (pretty much) fairly in the last 500 years, America would be the country receiving development aid from the West African nations.[[10]](#footnote-10)

Can we be sure of that? No. But we can be pretty sure that colonialism has kept Africa in an economically depressed state. So Washington and Horowitz are pointing at Africa and saying (to paraphrase) “The descendants of slaves aren’t owed anything. The Western superpowers that systematically oppressed their ancestors also oppressed those ancestors’ homelands, putting the parties on both sides of the Atlantic in a lowered economic state to this day. So you can’t complain that your ancestors were oppressed by Westerners in America because their only other option was to have been oppressed by Westerners in Africa.” Small comfort.

**Conclusion**

Washington and Horowitz are mistakenly thinking of reparations as an attempt to put things back the way they would have been if, so to speak, “none of this had ever happened.” That is not typically how we think about compensation morally or legally. Making the injured party whole does not usually mean returning them to the state they would have been in had they never *met* the offender. Rather, it means putting them in (roughly) the state they would have been in had the offense not occurred, but holding other facts as fixed as possible. The offense in question is slavery, and there can be little doubt that had forced immigrants from Africa not been subsequently enslaved, their descendants would be better off than they are today. And so the comparative utility argument has no moral or legal force.

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1. I focus on slavery in the United States because (a) it’s where I live, and (b) the comparative utility argument stands a better chance in America, with its relatively high standards of living, than in many other Western countries that used to practice slavery. [↑](#footnote-ref-1)
2. As of 2011, according to the CDC (<http://www.cdc.gov/minorityhealth/populations/remp/black.html>, accessed Feb 16, 2014 ). [↑](#footnote-ref-2)
3. In 2011, Sierra Leone was the lowest with 47.8 and Ghana was the highest with 64.2, according to the UN’s Human Development Report (<https://data.undp.org/dataset/Life-expectancy-at-birth-years-/7q3h-ym65>, accessed Feb 16, 2014) [↑](#footnote-ref-3)
4. I base this on 2012 data from the National Center for Education Statistics. I used their reported data from all levels of education for African Americans and rounded down in each case (so if the group completed 1-3 years of high school, I would round the whole group down to 1). As a result, this is a low estimate, and the real number could easily be 1 to 3 years higher. (<https://nces.ed.gov/programs/digest/d12/tables/dt12_010.asp>, accessed Feb 16, 2014) [↑](#footnote-ref-4)
5. Using the PPP calculator at the Bureau of Labor Statistics (<http://data.bls.gov/cgi-bin/cpicalc.pl?cost1=33%2C321.00&year1=2012&year2=2011>, accessed Feb 16, 2014) [↑](#footnote-ref-5)
6. Based on a Gallup poll, converted to 2011 dollars, PPP. (<http://www.gallup.com/poll/166211/worldwide-median-household-income-000.aspx#2>, accessed on Feb. 16, 2014) [↑](#footnote-ref-6)
7. See Boxill (2003), McGary (2003), McCarthy (2004), and Coates (2014), just to name a few examples. [↑](#footnote-ref-7)
8. See (e.g.) Ogletree (2003) and Coates (2014) [↑](#footnote-ref-8)
9. Let us suppose that the lawyer’s numbers are about right. They are at least realistic, and after all, it’s a thought-experiment! [↑](#footnote-ref-9)
10. Thanks to my students Whitney Ricks, Chris Kennedy, and Jskia Mark for suggesting and helping to develop this line of response. [↑](#footnote-ref-10)