

**Reparations for White Supremacy?  
Charles W. Mills and Reparative vs. Distributive Justice after the  
Structural Turn**

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**Abstract:** Drawing on the work of Charles W. Mills and considering the case of reparations to Black Americans, this article defends the “structural turn” in the philosophical reparations scholarship. In the Black American context, the structural turn highlights the structural and institutional operations of a White supremacist political system and a long chronology of state-sponsored injustice, as opposed to enslavement as a standalone historical episode. Here, the question whether distributive justice is more appropriate than reparative justice is particularly pressing, since structural racial inequalities form part of the basis for reparations. Derrick Darby’s pragmatic argument for non-race-specific redistributive policies and Tommie Shelby’s principled defense of distributive justice are both considered, as well as the challenge to the structural turn that comes from Carlton Waterhouse’s argument for reparations for enslavement rather than “legacy of slavery” reparations.

**Keywords:** Reparations; historical injustice; structural injustice; Charles Mills; the racial contract; race; racism; Black Americans

*The myth of black inferiority lives on in structural racism that one can detect in various life experiences of African descendants—for example, the continuing discrimination in the health care and the criminal punishment systems, despite the elimination of laws that expressly allow for discrimination between blacks and whites. The continuation of these disparities results in an inequality that prevents African descendants in the United States from being truly included in the project of democracy. For African descendants to be included—given equal status in U.S. democracy—reparations must be provided.*

- Adjoa Aiyetoro (2011)

In recent years, academic philosophical discourse on reparations to Black Americans has undergone a shift. It had long been assumed that the appropriate and desirable ground of reparations was slavery. The vile and violent nature of the enslavement by some human beings of other human beings, distinguished in their unfree and unequal status by an invented racial categorization that stigmatized Blackness and made Whiteness supreme, put slavery on par with genocide as one of the modern world's most horrific atrocities. Not only this, but there seemed to be an intuitive argument for why monetary reparations were owed to the descendants of enslaved persons. 250 years of bondage meant 10 generations who labored for no wage. A monetary debt based on unpaid wages seemed due to Black America. And so, seminal philosophical works by Bernard Boxill (1972; 2003), George Sher (1981; 2005), and Janna Thompson (2002) all considered, and ultimately defended, the payment of slavery reparations to Black Americans.<sup>1</sup>

However, the philosophical literature on reparations, and on historical injustice more broadly, has taken what Dan Butt (2021) identifies as a “structural turn.” Though sometimes it makes sense to discuss reparations for single historical episodes—e.g., the 1942-1945 internment of Japanese Americans—it arguably obscures the scale and scope of the injustices to Black Americans to focus only on slavery. Enslavement played a critical role in shaping a historical trajectory that has resulted in the social, economic, and political inequalities faced by Black Americans in the present day. But slavery is not the only injustice in this trajectory, which includes other direct state-sponsored injustices along with more nebulous forms of institutional and structural racism. From a structural perspective, slavery is emblematic of an entire system of racialized domination that devalues Black lives. It is this system itself that would seem to be the fitting ground of monetary redress and broader reparative justice efforts.

Charles W. Mills is not typically referenced as the progenitor of the structural turn in the philosophical literature on reparations and historical injustice. Prior to his untimely death in September 2021, his best-known work on reparative justice had a methodological air to it. According to Mills,

reparative justice is the methodology of philosophers who acknowledge racial injustice and the implications thereof for egalitarian political philosophy; distributive justice is the methodology of philosophers whose belief in the egalitarian potential of equal opportunity and state redistribution can be linked to a denial of racial injustice's magnitude (Mills 2009; 2013).

However, Mills's thinking on reparative justice goes beyond this insight, and is important for those of us today who would be wary of a U.S. government-sponsored slavery reparations program that downplayed the systemic nature of injustices to Black Americans. At the same time, examining Mills's framework, it raises the question as to whether the distributive justice enterprise is as dubious as Mills claims it to be. After all, if institutional and structural racism are as pervasive as Mills thinks they are, it is hard to see how there would be the political will for reparations. Moreover, if the ground of reparations isn't a single injustice, but a whole social system, this may in fact strengthen the argument for distributive justice and weaken the argument for reparative justice. If the case for reparative justice seems weak thusly understood, we may want to rethink the structural turn and revisit the case for slavery reparations.

Against such considerations, this article defends Mills and structurally-oriented conceptions of reparative justice. The analysis, which focuses on the United States and the Black American experience, proceeds as follows. First, I reconstruct Mills's understanding of how White supremacy operates as a sociopolitical system (section I) and his critique of non-race-conscious Rawlsian distributive justice (section II). From there, I examine the relationship between reparative and distributive justice by introducing a distinction between reparations for *synchronic harms* and for *diachronic harms* (section III). I then consider two arguments that potentially undermine Mills's position: Derrick Darby's argument that non-race-targeted programs should be preferred to reparations on pragmatic grounds (section IV), and Tommie Shelby's defense of distributive justice as providing a normatively valuable condemnation of racial inequality (section V). Finally, I consider Carlton Waterhouse's argument for slavery reparations, ultimately defending diachronic-harm based reparations to Black Americans (section VI).

## **I. Charles Mills on the Racial Contract and White Supremacy**

Let us begin with what is arguably Mills's (1999) seminal theoretical contribution, the idea of the "racial contract." Mills takes his inspiration from Carole Pateman's *The Sexual Contract* (1988) and from Rousseau's *Discourse on Inequality* ([1755] 1997). For Rousseau, social and economy inequality are artificial, the result of a political arrangement devised by a propertied class to safeguard their greed-driven interests without appearing to. For Mills,

similarly, it is a social contract of White men who created a self-benefitting system operating with a racial logic that explains racial inequality.

If one views social contract theory through a universalist lens, the idea of a racial contract is not immediately perceptible. For example, when Kant described all men as possessing a basic moral equality, this formulation would seem to include all human beings. In reality, Mills (2017, Ch. 6) points out, Kant's anthropological writings reveal that he thought of Black and other non-White people as sub-persons, and thus outside the scope of equal moral personhood from which the liberal principles of political equality and freedom are derived. The racial contract is hidden in plain sight.

For Mills, the racial contract is a "political, moral, and epistemological" description of how racial categories create norms of superiority and inferiority, along with material circumstances of privilege and disadvantage. It is also a "historical actuality" (Mills 1999). The signers of the U.S. Constitution were White men who employed racialized conceptions of citizenship and personhood. African slaves and their descendants were "not included, and were not intended to be included, under the word 'citizens' in the Constitution," having "no rights which the white man was bound to respect," the Supreme Court's decision in *Dred Scott v. Sandford* affirmed (*Dred Scott* 1856, 59-60; Mills 2017, 41). The racial contract's historical actuality is not limited to the United States. Worldwide, "Indian laws, slave codes, and colonial native acts formally codified the subordinate status of nonwhites and (ostensibly) regulated their treatment, creating a juridical space for non-Europeans as a separate category of beings," Mills (1999, 26-27) writes. "The modern world was thus expressly created as a racially hierarchical polity, globally dominated by Europeans."

In conceptualizing the racial contract, Mills wasn't attempting to refute Rousseau's class-based critique of modern society or Pateman's conception of a sexual contract by men functioning to exclude and subordinate women. Race is not the only axis of oppression. Rather, Mills sees the racial contract as part of a broader domination contract, a metaphor for the "patterns of socio-political exclusion characterizing actual modern polities" that expresses "the reality of group domination and social hierarchy" along the lines of class, gender, race, and other identity categories (Mills 2017, 37; Pateman and Mills 2007).

In Mills's view, the domination contract's great insight is that there is nothing natural about group domination. Structures of social hierarchy are a product of political society, "brought into being and... maintained by the actions and inactions of those privileged by them" (Mills 2017, 37). This doesn't imply, in the case of racial domination, a conspiracy where all White people got together and decided to subjugate Black people and other people of color—examples of legal codes employing racially exclusionary conceptions of citizenship notwithstanding. Rather, Mills explains, in the political philosophy of Hobbes, Locke, Kant, and Rawls, the social contract is a

theoretical device explaining how the power and authority of the state are justified by liberal democratic principles. By analogy, the racial contract illuminates how the idea of a racial hierarchy wherein White people possess a natural superiority over non-White people is used to justify the institutional and social-structural operations of a society that allocates race-based privileges and disadvantages (Mills 2002, 76-80). Of course, whereas traditional social contract theory aims to show that state authority and power have normative validity, this is not true of the justification of institutional and structural racism offered by the racial contract. It is instead a description of how White supremacy operates as an ideological backdrop to contemporary societies, even when antidiscrimination laws appear in domestic legal codes and freedom from racial discrimination is considered by international law to be a basic human right.

In theorizing the racial contract, Mills draws from accounts of institutional and structural racism in the social sciences without adhering to any one account in particular; the racial contract is intended to be compatible with a “wide range” of theories that see racial categories as constructed and reinforced through the operation of social-structural processes (Mills 2002, 78). Features shared by Mills’s framework and social-structural theories of race are thus worth pointing out.

First, Mills is nuanced in his understanding of the complicity of individual White people in systems of White supremacy. *The Racial Contract* (1999) is dedicated in part to “white renegades and race traitors.” The epistemological phenomenon of “White ignorance” relies on a collectivist social ontology, meaning that there is something to be understood about collective beliefs and attitudes over and above the individual beliefs and attitudes of persons who share (however much) in the White collective identity (Mills 2017, Ch. 4). Thus simplistic victim-perpetrator binaries that authors like Iris Marion Young (2011, 116-117, 175) and Catherine Lu (2017, Chs. 2 and 4) rightly caution against are avoided.

Second and relatedly, Mills’s theory is, like most social-structural theories of race, conscious of the trap of essentialism—that is, understanding group differences in a way that relies on there being an identifiable essence or experience that all group members have in common (Harris 1990). At their worst, essentialist understandings employ generalizations that erase heterogeneity among group members and reinforce group stereotypes. Any theory of structural domination, racial and otherwise, could promote essentialism if the basic idea is that all members of a dominant group are perpetrators of injustice, enjoy a uniform situation of privilege within society, and so on, and that all members of an oppressed group are passive, suffering victims. However, Mills avoids essentialism by making a strong distinction between the project of theorizing systems and of theorizing the behavior of individual agents within these systems, and only claiming involvement in the former. As such, his theory is “concerned primarily with the macro-issue of

race as a political structure of domination, rather than the micro-issues of individual racism, culpable intent, and personal vice/virtue” (Mills 2002, 85).

Third, Mills sees the social, political, and economic manifestations of racism as dynamic and adaptive rather than static and fixed. White supremacist ideology isn’t uniform across the eras of enslavement, Jim Crow, and “the age of colorblindness” (Alexander 2010). Rather, it “evolves over time” (Mills 1998, 101). To this, some might object to using the term “White supremacy,” as Christopher Lebron (2013, Ch. 1) does, because the term suggests a political system that, as a matter of law, puts White people at the top, and a sociocultural milieu where large swaths of the White population actively believe in the superiority of the White race.<sup>2</sup> Doesn’t term “White supremacy” connote a uniform picture of what racism is? For Mills, even though overt racism has receded since the days of the lynch mob, it is nevertheless meaningful to point out the continuity of an institutional arrangement that continually privileges White people. In the United States, though *Brown v. Board of Education* formally ended an era of *de jure* segregation, racial separation is still the norm for U.S. communities and schools. In large metropolitan areas, suburban Black and Latino students attend schools that, on average, are over 70% non-White; in inner city neighborhoods, the statistic shoots up to 90% (Orfield and Frankenberg 2014, 14). Nor is *de facto* segregation separate but equal: Researchers have calculated a \$23 billion funding gap between White majority and non-White majority school districts, though similar numbers of children are served (Meckler 2019). For Mills, findings like these are sufficient to argue that the institutional arrangement of the present-day United States bears the mark of White supremacy.

## II. Mills on Rawls and Reparative vs. Distributive Justice

In his writings on the racial contract, Mills’s discussion of reparations comes in as part of a broader discussion of racial exploitation (Mills 1999, 37-40). A White supremacist society is materially beneficial for White people, who thus have powerful incentives not to relinquish racist systems, whether they’re conscious of this or not. Black and other non-White persons are exploited by virtue of having to endure an inferior race-based status in the service of maintaining White privilege. This is in addition to the more literal ways in which racialized occupational hierarchies disproportionately relegate Black and brown people to performing demanding low-wage work. Economists have tried to work out the cost of racial exploitation to Black people and its worth to White people, but these values, “by their nature, are difficult to quantify” (Mills 1997, 39), and primarily make the case that reparations are owed for a racist sociopolitical system rather than telling us the exact size reparations should be.

In more recent work critiquing John Rawls's *A Theory of Justice* ([1971] 1999) and other writings by the late Harvard philosopher, Mills adheres to this view of reparations while working out distinctions between race-conscious reparative justice and race-neutral distributive justice. Rawls, Mills (2009, 161) is keen to point out, is "the most significant and influential political and moral philosopher of the 20th century." Yet Rawls barely mentions race in *A Theory of Justice* or elsewhere, nor does race make more than a cursory appearance in the vast trove of secondary literature on Rawls (Mills 2005; 2009; 2013; 2017). A methodological move allows Rawls to set aside questions of race, gender, sexual orientation, etc.: He works out an "ideal theory" of justice describing the basic institutional structure of a perfectly just society. In such a society, arbitrary factors of identity would have no bearing on one's life chances. Rawls seems to take it as so plainly obvious that racial discrimination—let alone a White supremacist institutional structure—is unacceptable in a perfectly just society that the matter hardly needs stating. But even in a perfectly just society, there will be differences in skills, talents, and personality, so it should be asked: What distribution of resources and social standing is most fair? Thus Rawls's primary concern is distributive justice in the idealized society he renders.

Rawls famously works out a theory of distributive justice using a social contract-type thought experiment to argue for two principles that individuals behind a "veil of ignorance"—unaware of their talents, societal position, and other personal characteristics—would agree on. The first principle requires that all members of a political society are accorded basic rights and liberties. The second principle, which has two parts, states that inequalities are only justifiable if they benefit the least well-off members of society (the difference principle) and if offices and positions are open to all (the fair equality of opportunity principle). Because of the difference principle, there would be high levels of redistribution in Rawls's ideal society.

For Mills, however, a Rawlsian framework is inadequate to the task of bringing about a racially just society. This framework, because it aims at working out the basic normative principles that an ideally just society would abide by, is not *meant* to tell us what to do about injustices plaguing a society that falls far short of this standard. The latter is the territory of "nonideal theory" and outside Rawls's project (Mills 2009, 162 *et passim*). Thus Rawls does not deign to weigh in on affirmative action, one of the most heavily debated issues among political philosophers in his day (Mills 2009, 169-170).

Moreover, because of the way Rawls frames his argument and sets aside questions of nonideal theory, it reinforces the impression that many White Americans have of their society as reasonably near the ideal of justice. On this view, problems of "race relations" are primarily in the past, and though bigoted individuals engage in racial discrimination on occasion, the White supremacist structures characterizing slavery and *de jure* segregation are no more. Revealing here is Rawls's definition of political society—that is,

political society in general, and not just idealized renderings thereof—as a “cooperative venture for mutual advantage.” This description masks the *de facto* operation of U.S. society as a “coercive venture for white advantage” (Mills 2017, 26). It produces a “sanitized and Eurocentric picture” of recent history, where “race, racial conquest, and racial atrocity have been whitewashed out” (Mills 2009, 172).

Lastly, Mills follows authors like Bernard Boxill (1972) and Howard McGary (1999) in the following insight. Say we were to implement Rawlsian principles in the present-day United States. This is not Rawls’s suggestion; the principles of justice for an ideal society are not necessarily the principles that would take us from non-ideal circumstances to the ideal. Nevertheless, say we do it anyway, in keeping with the views of those who want a “universal, broad-based leftist project,” and not reparations, in the contemporary United States (C. Johnson 2016). The difference principle is intended to ensure that individual differences in talent and personality allotted by nature’s wheel of fortune are not constitutive of one’s life chances. If a person has little aptitude for skilled professional work, as a matter of justice, they are still owed a satisfactory income and the respect of other members of society for what they do. However, as legal scholar Graham Hughes wrote in 1968, “Black people in America are not saying to white people, ‘You ought to help us because you ought to love us and make sacrifices for us out of charity and compassion.’ They are saying, rather, ‘You owe us something. Please pay your debt’” (Hughes 1968, 1066). A distributive justice framing fails to dispel all-too-common tropes about how Black people from poor backgrounds are owed society’s kindness due to being bad at school, raised in homes with single mothers and no fathers, and so on. When income is redistributed under the banner of reparative rather than distributive justice, this powerfully recognizes past and ongoing injustice as the reason why society owes something to Black people (Mills 2013, 13; Boxill 1972; McGary 1999, Chs. 6-7).<sup>3</sup>

### III. Diachronic Harms and Distributive Justice

None of Mills’s specific complaints against Rawls assert that distributive matters are irrelevant to questions of reparations. It is thus worth examining how reparative justice and distributive justice relate. Very generally understood, distributive justice concerns “different distributions of benefits and burdens across members of the society” (Lamont and Favor 2017). Reparative justice can be broadly distinguished into two different types. To use terminology I’ve used elsewhere, reparations can be for *synchronic* or *diachronic* harms.<sup>4</sup> When reparations are for synchronic harms, redress is made for an episode of injustice that occurred “at one point in time.” (Thus the term “synchronic.”) The injustice, which may have taken place in the distant or recent past, causes harm which morally, the perpetrator ought to repair.



Contrary to language sometimes used, a victim is not necessarily “made whole”; with serious wrongdoing, returning to the status quo ante is impossible. Nevertheless, reparations are an attempt to repair some of the harm done, showing that a perpetrator takes responsibility for the harm’s existence. Reparations for diachronic harms carry many of the same meanings, but in this case, at issue isn’t a self-contained episode of injustice now in the past. Rather, it’s *repeated injustice to a group* that takes place over time and is ongoing in the present day.

Tommie Shelby (2011a) has claimed that distributive justice considerations have no bearing on reparative justice. In the case of synchronic harms, Shelby has a point. An injustice is an injustice, regardless of a person’s socioeconomic status. It was wrong for Nazis to steal works of art from wealthy Jewish families, and the return of this art should not depend on a family’s present-day financial situation.<sup>5</sup> However, when arguments are made for reparations to Black Americans, the socioeconomic manifestations of racial inequality are often illustrated by statistics about Black-White income and wealth gaps, inequalities in life expectancy and infant mortality rates, high school completion rates, incarceration rates, and so on. The claim usually isn’t that these inequalities immediately result from slavery, but rather, stem from a range of group-based injustices that began with enslavement and continue into the present—what I’m calling a diachronic harm, in other words. In the case of diachronic harms, distributive considerations not only matter, but are in part constitutive of the diachronic harm itself. That these distributive inequalities reproduce themselves generation after generation reveal an ongoing situation of institutional and structural racism (Nuti 2019).

Considerations about the link between race-based socioeconomic inequalities and the claim to reparations have led some to express skepticism that reparations are backward-looking at all. In “Reparations for the Future,” Wenar (2006, 402) doesn’t make a synchronic/diachronic harm distinction like I’m making, but argues that what makes certain reparations claims compelling is the “unjust distribution of rights or resources *at present*.” He instructs the Rawlsian to imagine a society with the U.S.’s history that implemented the difference principle, and the least well-off members of society happened to be disproportionately White. “Would you then require that these worst-off white citizens be made still worse off, so as to better the situation of better-off blacks?” Wenar (2006, 402) asks. “If not, then you do not believe that such reparative claims have significant force of their own, separate from their overlap with principles of just distribution.”

It’s true that in considering which groups have potentially valid diachronic harm-based reparations claims, distributive inequalities do seem to genuinely matter. If a group experienced a range of injustices in its past but suffers no systematic inequalities in the present, though an official apology seems due, there would seem to be no compelling basis for large-scale material reparations. However, this doesn’t mean that diachronic harm-based

reparations claims are only normatively forceful insofar as they overlap with principles of just distribution, or that they are solely forward-looking (see Wenar 2006, 396). Wenar himself acknowledges so much in arguing that reparations are made so that present-day victim group members have grounds to trust an oppressor group (Wenar 2006, 403-405). This seems to be the wrong argument for reparations—reparations become instrumental trust-cultivating mechanisms rather than vehicles of justice<sup>6</sup>—but it does show that past injustice is what motivates reparative justice. If this backward-looking dimension weren't present, then a group would not even need to have experienced injustice to have a reparations claim, an implication that renders the very idea of reparations meaningless (Brooks 2008).

I have said that diachronic harms emerge from repeated injustice over time. Here we can be more specific: Diachronic harms result from multiple identifiable synchronic harms, their effects, and the interaction of these harms and their effects with background structural injustice. Let us consider how this works and who is responsible for diachronic harms.

Synchronic harms not only impact first-order victims and their families, but also members of the victims' community. The latter may experience psychological trauma, a loss of trust, feelings of inferiority based on an identity they share with the victim, etc.—indirect and diffuse harms, but harms nonetheless. Understandably, however, synchronic harm frameworks typically only see first-order victims and/or their families as having valid redress claims. With too broad an understanding of which harms should be redressed, there would be an inadequate recognition of the particularized nature of the victim's suffering.

And so, take the Tuskegee syphilis study, conducted by the U.S. Public Health Service on 399 poor Black men between 1932 and 1972. The research subjects were not told the purpose of the study (*viz.*, understanding how untreated syphilis affected the Black male body), and when penicillin became widely available in the mid-1940s, the men were not informed or offered vaccines. It is fitting here that an eventual U.S. government apology addressed the surviving victims and that redress payments went to the victims and family members of the deceased (Quinn 2001).

However, though there is no scholarly consensus on just how much the broader African American community has been impacted, there is a connection between the study, what the study represents in the minds of African Americans, and Black medical mistrust that continues to this day (Reverby 2020). Susan Reverby, one of the Tuskegee experiment's leading historians, invokes the idea of reparations for a diachronic harm in arguing that medical mistrust should be understood as part of the ground for reparations to Black Americans, alongside "slavery... convict leasing... debt peonage, redlining and racist G.I. bills, poll taxes and state-sponsored terrorism" (Reverby 2020, 897; quoting Coates 2014).

It may be tempting to say that the harm of medical mistrust, diffuse and complicated as it is, should be outside the framework of reparations altogether. Surely not every Black American feels mistrust; it would be essentializing to assume that all do. Surely also there are limits on what perpetrators owe for diffuse and remote harms.

But the synchronic/diachronic harm distinction gives us a way to make such matters more intelligible. Because diachronic harms are to groups, not every single group member needs to experience a given first-order injustice or its effects for us to say that “the group” has endured the injustice and these effects. Moreover, though there may well be limits on what *individual* perpetrators owe for diffuse and remote harms to other individuals, responsibility for diachronic harms would seem to lie with the state. When there are diffuse and remote harms from repeated synchronic wrongdoing by a government with a monopoly on political authority within a territory, and these harms feed into a cycle of injustice borne by the group, it seems only fair for the government itself to be on the hook for these diffuse and remote harms.

Let’s spend a bit more time on this last point. A wide range of agents bear responsibility for identifiable injustices within a trajectory of a diachronic harm. But when a government’s role in injustice is substantial—in the case of the U.S., this would be the federal government—it’s fitting that it take the lead on reparative justice efforts at the national level, though it may ask or require other continuous agential entities, such as state and local governments and companies, to contribute to redress. It’s fitting because of the power of national governments, both as perpetrators of injustice and because they determine matters of legality and illegality within the broad spheres of their juridical authority. It’s also fitting because of the moral significance of a national government that avows democratic principles committing repeated acts of serious state-sponsored injustice against members of the same group again and again.

The concept of reparations for a diachronic harm to Black Americans for which the U.S. federal government bears the highest level of responsibility is consonant with Mills’s understanding of a White supremacist social, political, and economic system being the ground of reparations, but allows for more precision in assigning blame. If White supremacy *simpliciter* is the ground of reparations, it is unclear that any particular agent should take responsibility. This would be a problem: Taking responsibility and being meaningfully accountable for wrongdoing is the distinguishing feature of reparative justice. On the diachronic harm conception of reparations laid out here, the federal government is *not* taking responsibility for structural harms because it is the highest-level institutional agent involved or the agent with the deepest pockets—the way that companies are sometimes strictly liable for wrongdoing by their employees but without necessarily being responsible in the moral sense. Rather, the federal government is taking responsibility for a series of state-sponsored injustices that *it itself* has perpetrated over the course of a long

historical trajectory (while acknowledging that there are other responsible parties whose involvement has contributed to the structural character of the harms present in the present day).<sup>7</sup> So, here we get an answer to a rather fundamental question: What is the point of reparations? The federal government's accountability via reparative justice initiatives is in keeping with traditional moral ideas about responding to wrongdoing: When there is serious wrongdoing and serious harm results, morality demands that wrongdoers bear the burden of the harm, taking responsibility for the harm's existence and attempting to repair it to the extent that is possible.

#### **IV. The Pragmatic Argument for Distributive Justice: Derrick Darby**

Let us consider one of the most powerful objections to reparations for diachronic harms. Though reparations and other race-specific policies might serve a morally worthy purpose, as Derrick Darby argues, distributive justice is better suited to real-world politics (Darby 2010; Darby and Branscombe 2014; Darby and Levy 2016; Darby 2019). Darby points out that liberal and conservative Americans have extremely different narratives of why Black-White racial inequality persists, with liberals focusing on past and present injustice, and conservatives referencing cultural values, failures of personal responsibility, etc., in a “postracial” era where racial discrimination is formally prohibited. Moreover, Darby (2019, 387–97) stresses in an article on Mills and elsewhere, an array of social psychology findings suggest that White people tend to react defensively when confronted by the claim that the advantages they enjoy are unearned. This, paired with a propensity to view society as basically just, means that narratives of large-scale anti-Black racial injustice fail to convince the unconverted and have a polarizing effect in politics. That U.S. states—11 and counting—are passing “anti-Critical Race Theory” laws mandating that teachers not make students “feel discomfort, guilt, anguish, or any other form of psychological distress” on account of their race encapsulates the kind of backlash Darby identifies (Scully 2022; T. R. Johnson, Gold, and Zhao 2022).<sup>8</sup> Race-conscious educational efforts, let alone “a crash course on the racial contract and racial exploitation,” have little chance of high uptake among the general White population (Darby 2019, 375).

Darby disagrees with the conservative claim that individual and structural racism have receded to the point where they no longer significantly factor into individuals' life prospects. Nevertheless, he pragmatically advocates “postracial remedies,” policy measures that combat racial inequality through non-race-specific programs, and which are credibly cast as having primary aims *other* than combatting racial inequality (Darby and Levy 2016). Darby's analysis may resonate with a person sympathetic to the idea of reparations to Black Americans, but who sees the post-(?)Trump United States as far too overridden by a brand of far-right politics that thrives on misinformation, fear-

mongering, and in- and out-group thinking for there to be any kind of meaningful progress towards racial reparative justice. Nevertheless, one objection to Darby is that the idea of postracial remedies cedes far too much to political forces that themselves have no interest in compromise. It is dangerous to allow such forces to go unopposed. As Kimberlé Crenshaw puts the point, in being silent “about the racial barriers that continue to shape the life chances of many people of color,” this “failure to engage racial power jeopardizes racial justice agendas by giving license to those who seek to stigmatize all discourse pertaining to ongoing inequalities” (Crenshaw 2011, 1333; Darby and Levy 2016, 486).

Darby, however, doubles down on his pragmatic stance in response to such a challenge. If racism is as deeply entrenched as a narrative of large-scale anti-Black racial injustice suggests, then it is little wonder that White conservatives will fight against reparations or any race-specific program with racial equality as its aim. Instead of giving up on the struggle for racial equality altogether, Darby argues, let us recognize that postracial remedies could do some amount of good.<sup>9</sup>

But there are considerable costs to this strategy. First, Darby emphasizes that he is not trying to suppress discourse about racial injustice as the cause of Black-White inequality (Darby and Levy 2016). Yet presumably, he envisions political energy and capital being devoted to pushing for, and winning the enactment of, non-race-specific programs. Differently oriented expenditures of political capital are not necessarily zero sum, and discourse on overcoming racial injustice and discourse advocating for non-race-specific programs might coexist. Nevertheless, if present race-related political energies were redirected, there is a danger of a racial justice discourse receding, realizing Crenshaw’s worries. The U.S. has moreover done its fair share of experimenting with colorblindness as a broader sociopolitical ethos. As authors ranging from Mills (2017) to Alexander (2010) to Bonilla-Silva (2017) have argued, colorblindness does not erase racism. Instead it further entrenches racial inequality, “aid[ing] in the maintenance of white privilege without fanfare, without naming those who it subjects and those who it rewards” (Bonilla-Silva 2017, 4). Tellingly, social psychologists have found that among White test subjects exposed to “colorblind” and “multicultural” inputs, those in the colorblind group exhibited higher levels of racial bias (Richeson and Nussbaum 2004).

Second, there is a danger that non-race-specific programs may not meaningfully benefit disadvantaged Black people if this is not explicitly encoded into a program’s operation; already-privileged White people will be the beneficiaries. For example, studies have shown that after natural disasters, higher levels of federal disaster aid are allotted to White applicants than Black applicants despite similar levels of property damage (Flavelle 2021). Indeed, as researchers have found, “several programs in place by FEMA systematically benefit affluent populations” (Chun 2021). This is indicative of

how the forces of structural racism tend to operate in a society marked by significant racial inequality. Even if a race-neutral social program does not intentionally discriminate against Black aid recipients, preexisting factors, like the different property values of similar homes in predominately Black and predominately White neighborhoods, can produce racially unequal outcomes.

Third, it is hard to see how Darby's idea of postracial remedies could avoid the trap of White appeasement described by Shelby, here analyzing Obama's health care push:

Obama advocates universal policies that he believes would, *as a by-product*, reduce glaring racial disparities. But he purposefully refrains from construing these policies as racial redress. Therefore, whites are not required to concede the legitimacy of blacks' grievances. To establish genuine racial conciliation, though, whites must willingly support policies that reduce racial inequality *because doing so is what racial justice demands*.

...The issue is whether we can *openly defend* a policy on the grounds that it is, at least in part, *a response to racial injustice* and still garner wide support for it. If we cannot generate such support, especially among whites, what does such an outcome say about the state of race relations and the possibility for further racial progress in this society? (Shelby 2011b, 104-105, original italics).

What's wrong with Obama's White appeasement strategy? For Boxill, basic ideas about self-respect are at stake. He recounts a debate between Booker T. Washington and W. E. B. Du Bois over whether to stand on one's rights when doing so is politically futile. Whereas Washington advocates acquiescence, Du Bois sees good in the struggle itself on self-respect grounds (Du Bois 1915; Boxill 1976, 59). When narratives that see racial inequalities as rooted in cultural and/or biological differences are pervasive in a society—narratives far too often internalized (Moody-Adams 1992)—exposing injustice instead of concealing it affirms the full moral worth of racially stigmatized individuals (Boxill 1976).<sup>10</sup>

Finally (and relatedly), reparations have great moral value; when pushing for non-race-specific policy goals is the dominant mode of trying to achieve racial equality, something morally important is lost. McGary (1999, 116) critically discusses someone who borrows money and later offers a gift to that person “to promote harmony or good social consequences” while not acknowledging the debt. Similarly, Mills (2019a, 117) emphasizes the importance of actions being carried out under the appropriate description: “If I give you twenty dollars because I am feeling sorry for you, it is not the same as if I give you twenty dollars to repay the money I borrowed from you last month,” he writes. When someone morally entitled to reparations is given something framed as a benefit, this does not acknowledge the injustice they've

experienced, nor does it acknowledge their standing in a community of moral equals who may demand accountability when wronged—an idea we'll return to momentarily.

## **V. The Principled Argument for Distributive Justice: Tommie Shelby**

So much for distributive justice as a pragmatic substitute for reparative justice. We must still consider the principled reasons why distributive justice might be preferable. Here, we can turn to Tommie Shelby.

As we saw, Shelby (2011b) is wary of undertaking universal rather than race-targeted programs for the purpose of appeasing White individuals unwilling to give up their dominant societal position. He sees distributive inequalities—and indeed, the very existence of class stratification—as in part brought about by racial injustice (Shelby 2004, 1710-11), and doesn't think non-race-conscious policies could extinguish the moral debt owed to Black America (Shelby 2013, 158). Nevertheless, Shelby argues that Rawlsian-type distributive justice could go a long way in alleviating some of the disadvantages that Black people disproportionately face:

The key point is that these socioeconomic disadvantages could be mitigated so that members of historically oppressed racial groups were not materially disadvantaged in the competition for opportunities and valued positions in society. This is not the same as calling for compensation for past wrongs. It would be a forward-looking measure used to bring society closer to the ideal of a well-ordered society (Shelby 2013, 158).

Shelby makes it a point to say that his position is not motivated by pragmatism. Rather, he doesn't want considerations of reparative justice to minimize distributive justice's distinctive critical contribution:

No doubt, there is a connection between current material inequality and the uncompensated injuries of slavery: because the injustices of slavery were never fully rectified, the resulting material inequality the former slaves were forced to endure partly explains the economic disadvantages of their descendants. But contemporary economic inequality is objectionable on grounds of distributive justice, and we must be careful not to blunt the force of this objection by casting it in the language of reparations (Shelby 2011a, 396).

According to Shelby, a theory of distributive justice like Rawls's is plainly condemnatory of an institutional arrangement in which racialized poverty is able to endure, thus the problem isn't a lack of reparations. The problem is a socioeconomic structure that is so radically inegalitarian that the basic conditions for democracy are not met. On Shelby's (2011a, 396) view, reparations do not aim at "material equality or democratic inclusion"; there is

no “intrinsic connection between the aim of reparations and the goals of material and political equality.” By contrast, he sees distributive justice as having material and political equality as central aims, and as striving to achieve the background conditions to make a genuinely democratic society possible. As such, it is distributive justice that is best equipped to give a powerful democracy-based critique of U.S. political society.

When the basis of reparations is a synchronic harm, Shelby is right, reparations don’t aim at material equality. (Recall the example of wealthy Jewish families who are owed the repatriation of artwork stolen by the Nazis.) But material equality is an aim of reparations for diachronic harms, which is why we spent time examining Darby’s position that non-race-specific forms of redistribution could be a pragmatic substitute for reparations. And so, *pace* Shelby, depending on the kind of harm at stake, reparations can aim at material equality—and when it comes to Black Americans, reparations that aim at material equality are surely warranted.

Shelby’s other claim is that reparations do not aim at political equality, but this is rather injudicious to the reparative justice enterprise. As Adam Smith ([1759] 1853, 139) wrote in *The Theory of Moral Sentiments*, acts of wrongdoing enrage us because of “the little account which [the wrongdoer] seems to make of us, the unreasonable preference which he gives to himself above us, and that absurd self-love, by which he seems to imagine, that other people may be sacrificed at any time, to his conveniency or his humour.” Boxill (1972) observes that if a wrongdoer’s act of wrongdoing treats the injured party as someone who is not his equal, whose interests do not matter, these messages are conveyed all over again when the wrongdoer refuses to acknowledge the injury. When two parties stand in a relation of equality, this is a relation of mutual accountability. When there is no accountability, equal relations are absent. But the wrongdoer who pays reparations affirms the equality and worth of the injured party; the relations between the wrongdoer and the injured are the kind of relations where mutual accountability obtains. Accordingly, when a group has long been subordinated by racist state-sponsored policies and forms of institutional and structural racism, for the state to pay reparations, this is a powerful statement that those belonging to the group are equal members of the political community who are owed accountability. Put thusly, reparative justice and political equality have a deep connection.

To this, Shelby might reply that paying reparations as an expression of the political equality of Black Americans does not mean that a country is a well-ordered democracy. It could be that reparations are paid and things continue on as before, with no fundamental change in the structure of U.S. society. A symbolic display of political equality is one thing, but having a democratic society where political equality is a realized value is quite another.

However, it is hardly fair to criticize the concept of reparative justice for having little to do with political equality based on an idea of reparations not



aimed at making political equality a concrete, lived reality. As theories of distributive justice and reparative justice similarly appreciate, political, material, and social equality are intertwined. A well-designed program of reparations to Black Americans would not only consist of monetary payments, public apologies, and the like, but would be accompanied by policies motivated by the ideal of a racially egalitarian democracy where race is no longer a determinant of political, social, and economic status. In the Movement for Black Lives's Reparations Now Toolkit, Andrea Ritchie and Marbre Stahly-Butts lay out an agenda of wide-ranging changes needed to

address ongoing harms to Black people in the United States, including but not limited to police and state violence, mass criminalization, incarceration, institutionalization, deportation, and exclusion, segregation, and structural employment and housing discrimination, food and service apartheid, denial of health care, and high rates of disability and stress-related conditions, high rates of maternal and infant mortality, and lower than average life expectancy, forced sterilization, and denial of reproductive care and gender, sexual, and reproductive autonomy in Black communities (Ritchie and Stahly-Butts 2019, 43).

In emphasizing that a program of reparations for a diachronic harm can be designed to address political, social, and economic inequalities, we may seem to be getting away from Shelby's claim about how distributive justice offers a valuable angle from which to *critique* racial inequality in contemporary U.S. society. But the two go hand in hand. If Black Americans were to rally around an unambitious reparations program that did little to advance the project of a racially egalitarian democracy, Shelby would have a point. However, one could not reasonably call the vision for reparative justice put forward by the Movement for Black Lives or by dedicated reparations organizations like the National Coalition of Blacks for Reparations in America (N'COBRA) unambitious. What is demanded is nothing short of a radical remaking of U.S. society in view of racial justice. It is thus hard to see why Shelby is attached to distributive justice as the proper vehicle for condemning the U.S.'s democratic failures vis-à-vis Black citizens. Reparative justice also communicates that the U.S. is not the democracy it claims to be, and arguably does so more effectively by clearly identifying injustice as the reason for the structural inequality of Black people (see also McGary 2003; Aiyetoro 2011).

## **VI. Enslavement as a Synchronic Harm: Carlton Waterhouse**

A final objection to the structural approach to reparations considers its conception of reparative justice as too similar to distributive justice. Arguably, in the move from reparations for slavery as a synchronic harm to reparations

to Black Americans for harms produced by a history of repeated injustice, something important is lost.

In a 2011 article, Carlton Waterhouse considers the case for reparations for a “legacy of slavery,” more or less describing the idea of a diachronic harm to Black Americans:

This legacy of slavery argument maintains that American slavery led to Jim Crow segregation and continued societal discrimination against African-Americans following the passage of the civil rights legislation of the late 1960s and early 1970s. As a result, adherents argue that the government should provide reparations to contemporary victims of societal discrimination that dates back to the original injustice which was never redressed (Waterhouse 2011, 723).<sup>11</sup>

Though Waterhouse thinks there is “empirical support [for] and rhetorical value” in the legacy of slavery argument, he sees it as “too blunt and imprecise” a basis for reparations (Waterhouse 2011, 723-724). He argues that the enslavement of African Americans should be the standalone basis of reparations, with the era of Jim Crow deserving its own reparative justice program as well.

Why is this Waterhouse’s position? First, he worries that such a broad understanding of the basis of reparations puts contemporary racial inequalities and slavery in the same category, obscuring the singular nature of slavery’s horrors. Second, he objects to any approach where reparations would not be owed if Black Americans suffered no inequalities in the present day—namely, Wenar’s claim, which I accepted in the case of diachronic harms (Waterhouse 2011, 724). Third, he objects to an approach to reparations that is insufficiently backward-looking, arguing that making living Black Americans the focus of a reparations effort “risks exploiting and instrumentalizing the experiences of enslaved blacks in service of present generations” (Waterhouse 2011, 725). Ultimately, Waterhouse (2011, 726) advocates reparations that reverse the “collective denial” of the “humanity, dignity, worth, and contribution” of enslaved African Americans.

Waterhouse’s argument recalls the memorable opening of Randall Robinson’s (2001) bestseller *The Debt*. Robinson recalls touring the U.S. Capitol, looking up at the fresco painted by Constantino Brumidi. The fresco, the *Apotheosis of George Washington*, reportedly celebrated “the character of George Washington and the principles upon which the United States was founded” (Robinson 2001, 1). Robinson writes:

Symbolizing the carapace of American liberty, sixty-odd robed figures are arranged in heroic attitudes around a majestic Washington, before whom a white banner is unfurled bearing the Latin phrase *E Pluribus Unum*, or one out of many. But all of the many in the fresco are white (Robinson 2001, 1).

Robinson's eyes wander to a frieze below the dome depicting an array of scenes from U.S. history, but not enslavement. There is a bitter irony to this:

To erect the building that would house the art that symbolized American democracy, the United States government sent out a request for one hundred slaves... In exchange for the slaves' labor the government agreed to pay their *owners* five dollars per month per slave (Robinson 2001, 3).

Pausing to visualize "the glistening backs of blacks with ropes and pulleys heaving the ponderous stones of the dome into place" (Robinson 2001, 3), Robinson heads to the gift shop. Absent from the two books for sale on the history of the construction of the U.S. Capitol is any mention of slavery.

It is clearly meaningful for reparations to address the collective amnesia around slavery that Waterhouse and Robinson identify. At the same time, however, Robinson's own call for reparations invokes slavery and its legacy rather than being focused on slavery as a standalone synchronic harm (Robinson 2000; 2001). How should a proponent of diachronic harm-based reparations to Black Americans respond to Waterhouse?

To begin with, I disagree with Waterhouse that it downplays the terrors of slavery to bring in contemporary structural and institutional racism. Logically speaking, a reparations program for a diachronic harm to Black Americans would not mean that all injustices making up the diachronic harm are the same. One might see how reparations discourse could dramatize contemporary racism in a way that eclipses the experience of enslaved persons, since no living representative of this group can tell her story. But if there is this tendency, it itself should be critiqued. It doesn't mean per se that slavery should be the only focus of reparative justice.

Further, while Waterhouse objects to an approach that says that no reparations would be owed if Black Americans were not subject to race-based inequalities, it is also revealing that his vision is for reparations to consist of the "creation, development, and support of monuments, memorials, museums, research grants, and educational programs to commemorate, honor, recognize, and humanize the roughly twenty generations of enslaved Africans and their contributions to the American society"—a project he sees as fundamentally different from "the material demand of other proposals that focus on the legacy and consequences of slavery" (Waterhouse 2011, 707, 728). But the danger of Waterhouse's proposal is that reparative justice becomes only about education and public symbols, allowing White supremacist institutional structures to continue on unscathed in a post-reparations landscape. Of course, if one thinks that reparations should be material and substantial, it is also necessary to accept the idea that if there were no more inequalities, substantial material reparations would no longer be appropriate. Waterhouse's worry

about instrumentalization *would* seem to be realized by a reparations program that ignored or minimized the injustice to which enslaved persons were subjected, but this points to the importance of having symbolic redress measures commemorating enslaved persons alongside material reparations. It doesn't necessarily mean that reparations should only focus on slavery.

There are other disadvantages to a slavery reparations framing. Reparations for slavery as a synchronic harm lends itself to being evaluated according to traditional models of responsibility, which work well when a synchronic harm is recent and the victims are still alive, but less well when the original victims are long dead (Howard-Hassmann 2004). This is not a problem for the kinds of symbolic reparations that Waterhouse describes, but as a basis for a more ambitious reparations program, it is easy for reparations critics to point out, for example, that not every historical White person was a perpetrator of slavery and that not every Black person was an innocent victim. Such objections not only come from conservatives, but also progressives (see Gates Jr. 2010). Diachronic harm-based reparations, with its focus on groups rather than individuals, and institutional and social structures over time rather than discrete wrongs synchronically understood, conceptualize responsibility in a way that discourages a focus on individual human agent perpetrators.

This is not to say that a traditional model of responsibility wasn't appropriate at one point in time. It was, and it is an egregious moral failure for the U.S. government to have never paid redress to enslaved African Americans, despite plausible reparations proposals and organized freedpeople's movements seeking reparations (Berry 2005). However, the clock cannot be turned back; that wrong can never be corrected. Without a form of reparations that acknowledges racial injustice in the post-slavery and post-*de jure* segregation eras, it treats present-day Black Americans as simply the inheritors of an unpaid debt, playing into narratives that view them as having experienced reasonably just treatment from the state since the passage of the Civil and Voting Rights Acts, aside from the non-payment of reparations. This creates too simplistic a divide between the past and present (Nuti 2019), as well as overlooking the extent of significant injustices to Black Americans perpetrated by the U.S. federal, state, and local governments from the Reconstruction era up until the present day.

## **VII. Conclusion**

In this article, I've defended an approach to reparations that emerges from the structural turn in philosophical reparations scholarship, showing the importance of the work of Charles Mills for this understanding of reparations, and arguing against the substitution of distributive justice for reparative justice. Some of the ideas here are underdeveloped; many objections concerning reparations generally are neither answered nor raised. But at the

very least, in describing reparative justice after the structural turn, I hope to have given an idea of its philosophical and moral appeal.

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## Endnotes

<sup>1</sup> N.B. Not every early academic treatment of reparations focused on enslavement. Bittker (1972) laid out a legal argument for paying redress to Black Americans educated in a Jim Crow school system; a philosophical article on reparations by Bedau (1972, 32, 39) referenced “slavery and segregation” and “slavery and discrimination” instead of treating slavery as an isolated historical episode.

<sup>2</sup> Lebron’s (2013) critique of Mills is worth explaining further: Lebron’s book argues that *socially valuing* Black people and other people of color less than White people is the key to understanding racial injustice. For Lebron, a White supremacy framework suggests coordination in a way that a social value framework doesn’t and is overly simplistic. Replying to Lebron, Mills (2019b) explains that “White supremacy” in his usage precisely refers to the uncoordinated activities of many actors that give rise to system-wide racial power imbalances.

<sup>3</sup> But see especially Pateman and Mills (2007, chap. 4); Mills (2017, 201–15) for ideas about how a Rawlsian framework could be transposed into “Black radical liberalism.”

<sup>4</sup> N.B. Elsewhere I propose a typology consisting of *synchronic individual harms* (harms to individuals *qua* individuals), *synchronic symptomatic harms* (harms to individuals *qua* members of marginalized groups, where the harms are “symptomatic” of how the group is treated), *synchronic group harms* (synchronic harms felt at the group level), and *diachronic group harms* (harms resulting from repeated injustices to groups over time). The present discussion

centers on synchronic symptomatic harms and diachronic group harms, though I use a simplified version of the terminology.

<sup>5</sup> This example might be used to press the idea that reparations *are* really about making the victim “whole,” but even in this kind of case, there is still the period of time where the family did not have access to the work of art, the emotional impact of the work being in Nazi hands for so long, etc.

<sup>6</sup> Consider a situation where members of a structurally disadvantaged group came to have full trust in an oppressor group without any prospect of change in their material situation. Morally, something seems greatly lacking.

<sup>7</sup> See related discussions by Westley (1998, esp. 456–66) and McKeown (2021, esp. 784–90).

<sup>8</sup> Indeed, in recent decades, the U.S. Supreme Court has greatly restricted the ability of lawmakers to enact race-specific programs, so much so that it is far from clear whether a federal program of reparations to Black people would pass Constitutional muster (Lane 2019; Darby and Levy 2016).

<sup>9</sup> N.B. Mills (2019a, 115-16) contests the idea that distributive justice-based arguments have a greater political pull than reparative justice-based arguments.

<sup>10</sup> Darby seems to appreciate the point about self-respect being important, keen as he is on emphasizing that he is not advocating the suppression of racial injustice narratives (Darby and Levy 2016). But again, we can question the compatibility of pushing for postracial remedies and actively calling attention to racial injustice.

<sup>11</sup> The difference between Waterhouse’s formulation and mine is that Waterhouse refers to “societal discrimination,” whereas I instead refer to “state-sponsored injustice,” *viz.* mass incarceration, police violence, school and housing segregation, etc.

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