

University of Alabama in Huntsville

LOUIS

Honors Capstone Projects and Theses

Honors College

5-1-2019

The Proper Application of Redress

Jacob Morgan Morrison

Follow this and additional works at: <https://louis.uah.edu/honors-capstones>

Recommended Citation

Morrison, Jacob Morgan, "The Proper Application of Redress" (2019). *Honors Capstone Projects and Theses*. 149.

<https://louis.uah.edu/honors-capstones/149>

This Thesis is brought to you for free and open access by the Honors College at LOUIS. It has been accepted for inclusion in Honors Capstone Projects and Theses by an authorized administrator of LOUIS.

The Proper Application of Redress

by

Jacob Morgan Morrison

An Honors Capstone
submitted in partial fulfillment of the requirements
for the Honors Diploma
to

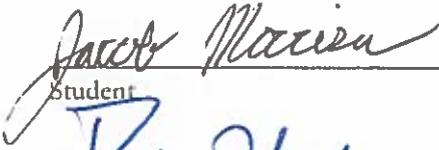
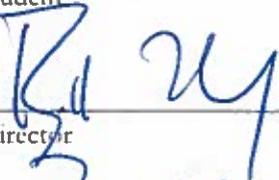
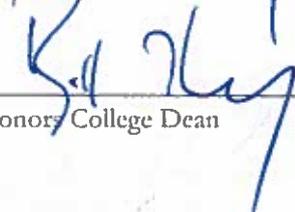
The Honors College

of

The University of Alabama in Huntsville

April 24th, 2019

Honors Capstone Director: Dr. William Wilkerson
Professor of Philosophy; Honors College Dean

 Student	<u>4/30/19</u> Date
 Director	<u>5/1/19</u> Date
 Department Chair	<u>5/1/19</u> Date
 Honors College Dean	<u>5/1/19</u> Date

Honors Thesis Copyright Permission

This form must be signed by the student and submitted as a bound part of the thesis.

In presenting this thesis in partial fulfillment of the requirements for Honors Diploma or Certificate from The University of Alabama in Huntsville, I agree that the Library of this University shall make it freely available for inspection. I further agree that permission for extensive copying for scholarly purposes may be granted by my advisor or, in his/her absence, by the Chair of the Department, Director of the Program, or the Dean of the Honors College. It is also understood that due recognition shall be given to me and to The University of Alabama in Huntsville in any scholarly use which may be made of any material in this thesis.

Jacob Morrison
Student Name

Jacob Morrison
Student Signature

4/30/19
Date

The Proper Application of Redress

by

Jacob Morgan Morrison

An Honors Capstone
submitted in partial fulfillment of the requirements
for the Honors Diploma
to

The Honors College

of

The University of Alabama in Huntsville

April 24th, 2019

Honors Capstone Director: Dr. William Wilkerson
Professor of Philosophy; Honors College Dean

Student Date

Director Date

Department Chair Date

Honors College Dean Date

Honors Thesis Copyright Permission

This form must be signed by the student and submitted as a bound part of the thesis.

In presenting this thesis in partial fulfillment of the requirements for Honors Diploma or Certificate from The University of Alabama in Huntsville, I agree that the Library of this University shall make it freely available for inspection. I further agree that permission for extensive copying for scholarly purposes may be granted by my advisor or, in his/her absence, by the Chair of the Department, Director of the Program, or the Dean of the Honors College. It is also understood that due recognition shall be given to me and to The University of Alabama in Huntsville in any scholarly use which may be made of any material in this thesis.

Student Name

Student Signature

Date

Table of Contents

Abstract	4
Recalling the Rawlsian Foundation	5
Black Disadvantage	10
Evaluating the Intuitive	14
The Millian Case for Reparations	16
Redress and Its Application	18
Against Reparations for Historical Injustice	22
Reference List	26

Abstract

The proper way to correct for injustices and oppression has long been a topic of contemporary political discussion. Recently, reparations for slavery has again come to the forefront of the political conversation. Multiple candidates for the Democratic nomination for the presidency have expressed their support for reparations for slavery (to one extent or another). It therefore seems timely to assess the merits of this position. The strongest case in favor of reparations for slavery was, in my view, made by Charles Mills in his 2007 book with Carole Pateman, titled *Contract & Domination*. In this book, he uses the “later position” (a re-formulation of Rawls’ “*original position*” to make it more applicable to contemporary discourse) to argue that a rational self-interest and a simple base level commitment to formal equality of opportunity (distinct from fair equality of opportunity) would motivate persons in the later position to adopt a system of reparations for the legacy of slavery. I will use Mills’ own concepts to show that he comes to the wrong conclusion. Instead of a system of reparations for slavery, persons in the later position would be motivated to 1) re-orient the basic structure of society (in the Rawlsian sense of the phrase) such that it is non-racist, 2) implement a system of direct reparations for harms done to them by racist structures (think living victims of the Drug War, redlining, Jim Crow, etc.) and 3) that following 1 and 2, no further direct reparations for historical injustice is necessary, rather remaining inequalities would be satisfactorily alleviated by an application of the difference principle.

Recalling the Rawlsian Foundation

The difference principle was introduced in *A Theory of Justice* by John Rawls in 1971, and later modified and shown in its final iteration in *Justice as Fairness: A Restatement* in 2001. The formulation in *Justice as Fairness* will be the one we will work with. The difference principle is the second of two principles of justice, which appears in *Justice as Fairness* thusly:

Social and economic inequalities are to satisfy two conditions: first they are to be attached to offices and positions open to all under conditions of fair equality of opportunity; and second, they are to be to the greatest benefit of the least advantaged members of society (the difference principle). (42).

The first condition, “social and economic inequalities are to be attached to offices and positions open to all under conditions of *fair* equality of opportunity” is selected by rational actors in the original position (a term explained later) for what are probably intuitive reasons, which are nonetheless worth explaining. “Fair” equality of opportunity, according to Rawls, is a system in which positions are open to all *and* it is ensured that all similarly endowed and driven persons have similar chances at attainment. This is selected over the other option, “formal” equality of opportunity (a system in which positions are open to all but no attempt is made to ensure that all similarly endowed and driven persons have similar chances at attainment), because actors in the original position, not knowing their ultimate location within the society they create (rich or poor, marginalized or privileged), would seek to create a society in which even if someone is born poor, they have similar chances at success as those born wealthy. Formal equality of opportunity is unfair and arbitrary, because it makes circumstances of one’s birth almost prophetic. People that are less naturally endowed are not so through any moral failing, and people born to economically destitute families are again not so through any moral failing, so it would not be a moral system that allows them to be destitute and have nearly no opportunity for escape due to circumstances out of their control.

The second condition, “social and economic inequalities are to be to the greatest benefit of the least advantaged (the difference principle)” is selected over what Rawls calls a “principle of efficiency.” A principle

of efficiency configures society such that it is impossible to make some better off without other's being worse off. The difference principle is chosen over this by actors in the original position because they would want a society in which even the most naturally disadvantaged person would have a fulfilling and decent life and to receive benefit from the inequalities that result from the naturally occurring unequal distribution of natural endowment. Again: there are natural inequalities in endowment that will result in inequalities in life circumstances, and again these natural inequalities are not the result of any moral failing. Thus, in addition to and following sequentially an assurance of fair equality of opportunity, these inequalities would be allowed to exist only if they benefit the least advantaged.

Now, what exactly would the difference principle look like in practice? How would we set up a system such that inequalities are the greatest benefit to the least advantaged? There are many ways to do this – Rawls does not lay out a specific map by which to accomplish the difference principle in practice. Generally however, there are two ways by which scholars of Rawls have suggested the difference principle in practice: universal programs and direct wealth redistribution. Rawls seems to lean more towards the former than the latter - in section 17 of *Theory*, he does mention investment in education for the least advantaged as a possible application of the difference principle (101). In the same section he specifies that the difference principle is to operate, whether as direct wealth redistribution or universal programs, not based solely on the merits of economic efficiency or social welfare. This investment in education for the least advantaged would be made possible by the allowance of better positions for the more advantaged (inequality), would be available to everyone, but would obviously be of the most benefit to the least advantaged who could not otherwise afford a quality education. This doesn't mean direct wealth redistribution is off the table though. A good example of this would be New Jersey Senator Cory Booker's recent "Baby Bond" proposal (S.3766, 2018). His bill, if passed, would create a savings account seeded with \$1,000 for every American baby that would be added to annually, the size of the annual deposits dependent on the household income (the lower the income the higher the deposit). These bonds would be made available to the recipients on their 18th birthday for the purpose of higher education or home ownership. This is honestly one of the most direct applications of the

difference principle I could imagine – the least advantaged receive the most, and this is made possible by the success of the more advantaged.

The “least advantaged” are to be the recipients of the greatest benefit of inequalities that will arise in a system of democratic equality, so it is worth knowing who exactly this is. Rawls devotes section 17 of *Justice as Fairness* to this question, and it is worth quoting at length:

In a well-ordered society where all citizen's equal basic rights and liberties and fair opportunities are secure, the least advantaged are those belonging to the income class with the lowest expectations. To say that inequalities in income and wealth are to be arranged for the greatest benefit of the least advantaged simply means that we are to compare schemes of cooperation by seeing how well off the least advantaged are under each scheme, and then to select the scheme under which the least advantaged are better off than they are under any other scheme. (59-60).

So the least advantaged are simply the folks that are the least materially well off under any given scheme of cooperation.

It is also important to note that the difference principle is a principle of reciprocity, as opposed to a principle of redress. A principle of redress is one that says “undeserved inequalities call for redress [compensation/reparations]” according to Rawls. A principle of redress, in Rawls words, is similar to the account of “corrective or rectificatory justice” for Mills, which calls for “the annulment of wrongful gains and losses.” Rawls says that this principle of redress would argue that inequalities of birth (social status, family circumstances) ought to be compensated for in some way, since people neither earn nor deserve the circumstances of their birth or their natural endowments (for better or worse). Rawls argues that the difference principle is rather one of reciprocity, of fraternity. In section 17 of *Theory*, he notes that, generally speaking, individual family members “do not wish to gain unless they can do so in ways that further the interests of the rest.” (105). He says that the difference principle essentially generalizes this desire to the whole of society, and can be justified to everyone. He gives us an example that is worth repeating:

Consider any two representative men A and B, and let B be the one who is less favored. Actually, since we are most interested in the comparison with the least favored man, let us assume B is this individual. Now B can accept A's being better off since A's advantages have been gained in ways that improve B's prospects. If A were not allowed his better position, B would be worse off than he is. The difficulty is to show that A has no ground for complaint. Perhaps he is required to have some less than he might since his having more would result in some loss to B. Now what can be said to the more favored man? To begin with, it is clear that the well-being of each depends on a scheme of social cooperation without which no one would have a satisfactory life. Secondly, we can ask for the willing cooperation of everyone only if the terms of the scheme are reasonable. The difference principle, then, seems to be a fair basis on which those better endowed, or more fortunate in their social circumstances, could expect others to collaborate with them when some workable arrangement is a necessary condition of the good of all. (103).

Therefore, although the difference principle is not explicitly a principle of redress, “it does achieve some of the intent of the latter principle.” Rawls also notes that no single principle can be the sole criterion of justice – they must all be weighed in the balance of others. Presumably, the degree to which some of the aims of a principle of redress are achieved through the difference principle would be acceptable to representative men in the original position as an answer to the problem of naturally arising inequality.

With a conception of who the least advantaged are, there is still an important thing to be noted about the difference principle, indeed the entire second principle of justice: it is subordinate to and follows the first principle. The first principle of justice is to be applied before we apply the second principle. Therefore, a recitation of the first principle is warranted (I use the first principle as given in *Justice as Fairness* because it went through major revisions from the version that appeared in *Theory* due to criticisms in H.L.A. Hart's essay “Rawls on Liberty and its Importance”):

Each person has the same indefeasible claim to a fully adequate scheme of equal basic liberties, which scheme is compatible with the same scheme of liberties for all. (42).

The priority of the first principle over the second rules out exchanges between liberties and economic advantages. Rawls considers the first principle to be so important that he calls it a “constitutional essential,”

saying that working political agreement on this is paramount. With this principle agreed upon, and only with this principle agreed upon, disagreement and differences about the “most appropriate principles of distributive justice can be adjudicated.”

Finally, with the difference principle and its context explained, it is of the utmost importance to understand *why* we should take it seriously. Rawls entire argument rests on whether people in the original position would or wouldn't accept this or that thing. Why should we care about the decisions of people in the original position?

The original position describes the places from which rational actors would deliberate the creation of a just society. In the original position, these actors are behind a veil of ignorance: they do not know their place in society, class or position status, fortune in the distribution of natural assets and abilities, intelligence, strength, etc. Rawls does not specifically mention these characteristics, but it would stand to reason that characteristics such as sex and race would similarly be hidden. These characteristics being hidden is important, because it prompts actors in the original position to think about the “other” because *they might be the other*.

Why is this significant? It is significant because people in this original position, motivated to ensure the well-being of everybody in society (because they might be *anybody*) would not agree to any social order which would unfairly disadvantage a specific group because of arbitrary characteristics. These rational actors would ensure that the society they create would be society as ideally defined – a venture in social cooperation for the mutual benefit of free and equal persons. The decisions that they would make, unhindered by prejudices or conflicts of interests, would be ones that everyone would benefit from, that would be just. It is so significant that all of Rawls' claims end up being justified by his assertion that people in the original position would or would not accept this or that thing.

Black Disadvantage

Rawls, in his work, deals with the creation of an ideal society from scratch – a literal “original position.” This puts his work in the lineage of other social contract theorists, even though his is more abstract and innovative than previous iterations.

We do not have the ability to go to an original position and create a society from scratch, however. We must work with what we have to move towards an ideal society not from scratch, but from a non-ideal foundation. This paper will seek to put forward a program that will ultimately correct for injustices based on racial status. In order that the program I will put forward be better contextualized, what follows is a recitation of part of Mills argument in *Contract and Domination* and a non-exhaustive list of injustices that have been faces by the black community in the United States.

In Pateman and Mills’ *Contract and Domination*, Mills quotes from Dalton Conley’s *Being Black, Living in the Red*, that without reparations, black disadvantage will continue unhindered even in an America with no modern discrimination because of historical injustices (130-131). This passage makes two claims: a factual claim and an assumption based on known facts. The factual claim is that there currently exists severe black disadvantage and there have been and are structural and systemic reasons for this disadvantage, including but not limited to slavery, Jim Crow, and the Drug War. The assumption is that this black disadvantage would continue even with no modern discrimination because the intergenerational wheels of disadvantage have already been set in motion, and with no force set out specifically to stop the turning of these wheels, the disadvantage will continue.

In what follows, I will marshal the evidence for the factual claim, and the assumptions based on it.

The factual claim is straightforward, and basically indisputable. Blacks, for the majority of the country’s history, and many would argue that to an extent even now, have had their ability to accumulate wealth hampered. The fruits of their labor were stolen for hundreds of years under slavery. Thomas Craemer, in “Estimating Slavery Reparations,” estimates that even if we only look at the 89 years for which we would

definitively the United States had culpability (arguably – the UK would be responsible for the atrocities that happened prior to American independence), and if we only look at unpaid wages (which means not even beginning to look at compensating for the moral wrong of slavery), these unpaid wages could amount to as much as \$14 trillion today. Black people were explicitly kept from a myriad of opportunities under Jim Crow. These restrictions for black folks in the Jim Crow South led to significant racial disparities in skill sets, which led to significant racial disparities in wages, which led to significant racial disparities in wealth accumulation. Carrathurs and Wannamaker, in “Separate and Unequal in the Labor Market,” estimate that if schools had truly been “separate but equal” during the Jim Crow era, this alone, with no other protections, would have reduced the racial pay gap by at least 40% even during Jim Crow. This never realized decrease in the wage gap would’ve allowed black families to accumulate more wealth, and to give their descendants more opportunities.

The New Deal attempted to combat the Great Depression in a number of ways – one of which was to open up FHA loans for home buying. However, such loans were not given to buy homes in “risky” neighborhoods. Risk was calculated by race. Neighborhoods with higher proportions of blacks were literally redlined (denoting the higher “risk”), thus making it even harder for blacks to catch up, keeping them from the principle mode of wealth accumulation (Klein E. & Posner J. 2018). In 2016, 62% of household wealth was found in home equity. Indeed, current presidential hopeful Cory Booker credits his family’s ascendance into the middle class to their ability to swindle a realtor into selling them a house in a white neighborhood. Though housing discrimination was officially outlawed in 1968, as with many things, it continued for much longer, as was evidenced by the lengths his family had to go to in order to be able to purchase their home. Their newfound home ownership guaranteed an appreciating asset in a nice neighborhood, that most blacks, even the ones who *do* own homes, are not lucky enough to have (Klein E. & Posner J. 2018).

In 2001, the AP released the results of an investigation documenting the theft of land. Their investigation centered around 402 victims who lost 24,000 acres of land, the sum value of which is tens of millions of

dollars. Virtually all of this land is in the hands of whites or white-owned corporations today (Barclay D. 2001)

Following Jim Crow and up to today, blacks have been disproportionately targeted for harassment, imprisonment, and various other punishment under the guise of a color blind “War on Drugs.” These more modern injustices have been chronicled in detail in Michelle Alexander’s paradigm altering “The New Jim Crow.” These injustices, which are by no means exhaustive, over centuries have given whites a huge advantage in capital accumulation over blacks.

What we are left with is this:

- The median wealth of white families is more than 10 times the median wealth of black families (Jones J. 2017)
- The median black household earned 61 percent of the income the median white household earned in a year (Wilson V. 2018)
- Black Americans have much lower social mobility than their white counterparts (Matthews D. 2018)
- Black Americans are much more likely to be incarcerated than their white counterparts (Matthews D. 2018)

These are all indisputable facts. The second step of the argument is an assumption based on these facts: even if we were to say that *all* barriers to success have been removed, the race has already begun, with whites the recipients of a huge head start via their ill-gotten gains. Martin Luther King Jr. even endorsed reparations in his book *Why We Can't Wait*, saying that it would take an unthinkable feat for a people only entering the race 300 years after the other participants to *ever* catch up. Indeed, one can see from Figure A below that capital, even if it accumulates at the same rate, will never be equal if the starting points differ. If the starting points, the beginning sums of capital, are different, they can never become equal under the same rate of accumulation – even if no external forces hamper the growth of either set of capital assets.



Figure A: Group 1 begins with assets at \$100. Group 2 begins with assets at \$50. They both accrue interest at a real rate of 1.03 per year. You can see that, even over a period of 200+ years, the ratio remains constant.

Evaluating the Intuitive

Mills' factual claim that present inequalities exist and they are largely due to historical injustices is indisputable. I will not try to counter this. Rather, I want to challenge the assumption extrapolated from this fact, that black disadvantage would continue unhindered in an America with no modern discrimination or institutional racism.

The extrapolation based on the fact claim, absent empirical evidence, seems intuitive. I stated as much during the summary of this position. Indeed, we can even look at Figure A and see that it *must* be true. There is simply no way for it not to be. If two distinct sums of capital are left to accumulate at the same rate, the smaller sum will *never* accumulate the same amount as the larger sum. And yet, as this is basically an empirical claim, one for which there would be precedence in other communities and even in other societies, there is a dearth of actual evidence given in defense of the claim. There are appeals to intuition, certainly, and they are strong, but one would expect to be able to marshal stronger evidence for something of this nature than simply intuition. For example, it would seem worthwhile to examine the conditions of other marginalized and oppressed communities in America. Everyone recognizes that while the black experience is unique in America due to its longevity and cruelty, they are not the only oppressed group. One would expect evaluations of say, the Jewish community in America. They certainly faced marginalization and oppression on their arrival, and by all appearances seem to have largely overcome these material disadvantages. The examination need not even be limited to the United States – there is no shortage globally or historically of minority groups being oppressed and marginalized by majority groups. Is it in fact the case then, that no oppressed minority group has overcome the material disadvantages to come into a status of essential material equality with their former oppressors? At first blush, the answer would almost certainly seem to be no, but the answer is not sought by the advocates of this claim.

A short, but tangentially relevant example, is what we have seen following the institution of a \$15/hour minimum wage in Seattle. Numerous doomsday scenarios were peddled, studies were done, predictions were made. They all seemed to be based on solid economic grounds: simple supply and demand. However, people

are often not as simple as a supply and demand graph. Indeed, the results have been *so* different from the predictions that researchers at the University of Washington have had to all but recant their predictions, and they still are not quite sure how they went so wrong. Instead of this government imposed artificial wage floor killing jobs and closing restaurants, Seattle has seen employment rise, worker pay increase, turnover rates fall, with nearly no hours reductions.

What this shows is that there is huge complexity in the behavior of humans, economies and opportunity. It shows that claims, even when seemingly supported by intuition, must be examined historically and skeptically, else we run the risk of being wrong in our assumptions, and when we base policies on incorrect assumptions, the results can be disastrous.

The above gives us a reason to question what seems an obvious inference – the claim that black disadvantage would go unhindered even in a world with no lasting discrimination. With no historical examples of other groups in other places being given to make us believe that this is indeed the case, we ought to be skeptical.

Again, obviously, the plight of the black community is unique both in its duration and its cruelty. However; to say that this community would be *incapable* of bridging this gap if they face no institutional barriers in the same way the aforementioned communities have though, seems problematic to say the least.

The Millsian Case for Reparations

Now that a better picture of the empirical reality has been painted, and we are no longer thinking in abstract terms about ideal societies created from scratch, what is the best program to bring us to a more ideal society? Regarding racial inequalities, Charles Mills makes the case for reparations.

There is an important question that needs to be answered regarding the goal of justice in a non-ideal world. We recognize that our society was not, in fact, created as a venture in social cooperation for the mutual benefit of free and equal persons, as Rawls and other white philosophers are very willing to assume, and Mills rightly ridicules (Mills, C. 2010). Our society today rests on a foundation of centuries of oppression, domination, thievery, genocide of “other” groups – all of these things representing a “breach” of the social contract, as Mills puts it. Mills argues that the appropriate way – indeed the least controversial way – to move forward is through reparations.

He comes to this conclusion by revising the original position. This revision – which he calls the “later position” – retains the self-ignorance of the Rawlsian original position (ignorance of personal features like sex, color, intelligence, birth circumstances) but lessens the social ignorance. This means the people in the later position are aware of society as it is today, its history of inequalities and oppression, and their mission is to choose from various strategies by which to make it better, rather than (impossibly – as Mills says) creating an ideal society from scratch. Mills sets out to show how people in the later position would take society from non-ideal to the ideal, rather than creating the ideal from nothing. This later position retains all the gravity and importance from the original position while making it much more applicable in the real world.

He argues that people in the later position would believe that a program of justice would demand a justice as redress for historical injustices done to specific groups. He does this in *Contract and Domination* by first setting aside all other questions of distributive justice, as he feels that these questions are irrelevant to the question of racial justice (meaning that, presumably, Marxists, liberals, and conservatives ought all to be able to agree to racial justice as a baseline). He then recounts that there are different schemes of equality of equality:

democratic equality, fair equality of opportunity, and formal equality of opportunity. Formal equality of opportunity is the most baseline form of equality from among the schemes presented (meaning formal equality of opportunity is present in *all presented* theories of justice. He argues that even in this minimum form of justice (and therefore in all of the presented forms of justice) reparations are necessary in order to achieve racial justice, defined as the elimination of racial injustice (127-132). It is important to stress how important this is to Mills, that he make the case for his version of racial justice from the minimum standard of justice. He does this in an attempt to prove that people from all political ideologies ought to be able to support a system of reparations. His argument for racial justice is then, in a sense, more acceptable to people in the later position than is Rawls' argument for broader justice.

Reparations are necessary because, while formal equality of opportunity permits inequality as a result of fair market competition and even of arbitrary inequalities like natural endowments and circumstances of birth, it *doesn't* allow for inequalities based on discrimination. Because the disadvantaged position of blacks is not the result of fair market competition, "but of discriminatory practices wrong by mainstream standards, and their cumulative outcome over decades." The disadvantaged position of blacks in society is *not* "the result of subordinate class membership... but of a subordinate *racial* membership." This disadvantage, then, is a denial of even *weak* formal equality of opportunity because they are disadvantage specifically due to uncontroversially unjust circumstances. Therefore, because the disadvantage is unjust even from the weakest conception of justice, actors in the later position would demand reparations for historical injustice in order to meet the demands of formal equality of opportunity at the very least, and decide among other conceptions of distributive justice following the administration of racial justice.

Because we all recognize the injustice of the past, and recognize that the situation of many (for better or worse) is due to these injustices, it therefore follows that a redress is not only warranted, but uncontroversial.

Redress and Its Application

The claim that true justice demands a justice as redress is to me the more interesting one. What exactly is the proper application of justice as redress? Where is it relevant, and where isn't it? Can the difference principle work where justice as redress does not? I will seek to craft my answer to these questions with the same tools that Mills uses to make his argument – I will seek to argue for what representative persons would or would not agree to in order to achieve racial justice in the later position. I will argue that, from the perspective of the later position, for injustices that have happened to living persons (henceforth known as present injustices) a principle of redress is necessary. For injustices that have happened to the no longer living ancestors of living persons (henceforth known as historical injustices), the principle of redress is inappropriate. Rather, persons in the later position would opt to use the difference principle to rectify disadvantaged positions that are the result of historical injustices.

As we will remember, the later position is Mills' reworking of Rawls' original position, in order to make it workable within non-ideal theory. Mills' chief criticism of the original position is that it has little relevance for real philosophical discussions about how to improve society, because the original position assumes the ability to start from scratch. In no society is this possible, and thus we have the later position. Recall that the later position retains the self-ignorance of the original position, but lessens social ignorance. Persons in the later position are aware that the society they are working to create must necessarily be based on the non-ideal foundation of the current world, and in the present discussion, the United States. They will be aware of the structural inequalities and discrimination that has been baked into the very fabric of our society over centuries, and thus, a chief topic of discussion for persons in the later position will be how to correct for these inequalities. Specifically, Mills makes a claim about how they would handle the racial inequality facing the black community, that claim being that they would demand reparations to fix the inequalities that have resulted from this racial inequality. I will argue in what follows that they would not choose (what I will call) the Millsian position, but rather the program that I lay out here: a system of direct reparations for present injustices, and the difference principle for the correction for historical injustices.

First, let's look at present injustices. How would persons in the later position advocate that we deal with these? I posit that they would demand a principle of redress – a real system of reparations, direct and intentional, for any person who faced institutional and systemic discrimination and marginalization by the state and society, in much the same way that we demand people be made whole when crimes are committed against them at an individual level. If a person is wronged, stolen from, assaulted, etc., we all agree that ideally the following will happen: 1) the violence will be stopped, 2) the perpetrator will be punished in some way, and 3) the victim will be compensated or made whole. This is the ideal. In some cases, it isn't possible. Sometimes, the perpetrator cannot be found. Sometimes, the perpetrator has no means by which to make the victim whole. These exceptions are not relevant to this discussion however, because we all recognize that the 3 steps laid out above are the ideal. What we are talking about in this paper is violence at an institutional, societal level – violence endorsed and perpetrated by the state. It seems rational, in the Rawlsian sense, that for people who have been on the receiving end of this violence the very same three steps need be followed, and the same three steps *can* be followed, because we as a society *most definitely* have the means by which to do this. We have historically not done this however, opting to only attempt the first step (even this small gesture is seldom truly accomplished). The individual analogy would be for someone to brutally assault another, simply stop assaulting them, leaving them bruised and bloodied, bones broke and with an impaired ability to work, and look down on the victim saying, “what? I stopped. Why aren't you pulling yourself up by your bootstraps?” It is immoral and unethical. That all 3 steps ought to be followed in some fashion for present injustices seems so intuitive to me in fact, that it ought to be the default position, and the real philosophical work to be done would be refuting it, rather than arguing for it. Unfortunately, that isn't the situation we find ourselves in.

The later position assumes that the representative persons will eventually become an already living person in our non-ideal world. There are a myriad of living people who have been wronged by our present institutions, thousands of young men torn from families for marijuana possession, thousands of black folks alive today who lived through the Jim Crow era, thousands more that had their ability to accumulate wealth decimated by redlining, and millions of people all across this country began life with the institutional disadvantage of having

attended poor schools. Obviously, persons in the later position would seek to ensure no one ever had to endure these wrongs again. Public education would be reinvigorated, redlining would be outlawed, drugs would be decriminalized, etc. These things seem uncontroversial as a measure of moving towards a more ideal world from the current non-ideal foundation.

Even fixing these problems leave millions who had to endure these problems in their own lives. What of them? I posit that persons in the later position would be wholly unsatisfied with the possibility of becoming a living person who has faced a life a discrimination and marginalization, the only reconciliation being that it won't happen anymore. No, they would demand a system of direct and intentional reparations created to make them whole. Persons in the later position face the distinct possibility of becoming someone who had their life personally affected by the unjust institutions of our current non-ideal world. For persons in the later position to be satisfied with their new society, they would need to be comfortable with the possibility of becoming any person of any class, race, gender in their new polity. In order to be comfortable with the possibility of becoming any race, class, gender in their new polity, it seems obvious that rational self-interest would demand that people who were the victims of state sponsored and state authorized oppression and marginalization receive some sort of compensation for their experience. Rational self-interest would demand this because persons in the later position could, in theory, become the victims of state sponsored and authorized oppression and marginalization.

This is similar to the Millsian position in that it is a call for reparations, and yet different than the Millsian position because it is not as narrowly focused on race. I think this is important because while people of color have been the main target of these harassment campaigns by our society, there has been white "collateral damage" so to speak. There are many young white men wasting away behind bars because of our arcane and racist drug laws. It would seem strange if persons in the later position were not concerned with making this person whole simply because he was not a target of this harassment campaign. He was negatively affected, and by quite a lot, it seems intuitive that rational self-interest would demand justice for this person as well.

The program of reparations that I argue persons in the later position would advocate would compensate all victims of systemic and institutional injustice.

Rawls speaks of how inequalities in natural endowments were neither just nor unjust, simply natural facts. The situation of individual black people in America, and other victims of state oppression *is not* a natural fact; rather, it is clearly and unambiguously a social fact and is therefore unjust. Now, Rawls doesn't exactly lay out how he imagines persons in the original position would handle institutional oppression, presumably because this problem wouldn't come up in an ideal society, and this is beyond the scope for his project. There is, therefore, no Rawlsian text on which to base my claim that persons in the later position would seek justice as redress for present injustices. This is something that Mills notes in a discussion on Rawls, noting that Rawls called for an altered form of the difference principle for cases like these, but unfortunately due to his death we were never able to see what he had envisioned. Despite this, I am confident in this assertion because this principle has precedent in a myriad of political and philosophical traditions, as well as in the real world (see civil lawsuits, for one example).

Thus far, the Millsian position and my own have been similar: a call for reparations. As referenced earlier though, Mills does not make a distinction between present and historical injustices. I argue this is a distinction that persons in the later position would make. Mills calls for the annulment of all wrongful gains and wrongful losses, whether they happened to folks that are currently living or not (in a way that is focused on the differences between black and white Americans, specifically. He is, purposely, unconcerned with the discrimination faced by persons of other communities). I do not believe that persons in the later position would accept this.

Against Reparations for Historical Injustice

Persons in the later position would advocate a system of reparations for wrongs done to living person - this is a necessary component of the program of justice that they would use to bring us from a non-ideal world to the ideal. It does not follow; however, that they would call for a similar system of reparations for historical injustice.

Once the victim is no longer with us, how would such a program even be administered? Give the reparations to the descendants is the most common reply, but why? The wrong was done to the ancestor, not the descendant. The wrong done to the ancestor affected the life of the descendant, this is incontrovertible, a truism almost, but would the disadvantages caused by historical injustice be viewed as so unique that they warrant a specific program to address them? Would persons in the later position, after a reorganization of the basic structure along non-racist lines and the compensation for present injustices, see that compensating for historical injustice is more necessary than compensating for unfortunate "natural facts"? There are any myriad of things that would possibly make one's life worse after this re-organization: cognitive impairments, single parenthood, physical disabilities, social isolation, etc. There are rust belt and Appalachian communities where, for the first time in American history, life expectancy is declining due to a lack of job opportunities. Chances for residents to get out are few, as education there is poor. A reorganization of the basic structure of society will help alleviate this for future residents, but what of people who have already lived through it? The case for reparations must also contain the case for why persons in the later position would view inequalities resulting from historical injustice uniquely deserving of attention, in contrast to these myriad of other things that might make one's life more difficult. I do not think that this is a case that can be made.

Rawls speaks of natural facts that are neither just nor unjust. I think that the affects (negative or positive) of historical injustices would be treated as such by persons in the later position, because I do not believe there is a strong enough case to meaningfully differentiate between the two situations - positive or negative affects due to historical injustices and the positive or negative effects of other natural facts. Mills states that these two case are heterogeneous because, unlike natural facts, the negative or positive effects of institutional

injustices are “social facts.” However, Mills does not distinguish between historical and present injustices. It seems from *Contract and Domination* that he mixes the two concepts up; saying “where [differential and invidious treatment by race] has left a legacy, it should be corrected for” and later in the same paragraph saying “all [racial justice] requires is that... there not be invidious treatment of black, and that the legacy of past invidious treatment not be perpetuated.” The first seems to argue for reparations for historical injustices, while the second seems to simply argue against the perpetuation of injustice.

I believe that this distinction is one that persons in the original position would make.

After having re-organized our society in such a manner as to ensure that all have basic liberties (that the first principle of justice is met), and that all victims of state and society sponsored oppression have been compensated, I do not believe that people in the original position would find the situation of a young black child (let’s say, whose father has just been released from prison and has been compensated for the time he was unjustly put in a cage) any more unfortunate than the plight of a white child born disabled in Appalachia to opioid addicts. It is not readily apparent to me why folks in the later position would find one situation more unfortunate, more deserving of additional compensation, than the other. Once all the actors in the later position have agreed upon ways to re-organize society so that it’s institutions are not racist, and once the actors have decided on the appropriate mode of direct compensation for the living victims of the previously racist institutions, it would seem that all the remaining disadvantages would be seen the same, as the material reality and condition of the individuals would be no different, regardless of the historical reasons for said condition, or lack thereof.

This is important, because the only way to justify reparations for historical injustices to the descendants of the victims is to somehow prove that persons in the later position would see the inequalities resulting from these facts as “special” in some way, somehow different from any of the other lingering inequalities that are not the result of the direct oppression of living persons. Though Mills only focuses on the inequalities resulting from the historical injustices of the invidious treatment of blacks in America, there are a myriad of historical injustices that would affect the lives of living people. The differential availability of public services in rural

America, the racist treatment of the Chinese in the late 19th and early 20th centuries, the marginalization of the LGBT+ community, etc. Undoubtedly, there are ripples being felt to this very moment from injustices long past to people long dead. In order to justify reparations to members of the black community for the ripples of historical injustice they still feel, and not give reparations to members of the above communities for the ripples of historical injustice they still feel, a very important and meaningful distinction would need to be given. Indeed, Mills even argues that reparations need be given to wealthy blacks (because presumably they would be *more* wealthy had it not been for the historical injustices). I argue that persons in the later position would not argue for this, and would not see this as a more pressing issue than equalizing opportunity for the less fortunate. Let's remember, the purpose and ultimate end game of the later position is that persons in this position would create an ideal society from the non-ideal American foundation, a society in which they would be comfortable being placed into *any* position in the society. The goal for the persons in the later position is not to right all past wrongs, to annul all wrongful gains and losses, but create a society in which they would willingly enter blindly, not knowing their station. This goal I think would re-center their minds on class divisions, and equalizing opportunity for the less fortunate, rather than correcting for all the historical injustices faced by the black community, to the point of giving reparations to billionaire blacks.

This is where the difference principle matters. While persons in the later position would demand reparations for present injustices, these reparations are specifically to right wrongs done to living people, not to combat inequality (the Millsian position seems to be about both righting wrongs and combating inequality). Persons in the later position would nonetheless adopt the difference principle as a method of combatting lingering inequality. If we accept the Rawlsian framework of the original position and the difference principle, we accept that persons in the original position would be satisfied with the difference principle as a method of correcting inequalities that are the result of natural facts, given a guarantee of a background of basic institutions that match up with the first principle of justice. It follows, then, that persons in the later position would accept the difference principle as a method of attacking inequalities that result from historical injustices *if* we accept that they would view historical injustices as they would natural facts. I have already established that we have no reason to believe that persons in the later position would have cause to distinguish between

historical injustices (between different communities, let's say), but would they see inequalities resulting from historical injustices as they do natural facts? I argue that they would, because they would be guaranteed a background basic institution that lined up with the first principle of justice, they would receive reparations for any wrong done to them personally, and thus they would have no reason to be concerned with what happened in the past.

I recognize that this is both stronger and weaker than Mills' position, but it seems it must be so. Millian reparations function to simply eliminate unjust racial inequality and right wrongs. I do not believe this is what persons in the later position would accept. Reparations in my plan are direct and expressly meant to compensate for wrong doings, rather than tackle inequality. I believe this would be necessary for people in the later position, because, as outlined above, I believe they would seek some sort of direct compensation for wrongs done to them by society. In this sense, my position is stronger. My position is weaker though, in combatting historical injustices. Where Mills argues that reparations are necessary to combat the inequalities that resulted from a racial polity, I do not see why persons in the later position, after agreeing to re-organize the basic structure of society such that it follows Rawls first principle and agreeing to a scheme of reparations for those personally done wrong, would see these inequalities as different from other natural facts, in any meaningful sense, and thus would argue that the difference principle sufficiently addresses these inequalities. Let's also remember that the difference principle does the most for the least advantaged, so if there are families that, even after having been given reparations for present injustices, are significantly disadvantaged due to historical injustices, they will disproportionately benefit from the redistribution of the difference principle, and thus we see a sort of reparations in effect, if not in name.

References

- Mills, C. & Pateman C. (2007). *Contract & Domination*. Malden, MA: Polity Press
- Rawls, J. (1971). *A Theory of Justice*. Cambridge, MA: Belknap Press of Harvard University Press
- Rawls, J. (2002). *Justice as Fairness: A Restatement*. Cambridge, MA: Belknap Press of Harvard University Press
- American Opportunity Accounts Act, S. 3766, 115th Congress. (2018).
- Craemer, T. (2015). Estimating Slavery Reparations. *Social Science Quarterly*, 96(2), 639-655. doi: 10.1111/ssqu.12151
- Wannamaker, M & Carruthers, C. (2016). Separate and Unequal in the Labor Market (NBER Working Paper No. 21947). Retrieved from National Bureau of Economic Research website: <https://www.nber.org/papers/w21947.pdf>
- Barclay, D. (2001, December 2). When They Steal Your Land, They Steal Your Future. *Los Angeles Times*. Retrieved from <http://articles.latimes.com/2001/dec/02/news/mn-10514>
- “The Racial Wealth Gap.” *Vox: Explained*, written by Ezra Klein and Joe Posner, directed by Randy Cohen. *Netflix Original*. 23 May, 2018. *Netflix*, <https://www.netflix.com/watch/80243753?trackId=13752289&tctx=0%2C19%2C80d5e374-3125-48aa-b6e1-5a9c466b4c08-381000940%2C%2C>
- Jones, J. (2017, February 13). The Racial Wealth Gap. *Economics Policy Institute*. Retrieved from <https://www.epi.org/blog/the-racial-wealth-gap-how-african-americans-have-been-shortchanged-out-of-the-materials-to-build-wealth/>
- Wilson, V. (2018, January 11). Racial Inequalities in Wages Income, and Wealth Show that MLK’s Work Remains Unfinished. *Economics Policy Institute*. Retrieved from <https://www.epi.org/publication/racial-inequalities-in-wages-income-and-wealth-show-that-mlks-work-remains-unfinished/>

Mathews, D. (2018, March 21). The Massive New Study on Race and Economic Mobility in America,

Explained. *Vox*. Retrieved from <https://www.vox.com/policy-and-politics/2018/3/21/17139300/economic-mobility-study-race-black-white-women-men-incarceration-income-chetty-hendren-jones-porter>

Mills, C. [ukingshalifax]. (2010, September 23). *Dr. Charles W. Mills - The Whiteness of John Rawls* [Video file].

Retrieved from <https://www.youtube.com/watch?v=Yfz20ZhOw4Y>