

# The libertarian argument for reparations

Mark R. Reiff 

Department of Philosophy, University of California Davis, Davis, California, USA

## Correspondence

Mark R. Reiff, Department of Philosophy, University of California Davis, Davis, CA, USA.

Email: [mreiff57@gmail.com](mailto:mreiff57@gmail.com)

## 1 | INTRODUCTION

The case for reparations for grievous acts of historical injustice has been getting a lot of attention lately, both within and outside academia (e.g., California Reparations Report 2023; Coates, 2014; Martin & Yaquinto, 2007). Those who advance it claim that the injuries inflicted by these acts are ongoing and severe, and the only way that members of the groups that were the focus of these acts can begin to regain the place they would have held within society had these injustices not occurred, or at least be able and willing to move on from them into the future, is to provide current members of these victimized groups reparations for the wrongs committed against their forebearers. In New World societies, talk of reparations has typically focused on two of these historic wrongs. First, the continuing injury inflicted by slavery and the discrimination against Black people that continued in its aftermath. Second, the injury inflicted through the widespread murder and seizure of land by government and government-sanctioned forces from indigenous peoples. In both the New and Old World, however, other groups—for example, religious or ethnic minorities who have been subjected to centuries of persecution—are also sometimes discussed as being entitled to reparations. Whenever reparations are discussed, however, the claim has generally been that these are required for violations of the principle of equality, a principle to which liberal societies have long paid lip service, but which is now (in some quarters, at least) beginning to be taken more seriously.

But I am going to talk about reparations in a different way. Not because I think that any of the current arguments for reparations for Black and indigenous people or anyone else for that matter do not lead to the conclusions that their proponents say they do. On the contrary, with perhaps a few exceptions, I find these arguments not only valid but also convincing. Accordingly, nothing I will say in this paper should be taken as an argument against any of these existing claims for reparations. But I do want to broaden the current discussion in two ways.

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First, in part I, I am going to set forth what I call a general theory of reparations. In it, I am not only going to talk about reparations as a means of remedying the injuries inflicted by slavery and by the genocide of indigenous peoples, the theft of their land, and the ongoing ripple effects of these historic wrongs. And I am not merely going to add to this a call for reparations for injuries caused by the long-time persecution of the usual religious, ethnic, and other minority populations. I am going to talk about reparations for an even wider variety of historical injustices, including, most importantly, the long-term economic oppression of women, and the historical exploitation of labor.

Second, in part II, I am going to set forth my argument for reparations, but not one based on the principle of equality, as most people currently do. Instead, I am going to base it on the principle of liberty. Again, this should not be understood as constituting a claim that demands for reparations based on the principle of equality are wrong. Rather, my point is that the principle of liberty, which is often raised as a defense by those on the political right to claims based on the principle of equality, does not support the position its right-wing proponents think it does. It actually leads us to exactly the same place as arguments based on the principle of equality are claimed to do. Indeed, properly understood, the principle of liberty provides an alternative and in fact stronger basis for such claims.

Finally, in part III of the paper, I shall put forth a specific proposal for beginning to fulfill our obligations to make reparations under the principle of liberty. But again, I want to make the limits on what I will propose clear from the outset. I will not be suggesting that my proposal offers the *only* way we can fulfill this obligation—I will merely suggest it is *one* way. I will not even claim that following my proposal is mandatory in the sense of being one required element in a package of other remedies. And I will not suggest that if even if we were to follow my proposal with gusto, we could completely fulfill our obligation to make reparations and clear the historical decks, leaving us all in a position to go forward together under the grace of justice once again. On the contrary, I will argue that our obligation to make reparations is an ongoing process that must be addressed by various remedies executed in different ways and to different extents over time. What I will offer in this paper is simply an important option that is worthy of consideration, but which has currently been largely neglected. I believe this remedy has a special connection with libertarian principles, but I am not claiming that a remedy *must* have such a special connection to be libertarian. A remedy merely needs to be consistent with libertarian principles to be acceptable. Finally, note that even if one were to reject my particular remedial suggestion, that would not undermine my overall claim that a remedy is due. Indeed, everything else about my argument would still stand.

There is one more preliminary matter I want to set forth before I begin addressing all the above. There are many objections raised today to claims for reparations, no matter what their form (see generally Gross, 2008). But to understand the libertarian argument for reparations and appreciate what is attractive about it, it will be helpful to keep in mind that these objections are typically driven by two underlying concerns. The first is that many people think any award of reparations necessarily implies that moral blame for the relevant historical wrongs is transferrable, at least in part, from the group to which the original wrongdoers belonged (meaning, in most cases, white people) to people who are members of that group today. Most current whites, however, are not willing to accept transference of any amount of moral guilt associated with wrongdoing in the past (see Parker, 2019). They did not personally do any of the things that qualify as historical injustice. Indeed, they claim to recognize that these acts were wrong and would claim that they vigorously support and indeed are primarily responsible for the

enactment of rules preventing the repetition of these wrongful acts today. So why should their moral scorecard be tarnished by the original sin of the now-long-dead?

The second underlying concern that white people typically express is that they do not see how payments to anyone alive today can be anything other than a windfall (Luna, 2023). No one alive today (with perhaps a handful of exceptions) was an actual victim of historical injustice. And moral victimhood, they believe, is no more transferable between generations than moral blame. If reparations are going to go to some people who are suffering and not others, then this merely repeats the wrongs of the past by not treating all those who are suffering today equally. Besides, a good number of people (those currently in the middle or upper class) among previously oppressed groups are not suffering today at all, while there are many poor whites who *are* suffering. No theory of justice worthy of our respect would advocate giving benefits to those who are not suffering and charging this to those who did not cause this suffering and who are in fact suffering themselves. If you want to know what unfairness is, the objection goes, this is a textbook example.

Obviously, any approach for reparations needs to have an answer to these two concerns if it is to have any hope of getting anywhere in the real world. But any approach to reparations worthy of our support needs to address these concerns in a principled way, and not merely with an eye toward reducing the degree of practical political resistance, although the latter goal is not inappropriate or unimportant. Currently, all the existing approaches to reparations that specifically address these concerns simply take them head on—that is, they argue that moral transference is indeed justified even to those who have not personally committed any wrongdoing and that members of previously oppressed groups are indeed morally entitled to reparations even if they are not personally suffering and those in other groups are suffering more or just as much. Nothing in this paper assumes that these responses are wrong. But clearly, the concerns prevalent today among white people would not continue to be so widely expressed if the arguments for reparations currently on offer were more convincing. It would therefore be helpful to have an approach that instead of dismissing these concerns as unjustified, avoids them, and does so in a principled way. And this, I will argue, is what the libertarian approach I am about to offer does. And with that said, I shall now get on with describing and defending it.

## 2 | A GENERAL THEORY OF REPARATIONS

### 2.1 | A statement of conditions

Because the precise meaning of “reparations” is not agreed today, I will begin by stating how I will be using the term. By “reparations,” I will be referring to a package of remedies for a special kind of past injustice committed against certain members of one’s own society based on their perceived membership in a certain category of persons, a grievous injustice which has caused a severe, long-term, and continuing distortion of the socio-economic and political order.<sup>1</sup> Accordingly, for now, I leave the question of whether one society may owe reparations for inter-societal injustices, such as those committed during international armed conflict, or colonialism, or even more broadly, for environmental damage inflicted by one’s own society on the planet or for the economic exploitation of the poor in other countries, off the table. But by focussing exclusively on reparations for wrongs committed against those within a country’s borders, I am not suggesting that a case for inter-societal reparations cannot be made. I do so simply because this inter-societal case raises enough additional questions that they are best dealt with

somewhere else. I do want to emphasize here, however, three points that would no doubt apply to both intra- and inter-societal injustices.

First, to be an act of reparation, the act must be expressly tied to an acknowledgment that the past injustice did indeed occur, that it was grievous and that it is having continuing severe injurious effects. This does not mean, however, that a reparatory action must constitute such an acknowledgment in and of itself. Actions in themselves, reparatory or otherwise, are often ambiguous. What matters is whether it is publicly acknowledged that the action in question is being taken for a reparatory reason. If the action is taken by a group or institution, rather than an individual, this means that the acknowledgment must be made with the general support of those that the entity represents, and not merely by its leadership. Otherwise, the acknowledgment will not be sincere. In that case, neither the statement nor the actions taken can be reparatory in the required way.

Second, the injustice at issue must be a moral injustice by today's standards, but while it might have also been a moral and even a legal injustice by the standard of the relevant earlier period, this does not matter in terms of deciding whether reparations are due and, if so, the nature and extent of those reparations. Reparations are intended to be an expression of a society's contemporary judgment of itself. If a society is not ready to judge its past acts by contemporary standards, then it is not really engaged in the process we are talking about here. To the contrary, it is disassociating itself from the original acts of injustice to such an extent that many of its members are going to think there is nothing about the effect of these wrongs that they should feel contemporary society has a responsibility to address.

Third, the injustice itself as opposed to its injurious effects need not be continuing. If it is, then any present-day wrongfulness (other than the present-day wrongfulness of not making reparations) is subject to the usual contemporary remedies, not reparations. Only the historical, not the contemporary injustice part, requires reparations. In short, when I speak of reparations I am speaking of a kind of (partial) remedy for a grievous injustice inflicted in the past on a class of people that has had clear, persistent, long-term, widespread, and severe negative effects on members of that class today.

## 2.2 | Some practical implications of the general theory

Aside from the most talked about historical wrongs committed against Black and indigenous people, my theory is deliberately designed to be general enough to cover other historical injustices too. Various religious and ethnic minorities, for example, have also been subject to grievous acts of historical injustice at the hands of the majority in almost every country that now considers itself liberal.<sup>2</sup> For example, in the West, especially in the Anglo-American world, East Asians and South Asians have also been subjected to grievous acts of historical racial injustice and oppression. Another group that has been subjected to centuries of blatantly unjust treatment and oppression, of course, is women, and these historical injustices would also be within the scope of my general theory of who is owed reparations. And finally, the vast majority of those required to labor for a living have also been grievously exploited everywhere in numerous ways, from the time labor first began to be exchanged for the means of subsistence to the present day (Reiff, 2013). Under my general conception, then, reparations are owed to the current descendants of the members of each of these groups.

I recognize that my inclusion of women in particular and exploited labor in general will strike many as controversial. There has been much discussion about reparations for women

who have been subjected to sexual violence during internal and international armed conflicts, and much discussion of the need to correct the ongoing disparities in income earned by men and women for the same work and to end other current practices that discriminate against women. But there has been little discussion (and almost no academic discussion) of the need for reparations for the historical *economic* oppression of women (see, e.g., Goldberg, 1970, pp. 44–45). I find this surprising, because throughout much of history, work performed by women has been unpaid or underpaid, and women have been barred from purchasing, inheriting, or even holding real property and otherwise denied the same right to accumulate capital as men. Even when ownership by women was technically allowed, women were (and to some extent still are) denied access to credit and thereby still effectively prevented from acquiring assets. They have also been and continue to be denied various other rights and opportunities that continue to limit their socio-economic standing and political power as well. Indeed, the documentation of these injustices and their effects is now so enormous that no one can reasonably deny that the long-term oppression of women has been grievous and that it has had long-term and severe distortive effects on the socio-economic and political order.

Moreover, although we are all the descendants of women, gender roles and stereotypes that were established long ago still hinder if not straight-jacket many women's economic opportunities today. Female-led households still get far less support than those led by men, or at least much less than they need given that women still bear the bulk of the burden, both economically and otherwise, of raising children (see Gould, 2012). Indeed, the entire socioeconomic superstructure has been designed to be and largely remains heavily weighted in favor of men. Given their exclusion from those who were allowed to amass capital, women are less likely to be sought-after as investors or developers or accepted as entrepreneurs, and this has reduced their influence on the application of capital for centuries and continues to do so even now. So the historical oppression of women clearly falls within the scope of my general theory of the kinds of acts having a continuing impact on a particular class for whom reparations are required.

But even more broadly, I also contend that the descendants of those affected by the historical economic exploitation of labor are entitled to reparations. This group, of course, includes a large portion of the descendants of the working and middle class—all those whose forebearers supported themselves primarily by exchanging their labor for what were in fact exploitive wages. These people may be men or women, white or Black, members of the religious majority or of a religious minority or atheists, and representatives of every possible ethnic group imaginable. Of course, what exactly constitutes exploitation is a hotly debated issue, and there are various theories about this on offer. I have set forth my own in *Exploitation and Economic Justice in the Liberal Capitalist State* (Reiff, 2013), and I will say more about my theory in the next section of this paper. But understanding the details of my theory is not necessary right now. All I want to emphasize now is that my theory is not Marxist, so we need not embrace Marxism to conclude that vast numbers of workers throughout history have been exploited.

In any event, under my general theory of reparations, the portion of the population that is entitled to some form of reparations for one historical injustice or another is going to be huge. Which means that the largest element of this group is likely to be white. But this does not mean that I am trying to co-opt existing arguments for reparations and ensure that if these arguments prevail, any reparations actually paid will mostly go to white people. We could make the same point, after all, about our current efforts to end ongoing discrimination against Black people. The most up-to-date empirical evidence shows that ending such discrimination will help not only Black people, but poor whites as well, and there are many more poor whites in total than Black people of any sort (see McGhee, 2021). Yet no one claims that ending discrimination

against Black people is really just a covert effort to help poor whites. And no one contends that we should endeavor to end discrimination against Blacks only in a way that has no beneficial side-effects for whites. But the fact that my general theory of reparations applies to many white people does allow us to avoid the argument that reparations are “special privileges” for others that must be paid for by whites and therefore should be opposed by whites for that reason alone. And the special privileges objection, no matter how much one might disagree with it, has obvious popular appeal. Indeed, concern about this is what led to the decision not to pursue proposals for reparations during the Obama administration (Felton, 2022). It is therefore an advantage of my argument that it allows us to undermine the special privileges objection from the start (see Jan, 2020; Leonhardt, 2021).

Note, however, I do not deny that the injustice suffered by some of these groups might be more grievous than the injustice suffered by others. My broadening of the groups entitled to reparations is not intended to “water down” or otherwise disrespect one group's suffering by grouping it with another, or to make light of the differences in suffering between particular groups, or even to suggest that it might not be important to distinguish between the suffering endured by each group in some other context. But we are so far away from doing anything to satisfy our obligation to make reparations to these groups that differentiating between them is unnecessary now. Doing so would only serve to create divisions among those who are entitled to some sort of reparations, and this would be self-defeating. Martin Luther King Jr. made this very point when he reminded us that this was the strategy used to divide poor whites from poor Blacks in the US South during Reconstruction (King Jr, 1965; Woodward, 1995). And this tactic is again being used now by the political right to divide the white working class from other poor people when the substantive interests of the two groups are often the same. If we ever get to a point where we are close enough to finally establish a fair playing ground for all that the distinctions between the relative suffering of these groups matter, we can revisit the question then.

### 2.3 | Reparations, compensation, and restitution compared

Because there are various remedies one might pursue to respond to a historical injustice, it may be helpful to explain how the distinctions between them should be seen in order to avoid any confusion as to what my conception of the remedy of reparations is getting at. A key element in the conception of reparations I am advancing is that under this conception, reparations are *not* intended to be a form of compensation. Reparations are not even to be thought of as *partial* compensation for the current injuries that are the lingering effects of acts of historical injustice. The underlying violations are too serious, the injuries caused too incommensurable with money, their nonmonetary effects too difficult to meaningfully measure beyond noting that they are huge, and except in unusual circumstances, the causal stories required to make out would-be claims for compensation under the usual rules contain far too many steps to be considered sufficiently certain under these rules to be recoverable. And in saying this, I recognize that compensation can be delivered in all sorts of ways other than the payment of money damages. But all compensatory remedies are compensatory because they move the recipient further along their indifference curve; that is, closer to the point where they would be indifferent between having the specified compensation and the injury in question having not occurred (Reiff, 2005). Given the nature of the injuries I am trying to address, however, moving someone along their indifference curve is not the objective. Indeed, trying to do so, suggesting that

someone could be made indifferent between these grave historical injustices and some positive change in their well-being today would be profoundly insulting, not reparatory.

Of course, when we are looking at compensable injury and have sufficient information to determine what amount of compensation may be due, who should pay it, and who should receive it, then compensation should be provided. Those fighting for some degree of individualized compensation for particular instances of historic injustice (e.g., Brockell, 2021; Brown, 2021; Levin, 2021; Moore, 2021; Yachot, 2021) would therefore not have to abandon their claims in whole or in part even if reparations, as I have defined them, were provided. To help claims for compensation along, we may even want to explore ways to make legally uncompensable injuries compensable again, such as by extending statutes of limitation or adjusting burdens of proof. But no change in legal standards or procedures can make injuries that are uncompensable by nature or through lack of information given the passage of time compensable again. This is the result of human nature and circumstances and the finality of lived experience. One cannot change this with legislation. But under my conception, reparations and compensation are aimed at different injuries, and so neither remedy can be a substitute for the other.

While I recognize that this is probably a unique feature of my conception of reparations, the advantage of this approach should become clear in a moment. First, however, I want to mention another kind of remedy that is sometimes used when there are problems calculating what would be a proper amount of monetary compensation, and is therefore sometimes thought of as a form of reparations. This is the remedy of restitution. Restitution, among other things, requires that the property in dispute (land, usually) be returned to its rightful owner. But this remedy does not avoid as many of the problems with calculating compensatory damages as one might think. For example, just like awards of monetary compensation, it requires that we identify both the wrongful and the rightful owner. While identifying the wrongful owner will sometimes be feasible in the cases we have in mind, identifying the rightful owner will almost never be. Even when it is, however, “clean” restitution would often create some new injustice. Given the passage of time, many people will have made improvements to the property in question. The claims of these people are entitled to some moral weight even if these people are considered wrongful rather than innocent improvers under existing law and therefore have no legitimate claim to title (Dickenson, 1985–1986). Indeed, it hardly seems just to ignore the improvements of even wrongful improvers *in their entirety* if these have taken place over generations, have added large amounts of value to the property in question, and there was no way for these improvers to have settled their title even if they had notice of the prior claims of the original owners. And just think of all the individualized hearings that would need to be held to determine the compensation required for improvements for each parcel of property ordered restored to its rightful owner. The need for such detailed inquiries into the value added by such improvements makes restitution an infeasible remedy in most cases all on its own. In any event, restitution would not address the real source of uncompensability here, which flows from the nature of the injury and not merely the difficulty of calculating the amount of compensation due.

But does not restricting reparations to the rectification of only uncompensable injuries make reparations merely symbolic, something which constitutes an acknowledgment of the wrong but does little to assist those injured by it? No, for the uncompensable injuries we are talking about here are too large all by themselves for a mere symbolic action to constitute a sincere acknowledgment of how grievous these historic wrongs were. The mind-blowing enormity of the injury in question cannot be used as an excuse to do mostly nothing. Under my general theory, reparations must make real and significant changes in the existing order.

## 2.4 | Reparations as an obligation of existing institutions and individuals

But who, exactly, has a duty to make reparations? Under my conception, reparations are owed only for injustices committed in an earlier historical period by individuals or entities whose successors-in-interest still exist in the substantive even if not in the formal, legal sense. By this I mean that the obligation to make reparations is a not only a moral rather than a legal debt; it runs with assets, not liabilities (we will see in a moment that this is a helpful feature of the libertarian argument for reparations). As long as the assets in question continue to exist, then, the obligation cannot be extinguished by the death or dissolution of the original wrongdoer, as liabilities can, or by using careful legal maneuvering to transfer assets into new entities but leave liabilities behind. Accordingly, under my general theory, reparations are owed by institutions, such as national or state, or local governments and government entities like police departments; they are owed by banks, corporations, and other legal entities such as universities or trusts or partnerships and their successors-in-interest, regardless of the legal terms of any transfers of ownership of these entities, and they are owed by individuals who participated in acts in historical injustice if they are still alive or have living successors-in-interest who hold assets traceable to these persons.

But this does not mean that under my conception, reparations are a collective responsibility of certain groups of individuals. That is, they are not the responsibility of individuals simply because these individuals are members of an entity whose members committed wrongs long ago. They are the individual responsibility of collectives as collectives. This means they are not subject to the usual objections to assigning collective responsibility (see Reiff, 2008, 2010). The effects of these injustices may and indeed must be continuing, but these current effects need not be traced back to the original injustice in the way that claims for damages must be traced to set forth currently cognizable legal wrongs. And to the extent that these same injustices or new versions of them are being inflicted today, the remedies available for them are the usual remedies for other kinds of current legal wrongs; only the historical part can be the basis of claims for reparations.

Note also that the assignment of a duty to make reparations mostly to institutions and not to individuals does not mean that most individuals will avoid having to contribute in some way to the payment of reparations. For when government entities are liable to make reparations for acts of historical injustice, these become government debts, and whenever government entities have debts, no matter how these are incurred, the taxpayers and those who otherwise contribute operating funds to these entities ultimately have to bear the financial burden of discharging these debts. Even when reparations are required from private firms, their shareholders and other stakeholders will ultimately bear the burden of paying for these reparations through the effect of these debts on the value of their interest in or on the dividends they receive from the firm. So a large group of individuals will indeed have to contribute to the payment of reparations, most of them indirectly perhaps, but my conception does not result in most individuals being let off the financial hook. Insisting otherwise would simply be a way of putting form over substance.

What my conception does do is let most individuals—except those rare individuals still living who can be found to have personally committed historic acts of injustice themselves, off the *moral* hook. Of course, we might want to assign individual moral guilt to existing individuals or entities in other contexts. For example, it might be important in other contexts to assign moral guilt to existing individuals or entities who have and continue to benefit from past

wrongs and impose special burdens on them. Such individuals and entities may even have a moral duty to disgorge a part or even all those benefits (see, e.g., Associated Press, 2021). But I will treat this duty of disgorgement as separate from what I am calling the duty to make reparations as well. My libertarian theory of reparations is not about identifying, shaming, or punishing wrongdoers. Other legal remedies and social criticism and the withdrawal of social cooperation are available to do that (see Reiff, 2005, pp. 29–34). The libertarian approach to reparations is about identifying wrongfully acquired assets and redistributing them in a way that allows the successors-in-interest of those who were wrongfully deprived of them to enjoy at least some of the benefits of owning them once again. Otherwise, the assignment of moral guilt to currently existing individuals or entities is unnecessary when what we are concerned with is the creation of a general obligation to make reparations.

## 2.5 | The assignment of individual moral guilt and its transference

Not having to assign guilt or blame to any contemporary individuals may sound morally unsatisfying in some way, but this is actually a benefit of my conception, not a bug. We can continue to argue about whether we should recognize an intergenerational transfer of the relevant original sins here and if so, what remedies should be instituted in light of this. Nothing about the payment of reparations as I have conceived of them precludes this. But people will resist the assignment of moral guilt even more vigorously than they will resist the creation of financial obligations toward which they might have to contribute. So as a tactical matter, any approach that requires such an assignment is unlikely to be productive. And remember, just because taxpayers are the ultimate financial guarantors here does not mean everyone has to pay equally. Like any other government financial obligation, taxes to provide the financial wherewithal necessary here can be steeply progressive, or they can be assigned only to a certain class of taxpayers (for example, the wealthy or commercial property owners), or they could be paid through the assessment of fines, license, or user fees. In some cases, fulfilling these obligations might even be covered by (title) insurance. In short, the obligation to make reparations can be financed in any of the myriad ways in which government operations or the operation of businesses have traditionally been funded.

Note that there is also another way in which the imposition of an obligation to make reparations under my theory is more feasible than under many of its competitors. To be subject to a duty to make reparations under my conception, the entity, organization, or institution at issue does not have to be primarily responsible for the historical injustice. It merely must be a contributor or aider and abettor. Liability for reparations under my conception is what lawyers call “joint and several.” Each participant is liable for the *all* the injuries caused by the wrong no matter what that participant’s personal contribution might have been. Indeed, trying to assess the degree of responsibility for injustices this enormous would be contrary to the idea that these injustices were so huge they have achieved historical importance. In these cases, determining a participant’s personal contribution to the joint wrong or the contribution of their predecessor-in-interest is simply irrelevant. And this means (among other things) that as the long as the government (in its largest sense) is partially responsible for these injuries, it is required to address all the damage, although it may of course demand contribution from lesser entities involved under standard legal principles. In other words, it is the government’s obligation to sort out who should contribute, not the victims or their descendants.

Of course, a large package of reparatory, compensatory, restitutionary, retributive, and deterrent remedies and various structural changes are going to be required if we are going to make a serious attempt to address all the continuing injuries flowing from these grievous historical wrongs. Disadvantage has been so firmly and deeply embedded into the very structure of society for some groups as a result of these wrongs that even with a degree of dedication to alleviating this that is unlikely to arise, these injuries will take generations to address. But what is happening today is either all talk and no action, or, if there is action, it is highly localized, mostly symbolic, and very piecemeal (see Law, 2020; Yoon-Hendricks, 2021). Nothing has been attempted on a society-wide basis. To attract enough public support to attempt society-wide remedies, however, we must make larger claims, not smaller ones. The first part of an effort to do exactly that is to embrace the general theory I have presented here. The second part, in turn, is to join this general theory with a libertarian conception of justice, rather than an egalitarian one. And this is what I shall do next.

### 3 | HOW THE ARGUMENT FOR REPARATIONS CAN BE BASED ON LIBERTARIAN PRINCIPLES

#### 3.1 | From equality to liberty

The fundamental value most often cited as a basis for the obligation to make reparations today is the principle of equality (see, e.g., Darity Jr. and Mullen, 2020). While the precise requirements of this principle remain hotly disputed, most everyone agrees that it requires that government show people who are similarly situated equal concern and respect, and take steps, at least in certain circumstances, to ensure that private parties do as well. People may vehemently disagree on whether certain acts constitute violations of this principle, but almost no one contends that slavery, Jim Crow, and other official and semi-official acts of discrimination against Black people, the long-time oppression of women, especially the denial of their right to own and inherit property and the denial of comparable wages when they are performing the same work as men, the genocide of indigenous people and seizure of their lands and in some cases their children, and the oppression and exclusion of religious minorities from enjoying various goods and services that society offers others, are not violations of this principle.

The general exploitation of workers raises more complicated and therefore controversial issues—many people do deny that exploitation is a violation of the principle of equality, or any sort of wrong at all. But many also recognize an equality-based claim against exploitation. I do think that exploitation is a violation of the principle of equality (see Reiff, 2013), but because nothing in my argument here depends on this being true, I will not argue the point here. For regardless of whether exploitation is a violation of the principle of equality, we need not rely on the principle of equality to include exploited workers in the groups entitled to reparations. They are included under the principle of liberty no matter what.

#### 3.2 | The argument from liberty

The question, then, is can one make a liberty-based argument for reparations? Liberals have pretty much conceded the argument from liberty to conservatives for generations (Hesse, 2021; Reiff, 2017a, 2020). But this is not only a tactical mistake, it is a substantive mistake as well, for

the liberal argument from liberty is actually very strong. All genuine libertarians—the label given to those who advance their view of justice based on the principle of liberty—begin with the fundamental principle of self-ownership, however, and derive their conception of liberty from this (Reiff, 2013, 2023, pp. 284–287, 292–294; Cohen 1995).<sup>3</sup> While libertarians do this in a variety of ways (see Reiff, 2023), those differences are not important here. I am generally considered a left-libertarian, meaning that I arrive at the same place as liberal egalitarians but use the argument from liberty to get there. But my position in this paper should nevertheless be acceptable to right-libertarians if they actually believe what they say they believe, for my left-libertarian position relies on the same fundamental principles and propositions on which right libertarians rely (Reiff, 2023).

A few other left-leaning theorists, of course, have used an argument from liberty to justify their egalitarian-appearing positions as well. But no one has used it as grounds for reparations, and those who have used the argument from liberty for other purposes have used a form of the argument that is very different from the one I will be using here. What they have used is what has come to be called the argument from “republican” liberty (see, e.g., Pettit, 2007). While there are many versions of this argument and many nuances to each version, advocates of republican liberty typically contend that the principle of liberty is violated whenever one person subjects another to “domination.” What this means then depends on how one defines domination, and while there is some definition of domination that would no doubt work here, defining what avoiding domination requires is no less controversial than defining what equality requires (van Parijs & Vanderborght, 2017, pp. 119, 120). It therefore will not do for our purposes, which is to show how an obligation to make reparations can be based on a principle that is not as moralized as the principle of equality and therefore does not require controversial assignments of victimhood and blame.

What I will base my argument from liberty on, then, is the fundamental principles of libertarian distributive justice, as set forth by Robert Nozick, one of the most influential right libertarians of the 20th century. These principles include:

1. A principle of just initial acquisition, which provides an account of how people could come to justly own things in the state of nature.
2. A principle of just transfer, which provides an account of how things can be justly transferred from one owner to another.
3. A principle of rectification, which describes what to do if either or both of the first two principles are violated in any particular instance (Nozick, 1974, pp. 153–160).

Of course, this statement of fundamental principles is incomplete—each principle needs to be given further content and refined before it can provide specific guidance on what justice requires that we do. Nozick went on to supply his own version of these refinements, and one could disagree with Nozick on some or all the elements of these more specific versions of his principles while still embracing the idea that the three principles provide the correct overall organizational structure for thinking about libertarian principles of justice. And this is what I shall do here.

### 3.3 | The principle of just initial acquisition

Taking the first principle first, Nozick uses a version of Locke's labor theory of property to give content to his account of just initial acquisition (Locke, 1988, section 27; Nozick, 1974,

pp. 174–182). That is, he contends that people come to own things in the state of nature by mixing their labor with them. Many people seem to assume that the New World was in a state of nature before white settlers arrived, and therefore fully available for free appropriation, but there is nothing in Nozick's work or the work of other libertarians that would suggest that indigenous people could be somehow justly excluded from the reach of the labor theory of property. New World lands were accordingly justly owned by indigenous people by the time white settlers arrived. Indeed, even if we consider some of the New World to have been unoccupied and therefore (perhaps) unowned and available to settlers for appropriation, this is not the case for large swaths of what is currently very valuable land. It accordingly would not change our determination that the principle of just initial acquisition was widely violated by the appropriation of the New World by white European settlers.

Even if we think of the “undiscovered” New World as being entirely in the state of nature, moreover, this does not mean that it was unowned and available for free appropriation. Nozick thinks of assets in the state of nature as unowned, but we could instead think of them as jointly owned. In this case, those who originally appropriated these resources through mixing their labor with them, as well as their successors-in-interest, owe compensation to all other original joint owners and their successors-in-interest for appropriating these jointly-owned assets. Indeed, this is the view that typically separates right-libertarians from left libertarians, for this one difference on the status of unappropriated natural resources provides a conceptual reason for left-libertarians to call for all sorts of redistribution (Reiff, 2013, 2023, pp. 280–281).<sup>4</sup> Locke argued that treating unappropriated resources as jointly owned was untenable because it would effectively paralyze development, for no one could appropriate anything without the consent of everybody else. But this is not true. We could still recognize appropriation if we require post-appropriation compensation. In other words, we could still recognize appropriation of unappropriated assets, and find a violation of right only if compensation to other joint owners is not ultimately paid, just as one does not violate anyone's rights by eating a meal in a restaurant unless and until one fails to pay for it (Reiff, 2020, pp. 51–52). So there is a libertarian argument for finding Nozick's principle of just initial acquisition violated no matter how one treats the colonization of the New World. The only way for these settlers to justly acquire land and the resources it contained once they arrived in the New World was to acquire this land in accordance with Nozick's second principle, the principle of just transfer.

### 3.4 | The principle of just transfer

Nozick gives content to his second principle by claiming that what justice in transfer requires is voluntariness, and many libertarians follow him in this. The meaning of voluntariness, however, is notoriously indeterminate (see Reiff, 2013, pp. 84–93). But it should be obvious that murder and theft are not permissible methods of acquiring property voluntarily according to libertarians or anyone else who has a conception of the term that is worth taking seriously. The seizure of New World lands from indigenous peoples should accordingly be uncontroversially unjust, even for the most conservative libertarians. True, some of this land was acquired by treaty, but since these treaties were executed under the duress and were largely violated by not only the governments that signed them but also the white settlers who were supposed to abide by them, it is hard to see how anyone worthy of being taken seriously could argue that these lands were mostly voluntarily and therefore justly transferred. And the same reasoning would apply to real property seized from Black people or destroyed using violence (think of the 1921

Tulsa Race Massacre) or seized from Black or indigenous or other minorities by local governments on the pretense of “urban renewal” or “highway construction” using the power of eminent domain (see, e.g., Archer, 2021; Buller, 2023; Fullilove, 2001; Olen, 2021; Parshina-Kottas et al., 2021; Randell & Curley, 2023; Staples, 2019; Werner & McMullen, 2021).

With regard to women, the violation of the principle of just transfer typically occurred not in the seizure or condemnation of their property, but in the refusal to allow voluntary transfers to them. But if the libertarian principle of just transfer recognizes voluntary transfers as creating property rights that cannot be violated, it is an implied corollary of this principle that preventing such voluntary transfers also constitutes an impermissible violation of liberty. Indeed, I do not see how this could even be controversial, for otherwise the principle of non-interference with property rights that all libertarians—both right and left—accept would be rendered largely meaningless. If putting a gun to someone's head and forcing them to sign over their property is a violation of libertarian property rights, then putting a gun to someone's head and *preventing* them from signing over their property to their wife or daughter or sister if they want to do so, or to anyone else for that matter, must also be a violation. Indeed, this would constitute the tort of intentional interference with economic advantage, which has been recognized at common law for hundreds of years (Fine, 1983). And the same would be true for government rules or practices that prevent such otherwise voluntary transfers. Not on the basis that women must be treated equally, although this is true as well, but on the basis that preventing voluntary transfers to women violates the liberty of both men and women to make and receive such transfers.

As I have already mentioned, however, women were not allowed to purchase or inherit property under the laws or conventions of the day throughout much of history or given access to credit even if they were allowed to do so. The libertarian property rights of women were also violated, of course, when they were effectively forced to provide unpaid or insufficiently compensated labor, but I shall address this basis for reparations separately when I discuss reparations for exploited labor. For even ignoring this aspect of the economic oppression of women, preventing women from acquiring property through voluntary transfers is itself a grievous historical injustice that requires rectification today. The same would also apply to laws and conventions that prevented Black people or other racial or religious minorities from purchasing property from willing sellers and preventing the financing of such purchases too.

Next, consider slavery. Remember, all true libertarians believe in self-ownership—that is, we each own our bodies fully and completely, and therefore we each also own our labor fully and completely (Reiff, 2013, 2023, p. 287; Reiff, 2020, pp. 56–57). Given this, we are each free to voluntarily exchange our labor for wages, or not. In any event, absent such a voluntary exchange, whatever resources we then mix with our labor become our property in the ordinary course (Locke, 1988, p. 288; Nozick, 1974, pp. 174–182; Reiff, 2013, 2023, pp. 40–42). All true libertarians should accordingly acknowledge that involuntary servitude is an uncontroversial violation of the principle of just transfer, for no matter how broadly or narrowly we interpret the voluntariness requirement, the historic incidences of slavery we are talking about are a violation of it (Nozick, 1974, pp. 152–153).<sup>5</sup> This means, of course, that slave labor cannot confer ownership rights on slave owners. Whatever resources were mixed with slave labor became the property of the slaves themselves, not their owners. And I do not see how ending enslavement could constitute rectification for the labor stolen from these people before this. So there should be little argument that the various historical injustices at issue here are the kind of injustices that would require rectification under libertarian principles.

### 3.5 | Reparations for exploited workers

Once again, I concede that my claim that the exploitation of workers in general is also a violation of the principle of just transfer is more controversial. But there is a way of reading Nozick's own interpretation of his second principle that is consistent with my claim. Nozick claims that voluntariness is all that is required here, but he does not make clear what voluntariness itself requires.<sup>6</sup> Nozick wrote a lot about voluntariness in one of his first published articles, however, and if we look to this as a guide, it does suggest that economic duress might sometimes produce involuntariness (Nozick, 1997). On the other hand, a transaction that is made under economic duress is voluntary according to law in most situations in most liberal jurisdictions (Reiff, 2013, pp. 84–93), and this would leave exploitation out. On the other hand again, there are a number of theorists besides (possibly) Nozick, including most notably Marx and his followers but not only Marxists, who argue that economic duress does indeed make a transaction involuntary, at least in many instances (see, e.g., Hale, 1923). And this idea certainly has some real intuitive appeal. So there is an available argument that even if voluntariness is the only substantive requirement, the libertarian principle of just transfer has indeed been violated here.

But rather than simply rely on a broad interpretation of voluntariness to make out my claim that reparations are owed to the exploited, I will instead rely on a broader principle of just transfer. I will argue that even a transaction that meets whatever standard of voluntariness we apply can still be exploitive in certain circumstances. Of course, if an exchange is involuntary, it is voidable for that reason alone and there is no need to enquire into whether it would also be exploitive. But under my version of the principle of just transfer, the principle requires not only voluntariness, but also reciprocity. That is, even when it is voluntary, an exchange is just only when the value given by one party to a transaction and the value given by the other are roughly equal in some meaningful sense (Reiff, 2013, pp. 75–76). Obtaining a profit in an exchange transaction is accordingly distributively unjust under my theory, but note it is not exploitive and therefore a violation of individual right as long as the amount of profit is reasonable. When the profit obtained by either party is excessive, or when the value exchanged is not otherwise roughly equivalent, the transaction is *intolerably* unjust and exploitive and therefore is a violation of right and commutatively unjust as well as distributively unjust (Reiff, 2013, pp. 101–189).

I realize there are a lot of working parts to my argument here. I use cost of production to determine equivalence, but why use this measure rather than market price to determine value? What does cost of production even mean, especially when the thing exchanged is labor? When is an amount of profit excessive rather than reasonable? Why distinguish between something that is tolerably unjust and intolerably unjust in the first place? I have discussed each of these issues extensively, however, in my 2013 book, *Exploitation and Economic Justice in the Liberal Capitalist State*, as well fully defended my claim there that exploitation can arise even in a transaction that is voluntary according to the applicable legal standards (Reiff, 2013). So rather than try to summarize my book-length defense of these concepts here, I will simply refer skeptical readers to those arguments. All I will say here is that if one accepts my theory of exploitation, a vast number of labor contracts and other exchange transactions are clearly grievously exploitive and have been for centuries.

A lot of contemporary transactions are exploitive too, of course, but it is only the historical ones that are of interest to us here. Even though most if not all parties to those historical transactions are now dead, the exploitive nature of those transactions has caused a continuing and

severe distortion of the socio-economic and political order. The successors-in-interest of those subjected to historical acts of exploitation (primarily the natural objects of their bounty, people who would have had more wealth passed down to them if their forbearers had not been exploited), would have valid claims for reparations too.

Even if one remains skeptical of my interpretation of the principle of just transfer as being violated by exploitation, however, this does not render the rest of my argument for reparations unsupported. For remember, all I am trying to establish here is that the class of people who are owed reparations is sufficiently large that making discreet awards only to members of one group or another cannot on its own constitute a serious attempt to make reparations to all who are due them. In any event, given the inclusion of women in this group, the class of persons who are owed reparations is still huge, even if we do not count exploited labor. The breadth of my claim as to who is entitled to reparations is accordingly an essential feature of my argument, not a defect, as one critic has contended. For it means that no matter what, a society-wide solution is required. Not necessarily as a substitute for more targeted solutions, but as a necessary supplement to these. Indeed, Nozick discussed the need for such a social rather than individualized solution himself and reasoned that given the size of the class owed rectification for violations of the principles of just initial acquisition and just transfer, some proxy for determining who was the victim of such violations and who was the perpetrator would be required. And the proxy Nozick endorsed, and the proxy I shall endorse here, is current wealth (see Nozick, 1974, p. 231). That is, we might reasonably use current wealth as a way of determining who has been injured by violations of the principle of just initial acquisition and just transfer and who has unjustly benefited from these violations.

### 3.6 | The principle of rectification

This brings us to Nozick's final libertarian principle, the principle of rectification. Note that rectification, as used by Nozick, and reparations, are not synonymous—rectification is meant to refer to all the various remedies—compensatory, punitive, declaratory, injunctive, restitutionary, reparatory, and so on, that might be available under the circumstances to do justice following a violation of either or both of his first two principles. And given that natural resources were in most cases simply seized or stolen from those who initially mixed their labor with them, the amount of rectification required if we were to take libertarian principles at face value would seem to be enormous. And if we add in violations of the principle of just transfer, the amount of rectification due would be larger still. Nozick did not have any problem with the idea that extensive rectification might be required (see Nozick, 1974, p. 231), so there should be no principled reason why right-libertarians would resist this. But as a practical matter, they do. Even Nozick, despite his express concession that there is a need for a whole lot of rectification, chose to not say much about this. Perhaps he thought this issue was tangential to the main project in which he was engaged, or thought it was a mere technical question that did not raise interesting theoretical issues, or perhaps he really did not think that rectification was a good idea in practice even if it was required in theory. He does not say. And this is how right-libertarians have proceeded ever since.

But if rectification is to be deemed tangential rather than essential to right libertarians, then some principle must be articulated by those who take this view to defend it. For without the enforcement of the rectification requirement, the principle of just initial acquisition and the principle of just transfer would each be rendered toothless, formal, and empty because no

consequences would flow from violating either of them (Reiff, 2005). Note also that this problem cannot be avoided simply by arguing that what we are talking about here are violations of distributive justice, not commutative justice, and therefore no individual duty to rectify has been created. The violations at issue here (including but not limited to exploitation under my conception of it) are indeed violations of individual right—that is, breaches of a particular individual's duty and not merely breaches of some larger but less specific “societal” duty (see Reiff, 2013). Each of these historical violations can be traced back to the actions of individual agents who interfered with the property rights of others, even if these individuals cannot currently be specifically identified. So I know of no grounds for arguing that the principle of rectification would not apply here. Indeed, how could Nozick's argument that the minimal state could arise without violating anyone's natural rights survive if these rights violations were not taken seriously? It is not acceptable to simply ignore the principle of rectification and not at least attempt to articulate a way of meaningfully complying with it.

### 3.7 | The advantages of the argument from liberty

One of the greatest advantages of the argument from liberty is that it is not subject to the usual riposte to the argument from equality—that no matter what equality requires, liberty trumps equality, so infringements of equality cannot be remedied in ways that violate liberty. For even John Rawls, the most influential liberal political philosopher of the 20th century and a staunch defender of the principle of equality, conceded that fulfilling the demands of liberty had lexical priority over fulfilling the demands of equality, meaning that no amount of liberty may be sacrificed for even a substantial gain inequality (Rawls, 1971, pp. 26–28, 266, 474–480). True, Rawls limited this concession to what he called “basic liberties” and denied that economic liberty was one of these. But even though this provides space for egalitarians to argue that equality can indeed sometimes defeat liberty, this exception is rejected by many of those on even the moderate right and universally rejected by those on the neoliberal and libertarian right (Reiff, 2017b). In any case, economic liberties can often be rephrased as some kind of basic liberty (religion, speech, association, and so on), so this exception can be got around relatively easily. And if the principle of liberty even might preclude requiring what equality demands in a particular case, this is a very powerful argument, one that is not easily defeated by those making an equality-based argument for reparations.

This is why the liberty defense to equality-based arguments is the “go to” argument for the political right in such a wide variety of cases. The liberty defense is made by those attacking minimum wage, by those contending that anti-discrimination laws conflict with their religious beliefs and therefore their religious liberty, and by those contending that various laws regulating financial and other kinds of transactions interfere with economic liberty or freedom of contract or association. It is made by those claiming that government efforts to limit campaign contributions conflict with their liberty to speak, which they claim includes the liberty to donate money. It is even made by those contending they do not have to pay for union services the union is compelled to provide to nonmembers, for this is supposedly a form of compelled speech and therefore an infringement of the liberty *not* to speak (see Reiff, 2020, 2023).

Unfortunately, liberals usually have little to say in response to the liberty defense other than to argue that their equality argument is really strong, which of course is irrelevant if liberty does indeed have priority over equality. But sometimes they nevertheless manage to prevail on this

point and convince people that equality not liberty should prevail in a particular case. This is becoming less and less frequent, however, and in any event, even when they do prevail it leaves those who advance the liberty defense largely unconvinced and looking for opportunities to relitigate the issue. As a tactical matter, it would be far better to offer a liberty-based justification for a left-leaning position and not just an equality-based one whenever it is possible to do so.

Of course, basing a claim for reparations on liberty rather than on equality does not merely require showing that liberty *permits* what equality demands; it requires showing that a proper interpretation of the principle of liberty *requires* what equality demands. In this sense, it might seem that the argument from liberty does bear a slightly higher argumentative burden than would apply were we merely trying to avoid the argument from liberty as a defense. But as it turns out, the extension required to make the stronger argument from liberty relies on the very same points as the lesser argument, so this extra burden is very slight. And since this approach avoids the liberty defense in its entirety, it is going to be strategically advantageous no matter what.

Nevertheless, despite this tactical advantage, some egalitarians worry that because my libertarian approach leads us to focus on assets instead of people, it fails to capture all that is wrong about historical injustice and cannot be the route to the kind of comprehensive national-soul cleansing remedy that would be called for by the argument from equality. And I agree. But I think this is a benefit rather than a drawback of my approach. By focusing on all aspects of the lives of those injured by these historical violations, the argument from equality raises many more controversial remedial problems, for there is much more against which to object. Even more importantly, the more comprehensive theories built on the argument from equality all seem to suggest that what we need to do is unwind history and rebuild it in some counterfactual way, something which might have all sorts of unintended consequences, and in any event is politically impossible to do. As a practical matter, then, these more comprehensive egalitarian approaches are unlikely to achieve enough public support to provide anything more than scattered, localized, or merely symbolic relief.<sup>7</sup>

In contrast, if we focus simply on assets, we are much more likely to achieve the kind of far-reaching remedy that those basing their claims on the argument from equality claim to want—a grand, society-wide program to provide meaningful assistance for everyone injured by one or more these historical violations. Indeed, as a historical matter, property-based claims for reparations tend to be much more successful than those based arguments from equality. Consider the success those seeking reparations from the German government for property seized by the Nazis or acquired under circumstances that made the transfer of that property voluntary in name only (see JUST Act Report: Germany, 2023). Or the amounts paid by various ex-communist states to those whose property was similarly seized by the government or acquired under duress (see CSCE, 2003). In the United States, property-based reparations claims have even been successful when made *by slave owners* who sought compensation when their “property” was lost because slavery was made illegal, or when settlers’ seizure of indigenous people’s lands was reversed through decree or revolt (see Craemer, 2021).<sup>8</sup> By contemporary standards, these payments to slaveholders and settlers were morally outrageous. But if focussing on property can justify reparations in these morally dubious situations, think of what this approach can do when used in morally justified ones.

Not only is the libertarian argument for reparations more politically practical, its simplicity and less controversial nature give it greater moral force. The notion of equality is sufficiently indeterminate, and the difficulties of establishing what is the morally correct pattern of

distribution and how we might maintain this pattern over time are so daunting, that the moral power of any particular egalitarian solution is always going to be open to attack. The argument from liberty, in contrast, is based on the simple and intuitively appealing principle that “you can’t acquire good title to property that was not legitimately owned by your transferor.” While some people might argue for limited exceptions here, such arguments present uphill battles, whereas because of its complexity and indeterminacy, the argument from equality is an uphill battle from the start.

Even more importantly, as I have mentioned already, establishing that a portion of current holdings were unjustly acquired in the past does not require the assignment of moral responsibility to anyone alive today. This is because what we are tracing under the “liberty as property” approach I am advocating here are assets and not people. The argument from liberty does not even require that some people continue to benefit from these violations, and therefore bear some personal moral responsibility in this sense. All that is required is that people alive today continue to claim ownership of property or the proceeds of property that was unjustly acquired at some point in the past. And property can be unjustly acquired even if the violator is not acting intentionally or even negligently—there is no requirement that the violator must have been at fault. In other words, property crimes and property torts (that is, civil as opposed to criminal wrongs) are strict liability offenses. Accordingly, no moral blame needs be assessed or implied by recognizing that there exists an obligation to make rectification for the violations of property rights that occurred here. The absence of an implication of personal moral responsibility makes the libertarian approach to reparations much less likely to face the kind of reflexive defensiveness that other approaches to reparations often trigger.

The argument from liberty also avoids various other attempts to morally undermine claims for reparations. For example, it is not subject to the claim that any obligation to make reparations has been “superseded” by the enactment of laws that would prevent similar wrongful acts from being committed today (see, e.g., Waldron, 1992). The moral basis of this claim is obscure, but it seems to be based on the patently false assertion that we no longer live a society that is drenched in white, straight, male, Christian privilege. But in any event, the argument is that given their supposed unequivocal disavowal of the relevant historical injustices and the steps they have taken to prevent the repetition of such injustices, the current descendants of those who committed such violations have established their moral “bona fides” and are supposedly cleansed of any obligation to make reparations for the rampant interference with property rights committed by their forefathers. But once again, the obligation to make reparations under the argument from liberty does not depend on the moral record of anyone alive today. It is, as I said, aimed at property, not people. All that matters is that some assets are currently held by those whose predecessors-in-interest acquired them in violation of libertarian property rights; whether there was fault involved in this then or now does not matter at all.

Even the concept of adverse possession, which allows a wrongful owner to become a rightful owner after a passage of sufficient time and which some theorists cite as grounds for disputing the claim that some portion of current assets are wrongfully held (see, e.g., Lyons, 1977, pp. 252–253), would not apply. This method of coming to own property rightfully is an application of the statute of limitations on legal action. But there was no available legal procedure here that could have been used by the true owners to quiet title and thereby settle the question of ownership. A slave, for example, could not sue to claim his share of the proceeds of the crops he was forced to farm—so the statute of limitations cannot even have begun to run. Besides, moral complaints about these injustices have been consistently made by those injured by them since the violations occurred, so there can be no moral surprise or failure to assert moral rights

here either, which is the driving force behind the whole statute of limitations concept. People have not been sitting on their rights; the wrongdoers and their successors-in-interest who controlled the political and legal apparatus of society here have simply refused to recognize that any such rights existed. Everyone who is alive today has notice of the historic facts underlying these claims, regardless of whether they were aware of the particular manner in which these claims might eventually be legally or morally expressed. Given this, no one today can claim not to have had notice of the claims against these assets. Having had such notice, no one could acquire good title to these assets no matter how many hands the assets may have passed through. And therefore no one today can hold these previously unjustly acquired assets free of these claims.

Using the argument from liberty, we can also avoid the argument that tracing the descendants of the perpetrators of this injustice (that is, who should pay) and their victims (that is, who should receive) would depend on and therefore reinforce the very kind of suspect categorization that we are now trying to reject given our current understanding of the principle of equality. Because we are not making a claim based on such categorizations, we cannot be accused of hypocrisy here. Most importantly, we also avoid the related argument that reparations for government programs aimed at assisting Blacks who have been disadvantaged by years of discrimination is actually a form of impermissible discrimination against *whites*, and therefore a violation of the principle of equality, because even if it is, liberty trumps equality, as those on the political right themselves loudly contend.

There is a whole collection of other morally dubious arguments I could also address. But let me cut this short and instead try to sum up all these arguments by going to the thought that is obviously driving all or at least most of them. And this is that recognizing a duty to make reparations on a society-wide basis is simply *too demanding*. The amount of rectification that would be required to set things right would be impossible to pay. But this is just another way of saying that when an injury is uncompensable, nothing needs to be done. A moral principle that said you do not need to make rectification if you just injure people in such extreme ways that you could never make things right would simply encourage the most perverse, violent, and immoral behavior. No such moral principle would be worthy of our support.

But morality is also supposed to be a guide for human behavior, and this means that it must take the realities of human nature and circumstances into account. Requiring people to do things that most could not reasonably be expected to do given human nature and circumstances renders morality impotent, and any argument that seems to do this can accordingly be challenged on that basis. Indeed, in other contexts, the demandingness objection has had some success. As an objection to utilitarianism as a method of moral reasoning, for example, many people find it convincing. But in that case, the “too demanding” objection is being offered a reason to choose some other method of moral reasoning, not to reject morality altogether. So if the demandingness objection were to have any purchase here, it would be only to a theory of reparations that required a wholesale makeover of the socio-economic and political order, something that the argument from liberty does not require, as I shall explain in detail in the next section.

There is one final argument here, however, that I do want to mention specifically before I move on. This is the argument that the wrongful seizure of property and/or labor that I have pointed to here may have actually left the descendants of the victims of this injustice better off than they would otherwise be today, or at least not clearly worse off (see, e.g., Sher, 1981). The thought here, I suppose, is that straight, white, rich, Christian, male-dominated society may have done a lot of bad things, both domestically and internationally, but it did some good things

as well, and these accomplishments have undeniably raised the overall standard of living “all-things-considered” for everyone over time. We simply cannot assume that there is a net injury caused by the totality of the activities of the dominant class and not a benefit. And if there is a net benefit, then no rectification in the libertarian or any other sense is due.

There is a massive amount of evidence, however, regarding the continuing maldistribution of wealth. The higher percentile one looks at in the wealth distribution, the whiter it is, and one does not have to get to the top percentile to find it is almost exclusively white (Aladangady & Forde, 2021). Men own vastly more assets today than women, despite some progress in this regard (Kent & Ricketts, 2021). Having parents who primarily exchanged their labor for wages rather than living off the earnings on their accumulated capital makes it far more likely that their children will do so as well (Rank & Eppard, 2021). The most reliable predictor of student success is the wealth of their parents, not their parents' educational attainments (Bhatia et al., 2023; Carnevale et al., 2019; Chetty et al., 2023). Indeed, we need only refer to the old adage that “it takes money to make money,” and the truism that “wealth begets wealth,” to understand how this historic unjust allocation of assets has produced a continuing unjust allocation today, leading to a continuing distortion of the economic order and therefore of the social and political order too (see, e.g., Horowitz et al., 2020; Long & van Dam, 2020; McIntosh et al., 2020).

Notwithstanding the undeniable reality of the special burdens and lesser starting positions that those who are members of historically oppressed classes have to overcome today, however, there are a few contemporary scholars who continue to make the argument that the descendants of the oppressed are indeed better-off today because their forebearers were oppressed (e.g., Risse, 2005). And this argument also continues to be asserted by some public figures as well. One well-known conservative activist, for example, said not too long ago, “Blacks in America...enjoy the highest standard of living of Blacks anywhere in the world, and indeed one of the highest standards of living of any people in the world...Where is the acknowledgement of Black America and its leaders for those gifts?” (Horowitz, 2002, p. 15). Perhaps even more significantly, Ron DeSantis, the current governor of Florida and (as of this writing) still a serious candidate for the Republican nomination for President, has repeatedly made a version of the “better-off today” argument on the campaign trail (Sullivan & Rozsa, 2023). While his assertion of this claim has triggered much criticism and even outrage (see, e.g., Alfaro, 2023), it obviously tells some people what they want to hear—that the historical injustices committed by their forefathers were, in fact, gifts to the oppressed, not crimes. And if this argument were valid, it would threaten the whole reparations project, not just the particular claim for reparations I have made in this paper.

Unfortunately, a full debunking of this argument would take more space than I have left and would end up being a distraction from the main thrust of my argument. Suffice it to say that for this argument to succeed, it would have to be true that white males, because of their dominant position, created public goods (goods that can be enjoyed at least to some extent by everyone) that would have not been created otherwise. But why should we think that modern improvements to our standard of living would not have happened without a dominant class, much less a white male one? Rather than assuming some sort of natural white male exceptionalism, why not assume that exceptional people, the kind of people whose work produces widespread improvements in the standard of living, naturally occur in about the same frequency in all groups and are not more common among white men? This, after all, is what all credible biological research shows. Moreover, the number of people in the nondominant class vastly exceeds the number of white males. So the more plausible assumption is that our lives are

actually much *worse* today than they would have been had many of the exceptional people in nondominant classes not been oppressed and otherwise deprived of the opportunity to contribute to social progress, for this has caused *everyone* to be denied the technical, medical, cultural, and other kinds of improvements these exceptional people would have otherwise produced. The idea that there is something more that needs to be proved here if we need to show that there was a net loss rather than a net gain to current members of the historically oppressed classes is simply not supported by the facts or any plausible assumptions regarding counterfactual worlds.

## 4 | WHAT MIGHT THE LIBERTARIAN PRINCIPLE OF RECTIFICATION REQUIRE?

### 4.1 | In general

As I said at the beginning of this paper, there are many different packages of options that we might choose when making reparations, and no particular remedy or package of remedies is necessarily superior to all the others. Remember also that the relevant libertarian principle here speaks of rectification, not reparations. I am treating rectification as a comprehensive remedy for the historical violations at issue; the remedy of reparations is just one part of this, the part that deals with uncompensable injury. And full reparations would require a package of remedies in itself, not just one. But because I am running short of space, I will focus on only one element of such a remedial package here, and I will be able to only briefly sketch how this particular remedy might work. I have chosen this particular remedy not because I think it must be part of any potential remedial package, but because it is underappreciated in the current literature, and because, as we shall see, it has a strong connection to libertarian principles. But this does not mean that every remedy that might be part of a total remedial package here must have some special libertarian connection. As long as a remedy is consistent with libertarian principles, this is sufficient. A strong connection to those principles is simply a bonus.

So what do libertarian principles require from any form of rectification? Well, libertarian principles focus on how the current allocation of assets came to be. So if the historically unjust interference with the right to acquire and accumulate capital is the injury we are trying to address, the most obvious solution is to provide those wrongfully deprived of capital the actual capital they were wrongfully denied. If we can tie a current asset to a particular act of historical injustice and identify those who would have held this a particular asset but for this injustice, then restitution of the relevant property or its value, less some amount to compensate the current owner for the value of any improvements, can be required under ordinary legal principles. But given the passage of time, the requisite tracing required to sort all this out is going to be difficult and expensive even when it is possible, which is not going to be often. So a great deal of rectification must take some alternative form. We cannot let the enormity of the wrongs here and the long-term nature of the injuries they continue to inflict, however, prevent a meaningful attempt at rectification.<sup>9</sup> We may not be able to re-shuffle the deck of assets everyone now holds so that everyone has precisely the assets they would have held had these wrongs not occurred, but this does not mean we cannot devise a remedy to meaningfully address at least some of this injury. Where we cannot provide the injured with the specific capital they were wrongfully prevented from accumulating, we can still provide them with *access to the benefits* of accumulated capital in a generalized sense. This is a remedy that, while perhaps second best, still has a

strong connection to the historical violations of libertarian principles that we are trying to remedy. It provides those who were wrongfully prevented from accumulating capital some of the benefits of having accumulated capital nonetheless.

## 4.2 | The sovereign wealth fund as a tool for wealth redistribution

In light of the objectives and constraints that apply to rectifying the historical violations at issue here, the remedy I will argue for is the establishment of a Sovereign Wealth Fund (SWF). That is, a fund created by the government, operated for the benefit of the entire public, which is managed by independent professional managers appointed and supervised by the Federal Reserve or its equivalent and therefore insulated as much as possible from continuous partisan political interference. Investment objectives for the Fund would be set by law, to be divided into specified percentages between growth and income. After an initial number of start-up years during which the Fund would be building up principle, its further growth could depend almost entirely on its investment success, not by requiring further outside contributions, although such contributions could be permitted or even required if our remedial objectives suggest that they should. The relative amounts of the principle to be invested for growth relative to that invested for income might even be adjustable within a certain range according to economic conditions at the time. But the thought is to require that it be managed much like a so-called “balanced” mutual fund is today. After the start-up period was complete, income earned by the Fund would be distributed to every adult citizen of the state that is sponsoring the Fund in equal amounts according to its performance.

But why equal? Should not benefits be higher for those who have suffered more and lower for the those who have suffered less? Should they not vary according to which and how many victim classes under which one can be classified? Should not those who are the successors-in-interest of victimizers rather than their victims get nothing? Even though everyone receives an equal dividend from the Fund, however, such distinctions can indeed be made. Not in terms of the size of the dividend each individual receives, but in terms of how much each individual will directly or indirectly contribute through the payment of taxes or other funds used for the initial seeding the SWF. Given that a lack of wealth is a rough but reliable indicator of who has suffered most from the ripple effects of history here, and accumulated wealth is a rough but reliable indicator of who has benefited most, as long as the seed money for the Fund is raised progressively, then the relevant distinctions would be made when we look at the *net* benefits each individual receives. We would want to keep actual dividend payments equal, however, because experience shows that government programs that provide equal benefits for everyone are less likely to be subject to political attack than programs that provide benefits that are means-adjusted (Skopal, 1995, pp. 250–274).

Of course, people who currently suffer from injuries caused by the historical injustices in question will often belong to more than one victimized group. But we would not want to make distinctions between beneficiaries based on the number of victim groups to which they belong or on the relative seriousness of the injustices committed against their forbearers. At least we would not want to do this under libertarian principles. These injuries are not linear in this way—if someone has no assets, they have just as few assets regardless of whether this stems from many historical injustices or just one or whether the injustice that injured them was more or less serious than the injustice that injured someone else. This does not mean we might not want to make more finely-tuned judgments about relative suffering as part of some attempts to

rectify the wrongs at issue here, but insisting we do this for every remedial action we take is only going to result in squabbling and resentment among the already suffering and ensure that nothing actually gets done.

I realize that a superficially similar proposal for equal payments to a wide group of people has gotten a lot of attention recently, and this is to provide every citizen with Universal Basic Income (UBI); that is, an unrestricted government monthly stipend that would be large enough under current economic conditions to support each recipient's individual basic needs (see, e.g., van Parijs & Vanderborght, 2017; Widerquist et al., 2013). Some of my critics have even contended that SWF payments are merely a form UBI. But this is true only in the most superficial sense. Yes, like UBI payments, SWF dividends would be equal in amount and would be made periodically to every citizen. Dividend payments are a form of income, so like UBI, they would increase the income of all recipients. But this is where the similarities end and the differences are extremely important in both a symbolic and practical sense.

UBI, remember, is almost exclusively promoted as a way of fulfilling the demands of equality, not liberty, and its focus is on the redistribution of income, not assets.<sup>10</sup> In other words, UBI is based on the presumption that income—that is, property that is arguably already justly owned by someone else—is to be redistributed to the most needy to satisfy principles of distributive justice. People who were wrongfully deprived of assets for centuries will indeed be made better off in a strictly financial sense if they receive supplemental income in the form of a fixed monthly UBI stipend. But such a stipend will hardly serve to restore the dignity and social position they would have if they currently enjoyed a share of the benefits flowing from capital which they were wrongfully excluded from accumulating. It is necessary to give those who are suffering continuing injury an actual beneficial share of real assets to do that. Dividend payments from a SWF provide them just such a share, for its amount is set by the market and the returns the market generates, not by government largesse. UBI, in contrast provides recipients with a kind of “disembodied” income whose amount is set by government policy. One feels like charity; the other, the benefit of accumulated capital that is rightfully theirs. While some UBI-supporting fanatics may dismiss this difference, most other people recognize its importance. Indeed, many of those who do not see a difference here have been from the privileged class, indicating it is easier to be indifferent between labor income and asset income once you reach a comfortable level of either. So perhaps the importance of this distinction can only be appreciated by those whose financial situation leads them to find the difference between asset and income remedies significant. But it seems pretty important to me.

I would recommend that the life shares in the fund not be eligible to be sold on the secondary market; but they could be, and even if they were not, they could still be used to borrow against, just like any other form of capital. This alone does more to restore the collateral benefits of asset ownership than UBI could ever do, for the expectancy interest in UBI benefits is typically presented as inalienable. Importantly, the SWF approach is also “predistributive” rather than “redistributive.” Instead of trying to offset injustices by redistributing income after the fact as part of a social welfare program, it aims to correct the unjust distribution of wealth itself, at least in part, and therefore make further redistribution of the income produced by that wealth less necessary. It brings the existing social structure more in line with what (at least left) libertarians envision, and also brings us closer to what Rawls called a “property owning democracy,” his favored arrangement for instantiating his particular liberal egalitarian vision of society (Rawls, 2001, pp. 135–179).

Note also that there are huge practical difficulties with funding the full, permanent, UBI payments in the amount that UBI advocates envision for an advanced economy, making the

implementation of UBI difficult if not impossible in these societies given their current moves to the right (see, e.g., Acemoglu, 2019; Goodman, 2017). The SWF approach, in contrast, is no less politically feasible than UBI, and probably much more. For it is not a poverty program, but simply a way of managing assets and providing everyone some of the benefits they produce, whatever these may be. Because the SWF is an investment fund, rather than simply a conduit through which wage income is redistributed, it is also far less financially voracious. Indeed, once the Fund is properly seeded, it can generate significant payments without further taxpayer support. The question, then, is whether the Fund can be sufficiently seeded without taking justly held assets or taxing justly earned income from the rich and middle class and simply redirecting it to the poor on a continuing basis, which is what funding UBI, or for that matter any other programmatic attempt to use redistribution to accomplish the goals of reparations, would require.

### 4.3 | Seeding the fund in a libertarian way

Unfortunately, many people seem to think that it is not feasible to seed a SWF unless we are dealing with a nation that currently enjoys large amounts of oil wealth. And it is true that all nations that currently have SWFs have established them using proceeds obtained through the exploitation of state-owned oil resources. Of course, both the United States and the United Kingdom *do* have large amounts of oil wealth; each has simply decided to use this subsidize exploration rather than insist that a fair share of the proceeds is paid over to the state. But I will ignore this potential source of seed money here, for there is no reason to think that a SWF could not be established using other sources of seed money.

For example, seed money could come from an ongoing tax on idle wealth, something we want to discourage anyway. And such a tax is fully consistent with the libertarian principles. After all, Locke, upon whose work Nozick's principles are based, argued that one could lose their rights in property if they left it idle because natural rights were subject to confiscation under the principle of waste, and we would not be talking about forfeiture but only taxation here (Locke, 1988, section 31, p. 291; Reiff, 2023). Seed money could also come from taxing various other activities we want to discourage because they inflict negative externalities in violation of libertarian principle on our own citizens. This could include a tax on the movement of production facilities or capital out of the jurisdiction; a tax on the export of jobs overseas; a tax on goods imported from abroad that were produced in a way that would have constituted a violation of domestic environmental, occupational health and safety, and labor laws if those laws had applied; and so on. Seed money could also come from fines levied for rights violations that are currently being dramatically underenforced, such as monopolistic behavior or other violations of the antitrust laws, fraud and violations of the securities laws, and tax evasion. All these wrongs are violations of libertarian principles too, and rectifying them is part of the job of the libertarian minimal state (Nozick, 1974; Reiff, 2023).

But most importantly, when stimulation of the economy by the Federal Reserve is called for, seed money might be injected into the Fund by the Fed through direct contribution of new money. Remember, the Fed contributed \$3.5 trillion to the economy over the last decade through its "quantitative easing" program (Schwartz, 2020), and there is no reason why this could not have been done by giving this money to a SWF, which then would have bought the same kind of bonds the Fed actually bought with exactly the same net result. And remember, for some amount of time, the profits generated by the investments of the Fund could all be re-

invested. A portion of these could still be re-invested even after the Fund begins paying dividends. And drawing on such a source of funding is fully consistent with libertarian principles. After all, creating money does not interfere with anyone's existing property rights, at least when it does not cause inflation, which the history of quantitative easing following the Great Recession shows it does not (Reiff, 2015, pp. 41–43).

Could the dividends paid by the Fund, however, ever be large enough to be significant in large, industrialized state? Yes, they could. Even with an adult population of around 250 million, as in the United States, a 10% return (about the yearly average for the both Norwegian SWF and the S&P 500 over the last 20 years) on a one trillion-dollar fund (a little less than what the Norwegian SWF is valued at now), an American SWF would be able to pay each recipient a yearly dividend of \$4000. A 20%–30% return, which the S&P index returned in 11 of the last 27 years, would pay everyone \$8,000–\$12,000. Moreover, if the value of the assets in the Fund topped one trillion, as it easily would have had quantitative easing been done through the SWF, yearly dividends could have been much more. And given an average 10% return each year, the amount of principal in the Fund would have doubled every 7 years. So even if only a portion of the capital I have mentioned was brought into the Fund, and no other sources were tapped, a valuation of one trillion or its inflation-adjusted equivalent, after say, 10 or at the most 15 years, when the Fund would begin paying dividends, would be easily achievable. A 10 trillion-dollar valuation would not be out of the question.

Note also that each of the taxes I have pointed to as possible source of seed money are independently justified—that is, none of them are imposed simply as a way of raising money to seed an SWF. None of them could be properly characterized as a “reparations tax.” We would simply be choosing to use some of the proceeds of these otherwise justified taxes and fees to fund the SWF rather than fund some other government obligation. And this should make objections to the creation of the SWF far less severe. Because if taxes are justified by independent reasons, where they go is much less relevant to the question of whether they should be imposed in the first place. Indeed, it should be less objectionable for them to go into the Fund than anywhere else, for at least then those who pay in will get something back, something that would not so clearly happen if these payments were to simply go into the government's general operating fund.

One referee for this paper queried whether insisting that the various taxes and fees and other payments of capital into in the SWF be “independently justified” is inconsistent with the requirement that reparations be accompanied by the acknowledgment I require in my statement of conditions for a payment to count as an act of reparations. But I do not see any inconsistency here. Nothing I say should be understood as requiring that the establishment of the SWF itself and its payments out not be publicly justified as a means of paying reparations. It is the particular taxes and fees and other sources of capital that are used to seed the SWF that need to be justified for independent reasons. What we want to do is ensure there is no direct transfer of funds taking place from people designated as the descendants of victimizers to those identified as descendants of victims. If such a direct transfer did appear to be taking place, then this would imply that there had been a transfer of moral responsibility from historic wrongdoers to certain members of the current generation, as well as a transfer of moral victimhood from the original victims to a different portion of the current population, thereby triggering the most powerful concerns that are holding all current approaches to reparations back. Instead, the assessments here, like the assessments behind the funding of most government operations, are not justified by the need to make specific payments out, but by judgments that those being assessed should make these payments regardless of the purpose for which they are used. Only current wrongdoers and those subject to independently justified taxes would pay; it is this that

the “independently justified” requirement ensures. Indeed, *no one would pay* if the Fund simply relied on Fed contributions and income rollovers.

While it might take some time for the dividends from the SWF to become significant, I see no reason to reject a remedy that will truly address the historic injustices at issue simply because it will take some time to do so, especially when so much time has gone by already and insisting on speed is likely to mean that nothing is done at all. Impatience is understandable, but problems that have been ongoing for a very long time take a very long time to fix. Besides, remember that establishing an SWF does not prevent or preclude us from taking all sorts of other steps right now to mitigate the continuing effects of these historical injustices, to keep them from re-occurring, and to stop the commission of acts of discrimination and exploitation that are still happening today.

I recognize that there a lot of details here still to be worked out, and there are also various mechanical, tactical, and perhaps even moral objections that might be raised to the establishment of a SWF. But these are elements that can be addressed elsewhere. All I am trying to do here is suggest that there is one currently neglected remedial possibility that flows comfortably from the libertarian approach, one that does not leave us relying on direct redistribution from individual to individual and does not advocate piling on the UBI bandwagon, which remains largely stuck in the mud. For anyone who wants to start making some real progress on the issue of reparations, the SWF approach is accordingly a remedial option whose time has come.

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The author has no conflicts of interest relevant to the preparation of this paper.

## ORCID

Mark R. Reiff  <https://orcid.org/0000-0003-1892-6357>

## ENDNOTES

<sup>1</sup> For a similar definition, see Darity and Mullen 2020, p. 2. Indeed, my definition differs from the one there only in that it does not incorporate the idea of reparations as a way to achieve “closure” on the past. For reasons that will become clear in a moment, I disagree that closure is something that could ever be achieved or should even be sought.

<sup>2</sup> Of course, many groups in illiberal societies claim they are entitled to reparations too. But since the fundamental principles which would support these claims are not recognized in such societies yet, I shall leave these societies off the table for now.

- <sup>3</sup> Note that some left-libertarians claim to base their views on not only the principle of self-ownership but also the principle of equal liberty. But as I show elsewhere, the principle of equal liberty is empty unless it is itself derived from the principle of self-ownership. See Reiff, 2023.
- <sup>4</sup> For more background on the distinction between left and right libertarianism, see Reiff, 2023; Vallentyne & Steiner, 2000a and Vallentyne & Steiner, 2000b.
- <sup>5</sup> It is true, of course, that a few libertarians would allow *voluntary* contracts of enslavement (see, e.g., Nozick, 1974: p. 331). But even if voluntary enslavement would be consistent with libertarianism (which I seriously doubt), this would still make *involuntary* enslavement, which is what is at issue here, a clear violation of the principle of just transfer.
- <sup>6</sup> His effort to do so in *Anarchy, State, and Utopia* is half-hearted and largely unsuccessful. He merely states that whether something is voluntary or coerced depends on what someone has a right to demand. See Nozick, 1974, pp. 262–265. But this simply begs the question, for he is using voluntariness to define what gives someone ownership rights through transfer, and if voluntariness is determined by some other principle, then it cannot serve as his principle of just transfer.
- <sup>7</sup> An example here would be the one-time \$25,000 payments made by the US government to survivors of its Japanese internment camps. For discussion of this and other examples of symbolic compensation, see Reiff, 2005, pp.164–165.
- <sup>8</sup> £20 million in compensation (the equivalent of £300 billion today) was also paid by the UK government in 1835 to slave owners whose slaves in the colonies were freed. These payments were made through loans taken by the government, loans that were repaid with taxpayer dollars and only finally paid off in 2015 (Manjapra, 2018). Similarly, Haiti was forced to pay a massive amount of reparations to France for freeing slaves owned by French citizens. Porter et al., 2022.
- <sup>9</sup> See Hannah-Jones, 2020.
- <sup>10</sup> For one of the few exceptions, see Pettit, 2007.

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## AUTHOR BIOGRAPHY

**Mark R. Reiff** is the author of *In the Name of Liberty* (Cambridge 2020); *On Unemployment, Volumes I and II* (Palgrave Macmillan 2015); *Exploitation and Economic Justice in the Liberal Capitalist State* (Oxford 2013); and *Punishment, Compensation, and Law* (Cambridge 2005). His papers on issues within political, legal, and moral philosophy have appeared in leading academic journals and the popular press, and his work has been translated into French, German, Italian, Portuguese, Japanese, and Chinese. In 2008-09 he was a faculty fellow at the Safra Center for Ethics at Harvard University.

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