

FROM OPPRESSION TO DEMOCRACY: AN ARGUMENT FOR REPARATIONS FOR
AFRICAN AMERICANS FROM A DISCOURSE ETHICS PERSPECTIVE

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ABSTRACT

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I argue that reparations for African Americans are justified because 1) the historical oppression suffered by the African American Community limits the possibility of equal participation of the community as a whole and individuals in the community to participate democratically in the political, social and economic life and 2) are necessary to bring about a society which fosters equal participation in the political, social and economic systems. My idea of democratic participation in the political, social and economic life comes from the discourse ethics of Habermas and I will argue that his derivation of a discourse ethic from a communicative ideal can be used in the discussion of reparations. I use Habermas's discourse ethics for two purposes for my thesis. I use it to set a standard for justice to see what was lost during the injustice; in this case, the ability for democratic participation in public life. I also use it to argue that the outcome of a reparations regime which would be a just society in which all members participate in public life democratically.

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Chapter One: Introduction

I. The Question of Overcoming Racial Oppression

The central premises of reparation arguments for African Americans take the following form. It is an undeniable fact that the group of people known as African Americans is on average in a worse-off position socio-economically than the group of people in the majority population. It is also an undeniable fact that African Americans have been systematically oppressed both legally and extra-legally throughout history. Social science and historical research shows that the oppression of the past has an influence on the subjugated socio-economic position of the present.¹ Furthermore, the effect of the historical oppression, the depressed average socio-economic position of African Americans due to the historical oppression, is unjust and a reparations regime ought to ameliorate this injustice. The proponents of reparations attempt to defend these claims while those who are against reparations attempt to dispel or undermine these claims. I claim that the harm of historical oppression that is in need of repair is the contemporary product of that oppression. Reparation is necessary to alleviate these problems.

While the issue of African American reparations is contentious, the issue of reparations, in general, or whether a transgressed party deserves compensatory justice has long been recognized. Since Aristotle², philosophers and non-philosophers alike have recognized various forms of the idea that situations that have been made unjust ought to be returned to justice. Forms of this reasoning are used to justify war reparations, insurance claims, tort claims and claims of reparations for human rights abuses.

In the specific African American case, the transgressions are apparent to all parties involved. One can learn of the historical oppression suffered by African Americans by conducting a comprehensive study of United States history from the pre-constitution period to the present day.³ From the premise of historical oppression, though, one must make an argument that the historical oppression is part of the cause of the current hardships of the African American community. The key, then, to any reparations argument is to connect a historical injustice, oppression or transgression to a contemporary condition of injustice.

Along with connecting the historical oppression with the current state of inequality, one has to determine exactly what was lost due to that oppression, what is due to the formerly oppressed, who ought to benefit from reparations and who (or what institution) ought to pay, render or work towards reparations. Most proponents of reparations have argued that the losses should be measured in terms of property or other material damages. And, these proponents argue, a certain amount of property or compensation ought to be provided to the historically oppressed. An important exception to this approach is David Lyons who argues that what was lost and what ought to be compensated is equality of opportunity.⁴ Lyons and others think that African Americans as a group (collective African America or Corporate African America) ought to be compensated for this oppression. Those who would make reparations, according to these protagonists, are the corporate white America, corporate United States society (including non-white America) or the Government.⁵ I defend the thesis that the entire society is responsible for reparations because the entire society is responsible for justice, social inclusion and democratic participation for everyone.

My argument differs from the economic approach to reparations as I disagree with the mainline reparations defenders, most specifically, on what was lost in the historical oppression. I argue that African Americans lost inclusion in the normative community of moral persons such that all other members of the community see them as beings worthy of respect. Along with that loss, and logically linked to it, African Americans also suffer from the more concrete harm of the disability to democratically participate in public relationships on equal grounds with full members of the community. Furthermore, any reparations would have to lead to racial reconciliation and democratic participation in public relationships. Democratic participation is the equal interaction in public life for those who are able to interact and equal access to the benefits of public life for every member of society.

In claiming that what is lost from oppression of African Americans is the ability to participate democratically in public life, I am saying that the nature of this injustice was such that its effects contribute to the present condition of inequality. And it manifests as unequal ability to participate in public life. Throughout the historical injustice, African Americans suffered a systematic denial of democratic participation in public discourse. Because of this denial of participation in public discourse, the oppressed could not establish material, political and cultural foundations that are necessary for democratic participation in society. They could not accumulate the material resources that are necessary for persons to have fulfilling lives. They were barred from participation in political policy making to the degree equal to members of the majority population. And, they could not participate in the economic sphere on equal grounds as the majority population. Likewise, they were not allowed to participate in

social life with the majority population. I use these spheres to talk about all of public life. For instance, education is important for taking part in all three spheres, and the denial of equal education opportunities to African Americans contributed to the diminished participatory powers in all three spheres. Furthermore, it is not only the case that this oppression continued for subsequent generations, it is also the case that each oppressed generation did not have the wealth, cultural and academic knowledge or the political knowledge and power to bequeath to the subsequent generations. This historical process leaves the current generation of African Americans at a social disadvantage with regard to participatory powers.

The above reflections on African American disenfranchisement from public participation suggest a deeper problem dealing with normative interaction. This deeper problem is concerned with the inclusion and exclusion of persons in the moral community. At bottom, the source of the harm to African Americans is that they have been systematically excluded from the moral community throughout history and that systematic exclusion leads to the unequal positions in the present day moral community. The moral community is a collection of beings that have interests, perspectives, desires and attitudes where as each of those beings want those things to be taken into consideration. And, the other members of the collective actually take those things into consideration. So, along with the systematic disenfranchisement, African Americans also suffer the harm of systematic alienation. This analysis shows that reparations ought to be less concerned with the quantity of goods distributed and redistributed than with membership in society construed as a moral community and understood as making democratic participation possible.

II. The Main Thesis

Given the above points, I can now introduce my main thesis. I argue that reparations for African Americans are justified because 1) the historical oppression suffered by them contributes to the disenfranchisement and alienation of the present generations of African Americans, and 2) reparations are necessary to bring about a society which fosters equal participation in the political, social and economic life and democratic inclusion in the moral community. My idea of democratic participation in the political, social and economic life draws from the discourse ethics of Habermas⁶ and I argue that his derivation of a discourse ethic from a communicative ideal can be used in the discussion of reparations. I use Habermas's discourse ethics for two purposes for my thesis. I use it to set a standard for justice to see what was lost during the injustice. I also use it to argue that the outcome of a reparations regime which would be a just society in which all members participate in public life democratically.

The beneficiaries of this reparations argument would be the members of African American community. This community is the one that is harmed and, thus, the one this is owed reparations. So being, reparations ought to contribute to their democratic participatory power in public life and their inclusion in the moral community. The entire United States society, over generations, is responsible for this oppression. The society had a political arm, in the form of the government, and a cultural arm in the form of cultural and social relations. It consists of the citizens, the institutions and the structures that make up the society. The government is responsible for the protection of rights of all of its members and the corporate society is responsible for the actions of the government. Thus, the entity that owes reparations is the corporate society.

Reparations, as I argue for them, ought to lead towards a society in which no one is alienated from the moral community and all members of society participate equally (or to the best of their interest and ability) in society. Likewise, the institutions that make up the structural foundation of society contributes to the well-being to all members of society such that members of society can develop their own lives as they wish and that members of society can continue to participate in society in ways to benefit society. So, a reparations regime would contribute to structural foundation in such ways as to contribute to the democratic development of African Americans.

One of the theses of my project as with any reparations argument is to devise a way to attend to the harms of the past in order to move forward in the future. This process would consist of retrieving the memory of the past. Here, I am concerned with the term “memory” as “social memory”. Like the memory retained in an individual’s consciousness, social memory is held in a collective consciousness. It is the remembered history passed down from one generation to the next. It is also embodied in the structure of society, the infrastructure, buildings, roads and facilities are built that last over generations. In the social structure, official and unofficial policies about relationships and interactions are passed on through generations. The historical oppression produces a certain memory in society. And this memory is not only in the consciousnesses of the progeny of those who were oppressed. It is also embodied in the social structures.

III. Direction of Dissertation

III.1 The Concept Corrective Justice: From Aristotle to Reparations

The aim of chapter two is to conceptualize an appropriate understanding of reparations that encapsulates all of the issues involved. A discussion of reparation requires an in-depth understanding of the concept of corrective justice. The basic understanding is that when a relationship is corrupted because of harm to one person by another, then justice requires that the person who caused the harm take steps to repair the harm. This notion of repair follows the more general notion of corrective justice. This chapter discusses the concept of corrective justice in order to get a proper understanding of an argument for reparations. The intuitive notions of correction and repair are basic enough. And, humans have worked through those notions before Aristotle thought about them philosophically. By formulating the conception as he did, however, he established the foundation for the continuing debate concerning reparative justice. In chapter two, I analyze Aristotle's conception and its contribution to the current debate on African American reparations. I discuss the contribution that John Locke made to the debate when he shifted the object of distribution and repair of reparations to property. And, I discuss other goods that might be subject to damage and repair. For instance, the moral hurt of an offense has a possibility of being subject of repair.

The concept of reparations, in this debate, has to take into account whether groups can be harmed and repaired and whether groups can harm and be responsible for repair. Thus, this chapter concentrates on the responsibility of groups to repair harm by analyzing two theorists of group responsibility. I examine Nicolas Rescher's argument that group responsibility can be derived from individual responsibility. And, I examine

Larry May's argument that group responsibility can be derived from his theory of social existentialism where individuals in a collective become responsible for collective action because they are members of that collective.

Thus, the goal of chapter two is to develop a conception of reparations that captures the intuitive notion of corrective justice, determines what is to be repaired, who does reparations and who benefits from it. The concept of reparations is concerned with repairing unjust relationships that were made unjust through some injustice. This conception is important for understanding the issue for reparations for African Americans. One might argue that there was never a just relationship between the African American community and the majority community since the establishment of the constitutional order. I argue later, that the constitution, as well as the established enlightenment order, set the conditions for justice for everyone. The problem, however, is that the injustice commenced at the beginning of constitutional order.

With this conception of reparations, however, one must consider the parties involved in the relationship, the injustice and the maker and benefactor of reparations. At least two parties must be in a just relationship. One of the parties disrupts this just relationship that causes harm to another party. Chapter two demonstrates that the parties under consideration for reparations could be individual persons or groups. The repairing process depends on the injustice that has been perpetrated. And that is the concept that is used to judge the reparations debate.

III.2 The Reparations Debate

The aim of chapter three is to analyze the contemporary philosophical debate on the issue of reparations as a response to the racial oppression of African Americans. In this treatment, I summarize the problems with the conventional approaches and offer an alternative. To do this, I analyze David Lyons' article "Corrective Justice, Equal Opportunity, and the Legacy of Slavery and Jim Crow"⁷. There are two reasons it is helpful to look at this article. First, he looks at three major bases for moral justifications for reparations and concludes that they are insufficient in arguing for reparations and he argues for a fourth basis, his own, which he thinks is a better argumentative strategy. In analyzing the article, I discuss the three major bases and the specific arguments that utilize these bases. As he lays out the moral bases so astutely, I see this as a good introduction and summary of the debate. The second reason that this article will be helpful in my discussion of reparations is Lyons' suggestion for a reparations policy. He defends the thesis that some of the preeminent arguments for reparations are inadequate as justifications because they fail to link the injustice of slavery to the current condition of African Americans, and any argument for reparations ought to start with an analysis of the Jim Crow era. The three inadequate moral bases that he attacks are the arguments based on moral debt that has remained unpaid to ex-slaves, the material disadvantage suffered by descendants of ex-slaves, and the unjust enrichment enjoyed by those who have benefited from slavery. In addition, his argument for reparations takes two major phases. First, he claims that the repairable harm of the historical oppression is the lack of equal opportunity that African Americans suffer, today, due to that oppression. Subsequently, he argues that reparations ought to consist of policies that progress towards

equal opportunity. The other phase of the argument is to determine the appropriate timeline for judging the historical oppression. His, timeline starts from the Jim Crow oppression because the effects are more readily apparent. Also, reparations ought to be given to institutions that serve the African American community rather than to individuals.

In debating as a fellow proponent of reparations, I argue that what all of the approaches lack, including Lyons', is an adequate account of what was lost during oppression so that they could argue for what is due in the reparations. While Lyons makes a persuasive argument on oppression's effects on equality of opportunity, he fails to argue for reparations that could attend to a damaged moral community. By starting the time-line at the Jim Crow era, he can argue that oppression has an effect on the present day African Americans.

I, on the other hand, argue that the nature of African American oppression was that it suppressed the ability for African Americans to participate in society throughout history to the point that the community still has diminished participatory power. By equal opportunity, Lyons could mean the equal opportunity to participate in political, social and economic life and if that is the case, then his solution may not be too different than my own.⁸ However, I think the grounding framework of my argument has advantages over Lyons' position. I analyze his position and the philosophical framework from which his position is grounded. He is grounded in a left-liberal tradition which promotes the protection of basic freedoms; promotes individuality while admitting the importance of social organization, and a redistribution of wealth in order to protect substantive freedoms. The author's argument for reparations follows from this position.

When there is a transgression, victims are to be compensated in some way. For Lyons, that way is to facilitate the equality of opportunity that is lost in oppression. The problem is that this conclusion takes the victims of oppression to be atomistic individuals who have been harmed individually and not in respect to their relations with others. So, I present three difficulties with Lyons' position. He takes a narrow view of the social person, he does not correctly consider the extent to which oppression adversely affects the victim's membership in the moral community, and he does not consider how oppression affects the victim's ability to participate in social discourse.

In a conceptual sense, the problem with Lyons' position is his attachment to the liberal notion of the person. In this notion, the person is the fundamental moral entity and is independent and free. The liberal derives normative obligations by negotiating the person's independence, freedom and rationality to determine how persons ought to interact with one another. An injustice occurs when one aggresses against a person's independence, freedom and rationality. This, however, is a limited view of the social being because the moral person gets its personhood from social interaction rather than in a pre-interaction independence and freedom. And, in this conception, an injustice occurs when a person is alienated from social interaction. I discuss the distinction between Lyons' liberal person and the person engendered through social interaction as discussed by Habermas.

III.3 The Social Personhood, Moral Community and Democratic Participation

The goal of chapter four is to get an understanding of social being that reflects the development of persons in social relationships in order to see how persons can suffer

harm when social relationships are damaged. To do this, I appeal to Jürgen Habermas who provides a dialectical approach to understanding personhood development, inclusion and democratic participation in normative interaction. From Habermas, I outline a framework for analyzing social interaction that allows one to measure harm to social membership. I develop an analytical framework which allows one to study social relationships in general and determine the harms to social being. And from this framework, I conceptualize an understanding of on universal grounds.

The aim of my project is to show that African Americans have diminished ability to participate in public life because of historical oppression. To defend that aim, I argue that, on the one hand, African Americans were alienated from the moral community. I do this by calling on Habermas' understanding of moral personhood development. With this understanding, personhood develops through social interaction. And, the moral community develops through interaction in a life-world. A just moral personhood development and a just interaction in a life-world are facilitated by democratic interaction. The justification of the democratic interaction is made through the author's discourse ethic.

Thus in chapter four, I start by developing an understanding of person contrary to the liberal notion. I argue, following Habermas, that the person develops through interaction with other persons in the life-world. In this formulation, a person is a consciousness that has a will, intentions, aspirations and the ability to reason. However, the consciousness is not static. It develops as it develops its will, intentions and so forth. This development takes place, for Habermas, as the person interacts with other persons in working through the problems of life. Following this understanding of personhood

development, I then set the grounds for social personhood development and moral community inclusion by analyzing Habermas's discourse ethics.

I use Habermas' discourse ethics to argue that participation in these aspects of public life ought to be democratic. Habermas uses the ideal speech situation to consider how norms are to be decided.⁹ In ideal speech situations, participants give arguments for their normative claims and are ready to change their positions when they are faced with a better argument. Habermas starts with Austin's speech act theory that argues for the possibility of acting with speech. And, he takes this notion and argues that humans organize social life with language. This organizing process, what Habermas called communicative action, is the act of coming to an understanding about norms which will guide action. The philosopher suggests that this notion of communicative action can also be applied to more practical discourses such as in social life and political policy making. In essence, his idea is that of democratic discourse that is significant in all areas of public life.

III.4 Historical Oppression

In chapter five, I discuss the nature of the transgression for which reparations would be necessary. Historical oppression is past injustice that happens overtime, in the past, and has an effect in the present. The injustice was systematic in that it involved all or most of society's institutions and it affected all or at least the most important parts of the lives of the oppressed. Also, it affected an entire community rather than just individuals and its effect spread across generations. The injustice was such that the oppressed could not participate discursively in political, social and economic life on the same level as people

in the majority society. As a result, it limited the ability of present day African Americans to participate discursively in these areas as well. By discursive participation I mean humans having the ability to take part in public life using their decision making abilities to the degree that everyone else in society has the ability to do the same and that participation includes discussions and debates about policies that affect all involved.

Oppression of the past has an effect on the lives of contemporary African Americans. I conduct a historical analysis of African American oppression in order to show how United States policies and actions towards African Americans throughout history affect the lives of African Americans today. In a divergence from Lyons, who thinks that Jim Crow era oppression is the starting point for a reparations calculation, I argue that oppression of African Americans throughout the history of the United States has an effect on the current condition. It not only had an effect on the material conditions, the political life and the social positions, but also the collective place of African Americans in the social consciousness of the country. The racist discourse, which started before the establishment of the United States, helped to develop a racist ideology which, in turn, contributed to the historical oppression. The racist ideology contributed to the thinking of races and what place these races have in moral, social and political realms and this thinking contributed to the development of policies and actions that were oppressive. It is important to analyze the history of the formation of this ideology to talk about reparations. The citizens of the country developed a way of seeing African Americans and their alleged place in society from the interactions and discourses that took place over time. In order to develop a society based on equal participation in

public discourse, one must contend with the racist ideology. And, to contend with the racist ideology, one must track its historical development.

I proceed in the chapter by discussing the historical process of oppression which I call racialization. I delve into the history of the racial and racist relationships starting before the revolution and tracking the process to its contemporary ramifications.

Racialization is a process of social and social consciousness construction. That is, the social structures that we see as race and racism along with the attitudes of race and racism are constructed through interaction through history. It is racialization that leads to the alienation and distorted participatory relationships. The discussion of the historical oppression is meant to show why it is necessary for reparations, and I discuss how past oppression impacts the lives of African Americans today.

III.5. My Argument for Reparations

After the elements of the reparations argument have been discussed, I am ready to complete the argument. The just social order that was violated was the constitutional order that set the conditions for just social relationships in the society. The transgression was the social and legal mistreatment of African Americans at the start of the constitutional order. While the constitution sets the conditions for just social relationships, the real conditions for interaction are played out in the continually evolving discourse in daily life. Throughout the history of the nation, from the founding on, the conceptions of justice, democracy and equality evolved as people in society interacted in changing conditions. However, even with this change, oppression continued as full participatory power eluded African Americans in general. African Americans continued

to be alienated from the moral community and disenfranchised from normative discourse. Thus, reparations are due in order to repair this historical situation.

In the concluding chapter, I make my argument for reparations arguing that reparations ought to be aimed at ‘repairing’ the victims’ place in the moral community and the democratic social participatory power. My idea of reparations is a counterfactual one. The idea is that the situation ought to be repaired to where it ought to be, given that oppression was a violation of what just relationships ought to have been. My understanding of reparations is that it ought to be forward looking with guidance from historical situatedness. The idea is to bring about a just situation while keeping in mind the historical realities and their effect on the present situation. So, repairing in the sense of returning to a just situation is inappropriate in talking about reparations.

As part of a reparations argument one ought to talk about who would benefit from a reparations policy. On the first hand, I argue that the African American community ought to benefit from such a policy because it was affected by the historical oppression and its members are, for the most part, barred from equal participation in public life because of this oppression. On the other hand, I argue that the entire society would benefit from such a policy because 1) there will be more people participating social, political and economic life in positive ways and 2) such a policy can begin to foment solidaristic mentality amongst a formerly disaffected population and lead to all members of society working together for the benefit of society as a whole.

The reparations debate in the United States, though, has further complication because of the racist reality of the contemporary society. This racist reality has the potential of limiting the effectiveness of a reparations regime. Racist legislators can vote

to limit funds that are allocated to reparations projects and racists could hamper the democratic participation of historically oppressed populations. I claim that this is not just a problem for the practical application of reparations but must be dealt with in the actual argument for reparations. To this regard, a reparations argument must include in its regime an element that helps to bring about reconciliation between the different social groups called “races”.

III.5.1. Consideration of Objections

The reparations debate generates interest in both the conceptual world of philosophical discourse as well as the socio-political world; which includes policy making, the law, and public discourse. Consequently, chapter six also considers objections to justification for reparations for African Americans that come from these two areas of discourse.

Objections from the socio-political world often regress to racist rhetoric without consideration of conceptual foundations. David Horowitz’s “Why Reparations for Slavery is a Bad Idea—and Racist Too”¹⁰ is an example of such a regressive discussion. However, one can portray such rhetoric in its best philosophic light and analyze it with regard to the philosophy that it would have.

I also consider another objection against reparations that is of more philosophical importance. Steven Kershner argues that proponents of reparations overstate their claims about oppression’s effects on the African Americans. He goes on to argue that reparations for oppression are not warranted because it is not the cause of the present demise of African Americans.¹¹ On the one hand, this seems like a debate about the effects of oppression that can be refereed by historical and sociological research. To

resolve this dispute, one could simply pit Kershnar's research against the research of other scholars of history and sociology to derive an answer. On the other hand, I show that Kershnar is only concerned with the economic position of African Americans and he fails to discuss how oppression does not affect their ability for equal participation in public life as I lay it out in my project.

I also consider objections to my view of reparations. One such objection would challenge my account as one of social justice rather than reparation. However, because of the historical nature of the denial of the access to just social relationships and the moral community and how that denial affects contemporary African Americans, this is actually an argument about repair. I also consider what one might call the "infeasibility argument." That is, because of the present racial attitudes and political system, it would be infeasible to attempt any reparations policy, much less my socialistic remedy. The racial attitudes and the political system are both part of the effects of oppression. Any remedy has to take them into account. Furthermore, the objector can not claim that any attempt at reparations contradicts some fundamental law of logic or metaphysics. And, since it is not logically impossible, we are allowed to try to repair.

Also, in the objections section, I cover other theoretical approaches to reparations that I do not cover in chapter three. And, I consider objections to my use of Habermas as a foundation to my reparations argument.

III.5.2. The Importance of this Project

This project is important in the discussion of social justice as practical philosophy given that injustice is a historical reality. In it, I consider what social justice ought to be while

considering how to come to social justice from a history of oppression. In order to do this, one has to articulate a just social arrangement and one has to articulate a just policy of attaining the social arrangement if the social arrangement has been formerly unjust. This way of talking about social justice goes beyond the a-historic idealism of some previous philosophies which tell us how societies ought to be without considering their historical realities.

III.5.2.1. Implications

This project has two major implications. One is in the realm of the philosophical discourse of just social arrangements and the reparations for injustices. The other is in the realm of the political discourse about reparations for African Americans. One implication within the realm of the political discourse is the ramifications of reparations if such policies were to be implemented for African Americans. Other groups in the United States have also been oppressed by its policy and social systems. If the argument for reparations for African Americans is valid, then similar arguments for other oppressed people must also be valid. My argument for reparations leads to the formerly oppressed receiving what it takes for equal participation in democratic discourse in society.

This leads to another implication in that given my argument for reparations one has to consider a type of social system that both eliminates oppression for which reparations would be necessary and extends the most democracy possible. Other groups in the United States have been oppressed and are currently feeling the effects of oppression in similar ways that African Americans are feeling the effects. Furthermore, given that these other groups would be due reparations for their respective oppressions;

and some individuals suffer multiple networks of oppressions (for instance, working class African American women), and reparations in the same way that I am arguing for, then a true solution would be a transformative one.

Chapter Two: The Conception of Reparations

I. Introduction

A discussion of reparations in general and reparations to African Americans in particular, requires an adequate conception of reparations. Such a conception would help clarify what an argument for reparations would have to accomplish. That is, an adequate conception would provide the general criteria for a good argument for reparations in a particular historical situation. A conception of reparations introduces a complex of issues that must be considered when talking about harm and repair. Such issues include (1) a description of a just system of social relationships (or a distribution of goods, honors, rights and social participatory power) that existed prior to an injustice. This issue is accompanied by some controversy. If the calculation of reparations begins at an initial just situation, then some might claim that the situation for African Americans were never just in the United States and claim that reparations is not the correct concept to use to resolve the harms done to African Americans. I argue, however, that the constitutional order set the conditions for just social relationships. The constitution banned the social, legal and political exclusion from rights for arbitrary reasons. Thus, there was a system of justice from which we can start the reparations discussion. It so happens that as soon as the constitutional order was established, it was violated. This violation takes us to issue (2), an injustice that disrupted the just system of social relationships and imposed specific harms; that is, there is a reparable damage. There must be (3) a party or some parties that contributed to the injustice, (4) a party or parties that were harmed by the injustice. Likewise, there must be (5) a party or some parties that benefited from the

injustice (usually but not necessarily the same parties as in (3)). Also, there is (6) the normative claim that some party, usually the parties that contributed to and benefited from the injustice (the parties in (3) and perhaps (5)), ought to provide reparations to the harmed parties (the parties in (4)) in order to repair the damaged system of social relationships.

Another conceptual consideration is that claims of reparations are inherently historical. This means that reparations claims must be checked for their historical facts with regards to the nature of (1) the initial just system of social relationships, the nature of (2) the injustice, and the effects of the parties in (3), (4) and (5) the parties involved and the nature and of (6) the claim of repair. Another historical consideration is the effects of the harms done to (4) and to anyone else who might have been adversely affected by the harm. Part of the consideration of the historical effects is the effects of the past harms on the current system of social relationships. Also, a special concern is a consideration of what is (7) lost in the injustice, (8) what is to be given in the reparation and how closely (7) is to be tied to (8). Lastly, (9) a conception of reparations must contribute to an understanding on a just outcome of a reparations program. It must provide for a way out of the effects of the injustice and leave no issues of justice outstanding. This chapter will not give an answer to all of the issues raised here. Instead, the goal of the chapter is to get a conceptual starting point from which we can judge an argument for reparations. Any adequate argument for reparations must address these issues.

An important aim of this chapter is to discuss why the above issues are important for a discussion of reparations. I start by discussing the philosophical foundation of the

notion of corrective justice. And, I do this by investigating the notion as developed by Aristotle. Recent notions of corrective justice often draw on Aristotle's conception from book V of the *Nichamachean Ethics*.¹² His notion is instructive because it is in accord with our intuitive notions of justice, desert and balance in relationships.

Though his is a cogent starting point for the discussion, Aristotle's conception does not convey an understanding of reparations over generations. Likewise, his formula does not provide an answer to the problem when neither the original transgressors nor the original victims are still alive. Furthermore, while he does consider rights and honors that might be harmed and repaired, he does not consider the feeling of loss or the feeling of alienation that a victim might get from a transgression. These problems illustrate that one must go beyond Aristotle's general notion of corrective justice to determine an adequate concept of reparations. To consider the question of historical harms, one could analyze John Locke's notion of reparations. While the notions of corrective justice and reparations get their start from Aristotle's formulation, much of the contemporary debate about reparations centers on the notion worked out by Locke in his discussion of the justification of repairing transgressed property relations. Differing from Aristotle's general notion of corrective justice, Locke concentrates on the notion of just distribution of property, harm and a return to a relationship of just distribution. Locke develops the notion that persons who do not commit the original harm might have to pay reparations if one can trace the property owed back to the original transgression. However, by his exclusive focus on property relations, he neglects other aspects the persons and relationships that could be damaged and ought to be repaired due to the transgression. Examples of these aspects include are moral, social, economic and political relationships.

This is problematic because human relationships cannot be reduced to property relations. The recovery of property alone would not satisfy a complete notion of reparations.

To look into what else might be lost and ought to be repaired from an injustice, one can turn to Rodney Robert's ideas in "Justice and Rectification: A Taxonomy of Justice" where he shows that compensation alone would be inadequate in redeeming just systems (or relationships) of distribution. He insists that, along with property harm that could be repaired by compensation; there are also harms to a victim's sense of being a moral person. Because of these harms, persons develop feelings of being disrespected, and they lose the security of being parties who deserve equal moral considerations. A theory of corrective justice or reparations ought to take this into consideration.

An additional problem emerges in the discussion of reparations for groups, in particular, African Americans. The concept of reparations with regard to African Americans should be distinguished from concepts that focus on harms to individuals in isolation. My argument is that African Americans are harmed as a group by a collective entity--the majority society. An adequate conception of collective harm and responsibility must also be considered in order to develop a conception of reparations. I analyze the positions on collective responsibility from Nicholas Rescher and Larry May. Rescher derives collective responsibility from individual responsibility and argues that one cannot hold an individual member of a collective responsible unless that individual made some implicit or explicit consent and through direct or via representative consent, to contribute to the harm. My view is that he puts too much emphasis on consent and members of collectives already have responsibility to ensure equal justice to all of its members. Larry May argues that members of collectives get their responsibility from

being members of that collective, contributing to or failing to contribute to the development of attitudes in the collective. Members of collectives are responsible for the actions of the collective by virtue of being members of the collective and failing to have the right attitudes and failing to change the attitudes of other members. My critique of May also addresses his way of deriving responsibility. First, members of a collective have responsibility to the collective and to those outside of the collective because we already have responsibility for equal justice to all persons with whom we come into contact. Furthermore, May overestimates the ability of members to change the attitudes of other members of the collective, especially in non-democratic societies. Yet, for May, those members are still responsible.

Drawing from the considerations developed, in this chapter, I plan to develop my conception of reparations. I explicate and analyze Aristotle's idea of corrective justice and articulate its ramifications in contemporary discussions in which the notion of corrective justice might be relevant. In the second part of the chapter, I analyze Aristotle's conception of corrective justice. Then, I discuss the concept of reparations by analyzing Locke's notion as he articulates it as a response to damages to property caused by aggressors in an unjust war and I discuss how this view diverges from Aristotle's concept of corrective justice. In the third part, I discuss Rodney Roberts' argument that the corrective justice approach is inadequate because it fails to address the psychological content (feelings of respect, personhood, and justice) of injustice and how injustices ought to be addressed given these considerations. And, by addressing Rescher and May, I also discuss how groups could be harmed by other groups or collective entities.

Part I.1 Definitions

Before going any further, let me clarify certain key concepts. The terms “corrective justice”, “reparation” and “rectification” can be taken as synonymous. However, as used in here, they have distinct, if similar, meanings. These are preliminary definitions used as guides for the sake of clarity as one reads through the conceptualizations.

I understand “corrective justice” to refer to the return to relations of interaction as set by a just system of social relationships. The goods in the just system can be tangible material goods or more abstract goods like honors, rights and titles. “Corrective justice” is an umbrella term since both reparation and rectification are concepts that used to talk about correcting damaged relationships. “Reparation” is usually understood to mean compensation of property lost due to unjust property relations. This is returning the thing lost in the unjust property relation or paying with some other goods (usually material) that would replace the lost property. I, however, will speak of reparations as repairing unjust social relations more generally since property relations are just one relation that is intricately enmeshed in social relations in general. I understand “rectification” to mean making a relationship right that has been made wrong by an injustice. “Rectification” has a moral significance that the normal understanding of reparation does not. While reparation conjures up the notion of economic, legal right, and I argue, social power and place, rectification evokes the notion of returning to a feeling that one might have of being secure in moral status.

II. Aristotle's Corrective Justice

I start this discussion with Aristotle's conception of corrective justice. Three elements stand out in this formulation. First, corrective justice is a component of distributive justice and when there is a disruption in just distribution of goods, correction ought to be implemented. Second, one either presupposes a just system or argued for independently of any argument for the concept of corrective justice. Whatever the system of distribution, one could argue that this system of corrective justice would apply when there is a breakdown of distributive justice. The third element in Aristotle's formulation is that the injustice that would require corrective justice has to happen between parties and the subsequent correction would involve the offending party, the party that caused and benefited from the injustice, losing the unjust gain and that gain would be used to repair the loss of the victimized party. Furthermore, this corrective transaction is thought to return the unjust situation back to a just situation, a system of just distribution. Janna Thompson suggests that Aristotle "thought of reparation as a matter of righting the moral balance by ensuring that perpetrators would not profit from ill-gotten gains and that victims would recoup their losses."¹³

To talk about Aristotle's notions of distributive and corrective justice one must have some understanding of his ideas on justice. Justice is a virtue in that a person can be just or have justice as an emotion or a psychological disposition. Also, justice can be a system in a society, in associations or between two individual parties.¹⁴ With justice as a virtue, just persons take and only accept their due share and when they have too much they would give up the unjust portion. The unjust, vicious, person wants to accumulate

goods beyond what is due and has the psychological disposition to take without regard for what is justifiably due.

Like the other virtues, justice is a mean (an intermediate point, not necessarily an arithmetic average). Aristotle thinks of injustice as cases of unfairness or inequality and he thinks that there is an intermediate point that would be just. This intermediate point is the mean between a person getting too little of what the person deserves and too much of what the person deserves. The other virtues are psychological dispositions that are played out in actual situations that are positioned between two extremes related to the proper disposition. The proper disposition is a component of good character. An example of such a disposition is courage which is positioned between rashness and cowardice. The disposition in question is a person's reaction to dangerous situations. Rashness is too much of the psychological disposition while cowardice is too little of the disposition. For justice, there are degrees of psychological disposition that are associated with the fairness of the treatment of others, the mean of which is justice and the extremes of which are injustice.¹⁵

Aristotle also talks about justice in reference to relationships between parties. And this subdivision of the notion of justice is further subdivided into general justice and particular justice. General justice is concerned with a system of rules, especially rules of institutions, such as with constitutions and political systems. Injustice in this sense is the violation of rules that are promulgated by the institution. Aristotle's main concern, however, is with what he called particular justice. And, particular justice is subdivided into distributive justice and corrective justice.¹⁶ The distinction between distributive

justice and corrective justice is the distinction between the distribution of divisible goods and justice in the correction of unjust transactions.¹⁷

Aristotle uses one formula to explain distributive justice and one formula to explain corrective justice. The first formula, for distributive justice, follows a geometric proportion: $A/B=C/D$. A and B are persons and C and D are the goods that are divided among them. A gets C for whatever reasons that would justify granting C to A and B gets D for the same or similar reasons. As A stands to B so does C stand to D. Aristotle did not specify a particular type of justice system and the fact that A merits C could be due to A's title, nobility, or effort. For example, one could use Aristotle's ideas to justify allocating a hut to a serf and a mansion to a person of nobility.¹⁸ And, as Aristotle himself says, "Everyone agrees that justice in distribution must be in accordance with merit in some sense, but they do not all mean the same kind of merit: the democratic view is that the criterion is free birth; the oligarchic that it is wealth or good family; the aristocratic that it is excellence."¹⁹

The formula that represents corrective justice is arithmetic: $A:B=B:C$. Aristotle says, "Rectificatory justice remedies an inequitable division between two parties by means of a sort of arithmetic progression."²⁰ He discusses the distinction between the two proportions that he uses. The first, $A/B=C/D$, is a discreet proportion because it involves four distinct terms. Aristotle calls the second proportion continuous and it also uses four terms but one of the terms is used twice.²¹ Corrective justice is required when there is an unjustified gain and an unjustified loss between the two parties and the unjustified gain and loss are correlative or contrasting. That is, the loss and the gain, if

they are material goods, are the same objects but one person has the objects that should not have them while the person who should have the objects does not have them.²²

Before talking about correcting an injustice, one must get a better understanding of what an injustice is. Aristotle's formulation is that injustice takes place when distributive justice is disrupted. That means, for Aristotle, that the proportionate relationship derived from whatever theory of justice is upset. Aristotle's criterion for justice is that it is to be done by way of proportionate relationships. Justice, in this case, would be discrimination using relevant similarities and differences in order to distribute goods and honors. As an example, person A who has a merit quotient of 5 would get certain goods and honors while person B with merit quotient 4 would get a different set of goods and honors. Injustice would be distribution goods and honors by discrimination based on irrelevant features of the parties concerned. The relevance of the features depends on the criterion for justice and the particular theory of justice used in the system of distribution.

To correct the injustice, the gain of the unjust party must be used to replace the loss of the victimized party. Aristotle suggests a metaphor of a line of two unequal parts. Imagine that the unequal lines represent a just division of the line. Then, imagine that one section of the line grows unjustly. A corrective measure would mean the portion that is over the just limit is taken and added to the lesser segment of the line.²³ The two parts of the line represent what the parties ought to have even if their real holdings are not equal. The unequal sections represent the thought that justice does not require that there be an equal distribution of goods. The portion above the original justified amount is unjustified holding and it ought to be taken from the larger segment and added to the

smaller. Aristotle says, “In Arithmetic proportion the equal is the mean between the greater and the less.”²⁴ If two parties have one and five respectively, to get the mean or equal, one would take two from the party that has five and add it to the party that has one to get three for both parties. For this account, one must assume that the benefactor of the unjust gain contributed to the injustice and owner of the loss is also the victim of the unjust act.

The wrongful gains of these types of relationships are wrong because of disruptions in distributional relationships. The injustice has to be a wrongful act perpetrated by a party in the relationship. This formulation has nothing to say about windfalls or gains not attributed to any merit. Windfalls might be unjustified if one translates Aristotle’s rule that one ought to get what one deserves to mean that they ought to get that and nothing more. However, if one looks at the two proportions that Aristotle uses, then one can see that windfalls are allowed as long as the proportions are maintained. Justice is relational; it only makes sense to say that a person ought to have something in relation to what others have. So, it seems that if one person gets a windfall and it puts his portion above what the proportion that person ought to have, then certain amount redistribution is necessary to redeem the proportion. On this topic, Ernest Weinrib reports “Injustice arises in the absence of equality, when one person has too much or too little relative to another.”²⁵

This leads to another difficulty with Aristotle’s formulation. Weinrib points out two features of corrective justice that lead to a third. Corrective justice responds to an unjust distributive relationship and they must be correlatively situated. Correlative situatedness means that the gain is taken from the beneficiary and that gain replaces the

loss of the person who suffered. These two features leads to a third feature; “A correlatively structured remedy responds to and undoes an injustice only if that injustice is itself correlatively structured. In bringing an action against the defendant, the plaintiff is asserting that the two are connected as doer and sufferer of the same injustice.”²⁶ This formulation does not take into account the person who does not commit an injustice but benefits from an injustice. An example of this could be a person receiving stolen property and the person did not participate in the actual theft. Also, the person might inherit property that was not acquired by the original holder in a justified way. This is clearly a case in which a party did not commit an injustice but has property that rightly belongs to someone else. One cannot resolve the problem using Aristotle’s formulation alone. Corrective justice may be appropriate in this account but not because of Aristotle’s formulation.

What one gets from the discussion of Aristotle is a general starting point for a concept of reparations even if one has to buttress the general concept with other important principles. One has the notion of a just state of affairs, once disrupted, must be repaired by the party that disrupts it. We are clear about the obligations and responsibilities of the parties in the immediate transgression. And we are clear about what needs to be repaired; the just system of distribution. One might be confused by the notion of distribution. Usually the term is used to refer to material holdings or goods. That does not have to be the case. It could also mean distribution of rights, honors and social power. That is, a feudal society has a certain type of distribution of social power (and rights) predicated on a hierarchical system where lords have more power and

privileges than their vassals. A democratic society, on the other hand, has another type of distribution of social power predicated on equal distribution of power and rights.

With Aristotle, one may be clear about the general foundations of corrective justice though remain in the dark on the obligations of repair for parties who benefit from the disruption but who did not actively participate in the disruption. Likewise, one still has to determine how to resolve transgressions over generations. And, one has to have a clearer understanding about what besides material goods that are part of just repairable relationships. And, finally, one has to determine if the parties involved can be collectives.

From Aristotle, then, one gets an understanding of several of the important issues brought up at the beginning of the chapter. His conception gives an abstract understanding of (1) the initial just social relationships. However, for discussions of reparations in particular cases, one has to be more specific about the initial just social relationship which has been disrupted. With regard to reparations for African Americans, I defend the claim (in chapter five) that the just social relationship was the one codified in the Constitution of the United States. It codified a just social order whose transgression (2) began, for African Americans, at the beginning of this order. And, this transgression continues; at every step of the evolution of the constitutional order, African Americans suffered transgression as measured by to that order.

III. Locke's Conception of Reparations

As discussed in the last section, Aristotle's conception of corrective justice requires, after a distributive injustice, that goods are returned to a victim of the injustice in order to

return the system of distribution back to the previously just state. From Aristotle, we get the idea that the corrective justice assumes an initial just system of distribution, a disruption of this just system of distribution (an injustice), someone who has caused this injustice, a benefit achieved by the person who caused the injustice and lost by the victim of the injustice, and, to correct the disruption of distribution, a redistribution of goods. Furthermore, the goods can be property, rights or honors. Issues that this concept fails to address include the issue of injustices over generations, the issue of whether reparations can be paid to those who are not the immediate victims of harm, and the issue whether reparations can be paid by those who did not take part in the immediate harm. Further, there are issues about the composition of the parties involved: whether they can be collectives, societies or states. Finally, there is the issue of what counts as a reparable good, whether these are exclusively material objects or if they can be something else.

The Lockean formulation of corrective justice (reparations) answers some of the questions Aristotle's notion does not address. Locke's position, however, remains inadequate. Repairing (or restoring) property is an important notion for his explication of just property relations and what should happen after the occurrence of unjust property relations. In "Just Conquest" in his *Two Treatise of Government*, Locke makes an argument for reparations using the pretense of a lawful conqueror. The lawful conqueror is a participant in a just war. A just war is a war in which the lawful conqueror has good reasons for participating. And, the lawfully conquered contributed to the damage of the conqueror's property. Locke follows the notion that a war of aggression with the intent to take the property, the life or the liberty of the victim is unlawful. A war in defense

against the aggressor would be lawful. At the success of the defense, the defender, called the lawful conqueror, would have justified claims to reparations.

Locke thinks that the lawful conqueror has the right to kill the aggressor because the aggressor gave up his right to life once he aggressed against the victim/defender. He says, "Let us see next what Power a Lawful Conqueror has over the Subdued; and that I say is surely Despotical. He has an Absolute Power over the Lives of those, who by an Unjust War have forfeited them..."²⁷ The victim of the aggression only has rights against those who actually engaged in the aggression. He says, "I say then the Conqueror gets no Power but only over those, who have actually assisted, concurr'd, or consented to that unjust force, that is used against him."²⁸ This follows the classical notion that those who are obligated to correct an injustice are the ones who took part in the injustice.

There is, however, a problem with Locke's argument that the victorious victim has the right to kill the aggressor. It does not follow from the fact that one person violates another person's rights that the aggressor no longer has rights. That is, the aggressor did not forfeit their rights. Persons do not forfeit rights because rights are not things that can be forfeited. Rights derive from the arguments for the fundamental principles of rights. Persons do not make a decision to accept rights; they already have them. Locke does not show that it is the case that the aggressor agrees to give up rights or that any such agreement would necessitate the aggressor not having rights. One normally assumes that someone agrees to an action by the person's verbal agreement or when the person makes some other recognizable sign. And, one has to make that assumption because one cannot actually witness the actual mental processes that go into a person agreeing. One cannot assume that a person agrees to something that the person

does not verbally agree to or does not make another recognizable sign. Furthermore, an aggression is not a recognizable sign that one agrees to forfeit one's rights. It follows that persons cannot forfeit rights because they do not have rights by choice and one cannot say that a person agrees to give up rights by attacking someone. Therefore, one cannot accept Locke's conclusion that the victor has the right over the aggressor's life.

While one cannot accept the conclusion that the victor has rights to kill the aggressor when the fighting is over, the argument for the victor's right to some of the aggressor's property is more plausible. Locke says "...he has absolute power over the Lives of those, who by putting themselves in a State of War, have forfeited them; but he has not thereby a Right and a Title to their possessions."²⁹ The part of the property that the victor/victim has a right to comes from that property that the aggressor damaged. The property that the victim has a right to would replace the property that the aggressor damages during the aggression.

The notion of reparation is in line with Locke's notion of mutual exchange of property by people who choose to do such exchange. For Locke, property becomes an intimate part of the person's being when that person puts labor into developing the property. A person owns himself or herself. Likewise, a person's labor is an important part of the person's self. This is because labor incorporates a person's body and the rationality that goes into labor. Labor, then, is the property of the person who applies it. And, whatever the person puts labor into, as in what the person works on, becomes the property of the person for Locke.

Locke employs the enlightenment idea that others must respect the rationality and volition of a person and persons cannot ignore the rationality of others in order to benefit

from their labor; this would be coercive or fraudulent exploitation. However, mutual exploitation (or mutually agreed upon exploitation) is allowed in Locke's philosophy. And, in this way, property, labor or other goods can be exchanged for its correlatives if all parties involved agree to the exchange. This leads to the idea of reparations. When person A takes property from person B through coercion or fraud, it is understood that person A ought to have consulted person B's rationality before taking the property. The property must be returned to B from the fact that the property belongs to B. If the property is damaged by A, then A must return a replacement from the fact that the property originally belongs to B and A assumes the obligation of exchange because it is understood that A ought to have consulted B's rationality before damaging the original property.

Reparations, for Locke then, is a type of compensation in which one party takes or damages the property of another party without the second party's consent. This compensation follows from the notion that persons ought to consider the rationality of other persons in interactions concerning material holdings in the way of mutual exchange. The reparation paid is the compensation that the perpetrator would have paid if there were mutual exchange. The aggressor must restore (repair) the property or pay compensation that equals the value of the original property if the property cannot be restored or repaired. The value of the reparations would be at the current rate of exchange of the properties of similar type. Moreover, while Locke talks about reparations in terms of compensation for damages due to an unjust war, one can universalize the main concepts of his discussion in order to make claims about unjust property relations in general. Unjust war, in this case, is like any other unjust act with

regard to reparations. The property is damaged without the owner's consent, and this damage is caused by the aggressor. Any property loss or damage due to unjust property relations must be compensated at the exchange rate of just property relations.

For both Locke and Aristotle, the person who gets the goods unjustly from a person who ought to have it, ought to give the goods back to the victim; for Locke, to redeem just property relations; for Aristotle, to redeem just relations of proportionate distribution. Aristotle, though, does not explicitly require that persons who did not commit an injustice to pay any compensation.

Lock, on the other hand, thinks that a person who did not commit an injustice could be obligated to pay reparations. He bases this idea on inheritance. Just as one might inherit goods and property, one might also inherit obligations. In this case, the progeny of the aggressor owes the progeny of the victim, if the aggressor does not compensate the victim for the unjust property relations. The idea is that property held by the aggressor actually belongs to the victim. The progeny of the victim inherits the property that they ought to have and the progeny of the aggressor inherits property that actually belongs to the progeny of the victims. The aggressors actually harm the progeny of the victims by denying them their inheritance. And if the progeny of the aggressors do not pay the required compensation, then they too are guilty of harming the progeny of the victims. This also works for properties passed on in other ways; such as through buying and selling. In this way, Locke argues that persons who are not guilty of the original aggression owe people who are not victims of the original aggression.³⁰

One problem with Locke's position is that it does not cover everything that is harmed in an injustice and I analyze that problem, in the next section, with my discussion

of Rodney Roberts. Roberts emphasizes feelings of being harmed that could be repaired by attempts at apologizing. Locke's just system prior to the injustice is based on his notion of just property relations and he overlooks other reparable goods.

IV. Rodney Roberts' Corrective Justice

The Lockean conception of reparations is inadequate because it is predicated on a limited view of what counts as reparable goods. To be specific, the conception undermines reparable human relationships that are not property relationships. In this section, I discuss how the Lockean notion of reparations fails to address the psychological impact of injustice. In doing this, I consider the work of Rodney Roberts who looks at the notion of corrective justice in order to determine whether the notion is an adequate way of righting an injustice. He determines that it is not because it does not cover everything that is harmed in an unjust relationship. As a remedy to this problem, he claims that his notion of rectification can replace the idea of corrective justice.³¹

Like Aristotle, Roberts recognizes the need to distinguish two species of justice. He accepts the idea that the goal of distributive justice is to establish just distribution of goods and rights. Aristotle's notion of corrective justice, however, is lacking because it does not take into account the victim's feeling of hurt and disrespect. Roberts thinks that his notion of rectification can incorporate a remedy that would consider these feelings. Roberts starts by arguing that justice is a subset of morality that deals with individual's relationship with other individuals. He quotes Aristotle, "In so far as we are interested in the nature of the agent, we speak in terms of excellence ... of character; in so far as we are interested in the way his actions affect other people, we speak in terms of justice"³².

He interprets Aristotle's concern with distributive justice to mean a distribution according to a "proportionate equality" rather than exact equality. Proportionate equality means that persons get goods and rights according to the proportion at which they deserve those goods and rights. Roberts also draws on W. D. Lamont's view that, "the principle of equality of consideration, [the state, insofar as it embodies the notion of distributive justice] distributes rights (on the basis of proportionate equality or equity) to the pursuit of those interests [i.e. those ends which individuals and groups in a community take to be good], prescribing, at the same time, the duties and obligations implied in the distribution of rights."³³ One might think of this notion as one of distribution according to fair shares in which "fair" is understood as acting according to rules based on universal principles and not based on arbitrary proclamations.

Roberts accepts the notion that distributive justice presupposes just social systems. He says, "It is important to note that distributive justice is primarily concerned with the distribution of rights and duties to members of society by way of society's institutions."³⁴ A just society is necessary to set and maintain a just distributive system, whatever that system is. It is also necessary for a just system of corrective justice (and for Roberts, rectificatory justice).

Roberts points out the connection between a system of distributive justice and compensatory justice by examining the connection between oppression and opportunities to participate in social cooperation, "Included in this concern for a just distribution of rights and duties, is a concern for those members of society who are disadvantaged insofar as their opportunity to participate in the advantages of social cooperation."³⁵ Here, the philosopher bases his understanding of the system of justice on Enlightenment

principles. The ideals of opportunity to participate in the advantages of social cooperation are democratic notions based on principles of liberty. From this notion Roberts, like Lyons, goes on to argue for redistribution in order to maintain a certain equality of opportunity. He defends this idea with a quote from Bill Diggs. “In trying to secure these opportunities and establish them as recognized equal rights, an unequal effort must be directed toward helping the disadvantaged. In this broad sense, distributive justice itself requires that the disadvantaged be ‘compensated’”.³⁶ Already within the concept of distributive justice we have the idea of compensatory justice. The advantages of social cooperation and the liberal pursuit of self-fulfillment is promoted by a just system of distribution and maintained by a system of compensatory justice.

Roberts continues by explaining his idea of compensation: “To compensate for something is to counterbalance it; to give something equivalent to the thing.”³⁷ Like the Lockean discussion, this idea of compensation is a remedy for what ought to have been mutual exchange that has been corrupted by coercion or fraud. The remedy for this corruption is to compensate the victim for the damages by repairing the goods destroyed. In other words, return the value of the damage. However, Roberts also notes that compensation need not respond to harm intended by an aggressor. He follows Boxill’s reasoning that compensation can assuage barriers to opportunity: “the aim of compensation is to ‘alleviate disabilities which stand in the way of some future good, however these disabilities may have come about.’ ”³⁸ Compensation, for both Roberts and Boxill, is forward looking in that it alleviates disabilities and it equalizes the competition for positions and resources.³⁹ Boxill follows the Rawlsian notion of

redistribution. That is, compensation is justified when persons are losers in the competition for position and resources, disadvantaged by accidents.

Roberts, on the other hand, is more concerned with compensation after an injustice. The injustice of concern is to a system of distribution. When the system of distribution is disrupted or contravened and leaves one party without its due amount, then justice requires that the party be compensated. Roberts calls this compensation in the “distributive sense” and it repairs goods and rights when something happens to disrupt what one person gets in relation to just distribution within the system of distribution. When compensation is justified as a matter of repairing an injustice, Roberts calls this compensation in the “rectificatory sense” and the loss that is repaired is individual. He says, “[T]he aim of compensation in such cases is to counterbalance the adverse effect on a person’s interests by providing something equivalent in value to the loss to that adversely affected interest.”⁴⁰

The notion of interests of persons has an important place in Roberts’ formulation. Interests are a person’s psychological states or feelings that are directed at particular goals or objects. And, attainment or possessing these goals or objects may benefit the person in material or positive psychological ways (i.e. pleasure, happiness, contentment).⁴¹ From here, Roberts suggests that the process of compensation presupposes two supporting ideas. First, a person’s interests have value for the person in such a way that a transgression of the interests is equivalent to a loss of value. And, second, the value of the transgressed interest and the value of the compensation must be commensurable.⁴² This formulation follows Aristotle’s idea of corrective justice in that one can imagine that the situation that Roberts talks about can be discussed in ways that

correspond to Aristotle's argument, and compensation ought to be used to return the line to equal halves. However, while Aristotle refers to returning a relation of justice to a just relationship of proportionate justice, Roberts is concerned with objects or goals of interests.

Compensation, then, must provide an equivalent for the material lost, and if that cannot be done, compensation must work towards accounting for any interest associated with the harm. For Roberts, "Adequate compensation is likely to include two things. First, some kind of compensation that is equivalent in value to a portion or particular aspect of the adversely affected interest ... Second, some other kind of compensation equivalent to any value left unaccounted for."⁴³ Roberts calls this formulation the Package Conception of Compensation (PCC). If the original object cannot be returned, then the correlative compensation is to ensure that the victim can pursue some new interest.

Even though Roberts thinks that his conception of compensation (PCC) is an improvement over the foregoing concepts of compensation (i.e. Aristotle and Locke), compensation alone is an inadequate response to harm done to a victim by a perpetrator. He says,

"As much as I have tried to account for the effects of the injustice done to A, that is, the effects of B's violation of A's rights to the necklace [or interests], I have said nothing about addressing the rights violation itself. In other words, I have said nothing about 'righting the wrong' which B perpetrated against A, only righting the losses which resulted from that wrong. ... [N]o theory of compensation (including the PCC) can adequately address these concerns."⁴⁴

In Roberts view, interests have a material foundation that can be accounted for by compensation. However, his understanding of rights violation and disrespect seem to have psychological (or psycho-moral) component as well. That is, persons have a feeling

that they are owed respect as persons and right bearers and violations of rights have negative psychological effects. He goes on to argue that compensation cannot respond to this.

Given that compensation by itself is not an adequate response to the psycho-moral harm, Roberts develops an alternative way to rectify transgressions. “To rectify something is to set it right. Hence, the aim of rectificatory justice is to set unjust situations right.”⁴⁵ Furthermore, this setting right takes all of the material considerations into account as well as all of the psychological considerations. Roberts suggests that along with restoration or compensation “an apology from the perpetrator of the injustice must also be rendered to the victim. Rendering an apology is a necessary condition for rectification because it addresses the matter of righting the wrong of an injustice.”⁴⁶ The hope is that an apology would address the wrong of the injustice. It addresses the disregard for the victim’s personhood and the disrespect. This would be an attempt to respond to the negative psychological effect of the wrong. In an apology, the perpetrator expresses regret and acknowledges wrongdoing. In this process, the perpetrator also acknowledges the personhood of the victim and that the victim is deserving of respect as a rights bearer. Roberts describes what a perpetrator might think when apologizing, “By apologizing I reaffirm that, like myself, the victim is a person, and so has moral standing. It is in this way that an apology addresses the wrong of injustice. Since all injustices are wrong for the same reason, they all involve some degree of disrespect, and so all require apology in order to be rectified.”⁴⁷

One can ground the concern for the psycho-moral component of harm in empirical analysis. First, one can assess the knowledge of his or her own feelings of

harm and extrapolate that knowledge to other persons. Likewise, one can notice, through empathetic assessment, the way others seem to feel when they are harmed. Axel Honneth, however, grounds the psycho-moral components of personhood to our desire for recognition and respect as signified in our everyday use of language. “Inherent in our everyday use of language is a sense that human integrity owes its existence, at a deep level, to the patterns of approval and recognition that we have been attempting to distinguish.”⁴⁸ He points to the use of words like ‘insult’ and ‘humiliation’ in the way people talk about their harms. The moral relationship is grounded in individualization through mutual recognition. Violations of moral norms are forms of disrespect, and respect is predicated on the idea that persons desire respect in moral relationships.⁴⁹ From this normal use of language about our feelings about harms, one can establish that psycho-moral harm is a component of violations of moral obligations.

Both Roberts’ and Honneth’s explanations allude to the idea that offenses and transgressions are types of alienation from the moral community. The moral community is that collective of beings that deserve moral respect and recognition as moral beings. And, moral persons, insofar as they can, are expected to recognize the personhood of other moral beings. By harming someone, the offender refrains from treating the offended person as a person who deserves moral respect. The offender does not take the offended person’s perspectives and interests into consideration. And, the offender does not use reason in a universal way with regard to the offended person. Both of these authors, here at least, are commenting on an individualistic alienation; an alienation of one person aggressing against another. Later, I discuss the systematic group alienation of African Americans. However, by apologizing in the individualistic case, the offender, at

the same time, acknowledges the harm and acknowledges the offended person's place in the moral community.

The apology, for Roberts, is supposed to be the offenders attempt to re-accept the offended person into the moral community. It is an attempt to repair the moral relationships that was damaged by the offense. This is a morally necessary step because no one is justified in placing her/himself above the moral community. Once a transgression has been committed, the offender is morally required to take steps to repair the moral community. In Aristotelian terms, the just moral relationship, the offense and the apology are concerned with distribution of respect in moral relations. Along with the feeling that they ought to have their goods, people also feel that they are beings who deserve respect. The injustice disrupts the property relations as well as the person's feeling of security in the moral relationship. Roberts's notion of corrective justice is supposed to repair both of those relationships. However, along with the psychological harm of a disruption in the distribution of feelings of respect, there is also a disruption in social relationships that is overlooked by the Aristotelian and the Lockean notions. If we start with a concept of a just distribution of political, social and economic power, then we can see how certain injustices can harm these relationships in such ways as to necessitate repair. Roberts' notion of humans having certain psychological interests in moral relationships is informative. However, one can project that notion to a person's interests in having a certain type of relationship in political, social and economic systems. A person is a complete person in a society in which the person can express humanity in society as an equal participant in which all persons have equal power to influence the relationships than affects those participants. Thus, while Roberts is correct to show

concern for the damaged psychological harm that needs repair, one must also show concern for lost power in social relationships that are harmed from injustice.

I will continue the discussion concerning what is lost (7) and what ought to be repaired (8) in chapter four. The current discussion, however, shows that property is not the only repairable good. In fact, I argue, in chapter four, it is social relationships are the most important repairable good. The next section is a discussion of the parties ((3) and (5)) responsible for the transgression and reparations.

V. The Parties Involved

Roberts' discussion leads us to think that there is something other than material compensation at stake regarding reparations and corrective justice. For Roberts, one of the intangible goods of concern is the victim's feelings of being part of the moral community. The transgression calls that feeling into question, while the apology is an attempt to restore that feeling. The next discussion, however, will focus on the parties involved in a repairable transgression. Since I am working on a concept for reparations that would be adequate for the debate with respect to African Americans, the parties involved in both the case of the harmer/repairer and the harmed/target of repair are collectives. The idea that a group can be harmed and could be awarded reparations is not controversial. And, I do not spend time on that topic in this section. In chapter five, I argue that African Americans were harmed as a collective and demonstrate how they were harmed. Now, however, I discuss the collective responsibility of the transgressor party. In doing this, I consider arguments of Nicolas Rescher, who derives collective

responsibility from individual responsibility, and of Larry May who derives collective responsibility from persons' metaphysical connections to their groups.

An adequate conception of reparations must have a way to determine who gets reparations and who must pay reparations. In order to talk about reparations for African Americans, part of the conception of reparations must include conceptions of collective responsibility and collective harm. On one hand, one must have an idea of how a nation or a society could harm others. On the other hand, one must determine how a collectivity could be harmed in so far as the members of the collectivity are harmed because they are members of the collectivity. The possibility of a group being harmed is not as controversial as the possibility of a group doing harm. Class action suites are examples of this. In such suites, people are repaired in so far as they are members of a particular class; the class of persons being harmed.

The more controversial step is to show how a collective can cause harm to other collectives and be obligated to repair that harm. Nicholas Rescher argues that group responsibility can be derived from individual responsibility. And, from this, a group can be responsible if the responsibility derived either by consensus or representation. Rescher says, "Group responsibility clearly calls for coordination and depends on the extent to which the group acts as a unit within which the actions of individuals are concerted. With the product of a merely fortuitous confluence of individual actions (e. g., a bank run), group responsibility is, clearly, out of the picture."⁵⁰ Here, he is arguing that for the group to have responsibility they must have intentions to do the specific harm. Any harm produced by the bank run would not be attributed to the group of people who rushed to remove their money from the bank because they did not intend any effort that

would produce harm. Rescher bases his conclusion on the respect for individuality and individual volition. From this starting point, he claims that we cannot condemn a person for an act that he or she did not commit or choose to commit. It follows that we cannot condemn a collective if the collective did not choose to act as a collective.⁵¹ The only way one can hold groups responsible is if the group acted by group consensus or through delegation as in a representative democracy.

Deriving group responsibility through group consensus is an easy application of Rescher's argument. If everyone in a group consents to an act of the group, then they are responsible for the effects of the act. The more difficult project, however, is to argue that persons are responsible for the decisions of their representatives. I translate Rescher's argument to read that is not grounded in a priori principles of social and political philosophy. Rather, it is grounded in how citizens usually act in representative democracies. The foundation of the argument, however, starts with the notion that persons are free and independent. Given this freedom and independence, persons are free to make their own decisions and form their own opinions. And, persons are responsible for their own decisions and actions. When these persons choose representatives, they choose those who best represent their wills and aspirations. So, the representatives make decisions according to the wills and aspirations of the persons who chose the representatives. In this way, citizens are responsible for the decisions and actions of their representatives.

The problem with Rescher's approach to deriving group responsibility is his atomistic stance on collective decision and opinion formation. In the ideal representative democracy, the free individuals vote for representatives who most represent the

individual's will and aspirations. In this way, individuals are not required to consider the wills of other persons. They can vote for what they think is best for their own self interest. If enough likeminded thinkers vote for the same representative, then that will is the one that gets represented. It follows that any other will or interest does not get represented. Representatives, then, may represent opposing and often antagonistic self interest. In this way of doing democracy, there is no collective will formation that could be used to derive collective responsibility.

Founding collective responsibility on individual responsibility is a problematic strategy for determining collective responsibility. With this way of thinking, an entire nation could not be held responsible for any state action since it is unlikely that everyone in a nation would make the same decisions about the course of action of a nation. The problem, however, is that the nation is often held responsible even if every citizen in a nation did not agree with the action. Nations are often held responsible for state actions. For example, individuals pay taxes to go to war even though all individuals in the nation might not have voted for the war. Subsequently, nations are expected to pay war reparations even if the all of its citizens did not want the war. For this reason, Rescher's position is hard to accept.

One way to overcome this problem is to go beyond the atomistic tendency to derive collective responsibility from individual responsibility. While Rescher is correct to hold individuals to account when they take action on individual decisions, and acquit those individuals who do not take such actions, he misses the fact that certain collectives develop a consciousness endemic to the collective itself. A business firm might develop a culture, and a society might develop a social consciousness. These cultures and

consciousnesses develop through interaction of the individuals, and they are the seat of opinion and idea formation of the collective. And, from these opinions and ideas, the collectives make decisions and take action. Collective action and opinion formation comes out of social consciousness development. Social consciousness development comes from persons in society participating in social relationships that contributes to ideas and opinions in society. From this social consciousness development, society becomes an actor that has opinions and makes decisions. As members of society that takes part in the social discourse, individuals take on the responsibility for social opinion formation.

Thus, Rescher's strategy of deriving collective responsibility from individual volition is problematic. Determining group responsibility takes more than analytically tracing decisions back to the individual. The individual decisions of persons are important, of course. But, individuals are connected to groups in ways beyond the individual's decision to belong to the group. Individual consciousness and collective consciousness develops via collective processes that contribute to how individuals see their world and how collectives form ideas. Larry May makes a similar assertion to develop group responsibility derived from social existentialism. In the next section, I explicate and analyze his position.

VI. Social Existentialism and Collective Responsibility

Rescher attempts to derive collective responsibility from individual responsibility. This project fails because he clings too closely to the atomistic conception of the social person. Larry May, on the other hand, introduces another way of deriving collective

responsibility. His approach is less atomistic and relies on individual's metaphysical connection to the group in which they are a part. He argues that collectives are responsible for group harms because individuals are members of the collective, participated in the discourse related to the harm and failed to stop the harm.⁵²

He starts his argument by defending a notion of social existentialism that he develops from Martin Heidegger, Karl Jaspers and Jean Paul Sartre. In this notion, the self is socially constructed by an interaction of the history of the person in society, the person's history, social conditioning and the person's choices. This is a metaphysical claim. The person has no essence or a metaphysical existence prior to this interaction. The person's existence is partly all of the things that go into making the being what it is up to this point (what Sartre calls facticity) and partly the person's own decisions. With this formulation, the person can be a member of a society and at the same time has freedom apart from the society.⁵³

He next argues that people in society who share the attitudes of that society are responsible for the results of those attitudes. His main example is of people who share racist attitudes. While there may only be a few individuals who actually commit racist harmful actions, those who share racist attitudes share the responsibility. He argues that attitudes can be products of quasi-conscious deliberation. These are deliberations in which a person is in control but perhaps only partially. A person might be silent when another uses violently racist language or by not argue against that language. He also argues for an understanding of character in which the person's character influences a person's attitude to cause or at least allow harm. In this regard, he takes a virtue theoretic stance along with his social existentialism with regard to morality. The deliberation and

the development of the character are influenced by society, but the person accepts them, contributes to them and contributes to the deliberation about them in society.⁵⁴ May accepts a weaker understanding of responsibility. A person could be responsible even if the person does not fully use his or her will to deliberate about morally significant actions. A person ought to change those attitudes that he or she partially has control of which could lead to harm of others.⁵⁵

May also argues that individuals are obligated to prevent harmful collective actions by not participating in the action and attempting to convince other members of the collective to change their attitudes. His solution for such inaction is to re-evaluate the notion of negligence such that it also means a neglecting to ascertain the harmful consequences of one's individual contribution to group action.

He then argues for the notion of responsibility being centered on community memberships. A person would be responsible, that is blamed or praised, insofar as the person is a member of a particular community. This follows from the obligations a community would have to certain moral actions and, being a member of that community, the person shares those obligations. He claims that morality cannot center on individual responsibility in which the person is isolated from his or her social environment. He says, "Rather, social groups such as corporations, teams, mobs, associations, ethnic groups, or residents of a public housing complex, can affect our judgments about justice and responsibility."⁵⁶

I agree with May that individuals incur some responsibility in virtue of those individuals being members of collectives. I also agree that individuals are responsible for their attitudes even if social forces contribute to the formation of those attitudes. In a

sense, by holding these attitudes, members of a society participate in a discourse of the attitudes and by not altering the discourse in proper ways; they contribute to the negative attitudes. They each may give others solace in having these attitudes and by refraining from self and social-criticism, they contribute to the perpetuation of those attitudes. And, I agree that individuals ought to take part in collective discourse in ways that contribute to causing morally acceptable collective action.

I have issues, however, with regard the metaphysical implication of May's argument. In his discussion on group responsibility, he is making a metaphysical claim about groups and group membership. As metaphysics is concerned with being and existence, a metaphysical claim about groups is about the existence of groups and what it means to be that particular group. In order for May to say that a person is responsible for the actions of a collective, the person must be connected to the collective in a certain way and the collective must be constructed in a certain way. The connection and the construction must be such a way that the collective could be implicated in a thing and the each member of the collective would also be responsible. That is, the collective is one entity and as the entity acts so does each member of the entity. The problem is determining from what principles one ought to derive the metaphysical connection of the collective.

First of all, one can recognize that certain collectives are constructed in ways in which when the collective does something members of that collective also do it. One can think of teams, crime gangs or entities such as corporations. However, members of these entities are implicated, or rewarded, for group action because of rules, laws or some other convention. With the team, for instance, when the team wins, each player on the team

wins. And, the entire team scores when any member of the team scores. Given this, there are criteria that one uses to determine what makes certain entities those entities. For cases such as the above, the criteria would be legal or social convention. The criterion that May envisions, though, is not so clear. And, in the following, I explain why.

The main problem is with the method of determining group responsibility. One can not rely on convention to determine group membership as with teams, crime gangs and corporations. However, by saying that membership depends on the member's social existence he runs into problems. May overlooks members of society who have less influence in social discourse than others have. It would seem that the group that has less social influence in the discourse would have less or even no responsibility with regard to the collective action. The model for this objection would be undemocratic societies in which decisions are made by some elite members of the society. Examples could also come from nominally democratic societies in which certain social classes have more influence than others. The problem with regard to May's position is that it does not seem that people with little or no social power could influence decisions regardless of their personal decisions or their attitudes. Yet, it would also seem wrong to say that they are not responsible in correcting harms done by the collective.

Another problem with deriving collective responsibility from social existence is that there is no way to limit social existence. For instance, for the Holocaust, one would not know whether only Germans who resided in Germany were responsible or whether the Germans of the Diaspora were also responsible. Likewise, one can not determine whether people who resided in Germany who were not of German descent, would also be responsible. Furthermore, from May's analysis, one could not determine if subcultures of

people who did not participate in the greater culture, would also be responsible. In short, May does not successfully show that the metaphysical being of the entity follows from his premises.

Thus, while May provides inroads to the understanding of collective responsibility, his conception does not provide the entire answer. His conception overlooks individuals who have less or even no influence in the social discourse while he insists these same individuals might have responsibility. Likewise, he his conception condemns persons to responsibility when they reside in societies where social decisions making is carried out by elite.

The purpose of this section is to analyze ways of talking about group responsibility in social harms and reparations; issues (3) and (5) in the collection of issues I mentioned at the beginning of the chapter. Individuals as parts of groups are responsible for group actions and responsibilities insofar as they are members of the collectives. I give an argument for this claim in chapter four of this work.

VII. Conclusion

This chapter has a limited goal. Its purpose is to develop a conception of reparations with which to judge arguments about reparations. The formulation of this conception depends on addressing nine issues that are fundamental to a reparations discussion. I start the discussion with Aristotle and his formulation of corrective justice. This formulation is in accord with the intuitive notion of repair and correction, but it has limited success in dealing with injustice over generations. Likewise, his formula does not tell who owes reparations when the original parties no longer exist. Nor does the formula have an

answer for all that might be lost in an injustice that might be repaired through corrective justice or reparations.

An answer for Aristotle's limitations could be found in Locke's argument for reparations after an unjust war. He makes an argument for reparations over generations and for reparations involving parties who were not parties in the original injustice. However, though he gives a view in to the goods reparations are the repair; his concentration on property is problematic. He ignores other possible goods for which a theory of reparations can be useful. Rodney Roberts, on the other hand, argues for a more substantive explanation of the type of goods that can be lost and repaired in this formula. He argues that reparations, or rectification, should address the feelings of being harmed that a victim incurs in an injustice. Though Roberts does not talk about other possible goods that might be lost and repaired, one can infer from his argument that social and political power can also considered for reparations.

Along with the above problems invoked by all reparations arguments, the African American reparations debate calls to mind an additional problem. Any such argument has to deal with the notion of collective responsibility for group harms. I analyze the philosophies of Nicolas Rescher and Larry May in order to discuss possible arguments for group responsibility. Rescher attempts to derive group responsibility from individual volition and one can not hold a person responsible for a decision of a group if the person did not agree with the group decision. I criticize this approach because of it lacks a proper view of the individual's participation in group development and will formation.

Larry May, on the other hand, attempts to argue for group responsibility from persons being members of the collective and how these persons contribute to the

development of attitudes of the collective. Though this argument shows promise by demonstrating how social attitudes can develop through interaction, May fails to show that this can be done by his social existentialist philosophy. May claims that persons are who they are because of the group to which they belong. However, persons are moral persons because of universal principles that derive moral personhood. It is the moral personhood that confers moral responsibility and obligations. The responsibility to pay reparations is such a moral responsibility. Group responsibility, then, is derived from a person's connection to the moral community rather than just his or her particular group.

These ruminations allow one to start thinking reparations for African Americans. And, in the next chapter, I begin review and analyze the strategies for defending positions on this subject.

Chapter 3: Competing Arguments for Reparations

I. Introduction

The previous chapter presented the major issues associated with the issue of reparations and stated these issues as they arise for the discussion of reparations for African Americans. This necessary step indicates what justifications for reparations must address and, thus, it provides criteria for testing reparations arguments. In this chapter, then, I proceed directly to the debate and present and assess the leading arguments for reparations.

My point of departure for the analysis of the reparations debate is David Lyons' work "Corrective Justice, Equal Opportunity and the Legacy of Slavery and Jim Crow."

Lyons' project is important because he analyzes three major moral bases for the defense of reparations, and, after finding convincing criticisms for them, he argues for his own position. His work challenges the idea of reparations as a redistribution of material wealth and argues for a reparations aimed towards restoring equal opportunity. Further, he argues that the harm that necessitates reparations is the legacy of historical oppression, not the institution of slavery alone.

The three major bases for justifications for reparations which David Lyons targets for analysis are the moral debt that has remained unpaid to ex-slaves, the material disadvantage suffered by descendants of ex-slaves, and the unjust enrichment enjoyed by those who have benefited from slavery.⁵⁷ Lyons argues that these three moral bases for reparations are not adequate moral bases because they do not consider the systematic nature of the oppression that subjugated African Americans. Likewise, in different ways,

they are inadequate as justifications because they fail to link the oppression of slavery to the current condition of African Americans. Lyons thinks that all of them can be improved if the starting point of the reparations calculus starts from Jim Crow oppression. However, he thinks that, even with the added premise, the three moral bases would still be inadequate and he offers a fourth basis for an argument for reparations; continuing denial of equal opportunity for descendents of historically oppressed African Americans.

In order to get a clear picture of his position on the subject, I explicate the three moral bases for reparations and Lyons' reaction to them. Lyons gives an overview for each particular moral basis, but I will use exemplary arguments for two of them. Janna Thompson gives an example of what Lyons calls a moral debt argument with her article "Historical Obligations". And, Bernard Boxill's "Lockean Argument for Reparations" captures what Lyons has in mind with his understanding of a material disadvantage position. I use Lyons' own explication of the unjust enrichment argument for an adequate understanding that position. I, then, take on Lyons' position, itself. His idea is to consider Jim Crow oppression as the transgression deserving reparation, consider the systematic nature of the oppression, and argue for a systematic rather than an individualistic remedy for the oppression which considers the degraded access to equal opportunity to the African American community.

After explicating those four moral justifications for reparations, I analyze them and give a suggestion of my own basis for reparations. While one is right to consider the systematic nature of the oppression and its remedy, and one is right to consider the oppression of the Jim Crow era as a major premise, I argue that Lyons' answer for

reparations does not address African American's exclusion from social relationships that prevents them from being full moral and social persons.

II. Reparations to Offset a Moral Debt

A moral debt that remains unpaid to ex-slaves is the first moral basis for a reparations argument that Lyons addresses. I understand moral debt to mean the obligation to balance a moral relationship owed from one party to another when the first party disrespected the other in some way. The rectification process includes bringing the relationship to a material condition of justice, recognition of the transgression, and an attempt at reconciliation.⁵⁸ After slavery, reparations were owed to the ex-slaves because of the moral debt. They had valid moral claims that were owed but not paid by the former masters and others contributors to the oppression. The argument stems from the fact that debt was inherited by those who inherited the profits of slavery and the claims were inherited by those who inherited the burdens of slavery.

To get an understanding of the moral debt argument, one can revisit Aristotle's discussion on corrective justice. Aristotle makes a distinction between distributive justice and corrective justice.⁵⁹ Distributive justice is the allocation of rights and goods according to a just system, whatever the just system happens to be. When the system of distribution is violated that relationship must be corrected. Aristotle uses the starting point of equality, and a transgression brings about inequality. He uses the metaphor of equal lines that have been made unequal. If we start with equal lines and a transgression causes inequality in the lines, then justice would require that we ought to take the excess from the longer line and give it to the smaller line to make the relationship equal again.⁶⁰

This discussion suggests that this bases for reparations is concerned with a moral balance that one would expect to be maintained, and if not maintained, to be repaired to the balance point. This moral balance pertains to the place that a person has in moral relationships. The person has status as a moral being, and demands respect from other moral person as she or he is obligated to respect others.

Along with the maintenance of a moral balance, another important feature of the moral debt argument is the recognition of the transgression by transgressors or a representative of the transgressors that a wrong has taken place. This feature also requires the recognition of the personhood of the transgressed. That is, there is a requirement that the transgressors recognize that the victims are persons and they deserve moral respect. After this recognition of the transgression and the personhood of the victim, an attempt must be made at reconciliation. Janna Thompson argues that reparations for slavery and its legacy are justified because of the importance of memory and historical identity as well as material remediation. She stresses that compensation is symbolic in that it shows the willingness of perpetrators to acknowledge an injustice and their desire to make recompense for it.⁶¹

II.1 Janna Thompson: “Historical Obligations”

To provide a fuller sense of the argument for reparations based on the notion of moral debt, I analyze Janna Thompson’s use of the justification in making her argument for reparations. In her work, “Historical Obligations”, Thompson describes the obligations one party might have to another party that derived from past relationships. A historical obligation, she claims, “is a moral responsibility belonging to citizens of a state, members

of a family, or some other inter-generational group, in respect to commitments made, deeds done, or obligations incurred by their predecessors.”⁶² In this statement, she takes the position that obligations can extend over time and generations, and they can apply to groups. That is, groups can have obligations to other groups, groups can be internally connected over generations and different groups can be connected by obligating relationships. She claims that the obligating connection is, at the same time, moral and logical.⁶³ The author defends this notion by appealing to our moral intuitions, of reciprocity, promise keeping, contractual relationships and other principles that could obligate one party to another. The historical connection is summed up in her claim, “History is important not merely because what happened in the past is often causally responsible for present inequities, but because it defines some of our present duties and rights.”⁶⁴

Thompson further argues that parties do have historical obligations of a moral kind that persist through time and cannot be overridden by other justice obligations. She defends this claim by saying that members of the obligated party incur obligations because they are citizens of the particular group and their citizenship obligates them to the commitments of the obligated group.⁶⁵ Likewise, she accepts the position that parties in the form of groups, communities and states have moral responsibilities. It is already accepted that states make inter-generational moral commitments that future citizens have to honor. When persons become members of collective parties, they accept the benefits of being members of these parties. Given the acceptance of benefits, they should also accept the obligations born of membership in these parties. This notion extends to obligations that are inter-generational; which includes treaties, trade pacts and payments.

Acts of reconciliation, treaties and trade pacts, are supposed to be historically significant such that they commit future members of the community to those acts.⁶⁶ Representatives of collectives make these acts of reconciliation in the name of the collectives. Thus, as long as they have the authority to make such commitments, these representatives expect the present as well as future members of the collective to act in accordance to the commitments. The collective is relieved of its obligation after an appropriate contractual procedure. For example, the parties negotiate other commitments, the contract for the commitment runs out, or the other party violates the initial agreement. Thompson calls such obligations “posterity binding commitments”. And, as long as the communities connected by these obligations persist over time, the commitments exist. If either of the parties ceases to exist, then the obligation ceases to exist.

Thompson argues that future members of the groups in question are obligated because those members have reasons to make commitments that they expect future generations to respect. She says of future generations, “They will want to maintain into the future some of the commitments and understandings that they have inherited. They too have reason to sustain the moral practice of honouring the commitments of their predecessors.”⁶⁷ She relies on principles of reciprocity and the notion that moral principles we accept for ourselves must be acceptable to everyone. Making and living up to such commitments, Thompson thinks, is necessary for maintaining important moral relationships. Communities have to make relationships with other communities in order to maintain relationships of trade, reconciliation and intercultural exchange. Living up to

such relationships is important because it fosters trust and confidence with members of other communities and this fosters future positive relationships.

So far we have followed Thompson's argument that members of future generations of groups are obligated by commitments made by previous groups. The issue of most relevance to the reparations debate is whether members of groups that committed harms are obligated to repair those harms even if the actual members were not around to participate in the harms in question. To bridge the two types of obligations, Thompson relies on the notion that it is good for persons, and persons would want posterity-binding commitments.⁶⁸ The author argues that the reasons that one is bound by inter-generational reconciliatory commitments made by parties of previous generations are also reasons one would be bound by commitments generated by moral failures of parties of previous generations.

In defending this claim, Thompson relies, implicitly, on a notion of universalization in which she assumes that people want to be able to make commitments. As I have recounted in her argument earlier, commitment making is important for moral and personal development. Making commitments obligates one to certain moral duties. This follows from principles of having good faith intentions to accept the obligations that those commitments imply. Once committed in this way, a person accepts obligations to reciprocate beneficial actions. She also utilizes a notion of universalization, the notion that principles and justifications that govern moral actions apply to all moral persons. She backs up the notion of universalization with her claim that, "An agent who refuses to acknowledge these duties would not be entitled to make commitments in the first place. Accepting these responsibilities is intrinsic to the practice of making commitments."⁶⁹

For this reason, Thompson concludes that persons also have the duty to repair harms committed by previous generations of their particular group. Thus, if one generation of a group owes reparations to another group and that obligation goes unfulfilled, then future generations take up the obligation.

II.2 Lyons' Argument against the Moral Debt Justification

David Lyons doubts that a successful argument could be mounted for reparations for slavery based on a moral debt justification because he does not think that moral debt can be transferred in the way that property debt is transferred.⁷⁰ Likewise, he does not think that moral guilt can be transferred between generations. Instead, he argues that a moral debt argument could be sustained for a case against reparations for Jim Crow era oppression. For Lyons, the parties in question are the present generation of white American and the present generation of black America. While no humans exist from the Slavery era oppression, many parties on both sides still exist from the Jim Crow era oppression. The harmful effects suffered by the present generation of African Americans can be directly attributed to Jim Crow policies while they cannot be attributed to the policies of the slavery era. White America is represented by the system which took part in, benefited from or did nothing to stop the injustices to the generations of African Americans of Jim Crow era. Lyons, himself, argues that racial oppression was a systemic endeavor and requires a systemic solution. The system, or institutions in the system, would be the guilty party in a moral debt argument because it was the system that engendered the oppression. For, Lyons, since no actual humans of either the offending or offended parties of the slave system still exist, there is no one that would have guilt and

no correlative entity that directly felt the harm. On the other hand, both offending and offended parties of Jim Crow still exist and those parties are the oppressive system and the African American community. So a moral debt argument has a possibility, for Lyons, if one starts from the Jim Crow era instead of from the Slavery era.

By saying that he doubts that moral debt can be inherited, he is challenging the idea that feelings of moral debt could be transferred communally across generations. As such, he doubts that future persons of a particular community ought to have feelings of moral debt because of injustices done by previous persons of that community and persons are not justified in expecting that those future persons have those feelings.

I agree with Lyons that it would be difficult to trace moral debt over generations. And, this difficulty would make an argument based on this principle hard to defend. However, I also think that Lyons does not formulate a deep enough analysis of the moral debt argument. Thompson describes a way that moral relationships contribute to the formation of social relationships and then inter-communal relationships. Legal and political relationships are only facets of these moral and social relationships. It seems to me that a reparations program ought to consider and attempt to repair the damaged moral and social relationships as well as political and legal ones. Though Lyons makes important points with regards to the timeline and the political/legal nature of the injustice, I think emphasis also needs to be placed on the feelings of moral alienation that that results from the oppression. In saying that, it would also make sense to consider the harms done in slavery because such harms have symbolic connections to the present. In terms of Aristotle's system of corrective justice, the just order must include a community

in which everyone has, is seen to have, and feels that they have, equal moral consideration.

III. The Argument for Reparations Based on Material Disadvantage

Lyons also challenges material disadvantage basis for reparations arguments. This basis considers the material disadvantage that descendants of slaves and ex-slaves suffered in order to argue for the justification for reparations.⁷¹ It is concerned with goods and material the ex-slaves and descendants could have had if the relationships were just. According to Lyons, theorists who follow this foundation for a reparations argument assume that the reparation claims are determined by a counterfactual test. With this test, one judges how much worse off a claimant is now than if the transgression did not happen or how much better off the claimant would be if the transgression did not happen.

Bernard Boxill gives an exemplary argument for the material disadvantage position in “A Lockean Argument for Black Reparations”.⁷²

III.1 Boxill’s “A Lockean Argument for Reparations”

In his article “A Lockean Argument for Reparations”, Boxill argues that it is the United States government that owes reparations to African Americans by borrowing Locke’s views on inheritance, consent, legitimate government, freedom and reparations. He uses Locke’s argument for reparations due to victims of unjust war to argue for reparations for the current community of African Americans. Boxill then uses those principles to argue that African Americans were harmed during slavery and this harm could be repaired by reparations. The slaves were victims of unjust property relations. The transgressors in

these unjust property relations owed slaves compensation for this transgression. The transgressors failed to pay the victims when compensation was due. Because of this failure, the descendants of the victims inherited the right to reparations. The compensation was not paid to the immediate descendants of the slaves or any subsequent generation of descendants. So, the current descendants of slave era African Americans have inherited the right to reparations.

Boxill invokes Locke who argues for reparations for those who have been attacked but were victorious in a war, a series of events he calls lawful conquest.⁷³ According to Locke, if a nation is unlawfully attacked and the victimized nation is victorious, then the victimized nation can exact reparations but only for damages caused by the attack.⁷⁴ This right to reparations extends only against those who joined in the war and not against innocent citizens.⁷⁵ Boxill interpreted Locke's statements to mean that the lawful conqueror has a right to exact reparations from the estates inherited by the innocent children of the unlawful attackers as long as exacting the reparations does not leave the children destitute. Boxill also believes that Locke does not require that the children make reparations for the harms that their "fathers" caused. Instead, a portion of the inherited estates can be taken from the children as reparations. That property has already been established as reparations and does not belong to just inheritance. The children are not required to pay out of their own earnings. For Boxill, the property "...might have been in their possessions, but their fathers had already forfeited their own rights to it to the lawful conqueror when they harmed him unjustly."⁷⁶

Drawing from Locke, Boxill makes the following inheritance argument. Harm was perpetrated on the slaves in the form of unjust property relations. The slaves had a right to reparations. The slaves also had a right to reparations from portions of estates of those who “assisted, concurred, or consented” in harming the slaves. Slaves had rights to reparations from some portion of the inherited property of the children of slaveholders and those who assisted, concurred and consented to slavery. Since white United States citizens, whose ancestors were slaveholders and assisted, concurred and consented to slavery inherit the debt of reparations, African American citizens, who are descendants of slaves, inherit the right to reparations.

Still following Locke, Boxill argues that the estates of the entire white population of the slave era owed reparations to the slaves and their progeny. The argument starts with the premise that the federal government and the state governments assisted the slaveholders in maintaining slavery. This is relevant because Locke insists that persons have rights to reparations against those who “...assisted, concurred, or consented to that unjust force...”⁷⁷ The next premise is that the white citizens of those states consented to the government’s assistance in the maintenance of slavery. Legitimate governments get their power from the consent of the people.

Boxill insists that it was Locke’s opinion that while citizens may consent to be ruled, it does not follow that they consent to all of the actions of a government. Citizens must make two signs of consent in order for them to be implicated in transgressions of a state. One is a sign of consent to be ruled and the other is a sign of consent to certain actions. Locke believes that residence is the sign of consent to be ruled. To argue that the citizens consented to the transgressions, Boxill suggests that if the citizens did not protest the

actions of the government, then they consented to the transgressions. This is true, Boxill insists, if the citizens knew of the injustices and there was no coercion against protesting the actions. Boxill suggests that the states tried to hide the brutality of slavery. This was unsuccessful and the citizens still knew of the transgressions. He reports that dissent was not punished or there was no coercion against protest. Therefore, the citizens consented to slavery. And, slaves had claims of reparations against the entire white population. Thus, Boxill argues that the African American community inherited reparations and the current United States government inherited the debt of reparations.

III.2 The Counterfactual Challenge to the Argument Based on Material Disadvantage

Boxill's argument is one material disadvantage argument that relies on the idea of inherited material debt. Lyons, however, suggests that the counterfactual objection provides problems for the material disadvantage argument.⁷⁸ This objection provides a problem for a reparations argument in which the transgression happened in the distant past. Because of the passing of time and the decisions and actions made by parties and descendents of parties, it would be difficult to decide who is owed what. Jeremy Waldron makes this problem more explicit in what he calls supersession of historical injustice. The problem is whether the original owners of the claim to reparations would have bequeathed the property to their progeny if they really did receive the reparations and if each generation of the progeny would likewise bequeath the property to subsequent progeny. Waldron claims that no argument could defend this thesis.⁷⁹ While this author makes the argument in reference to the land taken from the Maori in New Zealand, similar objections are made against reparations for the oppression of African Americans.

Waldron considers two ways in which claims can be challenged due to the passage of time. The first is the counterfactual problem in which he challenges Nozick's idea of calculating rectification by judging how an injustice interferes with just transfer of entitlement. The second is an argument that the claim to lost property fades over time because the importance of that property to the individuals who would have owned that property would fade.

Waldron's first approach is to challenge Nozick's principle of rectification in the latter's theory of entitlement. Nozick supposes that the principle of rectification follows from his two principles of justice: justice in acquisition and justice in transfer. Rectification is required when either or both of the first two principles are violated. Based on the historical evidence of just and unjust acquisition and transfer of holdings, one could make claims for rectification. One would also have to trace the consequences of the injustice with respect to the just and unjust holdings from the time of the injustice to the situation in question. By doing this analysis, the claimant would make a claim based on what would have happened to the holdings if the injustice did not happen.⁸⁰

This approach can apply to such claims that immediately follow its correlative injustice in which the transgressor and the victim are known and the holdings have not been transferred after the injustice. Waldron, however, argues that the issues are obscured when the claim is more distant from the injustice and once one takes transfers of the property into account. He challenges the notion that one could simply refer to a scientific study of historical laws of transfer. For example, more senior generations in families would transfer holdings to more junior generations; and tribal and community leaders would retain tribal and community holdings within the tribe or community for the

use of future generations of tribal or community members. Waldron suggests that there is a possibility that human freedom could interfere with the supposed historical laws of transfer and the historical laws of transfer do not take moral precedent over human freedom. That is, one is not morally obligated to follow the historical laws of transfer. Family members, tribal leaders or community leaders may choose not to commit to the usual laws of transfer and it would be their right not to do so.⁸¹

Waldron also points out that the claim to reparations weakens over generations because importance of the property to the would-be holder of the property fades, and the current owner of the property might have more of a claim to the property because the property might have become an important part of the person's being. Property is important for personhood over and above its practical use for the person. It is also important because it contributes to a person's life in certain important ways. Waldron suggests that property is important because it forms the center of one's life and it is important for the exercise of a person's autonomy. He explains the importance of property to personhood in this way, "For I must have developed some structure of subsistence. And that will be where my efforts have gone and where my planning and my practical thinking have been focused."⁸² Claims to reparations fade over time, especially over generations, because the property would no longer be central to one's life and is not important for the exercise of autonomy. While this argument challenges intergenerational reparations for property claims, it defends the notion that everyone in a particular society ought to have property. Waldron argues in another work that because property is so important to personhood and autonomy, everyone ought to have certain types of property.⁸³

Waldron disputes claims to reparations for injustices that took place a great time in the past such that past claims have grown weaker or lapsed over generations. While his argument is against material reparations that he claims would have been superseded, the author defends material reparations for injustices that are recent enough such that the claims would not have superseded. With this point, he agrees with Lyons who claims that reparations for African Americans should be calculated from the Jim Crow era.

Waldron also defends reparations of a symbolic nature no matter the time distance between the injustice and the claim. He makes this claim because collective memory is important for the identity of a community as well as for the identity of each individual in a particular community. He says that history provides "...a lesson about what it is like for people like us—human, all to human—to face real moral danger."⁸⁴ And, he says "Beyond this, there is an importance to the historical recollection of injustice that has to do with identity and contingency. It is a well-known characteristic of great injustice that those who suffer it go to their deaths with the conviction that these things must not be forgotten."⁸⁵ The injustice that is perpetrated against people like me because they are like me is, in a sense, an injustice against me no matter when the injustice is committed. He goes on to say that,

Each person establishes a sense of herself in terms of her ability to identify the subject of agency of her present thinking with that of certain acts and events that took place in the past, and in terms of her ability to hold fast to a distinction between memory so understood and wishes, fantasies, or various other ideas of things that might have happened but did not.⁸⁶

Persons acquire their understanding about themselves from the historical community. Individuals get their values, ideas and possibilities from the discourses conducted in the communities before them. Waldron concludes by saying that to "neglect the historical

record is to do violence to this identity and thus to the community that it sustains. And since communities help generate a deeper sense of identity for the individuals they comprise, neglecting or expunging the historical record is a way of undermining and insulting individuals as well.”⁸⁷ His conclusion suggests that a form of symbolic reparations is required, even for long past injustices, to rectify the harm done to the historical person. For example, monuments, museums and days of remembrance could be could contribute to symbolic reparations because they can show that society recognize the historical harms and is prepared to work towards reconciliation.

I agree with the notion that a program of symbolic reparations is justified to redeem the harm done to historical identity. However, I doubt that symbolic reparations, as Waldron explains them, would be enough to remedy the historical injustices perpetrated on one party by another if those injustices were systematic and continued through generations. Here, I am thinking about the African American situation in which the injustices contributed not just to problems of identity, but also to the unjustly diminished social, political and economic positions resulting from historical oppression. Remedying this problem would take more than symbolic reparations; it would take a concerted effort to bring the affected parties into society so that they are equal participants in it.

III.3 The Ontological Counterfactual Argument

Another criticism for an argument based on material disadvantage due to the counterfactual objection comes from the notion that reparation ought to repair a thing to its original state. For the case for African Americans, an objector could argue that to reestablish conditions as they were before the transgression would not require

overcoming existing inequalities. This is because one cannot conclude that if there was no transgression, the descendants of Africans would have prospered otherwise. Bernard Boxill responds to this objection by starting the counterfactual clock at the time of the transgression. For Boxill, the idea is not to return to conditions before the transgression. He argues that the counterfactual argument for reparations for slavery should begin with the earnings that the slaves would have received had labor relations been just. And given the lack of due reparations for each subsequent generation, reparations would be paid for what that generation would have received if the system were just.⁸⁸

Lyons' answer to the ontological counterfactual problem is to start the calculation for reparations from the Jim Crow era rather than the slavery era. For Lyons, the argument for reparations does not have to start at slavery since the oppression of Jim Crow is a more obvious link to contemporary inequalities. Furthermore, even if Boxill is right that reparations do not have to return the situation back to before the transgression, Lyons would argue that he still does not overcome the supersession argument. One cannot determine if the material given to African Americans, had there been no more oppression, would have been bequeathed to the progeny of African Americans. Furthermore, the problem, according to Lyons, is not that present day African Americans did not get reparations that were due in 1865. The problem is that the contemporary state of affairs is still oppressive and this state of affairs has a direct link to the oppression of the Jim Crow era. Like slave era oppression, moreover, Jim Crow era oppression resulted in material disadvantage. While it is difficult to trace the material disadvantage of contemporary oppression back to the material disadvantage due to slavery, one can calculate material disadvantage due to Jim Crow oppression.⁸⁹

IV. The Unjust Enrichment Justification

Lyons also challenges the unjust enrichment argument as a defense of reparations. This moral justification is grounded on the factual claim that some people benefited from the oppression of slaves, and some people benefited from not paying reparations when they were due after slavery. Furthermore, the nation benefited from the reduced price of labor of African Americans and the reduced social service benefits given to African Americans during the time after slavery through the Jim Crow era and today.⁹⁰

Any such argument and subsequent policy approach would seek to redistribute wealth by taking unjustly acquired wealth from one party and distributing that wealth to the damaged party. The redistributed wealth could be in the monetary value of what the damaged party would have had if the transgression did not occur, or the wealth could be the same material type as in a car or a home, or the wealth could be the actual same material as in land or a stolen object. This moral justification also draws on Aristotle's or an Aristotelian argument for corrective justice. According to this idea, one starts from an initial condition of justice that is then violated. There is a just distribution; that is, people have what they deserve. There is a transgression in which one party loses wealth and another party gains wealth both at the first party's expense and unjustly. Redistribution is required to return the system to a condition of justice.

The unjust enrichment argument for slave reparations would follow from the fact that slave-holders extracted profit from the labor of slavery and the progeny of slave-holders benefited from the wealth of the profit of slavery that were bequeathed to them, formally

or in the form of houses, education, status and so on. Others benefited from the economic system that was either totally based on slavery, in the South, or based on slavery tangentially, in the North. The argument continues by stating that while some were unjustly enriched, the slaves and their descendents were unjustly impoverished.

For Lyons, this argument has advantages over the moral debt and material disadvantage justifications. Unjust enrichment would end up being an unjust advantage in the vying for opportunities. Having the material advantage, whites would have more chances at taking part in economic investments, political participation and enjoying life. However, Lyons thinks this position needs two additional considerations. One would include Jim Crow oppression (that is, oppression since emancipation). During Jim Crow, African Americans suffered discrimination in job opportunities and education opportunities that would have increased their marketability and ability to compete with fellow workers. They also suffered wage and other benefit discriminations that, while it impoverished the African American workers, allowed the employers to benefit financially. Because of this oppression, African Americans continue to suffer unjustified impoverishment while at least some portions of the European American community benefited from unjust enrichment.

The other additional consideration is that the oppression was systematic in the sense that the entire nation, including government institutions, participated in, allowed and benefited from the oppression. The entire system benefited from the fact that one portion of the population worked for smaller wages and got substandard social protections and services while those in that population who worked paid the same taxes as the majority

population. Thus, the solution is not just to target individual benefactors but to challenge the entire system.⁹¹

This is a better approach, for Lyons, because the unjust enrichment is a direct cause of the inequality of opportunity. The White Americans have advantages because of the oppression of African Americans. With these advantages, Whites are better positioned to vie for opportunities in economic, political and cultural spheres. The unjust enrichment justification does not make these claims, however. It only makes the claim that Whites are unjustly enriched due to the oppression. Lyons makes the connection between unjust enrichment and the harm done to equality of opportunity.

V. Reparations for the Harm Done to Equality of Opportunity

Instead of the above moral justification for reparations for slavery, Lyons advocates one based on the reality of the continuing denial of equal opportunity for the descendants of ex-slaves. Reparations arguments that emphasize equal opportunity do not require that redistribution be correlative to material wealth that was lost or gained unjustly. What is required is to analyze how oppression obstructed the freedom of persons; particularly, how oppression affects opportunity. In this case, one has to show how oppression of African Americans hampered equality of opportunity. Subsequently, one has to show how reparations would resolve injustices in equal opportunity. Lyons addresses the problem not by focusing on the possible material that might be due to African Americans, but by focusing on the unequal social conditions that have their origin in the oppression.⁹² These inequalities can only be remedied by a “comprehensive set of public programs.”⁹³ That is, he suggests developing a set of programs that addresses the social

conditions themselves as well as the social structure that perpetuates the effects of the oppression and contributes to the social conditions.

Lyons suggests that what is needed on the theoretical level is a broader understanding of corrective justice than what is normally understood in the reparations debate. While corrective justice in the normal reparations discourse means some sort of return to of property or lost wealth, Lyons' idea of corrective justice is that the inequality in society ought to be corrected.⁹⁴ One would not be correcting the situation to a condition of real historical equality but to a situation of equality that ought to be the case. In the case of oppression of African Americans, as well as other oppressed groups, there was never a situation of equal justice. With this in mind, his solution is what one might call "forward looking" rather than "backward looking" because he emphasizes the possibility of a just system while acknowledging the unjust system derives from historical oppression. A backwards looking solution would emphasize remedying the harm based on the past harm done, and attempting to return the unjust situation to one before the injustice. A backwards looking solution would attempt to return material conditions to what they ought to have been. Lyons' forward looking solution would attempt to make the conditions possible for the equal opportunity that African Americans are denied because of oppression.

The just system Lyons wants to reach is a system of equality of opportunity. His idea of equality of opportunity could have two understandings. One is an understanding of opportunity within a system of fair competition in which parties compete for positions and more opportunities and successful competitors are rewarded for good performance.⁹⁵ This idea of equality of opportunity is distinctly liberal in the fact that it values the liberty

of the individual to participate in competition, it values the equality of moral personhood as well as equality of chances and it values the notion that individuals ought to be free to compete on equal grounds for positions and property in market oriented conditions.

However, the idea is distinct from another notion of equality of opportunity which stresses opportunity for free development; that is, persons would have the opportunity to express their liberty and enjoy their lives as they see fit. One might call this second view of equal opportunity left liberal or Marxist. Though Lyons' philosophy is grounded in liberalism, his view could also be a notion of opportunity for free development and opportunity to participate in society along with the opportunity of others. Lyons alludes to such a claim in his work, "Reparations and Equal Opportunity",⁹⁶ where on the one hand he makes a politically strategic appeal to improve the life chances of African American children with a program of improving African American communities. And, on the other hand, he argues for addressing the social separations. In doing this, he also argues that a program of reparations ought to address the racist attitudes that evolved out of the history of oppression and must be addressed in order to bring about such social remedies.

Using either notion of equality of opportunity, one would have to accept that African Americans are disadvantaged, in general, because of historical and continuing oppression. Historical oppression is well documented and I do not go into the oppression in this chapter. Nevertheless, in my view, the continuing oppression is based on two realities. First of all, the continuing oppression is an effect of the historical oppression. The past policies of oppression and social exclusion have an effect on the life chances of African Americans and this should be taken into consideration when thinking about

reparations. Second, African American are still affected by discrimination, de facto segregation and a political system that is unwilling to put in a genuine effort to protect the concerns of African Americans.⁹⁷

Robert Fullinwider makes a similar claim about both the legacies of slavery and Jim Crow and what needs to be repaired with his claim, “Had the federal government done nothing after 1865 except vigorously protect the civil and voting rights of blacks, the legacy of slavery would have faded considerably if not wholly by now through the industry of blacks themselves.”⁹⁸ This statement implies that the injustice that should be considered ought to be the oppression that contributed to the current problems of the African American community.

Lyons’ approach to reparations, then, is to address historical oppression’s effects on contemporary African Americans. And those effects are the diminution of equal opportunity for the affected community from where justice demands. The summary of the argument is as follows. All citizens are due equal opportunity. African Americans do not have equal opportunity because of historical oppression. If there is a transgression that disrupts a just situation, then reparations are due to repair that situation. The history of oppression is the transgression that disrupts equality of opportunity. Thus, Lyons argues, reparations are due to repair equality of opportunity.

VI. Systematic Oppression’s Affect on Equal Opportunity

All the moral justifications for reparations share one important attribute. They all have a concern for correcting an offense against a previous just state of affairs. However, they diverge in their strategies for justification. The moral debt basis is premised on an

unsatisfied moral slight that ought to be rectified. The material disadvantage basis concentrates on property injustice that must be repaired. And, unjust enrichment basis is predicated on material advantage that benefactors of the oppression enjoy that must be returned. Lyons analyzes these first three moral bases and identifies which parts of those strategies have merit. First of all, Lyons is right to criticize the justificatory potential of arguments from moral debt, material disadvantage and unjust enrichment. Though all three are made stronger by concentrating on the oppression associated with the Jim Crow legal system, they are inadequate because they put too much emphasis on individual losses. They all fail to provide the needed systematic approach envisioned by Lyons.

The injustice done to the social group “African Americans” was not simply an oppression inflicted on all the individual African Americans living during the slavery and the Jim Crow eras. The injustice was imposed on African Americans as a group. Segregation and discrimination were targeted at the group even as it affected individuals. The result and in most cases the objective was to keep African Americans as a social group in a lower position in a social hierarchy. In the process, society’s institutions oppressed African Americans as a social group. By “institutions”, I mean economic institutions such as the market, employment networks, and infrastructure; political institutions such as parties, political associations and the state bureaucracy; and social institutions such as associations, churches, and schools and universities. The systematic oppression of this group diminished the life-chances of individual African Americans. In turn, the deleterious condition of the social group affected nearly all of the individuals within the group. Thus, Lyons has an advantage over other theorists in that he calls for

an approach to reparations that addresses the inequalities across the economic and distribution spectrum.

By emphasizing the historical oppression of the Jim Crow era as well as the slavery era and by emphasizing a systematic remedy for this oppression, Lyons provides a possible basis for a sound reparations argument. Yet it remains incomplete in an important respect. His approach neglects the harms that historical oppression does to African Americans as democratic citizens. First, the equal opportunity argument emphasizes an individualistic remedy to a collective injustice in such a way as to ignore the harm of being excluded from solidaristic benefit of collective action. This is an individualistic remedy because it stresses the harms done to persons individually rather than harms done to the persons' places in social relationships. Second, the equal opportunity argument, by emphasizing an individualistic remedy, overlooks the loss of the victims' discursive power in political, economic and cultural relationships. And third, his philosophy overlooks how African Americans are marginalized within the moral community because of the history of oppression.

The above three problems with the position in question address the issue of whether equal opportunity exhausts the upper limit of what African Americans do not have because of historical oppression such that providing equal opportunity would satisfy the demands for reparations. In this argument, Lyons figures that equal opportunity, and the social benefits that accompany it, is that upper limit. In a paper that follows up on his reparations argument, Lyons formulates a contextual defense of his position for reparations for equal opportunity.⁹⁹ In this piece, he claims that his view is not an argument for material distribution even if some material redistribution might be

necessary. His aim is to point out the historical participation and complicity of the United States government in the “wrongful creation of a black-white gap in life prospects” and to argue for a reparations program to eliminate that gap.¹⁰⁰ Lyons is concerned that African Americans have less opportunity for enjoyment of life and freedoms because of oppression in which the government participated and allowed. Here, his meaning of opportunity is the opportunity for the exercise of liberties and participation in social life rather than simply opportunity to compete in the market on equal grounds with others.

Given this, he suggests two facets of oppression which a reparations program must address: “material deprivation and social derogation”. To address the material deprivation, he suggests a program that aims to close the life prospects gap for African American children. He argues that addressing the needs of African American children has positive political potential; that is to say, it would be easier for conservatives to accept. Likewise, while it is true that the historical oppression harms the life prospects of children, other African Americans would also benefit from such a program because in order to uplift the children, there has to be considerable programs that benefit the communities at large; for example, job promotion, education, and health care.¹⁰¹

Furthermore, Lyons also thinks a reparations program ought to address the social derogation or the social caste system that derived from the history of oppression. This caste system contributes to the life prospects gap because on the one hand it contributes to social and political exclusion which sets limits to the exercise of individual freedom. On the other hand, it contributes to the psychological harm of racist insults which has

negative impacts on the enjoyment of life. Lyons suggests that a concerted effort must be implemented to solve this problem.

VII. The Criticism of Equal Opportunity as an Argument for Reparations

Lyons' policy suggestions might be accepted by a wide range of progressive and left leaning policy makers. Likewise, they are humanitarian and, if implemented, would probably lead to a more egalitarian society. However, the diminution of equality of opportunity does not exhaust the harms of oppression of African Americans. Thus, it is not an adequate measure for reparations. It is too narrowly individualistic in that it takes what was lost to be what individuals lost. And, the policy remedy would be to ensure a certain amount of equal opportunity to individuals without considering how the systematic oppression affected the persons place in social relationships. In this critique, I admit that equal opportunity, individual liberty and free development are important parts of a person's humanity in a just society. However, the concept does not take into account the victim as democratic citizen and a person who is an equal member of the moral community. That is, his position does not take the victim as a person who ought to have equal influence in collective deliberation, equal access to social benefits and persons whose interests and perspectives have equal consideration in a community of moral persons. Equally, the victims are not seen as persons who have a feeling of security in belonging to a collective that shares participation and benefits. This more expansive notion of social person is what was victimized during the historical oppression of African Americans.

Since Lyons' position depends so much on the concept of equal opportunity, I find it necessary to analyze the concept. From this analysis, I conclude that any of the concepts would be inadequate in talking about the harm and object of reparations due to the historical oppression of African Americans. The first notion of equal opportunity is what one might call a right liberal or a libertarian notion. This notion emphasizes liberty of individuals in so far as they are independent actors in a putatively just system of relationships. It is exemplified by Robert Nozick's idea of rectification. The notion is that persons ought to be free to use their property as they wish as long as they do not interfere with the freedom of others. The right liberal position can best be understood by referring to principles of just acquisition and transfer:

- 1) A person who acquires a holding in accordance with the principle of justice in acquisition is entitled to that holding.
- 2) A person who acquires a holding in accordance with the principle of justice in transfer from someone else entitled to the holding is entitled to the holding.
- 3) No one is entitled to a holding except by (repeated) application of 1) and 2).¹⁰²

In this understanding, equal opportunity is opportunity to attain or compete for property according to just rules and use or transfer property according to just rules. These rules must apply to all participants and the system of rules is usually governed by the capitalist market. And, persons have equal access to attaining property and entering into property relations in this market. Nozick, himself, does not delineate and defend a particular procedure for acquiring and transferring holdings or property as long as that procedure protects the liberty of the property holder. One can infer from references in *Anarchy, State, and Utopia* that Nozick leans towards a free market capitalist procedure for acquiring and transferring property. Jeremy Waldron infers this from Nozick's story

about Wilt Chamberlain being free to use his basketball playing skills to make money without being required to acquiesce to redistribution and his references to procedures like selling, purchasing and gift giving without government interference.¹⁰³

This notion of equal opportunity reduces persons to free and independent individuals and ignores persons' inherent moral and social connections outside of the market.

Reparations based on such a notion, such as Nozick's notion of rectification, would restore property relations to where they ought to be depending on the nature of the harms and alleged historical property relations. But, it would not be concerned with the social person.

Lyons' approach to historical oppression and reparations is from a perspective one might call left liberal and it might be distinguished from the right liberal perspective. Left liberal theories of justice favor concepts of rights and liberties constrained by equal opportunity for all and a fair system of distribution. Lyons' notion of equal opportunity is founded on individuals' ability to enjoy life prospects rather than the popular notion of vying for material advantage. He says "I do not mean to rule out individual claims, but my argument concerns the role of federal policy in the wrongful creation of a black-white gap in the life prospects, a gap that federal policy first made possible and has since failed to address."¹⁰⁴ A notion of equal opportunity from this paradigm could be analogous to a Marxist notion of free development. In the following, I explain both concepts and point out why they are inadequate. The left liberal notion sees oppression as interfering with victims' opportunity to choose their own life plans. One might see Rawls as setting the standard for the left liberal understanding of social justice. One can see this in his two principles of justice:

- 1) Each person has the same inalienable claim to a fully adequate scheme of equal basic liberties, which scheme is compatible with the same scheme of liberties for all;
- 2) 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.¹⁰⁵

Rawls considers the first principle as being prior to the second and that the first part of the second principle as prior to the second part of the second principle in what he calls a lexical ordering. The prior principle must be satisfied before implementing the next principle. For example, all of the persons concerned must have equal liberty before they can have the opportunity to vie for offices or positions. Also, a system of redistribution that would ensure that the inequalities are to the greatest benefit of the least advantage should take place only after all the competition for inequalities. He defends this claim by saying, "We seek a principle of distribution (in the narrower sense) that holds within the setting of background institutions that secure the basic equal liberties (including the fair value of political liberties) as well as fair equality of opportunity."¹⁰⁶ In the ordering, the prior principle is a necessary condition for the following principle. However, the first and second part of the second principle is supposed to ensure and reinforce equal liberties. Equal liberties mean freedom to choose life plans as well as freedom from restraint. Thus persons can choose what offices and positions to vie for. And, the redistribution insures that persons who do not have the positions or offices of their choice would still have liberties.

Like the right liberal notion, the left liberal notion of equal opportunity contains opportunity to compete in a market or some other system. However, one can assume that a left liberal notion of equal opportunity does not have to mean an opportunity to

compete for wealth or positions in some competitive system; rather, one can take this notion to mean an opportunity to exercise and enjoy liberties. Rawls's idea of liberties includes the political liberties as well as free choice of the good life and choice of life plans. Marx's notion of free development¹⁰⁷ parallels Rawls's notion with three major differences. First, while Marx himself never argues for a notion of equal opportunity, one could replace Rawls's notion of liberties and make a similar argument for opportunity for free development. Second, the notion of free development goes beyond political liberties and the exercise of choice between different options of the good and life plans. Free development refers to the development of the personality of the person, or, personal self-development.¹⁰⁸ With the development of the personality, the person can be said to grow. This growth, on the one hand, includes academic, artistic and creative growth. And, on the other hand, this growth includes a person's development as the person works with others in society. This leads to the third major difference that free development has with Rawls's notion of equal opportunity. As Marx points out in *The Communist Manifesto*, "...we shall have an association in which the free development of each is the condition for the free development of all."¹⁰⁹ The development of each and the development of all have a dialectical relationship. The development of social institutions such as academic institutions, infrastructure, and institutions of art leads to the development, in a just society, of each person. Reciprocally, as each individual develops, in that same just society, the society itself develops through the relationships between individuals.

The isolated notion of free development retains the narrow individualism that the liberal notions of equal opportunity have. However, Marx's complete notion, the

dialectical notion of mutual development of individual and society, represents a kernel of a proper measure of the harm done in the historical oppression. My argument would be against the free development argument, if free development would be isolated from social development. If a reparations program were to attempt to enhance the free development of the victims without attempting to connect those victims to the greater community, then such a reparations program would be inadequate.

Given the above problems, the thesis of reparations as equal opportunity is inadequate because it treats the victims as individuals harmed in isolation rather than as members of society that were refused full democratic citizenship and full membership in a moral community. I am making the associated premises that African Americans were excluded from the existing political community and the effect of the historical oppression is their continual exclusion from the society as democratic citizens and continued alienation from the moral community. Democratic citizenship means that persons in collectives who are affected by collective actions, policies or institutions have influence in those collective actions, policies and institutions to the degree that any other citizen is able to influence collective actions. Access to the moral community, though, is a more fundamental issue. In it, all moral persons have equal moral consideration. It is a precondition for equal participation in discourse. My claim is against the reparations for equal opportunity argument because it fails to take the notions of democratic citizenship and equal access to the moral community into consideration. The equal opportunity argument for reparations fails to recognize the alienating effects of social harms. Throughout the history of the United States, African Americans participated in the society, but were both not permitted to participate on equal grounds and were blocked from the full benefits of citizenship.

A second way in which the equal opportunity argument is too individualistic is that it fails to recognize the harm done to the victims' influence in political, economic and cultural relationships. The democratic citizen is that member of society that has an interest in the development of society to the degree that the member has an interest in self-development. The democratic citizen benefits from social development as the society benefits from social interaction. Likewise, the member is not arbitrarily excluded from social benefits and the member is not arbitrarily excluded from social interaction. Following this interaction, the democratic citizen develops a feeling of belonging to a community that recognizes the member as a citizen that deserves respect to the degree that any one deserves respect.

Instead of a remedy that would just concentrate on equality of opportunity; a solution ought to concentrate on restructuring the institutions that serve the African American community in such a way that they work towards democratic social integration. This process should have the goal of developing the ability for equal participation in society and political procedures. And, in the process, the system would work towards a way of no longer treating African Americans as a social group outside of society. I do not take this as a total repudiation of Lyons because he does make inroads into discussing the necessity of social integration. However, my point is that the focus of the harm and the reparations ought to be the damage to the democratic citizen and the alienated social person.

The argument for the importance of democratic citizenship comes from the general enlightenment notion that persons ought to have input into how they are to be treated by other persons. There are two lineages of argumentation that defends this thesis. One

lineage of the argument for democracy comes from the idea that persons are metaphysically free and independent, and they have the ability for rational decision making. In the moral discourse, this leads to the notion that persons should have their rational decision making abilities respected and should not be treated as objects. This notion is projected to the social and political spheres with the idea that policies are to be implemented only after all those affected by the policies have a chance to participate in the decision making process in which the policies were generated. With this notion, liberty is the fundamental feature of the person and democracy follows from it. I critique this notion for not telling the whole story of human relationships. The premise that persons are metaphysically free and independent is not accurate. As I will explain further in chapter 5, persons become moral persons in interaction with other persons. They get their understanding of their place in the moral community as well as their values from this interaction. Humans are not individuals who come into social relationships but they are beings who emerge in human relationships.

Another lineage of the argument for democracy comes from the notion that democratic discourse comes out of and is an important feature of all social interactions that already exist between humans and follows from the universal preconditions of interaction which allows each participant in relationships equal recognition as a person. With this notion, democracy is the fundamental feature of the relationship and liberty is necessary for the discourse situation but not sufficient. This is just a summary of an argument for democratic citizenship. In the next chapter, I argue for a notion of democratic citizenship and how it can be a foundation for reparations argument by using Habermas's discourse ethics.

One might object to my attack on the equal opportunity argument by suggesting that the claim to equal opportunity could be thought of as a claim to opportunity to participate in public life or social relationships. The objection could continue by claiming that no policy can be formulated such that it guarantees or demands participation in public life by all citizens. The best a policy can do is to provide for the opportunity to participate. So, a theory can only defend the opportunity rather than a specific outcome of equal participation. My response to this objection is that I grant that the concept of equal opportunity could mean the ability to take advantage of the full scope of public life rather than the ability to compete in economic relationships or free development of an individual life. Likewise, my argument for democratic participation does stress the importance of equal opportunity to participate in social relationships. However, while it is reasonable to claim that persons ought to have equal opportunity to participate in public life, even this meaning of equal opportunity falls short of the ideal understanding of normative relationships. In the ideal normative relationship, persons are not persons because they have opportunity to participate in relationships; they are persons insofar as they participate in relationships as person. By being recognized as persons, they already have their interests, feelings, history and perspectives taken into account. And, if one projects this ideal normative relationship to social relationships, then membership in society as democratic citizen includes equal benefit from the prosperity in society and the secure feeling that one would receive these benefits. This membership includes taking comfort in the knowledge of being part of a community that respects this type of personhood. This moral and social status makes discourse possible. Thus, the meaning of equal opportunity, even the one that is to the left of the left liberal meaning, is

insufficient because it does not consider a correct notion of persons in social relationships.

VIII. Conclusion

In the above, I sought out to explicate the leading reparations arguments, particularly the equal opportunity argument, and demonstrate that their conclusions do not address every problem brought on by historical oppression. My argument is that they do not consider the total extent of the loss that African Americans suffered during the historical oppression. One can agree that the victims of the historical oppression did suffer loss in material wealth that ought to be repaired. And, one can agree that white society benefited unjustly from the labor of African Americans and ought to repay this wealth in the form of integrated structural development. Furthermore, one can agree that African Americans suffer from a lack of equal opportunity because of the historical oppression and that policies ought to be implemented that would ensure opportunity for participation in society to the extent that everyone else has this opportunity.

However, as we learned from the previous chapter on corrective justice, when thinking about repairing an injustice, one must consider the just state of affairs that ought to exist. Likewise, one must consider the extent of the divergence from this state of affairs. My claim is that the foregoing arguments for reparations failed to consider everything that was lost by African Americans during the historical oppression such that they still suffer from this loss because of the historical oppression. The arguments do not consider the position that African Americans ought to have in democratic society. The ideal position in a democratic society is one in which each member of society has the

influence in cultural, political and economic life and have access to the benefits of society to the degree that any one has this influence. Along with this notion of equal influence, membership in a democratic society implies shared benefit from collective action and feelings of belonging to a community. In other words, they ought to be seen, treated and respected as democratic citizens.

By only considering the material loss of the historical oppression, one set of reparations arguments only sees the victims as property holders who lost property that they ought to have and do not consider the importance of democratic citizenship. Lyons' argument for equal opportunity goes beyond the arguments for material wealth but fails to see the victims as part of a democratic society. I say that his argument is individualistic because it takes the victims as individual entities who vie for wealth, positions or other opportunities rather than members of a society who benefit as well as participate in society.

Given the demonstrated problems with the foregoing arguments for reparations, in the next chapter I present a background for an argument based on democratic participation. The focus of the chapter will be to explore the notion of democratic citizenship in a just society more fully. My notion stems from Habermas's notion of communicative action in that I take democratic citizenship to mean a person's membership in a discourse community who has equal influence in actions that affect each member. Persons take part in discourse to determine the extent of the effect on each member as well as the extent of that influence. The members start from common grounds and work towards common understandings on public action. From this discursive starting point, I argue that the effect of the historical oppression was to limit the

discursive power of African Americans and an adequate reparations program would provide for this discursive power.

Chapter 4: The Grounds for Reparations: Social Personhood, Inclusion in Moral Community and Democratic Participation in Relationships

I. Introduction

In chapter 2, I started my discussion on reparations with Aristotle's notion of corrective justice. In his notion for corrective justice, parties interact in a just state of affairs in which they have what they ought to have according to whatever system of justice holds for those parties. Parties in this scheme of justice have goods according to what they deserve. Goods, in this case, could include material as well as non-material goods such as honors, powers and rights. The formula continues, however, when one party commits an unjust act against another party such that the offending party benefits from the offense by accumulating some of the goods that belong to the victimized party. The victimized party, in turn, loses goods. This chain of events justifies a corrective action where a portion of goods from the offending party is returned to the victimized party. The portion that is returned is the portion that was taken in the injustice. This final process would bring the situation back to the just relationship.

While Aristotle's formulation is an appropriate starting point because it conceptualizes our intuitive understanding of corrective justice and outlines important structures of a situation that determines a need for it, an adequate theory of reparations must go farther. First, like Aristotle's formula for corrective justice, a notion of reparations must start from a just state of affairs. Such a starting point is important because a just state of affairs clearly defines a method of coordinating relationships such

that the corrective measures must coincide with that just system. Likewise, for our purposes, there must be a notion of group harm so that one can conceptualize injustice and repair to groups. And, a reparations argument needs an understanding of what was lost in the injustice so that it can conceptualize repairing that which was lost.

Here, one might have a question as to why and how I distinguish corrective justice from reparations. I use “reparations” instead of “corrective justice” because of the use of the term “reparations” in the current discourse of repairing social relationships. Both of these terms invoke the idea of returning an unjust social relationship to a just one. The similarity of the terms follows from the similarity of their root terms. In common usage of the terms “to correct” means to alter a situation, circumstance, technique or tool to its desired state (eliminate mistakes). On the other hand “to repair” means to return a situation to its original condition. “Corrective Justice” is a more general term that can also be used to talk about torts and insurance claims. “Reparations” is the more specific term that refers to collective repair after an injustice. Furthermore, it is the term that is used in the contemporary discourse about repairing social injustices. Thus, I use the term “reparations” rather than “corrective justice”.

With this distinction clear, in chapter 3, I analyze arguments for reparations for African Americans; and in doing so, I gauge those arguments by the concept of the initial social state of affairs. My overall conclusion from these analyses is that those arguments do not demonstrate an adequate understanding of social being and do not explicate the correct normative account of a just society. Without adequate conceptions of such a society, those arguments were lacking because they do not successfully define what was lost during the history of oppression for African Americans and, then, what ought to be

repaired. One needs an adequate account of justice in order to measure the injustice of a particular era. Exemplary inadequate measures of justice include Boxill's concentration of the loss of property and Lyons's concentration of the loss of equality of opportunity fail to consider aspects of social interaction that were disrupted because of the historical oppression during Jim Crow.

At the end of chapter 3, I set the stage for an developing a concept for a just society by countering the liberal notion of social being as an atomized individual who come into social relationships by competing for positions and goods. The liberal position ignores other aspects of the human person that would contribute to a social existence. Here, I am considering the contribution of a person's interaction with others to the development of that person's personhood and social self. That is, an adequate notion of social being is centered on the interaction of subjects with other subjects in the process of the development of the subjects' consciousnesses. The development of the consciousness also develops the subjects' identity and their place in the relationships. The being of the subjects begins with relationships, and subjectivity develops by way of participation in those relationships in which there is already a power relationship—however that power relationship is structured. So, an adequate account of social being must be concerned with the person in social relationships. I defend this notion of social being in the first section of this chapter.

While the discussion of social being is important, the main thesis of this chapter, however, is that the conceptual ground for an adequate approach to reparations can be developed with the discourse ethics Jürgen Habermas constructs with his notion of communicative action. I draw on Habermas because he argues a theory of social

relationships and democracy from which one can judge historical oppression so that one can determine whether reparations are due. This theory defends the claim that relationships ought to proceed by mutual recognition of all persons involved. And, these relationships ought to develop democratically. Moreover, any variation from this democratic development of social relationships requires procedures of repair.

Historical oppression of the African American community is an example of undemocratic development of social relationships, and the effects of this development undermines the ability of members of this community to participate in the social discourse on equal grounds with the members of the dominant community. Habermas's discourse ethic asserts that those affected by norms ought to participate in developing those norms; and, those who are affected by the norms must be able to accept the consequences of those norms. I will expound on this point later in the chapter. But given the grounds of Habermas's theory, harm occurs by the denial of equal participation in the development of norms in human relationships or by outcomes that those affected would not have accepted. Thus, a reparations argument would defend the thesis that reparations are due when an injustice harms participatory equality, and a reparations policy ought to be implemented to repair that state of affairs.

In developing my argument for reparations, I draw on Habermas's communications theory to reconstruct a more adequate justification of social organization than provided by Lyons and other liberals. This step is necessary for an argument for reparations that take communicative relationships into account. In part I, I present a notion of social being that shows that social being comes out of interaction with others. Persons get their individuation from their social situation. This notion of social being

comes from Habermas's notions of social and symbolic interaction and his notion of the life world. In part II, I discuss the precepts of discourse ethics. I discuss how discourse ethics grounds normative truths on the universal presuppositions of communication. This theory is an attempt to discover universal normative truths without depending on metaphysical claims. To do this, Habermas grounds the theory in what all moral persons must already accept. And, in part III, I discuss how the phenomena of distorted communication necessitates repair to authentic communication. Distorted communication is a failure of normative interaction in which communication that aims toward a common understanding is disrupted. Projected to practical interaction, some potential participants are excluded from interaction aimed towards mutual understanding. The outcomes of distorted communication are physical, cultural and social harms that have lasting historical effects.

I consider, analyze and respond to objections to my use of Habermas to defend claims to reparations in chapter six. In the next section, however, I consider the conception of social being.

II. The Conception of Social Being

II.1 Social Being and Interaction

I start from my criticism of Lyons' individualistic notion of social being and will move to a notion that reconstructs the development of personhood in social terms. With this analysis of social being, one can also criticize Lyons' analysis of historical oppression and of how that oppression is to be repaired. Against Lyons' atomistic notion of social being, I argue that persons are essentially social because of their interaction with other

persons. I will develop this notion by drawing from two of Habermas's discussions of how persons develop through interaction in specific historical contexts. In the first step, I draw from Habermas's discussion of Hegel's Jena lecture, and in the second I draw from Habermas's discussion of the lifeworld as he discusses the concept in his work *The Theory of Communicative Action*.

Habermas takes his cue for the understanding of social being from Hegel's notion of the development of the self through interaction. Hegel develops a conception of the self as evolving through interaction in opposition to Kant's notion of the self as an entity apart from the world.¹¹⁰ "Hegel's dialectic of self-consciousness passes over the relation of solitary reflection in favor of the complementary relationship between individuals who know each other." Hegel discounts Kant's idea that the "self" develops from the interaction between sensory input and itself alone and in isolation from other selves. For Hegel, the self develops through interaction with other selves.

By saying that the self develops, Hegel means that the self knows itself and its place in the world. And the way it knows itself and its place is in reference to other selves. The self knows itself when it sees the world from different perspectives. It can only get a sense of the world from different perspectives from other selves. Habermas says this about Hegel, "...for Hegel it results from the experience of interaction, in which I learn to see myself through the eyes of other subjects. The consciousness of myself is the derivation of the intersection of perspectives."¹¹¹ The self recognizes another self, and in that recognition, the self recognizes the other self as an entity of equal standing. By interacting with others, the person gets an understanding of his or her place in the interaction. The person gets an understanding of his or her beliefs, views and knowledge

base. Furthermore, the person gets an understanding of his or her place in the relationships with others. “Self-consciousness is formed only on the basis of mutual recognition; it must be tied to my being mirrored in the consciousness of another subject.”¹¹² The self can only become a subject with the existence of other subjects.

Habermas follows Hegel’s conception of the self (or consciousness) as an entity that develops as it gets more knowledge about itself and the world through practical interaction with other selves. The self is a combination of the thinking capacity (or the ability to manage information about the world), knowledge of the world, and knowledge of the self. According to Habermas,

Because Hegel does not link the constitution of the ‘I’ to the reflection of the solitary ‘I’ on itself, but instead understands it in terms of formative processes, namely the communicative agreement of opposing subjects, it is not reflection as such which is decisive, but rather the medium in which the identity of the universal and the individual is formed.¹¹³

The communicative agreement involves the exchange of perspectives between selves about the world and including each other. This exchange of perspectives acts as a process that, on the one hand, leads to the development of individual selves and, on the other hand, to the development of selves in general. Part of the way selves develop through seeing the world is by seeing the world from the perspective of others.

Habermas concentrates on two dialectical forms that Hegel uses to explain the development of the self in practical terms: labor and interaction. With labor, the self works on objects to satisfy drives. In doing so, they recognize their separation from the natural world. However, as the objects become tools for the satisfaction of the self’s desires, they also become tools for the satisfaction of the desires of other selves. “Labor Hegel calls that specific mode of satisfying drives which distinguishes existing spirit

from nature.”¹¹⁴ This idea recognizes that humans have drives that objects in nature can satisfy. From this, humans must act on nature to satisfy those drives. “Just as language breaks the dictates of immediate perception and orders the chaos of the manifold impressions into identifiable things, so labor breaks the dictates of immediate desires and, as it were, arrests the process of drives satisfaction.”¹¹⁵ By working on nature, the laborer recognizes that it is not nature but only a part of it.

Hegel also conceptualizes labor by referring to property and law. For him, labor is in relationship with interaction in that one of the ways a person in society recognizes other persons is through their property. Property is recognized as “yours” or “mine” whether “you” or “I” make it through labor or acquire it through trade. Habermas explicates Hegel’s understanding of how the law contributes to the development of the social person, “Under the category of actual spirit, interaction based on reciprocity appear in the form of an intercourse, controlled by legal norms, between persons whose status as legal persons is defined precisely by the institutionalization of mutual recognition.”¹¹⁶ Legal norms in liberal society set the laws that designate and protect property. In such societies, people recognize each other through property relations, and this is mediated by the state.

While labor and laboring with others implies interaction; interaction is not limited to the notion of labor. The notion of interaction draws from the notion of reciprocal recognition. Mutual recognition follows from the previous discussion of the self developing from other selves. The self develops through seeing the perspectives and understandings of other selves. For Hegel, the self strives for both development and recognition. As the self develops through getting more understanding about the world, it

needs others to verify that understanding about the world. At the same time, it needs other selves to verify its own existence. In addition, the self strives for the acknowledgement of its agency. Freedom is the power the self has over objects, and it wants other selves to recognize that freedom. Habermas refers to Hegel's master/slave dialectic where the master subsumes the personality of the other, the servant. After this process, the master's self can no longer be verified by the servant. The master can not get a perspective from another because there is no other; the personality of the servant has been subsumed. Hegel insists, and Habermas agrees, that this is the wrong formula for interaction. Recognition, instead, must take place in a mutual relationship.¹¹⁷

Along with Hegel's use of the connection between labor and the law to talk about the development of the self, Habermas also appeals to Hegel's understanding of the connection between the moral relationship (interaction) and the legal relationship. In the *Philosophy of Spirit*, Hegel characterized the modern bourgeois state as a state of legality. By way of the state, citizens interact with each other through the law. In social relationships, however, citizens relate to each other in moral relationships. The law of the state is derived from the moral relationships of mutual recognition, and it only acts to guarantee the action based on mutual recognition. According to Habermas, "Only the intercourse of individuals acting complementarily and subject to legal norms, makes an institution of ego-identity, namely the self-consciousness which recognizes itself in another self-consciousness. Action on the basis of mutual recognition is only guaranteed by the formal relationship between legal persons."¹¹⁸

Habermas adopts Hegel's notion of self development through labor and interaction and uses it as a foundation for his notion of social being. The self as a

complex of self knowledge, knowledge of the world, and perspective comes from self's interaction of other individuals. Persons get an understanding of themselves through their interaction with others. It follows, for Habermas, that they also get an understanding of their place in society from their interaction with society. The relationships are relationships at the level of consciousness mediated by labor and interaction. Labor is social in that labor goes into the infrastructure of society so that commerce, travel and interaction are possibilities. Likewise, persons manipulate nature to make objects that others use. In this way, the labor of individuals becomes a part of a network of labor in society. Furthermore, interaction is social in that the interaction that develops the self takes place in a network of interactions that are social. Via labor and interaction the consciousness of individuals get linked to the consciousnesses of both other people and society as a whole.

The above is a descriptive formulation of the development of social being. However, there is a normative element to this formulation such that it presupposes a mutual development of selves in interaction without dominance, coercion or deception. An underlying premise to this idea is that each self thrives for the most extensive development possible. In concrete terms, one sees this development as self actualization, autonomy and self fulfillment. And, a person gets this from mutual recognition and interaction from others. A self is harmed when it is dominated, coerced or deceived or otherwise denied mutual interaction.

This outlook into the construction of social being gives one a different view of racism than does Lyons' atomistic liberal position. And subsequently, it points to a different strategy for reparations. Instead of the independent, free and rational individual

who enters into contracts and competes for goods and positions, the Habermasian conception of social persons points to an inherently social person who gets his/her individuality and freedom through social interaction. For Lyons, racism affects people when racist persons and racist societies limit victims' independence, freedom and opportunities to compete for positions and goods.

The counter position implies a deeper sense of harm done to the victim due to racism. With racism in the Habermasian conception of personhood development, racists limit the ability of victims to interact in social relationships. Victims do not develop through mutual recognition because of this interaction. Thus, they do not develop as social beings in a democratic way. They develop alienated identities, suffer from oppression and limited resources, and suffer from exclusion from real social interaction.

Reparations, then, cannot simply address the symptoms of racism, but it must address the fundamental nature of racism. While this is just a preliminary remark on reparations, and a fuller explication of the concept is expounded upon later in this work, such a concept must address oppressive personhood development in racist social interaction. In the next subsection (II.2), I continue my challenge to the liberal notion of social being by looking into personhood development in the lifeworld.

II.2 Social Being and the Lifeworld

Habermas's discussion of the lifeworld plays another important part in his formulation of social being. As the self develops from interaction with other selves, part of this development comes from a network of interactions with other selves. These networks of

interactions take place in the context of the lifeworld. To get an understanding of the lifeworld, one can follow Habermas's distinction between lifeworld and system. He understands systems as networks of instrumental action that have tendencies to alienate humans from decision making. The market in a capitalist economy and the administrative state are examples of systems. With the market, goods are distributed according to market forces (supply and demand) and not according to the interests, volition and rationality of the people in society. With the state, policy is made through rule governed processes (elections, representation) that do not rely on the input from all persons involved.

The lifeworld, on the other hand, is the network of symbolic interaction based on shared values and understandings and as experienced by social subjects. This is a phenomenological concept of social experience as given in the intuitive immediacy of one's existence as a social being. The given web of meanings and interpretive possibilities locate one within a historical community. Membership in a community points to the idea of shared values and fundamental understandings. Members of the community interact with each other with these shared values and understandings over time to develop ways of living and interacting in the community. Persons get their social existence as they are seen in their social positions and as they see themselves in their social situations. Persons become social persons as they see themselves in the interactions in conjunction with the understood ways of living.

Within systems, personal connections are conceived as objective processes that do not require interpersonal contact. However, in the lifeworld, interactions are mediated by the values and understandings of the historical community. Habermas understands the

lifeworld as interactions between persons in everyday life who coordinate their lives through speech acts. He draws from George Herbert Mead's understanding of a social consciousness in society and incorporates part of this understanding into his own development of the lifeworld. According to Habermas, Mead "related the natural of objective meanings that the biologist ascribes to the behavior of an organism in the system of its species-specific environment to the semanticized meanings of the corresponding actions as these become accessible to the actor himself within his lifeworld."¹¹⁹ Mead takes the biological notion of a species living in an environment specific to that species and how that species lives or survives in that environment and derives the notion of humans thriving in their own social networks. This thriving, for Mead, takes place within a framework of communication. Society runs and develops because persons in society communicate and defend desires and other persons receive those communications and act on them.

In addition, Habermas cultivates Husserl's notion of lifeworld "as a reservoir of taken-for-granted, of unshaken convictions that participants in communication draw upon in cooperative processes of interpretation."¹²⁰ The reservoir of taken-for-granted is the collection of accepted beliefs that a person uses to translate the world. From this, Husserl felt that a situation is not bound by particular interpretations, but are "horizons" that can be overstepped by collective reinterpretation when the group is presented with new information, evidence and perspectives. Husserl explained his idea of the lifeworld within the framework of phenomenology. However, if one thinks of the lifeworld as linguistically organized collection of "interpretive patterns", then one can see the

lifeworld as subjects in grammatically regulated relations and think of it in terms of persons interacting in society.¹²¹

The lifeworld, for Habermas, is a network of interpersonal interactions that are mediated by historicized mutually adopted meanings. In addition, the interactions take place on the level of communicative actions which are actions oriented to mutual understanding. In the network of interactions, more immediate individual interactions are also influenced by more remote interactions. The network retains ways of talking and thinking when individuals in the network take these ways of acting to be affective such that individuals take up these ways when they get into immediate relationships. These ways of interacting remain stable or gradually change over time from one generation to the next. An example of how remote interaction can affect immediate interaction is when ancestors of members of a society adopt cultural meaning for an object (a fetish perhaps), and that meaning is held for the object in contemporary society.

The lifeworld contributes to self-development even if the self develops in a subjugated relationship. The subjugated self sees itself as subjugated, and the oppressive self sees itself as the dominant self. Even in these unequal relationships, statements are made toward reaching a common understanding. When a king gives orders to a servant, the king wants the servant to adopt the understanding of the king. The king, in the era of feudalism, makes decisions based on a feudal authority and wants the servant to also take up this understanding. The servant sees the king as justified ruler or hegemon depending on whether he or she accepts the justifications for the king's rule. Regardless of the servant's position on the legitimacy of the king's rule, both the servant and the king have

social places, and their social places are dependant, to some degree, to the other's existence.

The way one can see how concept of the lifeworld can be a way to analyze historical oppression is to see how the theory allows Habermas to introduce agents' differentiated interaction experience. The interactions in the lifeworld take place in three interrelated worlds in which subjects make claims aimed at mutual understanding. Those three worlds are the objective world, the social world and the subjective world. A world, for Habermas, is a sphere of understanding within which a subject can perform a speech act and take up a pragmatic relationship. A speech act is an utterance by a person such that other persons can get meaning from that utterance. A pragmatic relationship is a relationship in which parties try to convince each other of courses of action. The objective world is one in which all true statements are possible. That is to say, statements that have a truth value can be evaluated by all persons who have the tools to analyze the statements. The social world is a world in which all of the interpersonal relationships take place. This is the world in which persons come into contact with other persons to negotiate the objective and subjective worlds. In this world, persons test and verify objective claims for validity that other persons submit for verification. And, the subjective world is all of the experiences in which a speaker has privileged access. That is, the experiences cannot be independently verified by the experience of other persons. These three worlds are necessary for interaction in that interlocutors use the three worlds as a background for recognizing their common situation. From this background, they can start to make claims and prepare for them to be challenged.

Language is important for interaction in the three worlds and there is an internal connection between structures of the lifeworld and linguistic worldviews. Language and culture are transcendental in the fact that they are the necessary pre-conditions for relationships in the lifeworld. Habermas says, “Language and culture are constitutive for the lifeworld itself. They are neither one of the formal frames, that is, the worlds to which participants assign elements of situations, nor do they appear as something in the objective, social, and subjective worlds.”¹²²

With Habermas’s understanding of lifeworld, one can see that a person is already a social person. The social is a network of symbolic interactions. Symbolic means the use of symbols, predominantly in the form of language, to make and challenge claims. The person develops through inter-subjectivity, and through this inter-subjective development, the collective of subjects is developed. Habermas puts this in terms of the access to communication rather than in anthropological terms. While it is true that anthropological and sociological research inductively points to the conclusion that all humans are already in social interaction, Habermas comes to that conclusion from the communicative capabilities of all humans and the background values that persons share.

As with the discussion of social being through interaction, the above discussion of the lifeworld points to a descriptive notion of social being. It also has a normative element. A person is a person insofar as that person is a part of the lifeworld. A person has interests in participating in the development of values and understandings of the community. Also, the person wants to get benefit from the development of community interaction. From this analysis, a person can be harmed by being alienated from

development of the lifeworld or by asymmetric participation in the development of the lifeworld.

These reflections distinguish what I have been calling the moral community; that collection of persons who are persons because of the recognition as beings who have perspectives and interests that are considered by all other persons in the collective. Moral persons become moral persons in the moral community through interaction in that community. In ideal conditions, interaction is based on mutual respect and recognition. And, this leads to moral persons of equal standing. The moral community is conditioned on the lifeworld. The lifeworld is a world of shared values, shared understandings and interconnected interests where interaction takes place.

In racial oppression, the moral community is constructed according to alleged racial differences. And, members of victimized races suffer exploitation, domination and exclusion from democratic participation in the moral community. In the first part of this section I discuss personhood development as a product of social interaction. In this part of the section I consider the space in which this interaction takes place. A racialized alienated person is a product of a racially oppressive social interaction in a racialized lifeworld. The lifeworld, as it has been constructed in racial oppression, is a world of racialized values, understandings and alienated interests in which victims of racism are excluded from democratic participation.

The above analysis does two things. First, it demonstrates a different, and better, reconstruction of social being than the atomistic conception defended by Lyons' left liberal view. Second, it gives a more in depth look into racial oppression. Rather than being harms against individuality, freedom and equality of opportunity due to race, racial

oppression is actually harms to the democratic development of the social being in the moral community. Reparations would have to address this undemocratic development. And, in the next section, the discussion of the discourse ethics, presents an argument for a democratic development of the social person in the lifeworld.

III. Discourse Ethics

The above understanding of social being is a better conceptualization of social reality than Lyons' liberal notion. Instead of the atomized individual whose personhood is established prior to interaction, this conception of social being shows that persons develop in society through interaction with other persons. Now that I have developed an understanding of social being that allows one to begin to get a better view of the racial oppression that African Americans suffered, I will investigate the normative basis for this social interaction. To do this, I draw on Jürgen Habermas's discourse ethics in order to identify the ethical standard in which to measure the harms of racial oppression.

Fundamentally, discourse ethics grounds normative truths on the universal presuppositions of communication or linguistic interaction. These normative truths can be attained by human use of rationality in practice through successful communication. The founding premise in discourse ethics is that moral intuitions that all persons presuppose when they make moral claims. Claims of a normative nature have an obligatory force. The person making the claim thinks that the claim ought to be accepted and acted upon while the target of the claim feels obligated to it if it is justified. Persons already accept that normative claims must be justified, and one ought to obey justified

normative claims. From here, we go to the notion that all humans presuppose this when they take part in moral discourse. The presumed justification has motivating power that comes from shared behavioral expectations of a social group.¹²³

The force of the validity claim comes from the understanding between interlocutors that a given norm needs inter-subjective recognition. These interlocutors must share the knowledge, the rules or reason and the fundamental principles that would possibly make the claim valid to both parties.¹²⁴ In the ideal case, participants in discourse would come to an accord about plans of action; that is, the discourse would be aimed at reaching a common understanding. Discourse aimed at reaching a common understanding is what Habermas calls communicative action, and it is opposed to strategic action which occurs when one actor attempts to influence the other using coercion, trickery or fraud. As Habermas explains “The goal of coming to an understanding [...] is to bring about an agreement [...] that terminates in the intersubjective mutuality of reciprocal understanding, shared knowledge, mutual trust, and accord with one another.”¹²⁵

To support the possibility that participants in discourse can use reason to come to a common understanding, Habermas outlines a theory of argumentation. He grounds his theory of argumentation on informal logic because he claims that “it is impossible to force agreement on theoretical and moral-practical issues either by means of deduction or on the basis of empirical evidence.”¹²⁶ Deductively valid arguments conserve truth but do not convey the type of knowledge that would help participants reason towards mutually acceptable norms. Empirical facts about feelings, interests, and experiences do have content, but are open to various interpretations that cannot lead to universally

binding norms. Thus, the theory of argumentation takes the empirical facts and subjects them to universalizable rules of evidence and acceptability.

To formulate this theory, Habermas distinguishes three aspects of argumentative speech. First, he thinks that we have to look at speech in the ideal sense, such that participants make a good faith effort to use only the force of the better argument and exclude any other type of forces or coercion. And, participants take part in a cooperative search for better understandings. Second, we must see the process as being subject to special rules. The process of reaching an understanding is regulated such that participants

- 1) thematize a problematic validity claim and,
- 2) relieved of the pressure of action and experience, in a hypothetical attitude,
- 3) test with reasons, and only with reasons, whether the claim defended by the proponents rightfully stands or not.¹²⁷

The third aspect is that the aim of argumentation is to produce arguments that all listeners can accept or deny by virtue of the internal properties of the arguments themselves. An argument is a validity claim and the reasons with which the proponent justifies the claim. The proponent of the particular claim must use rules of inference, principles and warrants that either all participants in the discussion already accept or must get them to accept using argumentation. All three aspects are necessary for a proper theory of argumentation.

Given the fundamental presuppositions of ideal communication, Habermas's turns to a mechanism by which he can determine legitimate normative claims. This mechanism is the discourse principle (D); which can be stated as: "only those norms can claim to be valid that meet (or could meet) with the approval of all affected in their capacity as participants in a practical discourse."¹²⁸ Persons affected by norms are to

participate in the derivation of those norms. The phrase “could meet” means that persons do not have to directly participate in the discourse. One can already recognize some outcomes persons would not possibly accept. Other outcomes would have to be put to the dialectical test. Furthermore, norms are valid if persons would accept the vindicated claims, or we could realistically assume they would approve of them. The discourse principle sets the standard of duties persons would be obligated to, and it sets out a procedure for providing moral norms rather than providing the moral norms themselves. Furthermore, it is universalistic since it is based on presuppositions and capacities that all moral beings have. It is deontological, formal and universalistic, but it diverges from the atomism of Kantian ethics by the fact that validity of norms requires discursive participation by all affected parties.

This discursive participation is the idealized process of inter-subjective norm formation and rationality that aims towards a basis for moral judgments and social and political justification. In the ideal case, persons encounter each other in normative discourse ready to accept the best arguments for each position. They are ready to see the perspective of their interlocutors and they are ready to accept the justifiable outcome. In the real world, when people make normative claims and defend those claims with reason, they presuppose the ideal case by making claims, using reasons to defend those claims and expecting reasons when others make controversial claims. When people make normative demands, the maker of the demand expects the listener to accept the normative force behind the demand. The normative force is an implication of the justification of the norm. The norms in question are action norms; or proclamations about what one ought to

do and ought to be allowed to do. Every proclamation of a norm used is premised on the idea that the maker of the proclamation expects the listener to share.¹²⁹

Given (D), the argument needs a principle of argumentation that specifies a process of distinguishing propositions for acceptance as universal norms.¹³⁰ Habermas calls this the universalization principle (U): “A norm is valid when the foreseeable consequences and the side effects of its general observance for the interests and value-orientations of each individual could be jointly accepted by all concerned without coercion.”¹³¹ William Rehg suggests that this principle is like Kant’s Categorical Imperative in that it acts as a method for deriving norms of action impartially and for everyone. It is impartial in the sense that the outcome does not automatically favor one party over any other. It supersedes Kant’s Categorical Imperative, however, because one person does not decide on the norm of action for everyone. Instead, all those involved use incites, concerns, and interests to rationally and collectively derive norms. The goal with such a principle is not to derive an overlapping consensus (as with Rawls), compromise or a way of getting along (*modus vivendi*), but instead, it is for everyone involved to come to a common understanding about norms. In this vein, it would insure that all legitimate interests are considered.

The theoretical background (the (D) and the (U)) comes out of what humans already do concerning morality. Moral discourse is predicated on what humans already do when they use language in everyday reasoning to make normative commands. Everyday moral discourse starts with situational facts that are recognized by the interlocutors. From the particular facts, one argues that the other is obligated to do something because of a general warrant. The general warrant is the ground that both

interlocutors already recognize. If one party does not already recognize a warrant, then the other would attempt to show the necessity of the warrant by one that is mutually recognized.¹³² Being inductive rather than deductive, the process allows the interlocutors to assess the moral actions measured on the experience of the participants and consequences of the actions. The universalization does not refer to a particular case, but instead, to the process by which to assess all cases. Language itself allows interlocutors to justify and accept justified claims. With a shared language or conceptual system, the interlocutors can fix basic concepts and rules for grounding claims based on the evidence at hand. In the practical discourse, interlocutors make claims concerning their interests given the evidence using the collectively accepted rules of justifying claims based on a shared language system.

The norms derived from the above process are already social in that both the language systems that the interlocutors use and the interlocutors themselves are submerged in societies. Likewise, the general grounds and warrants that interlocutors refer back to when entering discourse depend on social acceptance. Furthermore, the norms that the interlocutors agree to must be consistent; thus, they must work for everyone else in society or the discourse community.¹³³ Given this revelation, the norms derived in immediate practical discourse act also as media for resolution of social conflicts. When two individuals who have competing interests resolve their issues communicatively, they have used socially accepted warrants for resolving issues and their resolution, if done with consistency in mind, would be a starting point for resolving future conflicts. This being said, discourse ethics acts as principle of conflict resolution where interlocutors, ideally, attempt to reach a status quo of mutual understanding. “By

entering into a process of moral argumentation, the participants continue their communicative action in a reflexive attitude with the aim of restoring a consensus that has been disrupted.”¹³⁴

Argumentation on these norms has to be premised on something beyond the basic rules of argumentation. The community itself fulfills this role because it can be seen as collective in which members coordinate their desires, interests and actions. Members rely on a background consensus of norms to resolve conflicts of interests and desires.¹³⁵

Where conflicts about the background consensus arise, the members debate the interpretation of the background of settled cases. This is not to say that in actual cases outcomes would be what we think of as morally appropriate. For instance, a king might attempt to justify punishing a peasant with an appeal to god or tradition. This might be done with the belief that the village ought to accept that justification because it is part of the background consensus. The problem with the king’s conclusion is that the peasant was not allowed to challenge argument put forward by the chief and the validity of the background consensus itself.

The norms that the peasant would more likely agree with would have put more constraints on the king’s actions. If the king were to accept some of the norms put forward by the peasant (for instance, the king cannot punish me without cause), then the king would have already accepted the consequence of the formation of the norm. In this case, acceptance of the consequence limits the king’s freedom. This is not conditioned on whether the king decides to live up to the accepted norm. By accepting the norm, the king commits himself to it. William Rehg explains the “trap” one sets oneself in when adopting a norm: “Thus if one adopts a norm as a moral principle of action, [then] one

‘logically’ commits oneself, simply in virtue of the semantics of such norms, to the action constraints as the norm describes them for each affected role.”¹³⁶ Here, one is bounded by the justifications that one already adopts.

Rehg understands “consequences” in two senses. On the one hand, “consequences” is understood as the constraints that one also accepts once one accepts particular norms. On the other hand, “consequences” are the real consequences of actions that affect individuals. The principle (U) limits norms based on what consequences participants would possibly accept given that the consequences are foreseeable. A wide range of consequences based on action norms can be designated as foreseeable; from something as immediate as an injury caused by an assault to a future harm caused by pollution of a local stream. These consequences can be predicted based on empirical evidence or social science and psychological research. Likewise, the probability that one would accept or reject the consequences can also be predicted.

For Habermas, the consideration for consequences represents a major departure from Kant’s philosophy. In Kant’s moral philosophy, moral duty is derived from the good will’s obligation to rationality without regard to personal interests and consideration of outcomes.¹³⁷ In Habermas’s philosophy, on the other hand, interests, feelings, and concern for outcomes are represented in claims to be tested for universal recognition. Some claims based on individual interests are disregarded outright because they are either internally contradicting or cannot coincide with the interests of everyone involved. Those interests either cannot be accepted by all or the outcomes that those interests would produce cannot be accepted by all. Some claims based on individual interests may be too particular to be acted on as moral imperatives. For instance, the claim “everyone should

work for me” because of “my interest in being rich” could not be acceptable by all involved. On the other hand, some claims can be accepted universally; such as claims derived from the interests of personal actualization, basic freedoms and health.

The next step is to argue for how norms could incorporate common interests. When a person makes a claim obligating another to action based on his or her own interest, the person has to appeal to propositions that they both have to already accept. Further, the other person’s interests already act as premises in the discourse about the claim up for consideration. Likewise, it is already the case that the other person must be able to accept the consequences of the action. Thus, the person making the claim must appeal to common interests.¹³⁸

From the above discussion of norms generated from discourse, one is ready for a discussion of the nature of the rationality involved in deriving a universalization principle that demands consensus building about moral norms. For Rehg, one must first look at the type of situation that is in most need of the discourse ethic approach.¹³⁹ He suggests that it is best suited for resolution of conflicts of interests in which claims obligate persons to action. To do an analysis of the justification for (U), one must do an analysis of the link between the validity of moral norms and practical consensus building based universal perspective taking. Rehg attacks this problem by first addressing the premises of (U).

There are two major premises that lead to the universalization principle. Rehg call the first the “content premise” because it must define norms of action and describe how discourse takes place with regard to such norms. The content premise leads to the idea that discourse must be concerned about the acceptability of the consequences by all involved. When a group accepts a particular norm, they expect that norm to delineate

roles of actors and set limits to the extent that persons can achieve their particular interests. This norm would help to resolve future conflicts of interests.¹⁴⁰

Universalization based on the above alone is limited because of the fact that this procedure could be carried out by an individual without regard to intersubjective consensus.¹⁴¹ An individual can claim that a he or she accepts the consequences of a norm regardless of the negative effects of the actions allowed by the norm. And, the individual could accept the norm for everyone. Another problem concerns the consequences and side effects on persons who may have not consented to the norm. That is, two parties might have debated and finally come to a consensus regarding a norm and a third party is affected by the outcome but did not participate in the discussion about the norm. For this problem, Rehg suggests that the parties should consider the foreseeable consequences as they affect third parties but the concerned parties cannot foresee all of the consequences and side effects.¹⁴²

The second premise necessary for the derivation of the universalization principle concerns the presuppositions of practical discourse. The following must already be accepted by anyone who enters into argumentation:

- a) Every subject with the competence to speak and act is allowed to take part in a discourse.
- b) [Broken into three parts]
 - i. Everyone is allowed to question any assertion whatever.
 - ii. Everyone is allowed to introduce any assertion whatever into the discourse.
 - iii. Everyone is allowed to express his (her) attitudes, desires, and needs
- c. No speaker may be prevented, by internal or external coercion, from exercising his (her) rights as laid down in (a) and (b) above.¹⁴³

The first rule, the publicity rule, allows all persons who are competent on the subject at hand to participate in the discourse. This follows from the notion that the

acceptability of conclusions must have the broadest range of participation possible to ensure that all possible perspective are taken and tested. The second rule, the equal participation rule, ensures that everyone can participate in debate and the third rule forbids coercive measures to gain argumentative advantage. In effect, these rules make argumentation democratic. Rehg insists that, “The point behind rules (b) and (c), then, is to ensure that a consensus really issues from a cooperative effort to find the most convincing solution to a problem.”¹⁴⁴ These rules are counterfactual in that one can never know if they are absolutely fulfilled. Habermas thinks of them as regulative ideals in that one uses them as measures for practical discourse and institutions.¹⁴⁵

Rehg insists that both premises are necessary for the derivation of (U) in saying that, “the argument hinges on linking the notion of norm as shared general behavior expectation with the idea that such expectations be established only in arguments.”¹⁴⁶ The universalization principle depends on both content and form. One can start with the human tendency to give, and on the other side expect, reasons for claims about what actions one must do or refrain from doing. The normative claims that are accepted in a community are the ones that persons in that community perceive to be justified. The (U) principle captures this intuition towards providing and expecting reasons.

Since (U) focuses on argumentation, all relevant arguments and challenges must be considered in a dispute on conflicts of interests. One cannot say that the norm is truly justified otherwise. This leads to the notion that all competent speakers must be allowed to participate. These speakers are interested in the outcome since the norms may have an effect on them. Also, the speakers provide arguments and challenges to arguments that must have a fair hearing. The persons who participate in the discussion about norms are

free and equal since their arguments are not arbitrarily excluded or minimized and because they are not coerced, intimidated or tricked into accepting an outcome.

The norm derived from the discourse sets the limits to actions among persons in a discourse community. It gives the force of the moral command to persons. Participants in the discourse have already accepted that the resultant norm carries the moral force of obligation since they expected that all other participants would abide by this moral force. Thus, given the above premises, persons are obligated to justified norms because of reasons all persons who are affected by them have accepted in debate open to all.¹⁴⁷

Throughout the history, members of the African American community have been subjected to laws, policies, and actions that they have not accepted. And, they have had little opportunity to participate in deliberations for choosing what laws, policies or actions that affected them. The significant point concerning reparations, however, is that the history of oppression contributed to the current alienation and disenfranchisement. I will say more on that point in chapter five. In the next subsection, however, I will discuss the connection between discourse ethics and the different aspects of social being. This is necessary to show the possible ways in which oppression can affect a social person.

III.1 Discourse Ethics and the Different Aspects of Social Being

Discourse ethics is a theory that is centered on the participants' rational input into moral, cultural and political norms while through that participation those participants come to common understandings about those norms. After the discussion in section III.1, one can see the connection between discourse ethics and moral relationships. In addition, after the discussions of section II, it is clear that moral personhood development ought to

coincide with the principles of the discourse ethic. And, racial oppression is an instance of personhood development contrary to the discourse ethic. In this sub-section, I will continue the discussion by noting the relationship between discourse ethics and the different aspects of social being. I do this by pointing out that since the derivation of the Habermas's program relies so much on communication and public discourse, one can infer its significance in cultural and social relationships. The problem, though, is that in large complex societies social coordination by way of discourse becomes complicated. Habermas allows for complex relationships to be controlled by something other than by direct discourse.

There are three levels of discourse that that follows from the discourse ethic. The first level is the discourse in the theoretical sense; that is, the level of the abstract, even if derived from real human interests, human social existence and the fact of linguistic interrelationships. McCarthy insists that, "This description of argumentative discourse is admittedly idealized; but it represents an ideal that has been operative in our tradition, not only in the lives of exemplary individuals but in the historical attempts to institutionalize discursive modes of examining certain types of validity claims."¹⁴⁸ By institutionalized, in this case, McCarthy follows Habermas's understanding in the sense that mechanisms of critique and response were developed for certain types of linguistic interactions.¹⁴⁹ This mechanism, as it spread to more types of interactions, becomes an apt method for participants in linguistic interaction to come to mutually acceptable understandings about the world. Examples of this institutionalization include scientific investigation and critique and the discourse that works towards answering political questions.

The second level is the level of practical discourse in what Habermas calls the lifeworld. This level is further separated into the interpersonal and social level. By interpersonal, I mean the level of individual interaction with another individual keeping in mind that interpersonal relationships are connected to social interactions. The social level is the level of social interaction where persons debate about values and practices for the collective consideration. It is the level of the discussion of values, ways of interacting and collective norms. Cultural relationships concern the discussion about values a particular social group might adopt.

The third level is the level of steering mechanisms that goes beyond the direct discourse of interpersonal and social into the discussion of social policies that would be implemented for a particular society. Habermas calls this the system and there are two facets of such steering mechanism in contemporary societies: economic and political steering mechanisms. Economic relationships concern the distribution of goods and the control of productive forces in a society. On the one hand, it is concerned with the interests of persons in society in the sense that the goods satisfy certain interests. These interests include dietary, leisure, accommodations and cultural interests. On the other hand, it is concerned with the autonomy of persons in society because it controls what people can do as labor and what parts of society benefits from that labor. However, in large complex societies, it is difficult if not impossible for all interested parties to contribute linguistically in the discussion on economic policies. Thus, a steering mechanism is necessary to allow a non-direct discursive distribution of goods that also coincide with as much of the discursive principles as possible. For instance, with any economic system, one can assume what basic interests individuals would have regardless

of any other interest they might have. One can already assume that persons would be interested in food, shelter, health, cultural participation and leisure. Likewise, one can already assume that persons would want as much autonomy possible in the productive forces that affect them. Furthermore, in an economic system based on discourse ethics, the consequences of economic products must be acceptable to all persons who are affected by those products.

Political relationships, the other facet of the system, concern the relationship of policy making power and the actual making of policy. Like the difficulties with economic discourse in large complex societies, a society cannot rely on direct discourse to generate such policies. Or, at the very least, it would be difficult. And, like the issues with economic discourse, political discourse can have discursive principles in mind even if it does not directly correspond with discursive democracy. One can already ascertain the political interests of persons. Persons do not want laws that restrict their freedoms unjustifiably and they want laws that increase their freedoms. That is, they want laws that help them to fulfill their interests. And, persons would reject laws that would hurt their legitimate interests.

The above abstract presentation of discourse ethics requires further contextualization in order to understand its practical application. The normative force of the discourse principle is infused throughout all relationships between persons. In any relationship between persons, the discourse principle ensures that all persons involved have equal participatory power in that relationship. Likewise, persons have the communicative power to cancel any adverse outcome of a relationship that the person could not be expected to accept. Equal participatory power in any actual moral discourse

precludes any harm done to any of the participants. Moral relationships projected out to social situations include political, cultural and economic interaction. Political interaction involves discourse about policies that are derived in order to organize society. Economic interaction concerns the distribution of resources in society. And, cultural interaction concerns the discourse about values and ways of living in society.

Thus, the aspects of social being takes several forms: 1) the moral discourse, 2) the practical moral discourse that ought to take place concerning actions, 3) the cultural discourse, 4) the political discourse and 5) discourse on norms of action in any other social relationship which includes economic relationships. On this discussion, Habermas insists that the discourse principle is the same in each level of discourse. He says, “I have therefore introduced a discourse principle that is initially indifferent vis-à-vis morality and law. The discourse principle is intended to assume the shape of a principle of democracy only by way of legal institutionalization.”¹⁵⁰ Law is legitimate when it allows participation by all those affected by the law, and all those affected by the law can accept the outcome of deliberation. This same formulation, then, can allow one to formulate a principle of democracy to any relationship.

III.2 The Levels of Democratic Social Relationships

The discourse ethic applies across the spectrum of social relationships. As such, it defends the participation of all persons in normative discourse. It follows that any discourse that produces or depends on normative principles can be analyzed by discourse ethics. In ideal speech, persons participate with linguistically translated interests,

perspectives, desires, and intentions. And, this participation is governed by the rules of argumentation. Only those propositions that can possibly be accepted by all participants in the discourse can remain in the discourse. Participants use the remaining propositions to develop norms. This formulation grounds all normative interaction on democratic participation. Participants are persons insofar as they have a stake in the outcome of the discourse and they can translate that stake into a linguistic defense. Prospective participants cannot be excluded if they meet that criterion. Likewise, the consequences of the discourse are justified only if they can be accepted by all participants. Thus, the outcome of the discourse is democratic as well. Persons would not accept harm and would not accept a consequence from the discourse that would leave them subjugated, oppressed and left out of the discursive process.

From the previous discussion one can now see how discourse ethics work in social relationships. In order to discuss the possibility of having social relationships governed by discourse ethics, I investigate social relationships from four points of reference: moral interaction, cultural relationships, political relationships and economic relationships. These types of relationships may not encapsulate every aspect of social interaction, but they are significant aspects of social relationships that were affected by racial oppression in the United States. In practice, relationships in society are governed by normative controls. Moral interactions are concerned with what individuals or groups ought to do with regard to other individuals and groups. Discourse ethics defends the thesis that norms that govern moral interaction come from what can be accepted by all participants in the relationship. These interactions take place on the interpersonal level where individuals communicate with each other with norms that they themselves have

accepted. Racial oppression had the effect of creating moral divisions between the so called races. African Americans and Euro-Americans are reluctant to interact with each other. This is due to emotive reasons such as fear, distrust, hatred, or even disinterest, as well as structural reasons such as structural and institutional racial divisions. Communication with norms developed by mutual discourse is limited. And, there is limited chance for such interaction.

Cultural interaction is concerned with the discourse about what values and ways of life are important and which are accepted as foundations for further interaction. Social discourse is governed by cultural foundations. People make claims and defend their claims based on what values they hold and what ways of life are accepted. The discourse ethic informs us, however, that these cultural foundations ought to evolve democratically. That is, persons with different values, ways of life, and perspectives ought to be allowed to participate in cultural interaction without arbitrary exclusion and these foundations ought to develop through mutual discourse. People should be allowed to give their input on cultures principles and none should be excluded without universally acceptable justification. A society based on racial discrimination is an example of undemocratic cultural discourse. In such a society, the dominant racial group controls the adoption and evolution of cultural symbols and the subjugated racial group has influence on such adoption and evolution. The dominant cultural symbols are chosen without regard to universal acceptability or discursive processes.

Political interaction is concerned with the development of policies and the relationship of policy making power. It includes the social institutions of regulation and control such as executive, legislative and judicial institutions. Discourse ethics requires

that political interaction be open to all members of society who are affected by those policies. Policy making power ought to be distributed democratically. Likewise, discourse ethics forbids the adoption and execution of policies that places more burdens on one individual or group unjustifiably. While discourse ethics requires more or less direct democratic procedures, such discourse is complicated by large complex societies. However, a political system can adopt a representative model as long as representatives consider the interests, perspectives, intentions and desires of all persons and ensure that the policies benefit all members of society. Furthermore, the possibility of more inclusive democratic procedures ought to be continually investigated in a continuous dialectical process. Innovations, such as the internet, ought to be developed to allow more discursive possibilities.

Racial oppression limits the possibility for dominated races to participate democratically in political discourse. First of all, because of the moral divisions between the so called races, members of the dominant race are less likely to form empathetic bonds with members of the oppressed race than they would with other members of the dominant race. Furthermore, members of the dominant race would have fewer chances to have interpersonal contact and have fewer chances to realize what policies would benefit members of the oppressed race.

Economic interaction is concerned with the discourse about property, the distribution of and control of private and public property, and the distribution of private and public wealth. With this in mind, the discourse concerning economic relationships is a significant problem in society. If there is a crisis in economic relationships, then there is a crisis in the reproduction of life. And, whoever controls the economic relationships

also controls the reproduction of life. Furthermore, the control of economic relations equals the control of labor, leisure and the development of creative capabilities. Much of the policy decisions in the practical political sphere are concerned with the distribution of wealth and property. Examples of this are healthcare legislation, military spending, employment development, schools and public security.

Discourse ethics argues for democratic participation in economic relationships of all persons affected by the particular economic relationships. Economic policies that have national reach demand democratic participation of all members of society. Economic relationships of a local or personal nature demand local or personal democratic participation. The distribution of wealth and property ought to meet the requirements of communicative action. The outcome should meet the acceptance of all affected by the distribution. This does not mean that all persons are to receive equal material holdings. But, it does require that the outcome reproduces discursive power. For example, democratic economic discourse would lead to the building of schools, extend access to the means of communication, ensure full employment, access to the political discourse and ensure that all members of society have homes and private property.

Economic interaction is concerned with actual discourse concerning where funds should go. That is why access to communication and political discourse is important. It is also concerned with non-coercive economic exchange, which equal education and full employment would work towards ensuring. Universal access to homes and private property serves a third function. Both homes and private property contributes to the development of personhood. People begin to see themselves in their property. The

proposition “mine” contributes to the social being of the person. And, it has a solidaristic function. By owning property, people begin to see how important property is for others.

Because of racial oppression, members of the oppressed group have limited possibilities to accumulate property necessary for human development. Likewise, they have less ability to participate in non-coercive economic exchange. And, they have fewer chances to participate in policy development that govern where funds should go. Thus, racial oppression has an effect on members’ of the oppressed race ability to participate in economic relationships as well as other aspects of social relationships.

IV. Distorted Communication

Communicative ethics sets the standard for a universal normative outlook that refrains from excluding anyone who could participate in moral discourse. With regard to this normative outlook, any type of discourse that disregards the participatory power, the immediate interests, as well as the interests in the consequences of all persons involved, violates authentic communication. Distorted communication is a breakdown of normative interaction and acts as a barrier to communication that aims toward a common understanding. It is characterized by fraud, coercion, or use of rhetorical devices. It could also be caused by psychosis or some other inability to take part in rational discourse. Explained in this way, racial oppression is a type of distorted communication in which democratic social interaction is subverted because of racial differences in participatory power.

Social interaction can be affected by distorted communication when the processes of social steering and organization are not controlled by democratic interaction. Some

examples of this are: 1) political and economic policies that are derived by coercion and domination, 2) some persons are arbitrarily excluded from social discourse, and 3) some interests are excluded from social benefits while those same interests are not considered for protection from harms.

Habermas uses the notion of distorted communication to replace Marx's notion of ideology. For Marx, ideology is the system of ideas that governs the thinking of a society. The ways of thinking inside a society evolves according to the material conditions of that society, and the class who controls the material conditions controls the ideology. This class controls society's ways of thinking for its own purposes, and, in doing so, gets the lower classes to think that the interests of the controlling classes coincide with the interests of the lower classes. The lower classes are manipulated into working and striving for the benefit of the upper classes while the upper classes get more economic, cultural and political power.

Critical theorists began to see a problem with this analysis when, in late capitalism, the upper classes no longer needed to control ideology. For that matter, the lower classes do not even consider participation in the control of society. Instead, they are completely engrossed in consumerist culture. They spend most of their time working, or looking for work, and shopping. Marx's notion of ideology is that it is a barrier to equal participation in social interaction. The condition of the lower classes in late capitalism is an example of the barriers to social interaction. However, there are barriers to social interaction that go beyond manipulation of the social psychology for the benefit of bourgeois control of society. Such examples are racism, ethnocentrism, sexism and

other forms of sectarianism. A more fundamental conceptualization of the barriers to democratic social interaction is required.

Habermas does not give up on Marx's notion of ideology completely. By grounding social interaction on linguistic interaction, he can explain the problems of interaction in late capitalism. As Habermas sees the situation, consumerism interferes with participatory interaction of persons in society. This assessment is in accord with his definition of distorted communication. Like communicative ethics, distorted communication is a normative concept. Relationships ought to be governed by interaction aimed towards communicative action. If, however, a relationship is infected by distorted communication, then the situation ought to be corrected towards a more democratic communication.

V. Conclusion

The purpose of this chapter is to determine a basis for an argument for reparations. I conclude that the basis for an argument for reparations is alienation from the moral community and disenfranchisement from normative discourse. I started the chapter by presenting a concept of social being as developed through interaction in social relationships as opposed to the liberal notion of social being. The concept of social being based on interaction demonstrates that persons are social as they are individuated. And, their socialization contributes to their positions in the moral community. They get their individuation from their social processes of which they are a part. Similarly, humans develop their personality in social interaction and this social interaction contributes to a

social consciousness. In the ideal case, this interaction is facilitated by mutual recognition where as each individual is seen as persons worthy of respect. Individuals are part of the moral community. Their interests and perspectives are recognized and considered in discourse. The just situation here is that all persons have equal access to the moral community.

I continued with an exposition of the discourse ethics to establish standards for a just moral and social order. The interaction through which humans develop their social being is organized linguistically. These linguistic interactions are, in turn, informed by normative presuppositions. This formula includes a commitment to rules of argumentation such that claims and interests put into linguistic form cannot be arbitrarily excluded. These claims and interests have to be judged by the truth value of the claims and the support of the claims. Likewise, no person can be arbitrarily excluded from the discourse and all persons must be able to accept the consequences of the discourse. These principles set the criteria for derivation and acceptance of norms.

Discourse ethics delineates procedures for deriving justified norms that all parties could accept. Any method aimed at deriving norms are essentially communicative in that person who are deriving the norms are reaching an understanding. Any method aimed at deriving norms that stray from the discourse ethical procedures is distorted communication. Thus, as the just state of affairs is an order centered on discourse ethics, any social order that evolved on the basis of distorted communication ought to be corrected to a just one.

The conclusions derived from this chapter become the first premises for the next in which I argue that reparations for African Americans are justified. The African

American Community is alienated from the just social order that I have described in this chapter. This alienation took place over a historical process that I describe in the next chapter as “racialization”. The racialization process contributed to the development of two different lifeworlds in which one, the White community, is dominant in a social hierarchy than the other, the Black community. Members in the respective community do not participate on equal grounds. For the Black community, however, this constitutes harm. The racialization contributes to the diminution of participatory power in social interaction for African Americans; a condition in line with the definition of distorted communication. Reparations are justified because of the distance between the present condition and the condition of a just social order, the situation of a divided lifeworld, and the necessity to repair distorted communication.

Chapter 5 The Transgression and Harm of Racialization: The Deviation from the Just Social Order

I. Introduction

Chapter Four set the philosophical framework for understanding reparations from a discourse ethics perspective. In it I argue that a just social order is one in which all moral persons have full access to moral and social interaction without arbitrary exclusion. The transgression that forces the question of reparations is organized through distorted communication that is manifested in psychological, social or material harm. The victims of this harm in the moral or social relationship do not participate in the interaction on equal grounds, and we can counterfactually assume they would not have accepted the consequences that the actual interaction produces.

A reparations policy would be the resolution of this distorted communication such that it would attempt to extend to the victimized parties the discursive powers necessary for democratic social interaction. Reparative measures apply to any situation in which subjects in a relationship have interests in the participation and the outcome of the interaction but have been denied full participation in and fair benefits from the outcome of the interaction. Along with disenfranchisement from practical participation in social interaction, reparations are also due when harmed parties suffer alienation from the moral community.

With that understanding of reparations from a discourse ethics perspective, one can now work towards discussing the harm that justifies reparations for African Americans. In the abstract, the argument goes; 1) there is a just moral and social order which determines how moral norms are determined such that no one is arbitrarily excluded from

authentic interaction and all person ought to be able to accept the outcomes of the interaction, 2) the oppression, which is violation of this social order, started at the constitutional founding of the nation and persists to today in such a way that the present day community of African Americans are still harmed in both participatory power and exclusion from the moral community and 3) reparations are justified in order to bring the present day community of African Americans into the democratic social order so that they both have the discursive power to participate in the development of moral and social norms without arbitrary exclusion and they can accept the consequences of the products of the interaction. This argument requires demonstrating how oppression contributes to the current lack of participatory power and community integration of members of the African American community. The purpose of this chapter is to do just that.

An understanding of the link between the history of oppression and the current disenfranchisement and alienation is important for thinking about the content of a reparations policy. The emphasis on the loss of participatory power and exclusion from the moral community contrasts with arguments for reparations that emphasize compensation. The victims of racial oppression lost more than property and the chance to attain property. They lost the power to participate in and benefit from democratic social relationships. Arguments for reparations that focus on compensation theorize that African Americans lost a certain amount of wealth due to oppression and argue that this wealth ought to be repaired. But one can return some material thing that is lost during a transgression and still not have repaired the social and moral harm. I make a similar criticism of the argument from the standpoint of equal opportunity by arguing that restoring equal opportunity would not have addressed all of the harms done during the

oppression even if the contemporary lack of equality of opportunity is a product of the historical oppression. A reparations argument ought to address the extent to which the social power and normative acceptance of the offended parties have been damaged by racial oppression.

The arguments for reparations as compensation or creating equal opportunity do have some plausibility. It is true that members of African American community did have their labor exploited without fair compensation throughout the history of the United States, and the legacy of this exploitation continues to adversely affect the community today. It is also true that one of the effects of the history of oppression is a lack of equal opportunity that members of the African American community suffer with respect to the majority society. However, the members of the African American community also suffer from a lack of power in social relationships with respect to the dominant community. In this respect, members of the dominant community lack the appropriate concern for African Americans as members of the moral community. Likewise, members of the victimized group do not experience themselves as members of the moral community. By “moral community,” I mean the collection of beings that have interests, perspectives, desires and attitudes that deserve to be considered with respect when they interact with other members of the community. In Habermasian terms, moral beings have certain participatory powers that connect them in a normative discourse in which their interests, perspectives, desires and attitudes have an influence. The history of oppression has been a history of systematic exclusion of Blacks from moral concern and this has had an effect on the participatory powers of contemporary African Americans. This is the harm that a reparations program must address.

This chapter is concerned with the historical processes that contributed to contemporary harms. In part II, I discuss how oppression contributes to the formation of races, and, in turn, how racialization contributes to the attitudinal and structural divisions that lead to social harm. This oppression works as a racialization process that separate people into racial groups. I discuss racialization in five major periods of United States history (the colonial period, the constitutional period, the Jim Crow era, the civil rights era, and the contemporary era). In each of these periods, racial oppression contributes to ideologies as well as to institutions and structures that continue to affect the present generation of African Americans. In this discussion, I consider the problems of racialization that justifies reparations. Racialization is the process of dividing the moral community into racial groups, and of producing barriers to democratic interaction.

II. Racialization: The General Concept

II.1 The Importance of Racialization to the Reparations Argument

In chapter 4, I concluded that the person of concern in the reparations debate is the social person who is a person constituted through social interaction and interaction in the life-world. From this interaction, the person gets his or her individuality, his or her place in the community, including a sense of being a part of the collective of beings deserving moral respect. Since social interaction is so important to the person, exclusion from social interaction is a significant harm. The purpose of reparations is to repair the harm caused by a past transgression, and, in the present argument this is a harm that bears on social interaction. In this case, the transgression is the process that produced the racial opposition that oppresses African Americans. I use the term “racialization” in speaking

of this process. And, this is the process that leads to the current racial divisions in this society (racialization may take different forms in other societies). These current racial conditions are a complex of oppressive relationships in which African Americans experience insufficient participatory powers. In this section, I illustrate the process of racialization and show how this process led to the subjugated interaction capabilities that are harms deserving of reparations.

II.2 Racialization: The Historical Process

Racialization in the history of the United States has been a historical process of social construction which leads to reduced participatory powers of one social group compared to the power of a dominant social group where the groups are separated due to alleged biological or metaphysical features. In short, racialization is the process that develops races and racial division as an organizing principle of social existence. In the United States, this process contributed to the development of networks of relationships along attitudinal, cultural, economic and political axes contingently organized as racial differences. The process included frameworks of domination in which groups represses and subjugate one or more other groups. The domination typically consists of the one or more groups having more participatory power than the oppressed group. And, in the practical context, domination plays out as the dominant groups benefiting from asymmetric power relationships in political, cultural, attitudinal and economic interaction. Furthermore, the racialization process is often marked by relationships of antagonistic interactions between groups and persons within the groups. Even though

racialization is not always marked by personal antagonism on the individual level, on a group level, races are developed in antagonistic opposition.

In defining racialization, I use the term “axes” to mean the continuum of interaction possibilities from cooperation to antagonism within a certain social sphere. For instance, two diametrically opposing political parties would be represented by opposing valences (i.e. from negative to positive) along the axis. On the other hand, for a collective working for a common goal, there are no poles. The historical process of racialization was oppressive for Blacks along the social axes of cultural, economic, and political interaction. The process affected the extent to which Blacks were accepted as moral beings. The denial of full membership to the moral community further led to the lack of social power to influence social discourse and policy. This translates to the lack of cultural, economic and political power. And, more germane to the concept of reparation, racialization’s contemporary effect continues to limit the full participation of African Americans in social relationships. Further analysis of this phenomenon is appropriate to demonstrate the harm of the historical oppression.

The importance of the process of racialization in the discussion of reparations becomes apparent when one refers back to the formulation of reparative justice. In referring back to the formulation, one can see that a system ought to be repaired when a past transgression affects contemporary relationships, particularly when the transgression violated a previously established just social order. The just social order, in this case, was the constitutional order adopted in the formation of the United States. The Constitution established the normative framework for political and social interaction among members of the new nation. The constitutional order, though it evolved over time, set the terms

and norms for legal and political interaction for members of the nation. The constitution defined the organization of political power, including citizenship, the rights citizens were to have, and how the state was to be established and regulated. Society was to be governed by law rather than arbitrary authority. Likewise, though the constitution allowed for social and economic hierarchy, citizens could not be deprived of their rights without due process. Both the commitment to the rule of law and due process committed the framers of the Constitution and the citizens to the assumption of rationality and universality in social and political discourse. At the point of any conflict with the state or other citizens, a citizen could appeal to the Constitution, and its corresponding principles, of universality and rationality as the basis for asserting his or her rights. It follows that once the citizens adopted rationality and universality as a background to the constitutional and social order, they could not rationally resort to arbitrary action to deny anyone inclusion in the moral and political community. Exclusion due to race, and thus the treatment of African Americans, was a contradiction to the very principles of the Constitution as ratified through a republican process.

The written United States Constitution was contradictory. It embodied the enlightenment principles of equality, liberty, rationality and due process, but at the same time upheld class and racial hierarchies. I take the embodiment of the enlightenment principles as the foundation of the order and the contradictory upholding of hierarchies as the oppressive ramifications of the contradiction. At the beginning of the constitutional order, the oppression had already started. The promise of the enlightenment was unfulfilled.

II.2.1 Racialization in the Colonial Period

The racialization process in the Americas actually started before the constitutional order that transformed the British colonies into the United States. The idea that different people deserve different moral treatment was held by Europeans before English settled the Americas. This notion led to the idea that non-Whites are more suited to exploitation. Put another way, they have less moral protections against exploitation. In the colonies, this fact contributed to the gradual racialization of the economic and social order. Gary Nash talks about the dual nature of race division and economic exploitation.¹⁵¹ This was a reciprocal relationship. While economic exploitation contributed to the racialization process, the concept of race also facilitated the drive for economic exploitation. The notions of race and racial difference grew after the European encounter with Africans in North America and Nash insists that Europeans invented the notion that Africans were not civilized. This invention, he also claims, facilitated the slave trade and exploitation.

Europeans invented the notion of African ‘backwardness’ and cultural impoverishment after the slave trade had deposited millions of Africans in the Americas. This myth served to justify the cruelties of the slave trade and to assuage the guilt of European involved in the largest forced dislocation of people in history.¹⁵²

He further explains how the laws and practices slowly isolated Blacks from the community. Subsequently, the evolution of the laws contributed to the way Whites saw Africans.

Bit by bit they deprived the African immigrant—and a small number of Indian slaves as well—of rights enjoyed by others in the society, including indentured servants. Gradually they reduced the slave, in the eyes of society and the law, from a human being to a piece of chattel property.¹⁵³

The colonialists needed justification for treating certain human beings as exploitable entities. The institution of indentured servitude initially served that purpose. The law provided the justification for free, or low cost, labor for the colonialists. The practice of indentured servitude thrived early in the colonial period. Some people sold themselves into servitude in order to come to the colonies. Others had existing debts and came to the colonies to work off that debt. The laws of the colonies recognized indentured servants persons with rights, however, and eventually, under law, these people had to be freed. And, as the supply of indentured servants dried up and the demand for labor increased, the colonialist turned to chattel slavery. Here, though, the justification for chattel slavery had to be invented, and the process of reducing the Africans to non-personhood through the law and social discourse aided the effort. In effect, racial identity made it easier to justify slavery. And, in turn, the justifications, the structural reality of slavery, and the law contributed to how people thought about race.

As well, the fear of slave revolt contributed to how Whites thought about race which, in turn, also contributed to the racialization process. Enslaved Africans were the “other” whom might want to do harm to Whites. The “other” became dangerous and this added to the moral separation. Slave owners, and colonists in general, knew that enslaved humans did not want to be enslaved. They knew that slaves resented their condition and would want to change that condition at any chance they got.

The movement to annul all [of] the slave’s rights had both pragmatic and psychological dimensions. The greater the proportion of slaves in the population, the greater the danger to white society, for every colonist knew that when he purchased a man or woman in chains he had bought a potential insurrectionist[;] The larger the specter of black revolt, the greater the effort of white society to neutralize it by further restricting the rights and activities of slaves.¹⁵⁴

Slavery slowly adopted a racial character after settlers felt it was more efficient to have African slaves rather than English indentured servants or Native American slaves.¹⁵⁵ And it had a definite racial quality by the time of the revolution and the official start of the constitutional order.

As the institution of slavery evolved, the policies and social rules that restricted the legal and moral personhood of African Americans increased. And this further contributed to how Whites saw people of African descent. The institution was, *prima facie*, one of economic exploitation. Slavery, itself, in its essential conception, is the use of another's body for one's own designs without the other's consent, whatever those designs might be. In the American case, those initial designs were economic. However, the institution took on more of a racialized nature as legal and social norms were adopted to divorce African Americans further from the moral community. This had the effect of making the exploitation of other human beings easier for the liberal society to accept. Furthermore, the evolving racist nature of the institution also stratified society in such a way that working class Whites and poor Whites could feel they had a connection to the hierarchy that Blacks did not. Working class Whites took pride in the fact that they were in the dominant caste. They saw that Blacks were humans that could be enslaved or otherwise did not have the full allotment of rights that they themselves had. So, the workings of the institution of slavery contributed to the racist attitudes of the society.

The institution consisted of the actual practice, the colonial policies that supported the practice and the social psychology and structures that supported the institution. The system of slavery was the institutionalized separation of a certain group of people from

the community of citizens. Instead of treating African Americans as citizens that would be protected by a system of legal and social rules, they were treated as mere beings that could be used or civically ignored. This phenomenon, in turn, contributed to the notion of a separate ontological order; that is, it contributed to the misguided notion that races have an objective reality independent of the social experience of them. The idea of races as different ontological entities contributed to the notion of a normative hierarchy. The perception that groups of humans could be separated into kinds further reinforced the idea of a normative hierarchy in which members of different races deserved different moral protections.

The combination of the colonial policies, social practices and social structures were generated from the racial attitudes of citizens, and, in turn, they contributed to those racial attitudes. The racial attitudes (psychological racism) developed from a reciprocal relationship with racist material conditions and racist policies. The feelings about non-Whites that Europeans already held contributed to the idea that non-Whites could be exploited in a particular type of slavery. Europeans seeing Africans in that particular type of slavery, chattel slavery, reinforced the attitudes of Whites about the particular moral status. Likewise, attitudes about who could be afforded moral respect led to the passing of discriminatory laws. This also led to the general acceptance of the laws and policies by the general society.

A precursor to the institution of slavery as a step in the racialization process was the idea that the 'other' could be denied moral consideration. One can notice this othering phenomenon in caste systems, class systems and colonial relationships in which the oppressing group subjugates another group because of ethnic, religious or language

differences. Throughout slavery, African Americans were essentially seen, in general, as non-persons to be used without any consent. Even freed Blacks did not have full rights and did not have the same participatory power in society as White Americans.

Though the colonial period falls outside of the time period for which one can calculate reparations, the racialization process was already underway. Part of this process was the development of negative racial attitudes which became the focal point for the lack of moral consideration Whites held towards Blacks. Another significant factor was the development of the racial nature of the institution of slavery. The institution of slavery was important because the status of slavery was hereditary, thus, condemning the progeny of slaves to moral, social and after the colonial period, political subjugation. Along with the mistreatment of Blacks, the institution of slavery contributed to the discourse about race and, thus, how Whites saw Blacks. White attitudes towards Blacks during this period were the beginning of the exclusion that would keep Blacks from the moral consideration throughout history. While, it was the United States government and society that set the standard just treatment of persons and protections of rights under the principle of due process, what we can get from the colonial period is the development of the racial attitudes and structures that contributed to the oppression throughout history. This period was the beginning of the racialization process that would lead to an exclusion from democratic social interaction and reduced participatory power for later times.

II. 2.2 Racialization in the Constitutional Order

At the start of the constitutional order (my name for the period from the Constitutional founding of the nation to Emancipation), African Americans were excluded from full

membership in society. First, they could be held as slaves. Also, even if freed, they were not granted citizenship or otherwise provided due process. The Constitution of 1787 promulgated a liberal representative republic in which citizens had standing, participatory power and rights. The members of the constitutional convention, however, accepted the view that Africans and descendants of Africans did not deserve citizenship rights, and worse, could be the property of others.¹⁵⁶

The social realities of the time contributed to the belief of the citizens that Blacks could be treated as less than persons, and thus, they could be enslaved. Furthermore, the citizens did not think that Blacks deserved political protections, and because of that fact, those citizens accepted a constitution that allowed the oppression of African Americans. Along with other oppressions, African Americans were limited in their ability to control their consequences (act freely, use their autonomy, participate in public discussion) to the degree that Whites could control their consequences. As the racialization process continued, the lack of moral concern afforded Blacks limited the life chances of each affected person. Consequently, the limited access to the moral community reduced the developmental chances of the African American community as a whole.

African Americans fared differently in different areas of the country. While southern states maintained slavery from before the establishment of the constitutional order to the emancipation, northern states ended slavery at various times from the 18th century to the early 19th century. The latest known northern state to end slavery was New Jersey, which ended it in 1804 but the institution lingered into 1865.¹⁵⁷ The northern states, however, still participated in the slave economy through trade and shipbuilding.

Furthermore, all of the states had laws that limited the liberties of freed African Americans.

The Constitution is important because with it the United States committed itself to the enlightenment principles of individual rights, autonomy, equality and due process, while at the same time subjugating a class of people for arbitrary reasons. Here is where there is a just social order, albeit only according to the constitution, and a violation of the very same order at the same time. The signing of the Constitution and the period that immediately followed that signing is also important because of its contributions to the racialization process. The main contributions to this process was the legal structures that estranged Blacks from rights, citizenship and just economic interactions as well as the social structures that separated Blacks from dignity and cultural standing. Blacks were less than full moral persons in the eyes of Whites as Whites failed to grant them moral respect. The exclusion from full access to the moral community was a factor in White interaction with Blacks in social and political relationships. From the founding of the nation to Emancipation, slavery was an institution and not merely a factor of individual preference. It being an institution meant that the entire society had to be involved. The social structures reinforced the idea of the non-personhood of Blacks. Social relationships, outside of the slave relationship, had to be segregated. Economic relationships outside, of the slave relationship, had to be dominated by Whites. Thus, churches, schools and businesses could not be integrated. If Blacks could not have moral status, then they could not have political status, meaning they could not vote, sue, petition, run for office or otherwise have political protections. And, after emancipation, the Black population was left without property, economic wherewithal, social and

political education, and equal standing in social relationships. Furthermore, citizens saw Blacks as slaves and began seeing that condition as the natural and moral way of things. And, when the institution of slavery no longer existed, Whites felt that the subjugated condition for Blacks was morally appropriate. This moral attitude contributed to the social exclusion and political disenfranchisement. And, in turn, this contributed to the attitudes about race lingered throughout future stages of United States history.

II.2.3 Emancipation and Jim Crow

The end of the Civil War brought about the end of the institution of slavery and the immediate emancipation of all enslaved African Americans. And later, three amendments to the Constitution seemingly solidified the legal rights of Blacks. The Thirteenth amendment abolished slavery, the Fourteenth guaranteed the civil rights of Blacks, and the Fifteenth granted black men the right to vote.¹⁵⁸ Emancipation and the Civil War amendments did not bring full citizenship to African Americans, however. In fact, southern states instituted a new racialized order by passing a series of discriminatory laws. These laws, collectively referred to as Jim Crow, were different for different states. But, they effectively maintained a hierarchical racial order that oppressed African Americans. From emancipation to the mid-20th century, Jim Crow was the legal and social reality for the southern states. The policies of this legal order had a dual effect. On the one hand, it served as a repressive economic tool to keep Blacks as farm workers, domestics and menial laborers. On the other hand, it served to maintain a particular type of hierarchical society where Blacks were a subjugated caste. As an economic tool, it helped keep the cost of labor down. And, it kept the working class divided so it would

not challenge the power of the bourgeoisie. Furthermore, as the Jim Crow policies and practices limited the opportunities of Black workers to what amounted to menial labor, white workers did not have to fear the competition for better jobs from the black workers.¹⁵⁹

As a tool for maintaining a hierarchical system, it helped to unify poor and working class Whites with the White Bourgeoisie. Their race was a badge of distinction with which they could draw on for pride, racial solidarity and emotional security. These lower class Whites could take solace in the fact that they were White and not Black. They are not oppressed, subjugated or repressed, or at least not so to the extent that Blacks were. They had freedom of movement within society. And, they had full protections of the law. If nothing else, they felt that they had an ontological and moral connection with the White elite. Though non-southern states did not have a systematic set of policies such as Jim Crow, they did have policies and practices that continued to limit the life chances of Blacks up to contemporary times. Discrimination and prejudice were essential features of all areas of the United States.¹⁶⁰

Not only did the Jim Crow era contribute to the attitudinal racism, it also contributed to the structural and institutional racial division that is present today. Those laws and practices prevented African Americans from accumulating wealth that they could pass on to future generations. Likewise, the era contributed to segregated living spaces that kept Blacks from public discourse. Ira Katznelson discusses how African Americans were left out of New Deal policies that benefited much of the white population during and after the Great Depression.

National programs were particularly important when naked discrimination prevailed across the spectrum of public services within the South...Most Black

neighborhoods lacked paving and lighting. Public employment and access to local and state programs of relief offered whites and blacks starkly different levels of opportunity and support.¹⁶¹

The examples of the New Deal exclusions are often overlooked in the academic discourse on the Jim Crow era because other examples of discrimination and segregation might seem more vicious and news worthy. During the Jim Crow era, violence and intimidation were some of the tools used to keep African Americans subjugated. Lynching was a common method for keeping African Americans terrorized.¹⁶² And this violence sometimes came in the form of full scale pogroms such as with the riot at Tulsa, Oklahoma.¹⁶³ This violence was an intensified projection of the exclusion from the moral community as Whites, for the most part, had no obligation to the moral personhood of Blacks. Along with the systematic disdain that white society had for Blacks, it was understood that a hierarchy that Blacks were obligated to respect. The violence often took place after a Black person flouted some boundary of the moral, social or political hierarchy.

The violence and intimidation contributed to the lingering attitudinal racism. On the one hand, it contributed to the exclusion of Blacks from the moral community. It reinforced the notion that Blacks are non-persons who can be subjected to violence. On the other hand, it served as a tool to keep African Americans from fully realizing their social and political potential. The lingering racial attitudes of the Jim Crow era should not be overlooked. These attitudes that were developed during Jim Crow and other eras infect the social relationships today.¹⁶⁴

However, Jim Crow also had a deleterious effect on the social and political structures that prevent African Americans from fully participating in democratic ways.

During this time, racial segregation prevented the social and political discourse required to develop mutual understanding about social and political problems. The harm of this arrangement fell on Black people. Though, the Civil Rights campaigns changed the legal landscape, they did not address the racial psychology nor the segregated institutions and spaces. Thus, the racial oppression of one era continued in different forms in the next era.

The Jim Crow era is important because the current problems are direct results of the policies and ideas of that period. The legal segregation of that period devolved into the de facto segregated spaces of today where schools, neighborhoods and work places are still predominately segregated. The discrimination of that period leads to the institutional and structural racism of today. And, the economic racism of the period leads to the economic inequalities of today. And, all of this leads to the lingering oppression.

II.2.4 Racialization after the Civil Rights/Post Jim Crow Era

The Civil Rights movement culminated in laws such as the Civil Rights Act, Voting Rights Act and the Open Housing Act¹⁶⁵ being passed that ended legalized segregation and discrimination; effectively making discrimination illegal. However, the changes brought about by the movement did little to abate the systematic separation of the races that result from racialization. Both racialization and its effects continued. While African Americans got the security of legal protections, they were not fully afforded moral regard and they did not enjoy rights of full political participation. They were granted full citizenship protections but did not have the security of full actual citizenship. Joe Feagin points out that despite the victories of the Civil Rights era a significant percentage of

Whites maintained negative attitudes.¹⁶⁶ These racial attitudes contributed to segregationist and discriminatory actions that could not be adjudicated by law. For instance, the society remained segregated even though it was not legally enforced. Whites tended to move away from Black population areas. And, through a system of extra-legal methods, they prevented many Blacks from moving into white neighborhoods. People's economic and cultural opportunities depend on where they live and the associations they obtain. Because of the fact of de facto segregation and the persistent negative racial attitudes, Blacks continued to have reduced opportunities in the public sphere. These facts demonstrate that the Civil Rights Movement failed as a remedy to the problems of racialization.

The laws that were the products of the Movement reinforced African Americans' legal status as citizens. But it did not ameliorate the subjugated social interaction and lack of participatory power that racialization engendered. The attitudinal, institutional and structural racisms that the Civil Rights movement failed to resolve are direct causes of contemporary racial oppression. The racial animosity lingered, and this affected African American's position in social and political interaction.¹⁶⁷ The segregated social institutions and spaces changed slowly if at all.¹⁶⁸ This segregated reality hampers the democratic participation in social discourse. And, they still do not have the participatory power equal to that of members of the majority.

II.3 Racialization and White Identity

Now I will investigate how the development of white identity produces barriers to social interaction that harm African Americans. This identity developed through historical

processes that have a contemporary effect. White identity developed from a parallel but inverse process of racialization to Black social identity. The oppression of Blacks produced to subjugated position in the social hierarchy and produced a dominant position for Whites. And this development contributes to the oppressive social interaction that prevents authentic communication. George Lipsitz, in his article “The Possessive Investment in Whiteness,” details how the White race is constructed and what it means to be White. He talks about the development of Whiteness when he says “More than the product of private prejudice, whiteness emerged as a relevant category in American life largely because of realities created by slavery and segregation, by immigration restriction and Indian policy, by conquest and colonialism.”¹⁶⁹ The policies and social practices that isolated the African Americans into the Black race also isolate Whites into a race. He says “American economic and political life gave different racial groups unequal access to citizenship and property, while cultural practices including wild west shows, minstrel shows, racist images in advertising, and Hollywood films institutionalized racism by uniting ethnically diverse European-American audiences into an imagined community—one called into being through inscribed appeals to the solidarity of white supremacy.”¹⁷⁰ The convergence of policies and cultural life worked together over time to construct the elevated social position of people called White over people thought of as non-White. One can see why Whites begin to take this elevated position for granted, accept it, and further, fighting to maintain it. Along with the economic and political power benefits, this could also contribute to a heightened sense of worth and entitlement.

The possessive investment in whiteness means that White people get benefit (economic, political, and cultural) from being White and this benefit comes from the

history of racialization. White people are invested in this hierarchy just by being White; they possess shares in Whiteness. Lipsitz suggests that the process followed the same path as the racialization of Blacks and other minorities but with the opposite results. He says, “From the start, European settlers in North America established structures encouraging possessive investment in whiteness.”¹⁷¹ He recounts the series of political and social policies and legal actions that contributed to the process. This includes: attacks on Native American lands, the institution of chattel slavery, restrictions on naturalized citizenship, and Jim Crow segregation.

Structural violence played a major role in the historical process of racialization that contributed to the development of both the black and white identities. The structural violence is the harms done to the African American community because of the structures of society. These harms include the limitations to achieving fulfilling social existences as well as problems for persons in fulfilling their basic needs. The structural violence also impeded personal aspirations for being included as full members in social and moral interactions. For instance, African Americans were limited in what relationships they could participate in. Their churches and other associations were segregated. The structures include the political structure where African Americans were legally and extra-legally limited in how much they could participate in policy making. They include the cultural structure in which African Americans were segregated away from the majority population and otherwise could not participate with others in society to the degree that everyone could. They also include economic structures in which African Americans were segregated in their employment opportunities and excluded from other economic opportunities.

The implicit violence was the subtle and explicit coercion used by Whites to keep African Americans in their alleged social place. The explicit coercion came from groups such as the Ku Klux Klan that were formed shortly after the Civil War in order to terrorize African Americans into succumbing to the racial order. The KKK backed their coercion up with actual violence. Along with the explicit coercion, there was the subtle coercion of the economic and political system. In the economic system, since African Americans were limited in their economic opportunities, they were coerced by the threat of poverty. Also, African Americans were expected to show undue deference to their White counterparts because of the hierarchy that Whites felt was justified.

This construction of whiteness contributes to the animosity that lingers despite the victories of the Civil Rights movement. This animosity has a real effect on moral, cultural and political discourse. People are less likely to take up the perspectives of those they feel antipathy towards. Thus, they would be less likely to enter into moral, cultural and political discourse that would address the problems and concerns of others. Along with this lingering animosity, possessive investment in whiteness is engrained in institutions and social structures. This construction of whiteness contributes to the normative divisions that keep people from democratic discourse. And, this is also what reparations ought to address.

II.4 Contemporary Impact of Racialization

Racialization, because it is the process of racial construction, leads to the contemporary racial differentiation of power relations. The differential power relations are an anathema to a just democratic order. In this phenomenon, members of different races have limited

discursive contact along the social axes. While the lack of discursive contact is problematic because it violates the democratic requirement for social interaction, the effects of racialization are also a problem because it contributes to the oppression of African Americans. The discursive separation in cultural, economic and political spheres hurts Blacks because racialization has left them vulnerable. Additionally, racialization created a white life world organized around whiteness as a dominant culture that oppressed African Americans.

The importance of racialization to the reparations debate can be summed up in the following way. The racialization process separated groups along social axes and prevented the members of the different groups from seeing each other as persons deserving of equal consideration. The process contributed to the development of a hierarchical system between the groups such that one group oppressed the second group. As such, it contributed to the contemporary hierarchical arrangement of society. This arrangement translates to a network of disproportionate power relationships that end up being oppressive for African Americans. African American values and perspectives are not taken into consideration to the extent of as does white values and perspectives. They do not have the same ability to influence their outcomes as Whites can influence their outcomes. While considerations of values and perspectives have immediate effects on who gets consideration for membership in the moral community, such considerations have public effects on both who has influence in cultural, economic and political discourse and the outcomes from those discourses. In short, the contemporary hierarchical society prevents democratic communicative relationships between members of these disparate groups. African Americans are negatively impacted by this social

situation. Thus, racialization is the transgression that one has to consider in a corrective justice formula. A reparations policy would remedy the effects of racialization, the racial separations in social interaction.

II.5 Du Bois and Racialization

The above exposition of racialization and its historical effects can be thematized as a series of oppressive relationships that lead to relationships of alienation, disenfranchisement and subjugation. The result is that one group, the historically dominated group, is systematically denied participatory power in current social relationships. During the process, as illustrated in the section “Racialization: the General Concept”, African Americans were systematically denied authentic democratic participation and access to a moral community. Consequently, this process resulted in more barriers to authentic communication by, on the one hand, erecting structural barriers to communication and, on the other hand, by contributing to the current racial attitudes of mis-recognition. The structural barriers are the limitations to interaction along certain axes that keep Blacks from democratic communication. These structural barriers are part of the effects of historical oppression that I discussed in that section.

As pointed out in chapter Four, Habermas provides an abstract foundation for a just moral and social order with the discourse ethic. However, while accepting the abstract analysis of normative foundations, one must acknowledge that Habermas does not give a thorough conceptualization of race and racism that can give context to the historical process of racialization explicated above. The foray into conceptual analysis of race and racism is important to the discussion of historical oppression and reparations

because of the real-world effects of oppression and the practical nature of reparations. This harm not only affects the abstract normative relationships, but it also impedes the victims' participation as full members of community in which persons see themselves as having the ability to express their wills in society in relationships of mutual recognition.

As such, a conceptual elaboration of the historical perspective is necessary for a clear understanding about the harms done to the African American community. To find such contextual understandings of racialization and its effects on African Americans, I turn to W. E. B. Du Bois' work *The Souls of Black Folk*. In this work, the author addresses the concept of racialization through his analysis of double consciousness. In this analysis, he studies how the interaction between Blacks and Whites in oppressive relationships contributes to a racialized social consciousness that reflects racialized interaction. His approach draws on his own sociological research into the lives of Blacks in the late 19th century, where he saw that African Americans strived for respect and the participatory power to flourish in society, but were blocked by the limitations imposed on them by racist practices and institutions.

Along with these empirical studies, his analysis is grounded on the theory that one's consciousness develops through interaction with others, when one sees oneself reflected in these interactions. Similarly, social consciousness develops through the interactions of everyone. Every person in the interactions uses the memes, symbols and values that develop out of social interactions. In this process, ways of interacting and ways of thinking come to the fore. Through the particular social conditions that Du Bois studied, he saw that Blacks longed for personal self development and saw themselves as persons who deserved this development. Consequently, by seeing themselves in that way

and interacting amongst themselves in that discourse, their collective consciousness developed around those experiences. However, Whites, in general, saw Blacks as inferior beings (and beings worthy of oppression) who were undeserving of access to a moral community. Because of this interaction with Whites and the racist social structures, Blacks saw themselves in the eyes of the dominant class; as a subjugated class of people. And, this insight contributed to how they interacted in society, and this interaction, further contributed to how they saw their positions in society. Thus, they had a dual consciousness; one in which persons are worthy of social and self fulfillment, and the other as second class moral beings.

Du Bois gives his explanation of how racialization constructs a dual development of social being in *The Souls of Black Folk*. He discusses how Blacks see the world from how they see themselves and how they see themselves through the perspective of the racist white society. In the introduction to the 2005 edition, Henry Louis Gates, Jr. talks about this in terms of bifurcation. He quotes Arnold Rampersad,

The most important concept of the work [talking about *Souls of Black Folk*] reflects Du Bois' sense of dualism. The 'souls' of the title is a play on words, referring to the 'twoness' of the black American: 'two souls, two thoughts, two unreconciled strivings...in one dark body, whose dogged strength alone keeps it from being torn asunder.' [*Souls*] The Black possesses 'no true self-consciousness' but a 'double-consciousness,' seeing himself only as perceived by [W]hites through the veil.¹⁷²

Du Bois uses the philosophical concept of soul, as consciousness, and Gates claims that he "transformed the psychological concepts and made them serve as metaphors for the fundamental conditions of black American citizenship."¹⁷³ The dual consciousness comes from the two perspectives from which African Americans see the world and how that world helps to develop their consciousnesses.

Du Bois puts it this way, “It is a peculiar sensation, this double-consciousness, this sense of always looking at one’s self through the eyes of others, of measuring one’s soul by the tape of a world that looks on in amused contempt and pity.”¹⁷⁴ Here, Du Bois understands the consciousness to be the ‘self’ and this self develops from its interaction with the world and other selves. The life-world was split into a black world and a white world. Blacks interacted in both worlds as they strived for self realization. In the Black world, the opportunities for self-realization were limited by racism. And in the White world, Black self-realization was thwarted by Whites perceiving Blacks as beings that ought to be subjugated, repressed and oppressed with their personhood ignored. The White world interacts with Blacks with segregation, discrimination and subjugation in general. In this dual world, Blacks see themselves in terms and values used by the oppressor. The bifurcated social consciousness developed through the bifurcated world in which social interaction was mediated by racialized development.

This development of the self is historical in that it takes place through interaction over time. Du Bois says, “The history of the American Negro in the history of this strife, -- this longing to attain self-conscious manhood, to merge his double self into a better and truer self. In this merging he wishes neither of the older selves to be lost.”¹⁷⁵ This consciousness develops over a history, and for the African Americans, it develops over a history of slavery, Jim Crow, economic, political and legal neglect from the greater society. He also stresses that the historical process is a process driven by Blacks striving for equal participation in conscious development.

In discussing the independent self and collective self-development, Du Bois borrows from Hegel’s work in the *Phenomenology of Spirit*¹⁷⁶ by using parallel

concepts. The first of the parallel concepts is Du Bois' notion of 'striving' and Hegel's notion of 'desire'. Du Bois' analysis of this development is facilitated by his analysis of the notion of 'striving'. Striving is trope that Du Bois uses to talk about persons working towards fulfilling aspirations. He thinks that persons have a drive for self development. For Hegel, "self-consciousness is Desire."¹⁷⁷ That is, self-consciousness wants acknowledgement of its own existence. Hegel uses the term 'desire' to give it an emotional bent in order to allude to the idea that self-consciousness has a strong "emotional" stake in its own existence. However, it is not emotional in the narrow sense; instead, the desire is an essential feature of human self consciousness. The self satisfies its desire for existence by subsuming objects of knowledge. The objects are for it (the self), by subsuming the object, the self reaffirms its status as being for itself. Being for itself means that the self exists for itself, it uses its rationality and other abilities for itself, and no other thing can use the self. Du Bois follows Hegel in this understanding when he uses the concept of "striving". For Du Bois, "striving" represents the person's real struggle to be in the best possible place in social relationships. The person wants to exist as a social person and wishes not to be used as objects by others.

The next parallel between Du Bois and Hegel is the self-development from the interaction with other selves. For Hegel, once an object is subsumed by the self, it can no longer affirm the existence of the self; it becomes a part of the self in itself. So, the desire continues until the self encounters another self.¹⁷⁸ The other self cannot be subsumed because it has its own experiences, its own rationality, and its own desire; it is for itself. However, the self is continually reaffirmed from the other self because it cannot subsume it. The self is 'negated' (it is not of the other self), it is challenged, and it

affirms or denies the other self's experiences. Thus, as Hegel says, "Self-consciousness achieves its satisfaction only in another self-consciousness."¹⁷⁹ Du Bois mirrors this point in his parallel ideas; one the "double consciousness, this sense of always looking at one's self through the eyes of others"¹⁸⁰ and the other "the longing to attain self-conscious manhood, to merge his double self into a better and truer self."¹⁸¹ This merging of the selves proceeds through equal participation in consciousness development. For Du Bois, this would come about through mutual recognition by all parties as they interact as equals in relationships.

The third parallel between Du Bois and Hegel is Du Bois' mirroring of Hegel's idea of the duality of lordship and bondage with his idea of double consciousness. Hegel uses the allegory of lordship and bondage as way of showing how self-consciousness is not fulfilled when one consciousness is subsumed by another. In the allegory, he tells of a struggle for both consciousnesses for survival and to affirm each of their existence; that is, they both have a desire to stake a claim to existence. Each stakes its claim to existence by affirming itself for itself while subsuming all other things for itself. When one consciousness, fearing extermination (death) by being subsumed by the other, submits itself to the other, it becomes for the other. In the process, the lord fulfills its desire of affirming its existence. The servant becomes a thing for the lord, and its consciousness is subsumed.¹⁸² This process would be contrary to authentic development of the self. The lord's consciousness is only fulfilled for the moment; otherwise, it continues to be unfulfilled. It would not have the other to reaffirm its existence. The lord would not be challenged by the servant, and thus, the Lord cannot learn through dialectical exchanging

of ideas. The servant's consciousness gets subsumed and cannot be fulfilled. It would see itself as an unfulfilled consciousness and as a mere object to be used by the lord.

Du Bois considers the condition of African Americans and sees that they have subservient roles in determining their own existence. On the one hand, their existence is for them as they strive for better social conditions and cultural interaction. On the other hand, their existence is for the dominant population as they experience their lives as being dominated by white society. Having their existence subsumed, Blacks are seen by Whites as objects for Whites to use, oppress or ignore. Like Hegel, Du Bois sees consciousness as striving for development through interaction. And, like Hegel, he sees that both the dominant white consciousness and the dominated black consciousness both are unfulfilled. Du Bois makes reference to Blacks and Whites working together for a better society, "in order that some day on American two world-races may give each to each those characteristics both so sadly lack."¹⁸³ The allusion to racialism, the idea that races have particular characteristics specific to that race, in this comment is unfortunate. However, another interpretation of the passage could be that the reference to character traits of races should actually be referenced to individuals, and this would mean that each individual has something to give to the interaction. By dominating the Black community and excluding its members from equal moral consideration, the white community can not benefit from the interaction with members of the Black community, and thus, cannot join in with Blacks to attain the teleological goal of true consciousness development. The other, Blacks, do not reaffirm the consciousness of the Whites in a dialectical way. Black self-consciousness, also, cannot be fulfilled because they do not share in self fulfilling interaction with Whites. In the end, this arrangement is inauthentic interaction.

As with Hegel, for Du Bois, part of self development comes from personal development which a person has the freedom of creative self expression, and part of self development comes from self expression in public life. The latter grounds his view, theoretically, on his Hegelian background and, scientifically, from sociological studies as portrayed in *Souls*. From his studies, he sees black people attempting to use their creativity, freedom, ingenuity, and intellect only to be stymied by the attitudinal and structural racism. The goal of the striving is a 'better and truer self,' which one could interpret as self realization, aspiration or something akin to Marx's notion of free development. One would aspire to whatever the person's creativity, intellect or ingenuity would accommodate. There is an individual component to the striving; a person strives for his or her own self development. And, there is a collective component; a collective can strive together as each person participates in striving. If participants are striving, then their strivings take part in the collective discourse along with other persons' strivings. Persons work within a particular social arrangement (a life-world) with their own creativity, perspectives and interests to both contribute to their own development and the collective development. As the collective develops, it presents new perspectives, ideas and tools (figurative and real) for persons to use in their further development.

Both Hegel and Du Bois take self development and, by implication, social consciousness development as a historical process. At any moment in the process, the persons see the world from the particular historical perspective derived from a particular historical process. The condition of the contemporary African American community is a product of the historical process. From this, one can conclude that the African American

community is what it is because of the historical process. The perspective is part of the social consciousness.

While the foregoing is a descriptive explanation of social being and social consciousness, this analysis also has a normative aspect. In short, consciousness development in the bifurcated world is unacceptable. It is harmful to Blacks because it inhibits their capacities as it impedes their striving for true self development. Du Bois points to a cultural democracy in which all parties have equal participation. He says, “This, then, is the end of his [Blacks] striving: to be a co-worker in the kingdom of culture, to escape both death and isolation, to husband and use the best powers and his latent genius.”¹⁸⁴ The oppression is also harmful to Whites because it keeps Whites from being full moral beings, and it keeps them from benefiting from the conscious development of Blacks. To quote Du Bois,

...all striving toward that vaster ideal that swims before the Negro people, the ideal of human brotherhood, gained through the unifying ideal of Race; the ideal of fostering and developing the traits and talents of the Negro, not in opposition to or contempt for other races, but rather in large conformity to the greater ideals of the American Republic, in order that some day on Americans soil two world-races may give each to each those characteristics both so sadly lack.¹⁸⁵

In this passage, Du Bois means that cultural interaction ought to be democratic in that participation in this interaction should be open to all who can participate without arbitrary exclusionary criteria. Likewise, the benefits of the cultural interaction should be distributed democratically in that those benefits should not depend on arbitrary criteria. Du Bois derives an understanding of true consciousness by analyzing the bifurcated one. This bifurcated consciousness leads to suffering and angst and opposes true freedom and creative self expression. He suggests that African Americans really want (their spiritual

strivings) a complete consciousness that interacts with others as equals, and this interaction leads to mutually beneficial development. He says;

He [Blacks] would not bleach his Negro soul in a flood of white Americanism, for he knows that Negro blood has a message for the world. He simply wishes to make it possible for a man [Blacks] to be both a Negro and an American, without being cursed and spit upon by his fellows, without having the doors of Opportunity closed roughly in his face.¹⁸⁶

True conscious development is cosmopolitan and democratic insofar as a full range of disparate ideas and practices are needed for individual as well as collective development. To alienate different individuals into isolated groups who do not have full access to interaction is destructive to all individuals. Ideas would not be tested, thus stalling further cultural evolution, and new ideas would not be allowed to take part in collective cultural interaction, thus hampering advancement. The above passage also points to the aspiration of Blacks for full access to participating in cultural interaction. The ‘opportunity’ in the quote has two meanings. One meaning is opportunity for economic and social development which the African Americans that Du Bois studied for *Souls of Black Folk* lacked and desired. It also means opportunity for self realization as members of a collective that sees one as equal participants in interaction.

Du Bois’ social theory is predicated on the development of social consciousness. And, social consciousness develops through social interaction towards collective and individual fulfillment. One finds this in Du Bois discussion of the notion of spiritual striving. Racialization, then, is the movement of social consciousness in the wrong direction due to racial oppression. The connection of racialization to social interaction is an important move because it links the control of the discussion of values and meanings to a dialectical process. For Du Boise, interaction is how people transmit ‘spirit’ or the

content of social consciousness throughout the collective. And this process is impeded by racial oppression.

Du Bois' approach is beneficial to the discussion of racialization because it adds a conceptualization of race and racism to the debate that Habermas does not get to with his discussion of communicative action alone. While discourse ethics is concerned with persons' interests, perspectives, and historical context, it is still too abstract to deal with the ramifications of racialization by itself. Du Bois problematizes racialization in an appropriate way when he shows how the unequal social interaction, and thus, double consciousness hurts African Americans' in their attempt to fulfill their social aspirations. The limitations of this analysis, however, is that while successfully connecting social being with participatory self-realization, it lacks the conceptual normative foundation that one finds with Habermas' discourse ethics. Du Bois argument for the normative case depends on the benefits of mutual conscious development for all parties. His argument follows from two major steps. The author makes a teleological move similar to one that Hegel tries to establish with his dialectic. Hegel makes reference to a true consciousness that is the end result of mutually reciprocal interaction. The true consciousness is one that is part of a dialectical relationship in which all parties "...recognize themselves as mutually recognizing one another."¹⁸⁷ It is one which develops through mutual recognition of other consciousnesses. Du Bois takes up this idea in his notion of "Kingdom of culture" in which authentic cultural relationships allows all who can participate in cultural interaction to participate, and no one is excluded arbitrarily. He says, "This, then, is the end of his [Blacks] striving: to be a co-worker in the kingdom of culture, to escape both death and isolation, to husband and use his best powers and his

latent genius.”¹⁸⁸ As co-workers in the kingdom of culture, Blacks would participate in social relationships on equal grounds with shared values and aiming towards shared ways of living. Furthermore, being equal participants in cultural relationships, Blacks would also transform their “double [selves] into better and truer [selves].”¹⁸⁹ This notion points to the idea that there is such a thing as a truer self. And, this truer self is a self that is in mutual relationships with other selves. This move suffers from a lingering metaphysical gap that the author fails to close. Du Bois, like Hegel, does not provide an argument that explains the existence of a truer self, or an authentic “kingdom of culture” in which a truer self is supposed to reside.

The other step is to appeal to the enlightenment principles that have already been accepted by the United States society. These enlightenment principles are what Du Bois alludes to when he says “The greater ideals of the American Republic.”¹⁹⁰ He means ideals such as the same liberties that any other person might have, such as the rule of law and equal protection of the law. While he appeals to these ideals, which demarcates an individualistic atomistic person, he only uses them as links to his true idea of a social person; one that develops by creatively and freely taking part in cultural interaction on equal grounds as everyone else.

While the author fails to develop an adequate normative foundation for his notion of dialectical striving for self development in collective development, his explication of Black oppression in *Souls* provides conceptual augmentation for understanding racialization. In doing this, he demonstrates how the social estrangement that follows from the structural violence, cultural oppression and alienation became a barrier to the full participatory development of African Americans. In effect, this estrangement over

time is the racialization that separates African Americans from the discourse community. And over time, this history of separation leads us to our present social condition of oppression.

III. Conclusion

The purpose of the preceding discussions is to characterize the offense (transgression) that would justify reparative policies. In this characterization, I contend that the offense that leads to the harms of contemporary society is the process that produced the moral and social subjugation that prevent equal participation in social relationships. I call this process racialization because it is the process that constructs races. And, it is an offense because it is a process that produces the chronic separation of people from authentic democratic participation in social interactions. And it produces harm because it results in social relationships made of barriers to moral, social and political discourse which subjugates and oppresses African Americans.

Racialization is a process of the development of races and, in turn, it is the development of networks of hierarchical relationships along attitudinal, cultural, economic and political axes in which dominant racial groups benefit from the subjugation of dominated groups. These attitudinal, material and structural components presaged the racial attitudes, material conditions and structural schisms one sees in contemporary racial relationships. This racialization culminates in African Americans being alienated from full membership in the moral community and reduced participatory power in social discourse.

A discussion of the history of oppression is essential in defending the claim that racialization is the offense of concern. The offense of concern is considered with respect to a historical moment wherein there is a separation from a just condition. The just social order in this analysis is the constitutional order that was adopted by the United States once it began using universal principals and rationality as a background of social interaction. The process separated African Americans from the social benefits of being included in the protections of the constitutional order.

The offense had started when the society set itself up as a society based on the universal principles of freedom and equality. However, the racialization process spanned distinct eras in history. It started before the founding of the republic in the colonial period. Race in the colonial period started out as a simple belief in alleged races and the belief by Europeans that their race implies a superior moral status without real political significance. It evolved to a brutal hierarchy of races where African Americans were dominated in moral, political as well as economic spheres.

The constitution established the rules for treating humans under its purview. However, African Americans were excluded from these protections from the outset since the law did not protect them from being enslaved. And, even free Blacks did not have equal protections. During this time, another set of ontological distinctions began to be developed. Whites developed notions that they were citizens who were defended by law while they began to see Blacks (even freed Blacks) as “the other” who had few if any rights.

Emancipation brought about a change in the racialization process but not the freedom and equality that the constitution promised. It did not bring about full equality

to African Americans. Hierarchical racial orders permeated the social discourses and solidified the separations in social structures and institutions. As well, racialization took a different turn after the Civil Rights/Post Jim Crow era. Though the Civil Rights movement culminated in the end of legalized discrimination and segregation, it did not usher in an era of equality in social interaction. The systematic separations continued, if not in the legal sphere, definitely in other major social spheres. Throughout all of these stages, there were different levels of disenfranchisement and alienation. The disenfranchisement and alienation of one stage contributed to the oppression of the succeeding stage. In all of these stages, Whites, in general, did not see that it was necessary to allow Blacks to benefit from social prosperity because they did not see Blacks as part of the collection of beings deserving of equal moral respect. And, because they did not see Blacks as part of the moral community, they refused to completely tear down the attitudinal and structural barriers to democratic participation.

I conclude that the process of racial construction leads to the contemporary exclusion in social interaction and differentiation in discursive power. The process shapes how persons think about racial interaction. And, it leads to schisms in power relations in social structures and institutions. African American values and perspectives are not taken into consideration to the same extent as White Values and perspectives. This phenomenon affects who deserves moral consideration as well as who gets to use power in social and political interactions.

Racialization results in harm because it results in normative barriers to authentic social interaction. As such, it harms because it leads to African Americans being denied equal access in the moral community. That is, it limits African American a place in the

community of moral persons in which each person is recognized as beings with interests, desires and perspectives that are worthy of being considered in moral discourse. As well, it harms because it produces barriers to practical communication (political, cultural, and economic). These barriers to practical communication follow from the exclusion from the community of moral beings. In Du Boisian terms, it blocks the spiritual strivings of beings who want authentic participation in social interaction. Beings that are not considered moral persons do not have to be considered in political, economic and cultural deliberations. However, there is a reciprocal element to this dynamic. As the explication of the history of racialization demonstrates, people's understanding of their relationships in interaction is reflected from what they experience in those relationships. As Whites saw Blacks in the oppressed social positions, they tended to see them as less deserving of moral consideration. This phenomenon, in turn, made it easier to accept oppression of fellow humans.

One of the theses of chapter four was that the social being is a being that develops through social interaction. This thesis stands in conjunction with the other thesis that argues that development through social interaction ought to be grounded in democratic principles. That is, the development of the social person through non-democratic (oppressive, tyrannical, ideological or coercive) processes would be wrong. This chapter, on the other hand, investigates the possible harm that would necessitate reparative policies by delving into the undemocratic evolution of social relationships that contributes the formation of contemporary social relationships. Given the notion that social personhood develops through social interaction, and the notion that personhood development through non-democratic processes could constitute harm, one can determine

if such processes are harmful or just. Furthermore, one can determine if such processes result in conditions that would justify reparations. The historical process of racialization is such a process. It resulted in an undemocratic situation in which a group of people are alienated and subjugated because of historical factors. Thus, racialization is the transgression that damaged the normative relationships, and the racial divisions are the harms that are to be considered for repair.

To this point, then, I have assessed the major premises for a reparations argument. I have considered the conceptual background for reparations in particular and corrective justice in general in the second chapter. I have analyzed the major contemporary reparations arguments and concluded that they are inadequate in dealing with the real harm to the African American community. I determined that one of the problems with the prevailing reparations arguments was that they misunderstood the being of the social person. Those arguments took the social person to be atomistic and alienated that deserves reparations in an individualistic way. I argued in chapter four that the social person is socially oriented through interaction. Along with this socially oriented concept of the social being, I argued for a just social order that gets its legitimation via democratic distribution of power and benefits. In this chapter, I argued that the transgression of racialization resulted in the harm of reduced participatory power in social relationships for the present generation of African Americans. And, in the next chapter, I argue, given the justifications of the previous premises, that reparations for African Americans are justified in order to repair their justified place in social relationships.

Chapter 6: Conclusion: From Oppression to Democracy

I. Introduction

In this chapter, I turn to the conclusion of my argument for reparations for African Americans. The argument begins with reparations as justified after a transgression violates a just social relationship. The racial oppression that African Americans suffered was a violation of a just social order. It is a violation of the normative and practical rational discourse that ought to have taken place, and it is a violation of the constitutional order that was adopted for the nation and that assumed universal and consistent principles of justice. Racialized oppression violated the abstract universal norms of a just social order embodied in the historical constitutional order. This historical oppression, furthermore, affects contemporary discourse in a way that leaves African Americans at a disadvantage in the social discourse. And, this disadvantage is contrary to the abstract universal order grounded in discourse ethics and the constitutional order which ensures equal protection under the law, equal access to the laws, and equal representation in democratic institutions. Thus, reparations are justified in so far as the history of oppression was a violation of democratic normative expectations throughout history and it causes damages to contemporary democratic participatory possibilities. After I review the premises that I defended in the foregoing chapters, I connect those premises to my conclusion for reparations.

I began my argument with a development of a notion of corrective justice that is appropriate for the contemporary problem of reparations. I start the derivation of an appropriate notion of corrective justice by analyzing Aristotle's notion of the concept and

thinking about the elements necessary for the concept. The elements of the formula for corrective justice consist of the initial just social order, a transgression, the resulting harm, a victim of the transgression, the transgressor and a policy of correction or repair in which the transgressor takes steps to repair harms one to the victim. In this conception, reparations are justified because a just order was disrupted.

The just order, or just social arrangement, is just according to the system of rationality deemed good for that arrangement. If a person disrupts that situation by damaging or taking the justly distributed goods of another person, then the person who caused the harm is responsible for restoring the just distribution. Though Aristotle considered many aspects of a just order such as property, rights, honors and other goods, contemporary discussions of reparations have concentrated on property as the subject of reparative policies. I consider the feeling of harm and disrespect that must also be addressed, as discussed by Rodney Roberts and Axel Honneth. I also discuss how groups might be harmed and how groups are obligated to repair.

I continue the discussion of reparations by reviewing the most cogent arguments for reparations to date and discuss why a further contribution is needed. After considering arguments by Boxill, Thompson, Lyons and others, I conclude that their contributions are inadequate because they fail to consider the full extent of the harms caused by racial oppression. They emphasize harms that might be done to individuals without considering harms done to the persons' participatory power in social relationships. The individual harms, to property and person, contribute to the harm of social participatory power. Another problem with their arguments is that they take an

atomistic view of the social person. I argue, instead, that the proper approach is to understand the individual person as acquiring its being through social interaction.

After one understands the being of the social person, one can then understand the person's place in the abstract just social order. I derive my notion of the social person from Habermas's discussion of Hegel's "Labor and Interaction" and Habermas's explication of interaction in the life-world. And, I ground my notion on the just social order on the discourse ethic in which Habermas grounds normative interaction on linguistic interaction.

On this view, the just social order is based on the notion that the person is a social person in social relationships that are governed by principles of democratic participation grounded in the rules of linguistic interaction. However, the subject of reparations pertains to a historical social order and not merely an abstract one. The just social order in this case, is the constitutional order that, in principle, was designed to extend rights and protections to all persons without arbitrary adjudication. Throughout the history, however, African Americans have been denied equal access to this social order due to a process of historical oppression that I am calling racialization. They are alienated by the way that race is social constructed. And, the effects of this social construction linger as undermined social participatory power.

Thus, reparations are justified because racialization has undermined the social participatory power of African Americans, and they are due equal social participatory power with the majority population. I have defined the just social order as one that has historical grounds in the constitutional order and is guided by the abstract social order of mutual recognition and democratic participation and benefit. The victims of this

particular transgression are those who have reduced participatory social power because of the unjust social status due to racialization. The transgressors in this formula are the people who developed the policies of oppression, maintained and enforced these policies and benefited from these policies throughout history. Thus, it is this collectivity that must repair when persons are harmed with respect to those principles. And, lastly, I conclude that it is the collective society owes African Americans equal participatory power as reparations for the transgression of historical oppression.

II. The General Notion of Reparations

To start the argument for reparations, one must first get a proper understanding of the concept. To do this, I draw on Aristotle's notion of corrective justice. Though Aristotle concentrates on the correction of failed distributive orders, reparation is, for him fundamentally, about repairing a just relationship. Aristotle uses the metaphor of a divided line as an analogy for an argument for correction. The line is divided unevenly but in proportion to a hypothetical relationship between two persons. If one of the persons were to transgress against the other and benefit from this transgression to the extent that the offender gets an unjust portion of goods, then that person must return that portion. This is represented in the line. The harm is represented by the portion of the line that the transgressor has but does not deserve after the transgression. The corrective measure would be, as represented by the line metaphor, redrawing the line to its original dimensions.

Along with Aristotle's general formulation, one can specify facets of the concept that Aristotle does not explicitly conceptualize. At the outset, I formulated a complex of

associated concepts that must be considered. They are: 1) the just relationship, 2) an injustice (transgression or offence) that disrupts that relationship, 3) a party that contributed to the injustice, 4) a party that is harmed in the injustice, 5) a party that benefited from the injustice and 6) the repair of the harm. One must also consider 7) the nature of the harm; or what is lost due to the offence. And, one must consider 8) what is to be given in the reparation and how closely 7) is to follow from 8). And lastly, 9) a conception of reparations must contribute to an understanding on a just outcome of a reparations program that leaves no issues of justice outstanding.

As we have seen, Aristotle's notion of corrective justice foregrounds the distribution of goods. These goods can be material, such as property, or non-material, such as titles, respect or honors. These goods can be distributed according to a feudal, monarchical, oligarchic or a democratic system of distribution. However, regardless of any system of distribution, a transgressing party must return that portion that was taken or damaged. While Aristotle's notion of the goods was more general, John Locke's notion of goods that deserve repair is specific; that is, the specific good that can be properly distributed, transgressed against, and repaired is property. Locke takes property to be the dominant principle in moral and political philosophy. For him, life is a property of the person who has it. When property is taken or damaged unjustifiably, then that property has to be repaired or restored by the person who took or damaged that property. Of course, a transgression against a life through murder or manslaughter cannot be repaired. But, other types of property can be restored, repaired or the damages can be compensated. Locke argued for reparations for damages due to an unjust war. The victorious and just side, the just conquerors, are due reparations for the damages that the

transgressors caused. From this idea of war reparations, one can infer that any unjust act that causes the loss of just holding in property ought to be repaired by the unjust actor.

The contemporary debate on reparations for African Americans has usually concentrated on the loss and repair of property relations. However, that concentration only makes sense if the only thing that is lost in a transgression is property. An alternative view is promoted by Rodney Roberts, who argues for a notion that the repair of property or compensation for property loss is not the only concern for reparations or rectification. Roberts insists that part of the harm of a transgression is the feeling of being harmed that the victim endures after the transgression. And, that harm must also be ameliorated. I rework this suggestion as a matter of restoring moral community where everyone is and feels that they are an equal member. From this approach, one can see that reparations are more than compensation, because not only material things are at stake.

Two other aspects of the corrective justice complex of concepts include the notion of victims and the notion of the transgressors. Since in this case, the topic of the discussion is justification for reparations for African Americans, one must consider the possibility of a group as victim and a group or some other social agent or institution as transgressor. Groups can be harmed and those groups can be distinguished by their harm. I demonstrate, in chapter five, how African Americans are harmed insofar as they are African Americans through the historical oppressions associated with racialization. The determination of the transgressor party, however, is a more problematic case.

Nicholas Rescher argues that group responsibility is derived from individual responsibility. And, group responsibility only follows from consensus or representation.

So, to determine if a group harms another, one must determine if the group made the decision by consensus or representation. My response to his argument is that groups are already responsible for others and other groups as equal members in moral, social and political collectives. These responsibilities hold regardless of how members vote. In democratic groups, the group is responsible for the just distribution of goods and equal protection of rights.

Larry May introduces a way of deriving collective responsibility which argues that members of a collective are responsible for group harms because they are members of the particular collective, directly or indirectly participated in the harm and failed to speak out against the harm. He grounds his argument on what he calls social existentialism in which the self becomes the self through the interactions throughout history of the person in society, the person's history, social conditions and the person's choices. The person becomes a member of society as the person becomes its own self through history. In this process, the person becomes existentially connected to society. Also, persons in society who share attitudes in society are responsible for those attitudes. The person's interaction in society helps to form the attitudes of society, and, in turn, helps to form the person's attitudes. The person accepts them and contributes to forming them. The only way out is if the person tries to change the attitudes of his or her compatriots. The person then, is responsible because the person is existentially bound to that particular community and communities have moral obligations.

My response to this thesis is that May makes a metaphysical claim about collective membership that he does not have grounds to make. May does not consider that members of society have different capacities for influence in social interaction.

Under May's formulation, members of a society assume responsibility because of their membership. However, it seems unfair, on these grounds, to say that members who have little or no influence in the social discourse would have responsibility even if the responsibility is on a different level as members who dominate the social discourse. Some people could have made compulsory participatory gestures, or just gone with the flow, or not really participated in the decision making at all. Furthermore, there are subcultures within a dominant culture that may make decisions against the decisions of the dominant culture. And, in some cases, these subcultures may be dominated themselves. Yet, I agree with May that people who do not participate in social decisions as well as the subcultures that may make antithetical decisions are also responsible for group decisions. But, I agree with his conclusion for different reasons.

I ground my understanding of group responsibilities from the premise that we are responsible for equal justice for all persons by virtue of our already incurred obligation to all members of the collective personhood. With regard to group responsibility, a collective is responsible for just social relationships such as equal protection of rights and just benefits of society. Then, each member is already responsible for participating in society to reach those normative goals. In this understanding, each member of a collective ought to participate in social relationships in ways that support just social relationships. Examples of such participation include participants developing policies that ensure protection from harm, defense of rights and democratic participation. A statutory establishment of such policies, a constitutional establishment, sets the foundation of social justice. This establishment satisfies Aristotle's requirement for an initial just situation. A transgression occurs when members of the collective take action

to harm victim members of the collective, and the collective fails to protect the victim members from harm. The aggressors are responsible for the directly causing harm, and the collective is responsible because it failed to protect the victims from harm.

From the second chapter, one can ascertain an adequate conception of reparations to use in the contemporary debate. We start from the notion, articulated by Aristotle, that a just system of distribution, once disrupted, must be repaired. According to this formulation, the unjust relationship must be repaired by the transgressor. But, Locke argues that parties other than the transgressor can be responsible for repairing harm. Though property relations are the main issue in contemporary reparations debate, other types of relations could be considered. Groups can be victims of transgressions that can be repaired. Likewise, groups can be the perpetrators of transgressions, the benefactors of transgressors as well as those responsible for reparations.

III. The Major Prevailing Reparations Arguments

After determining an adequate conception of reparations, I seek to gain insight into the contemporary reparations debate. And, to do this, I analyze the leading arguments for reparations. However, I find that these arguments are inadequate for two reasons. First, they do not take into consideration a complete account of what was lost in the harms to African Americans in the historical oppression. Thus, they do not give a proper account on what needs to be repaired. Second, they do not address a proper understanding of a social being. The prevailing arguments give an atomistic account of social personhood. Instead, I insist that social being should be understood in terms of social development through interaction.

I started my analysis of the prevailing arguments for reparations by exploring David Lyons' work on the moral bases for reparations. He analyzes the three moral bases for reparations and finds that they are insufficient. He then argues for his own argument for reparations with which he argues that the timeline for reparations ought to start from the more proximal Jim Crow era rather than the more distal starting point of slavery. He then argues that what was lost in the history of oppression was the equal opportunity that African Americans should enjoy as equal citizens and moral persons.

My assessment of Lyons is that he is correct to be concerned about those bases for moral arguments. And, he is correct to be concerned about the timeline. However, his conception of the harms caused by oppression, namely lost equality of opportunity, is not adequate. I make this claim because Lyon's position continues to treat the social person as an atomistic individual. It does this by taking the individual as something that can only be harmed as an individual.

IV. The Argument for an Appropriate Idea of Social Interaction

Given the general formula for reparations and the fact that the foregoing approaches are inadequate, it is important to rethink the initial just order whose disruption is the oppression that requires reparations. For showing what I take to be a just order, I must first give an understanding of the social nature of the person.

My idea of the social person draws from two of Habermas' discussions of interaction in society. The first is his paper on "Labor and Interaction"¹⁹¹ in which he analyzes Hegel's notion of the development of consciousness through social interaction. The second is his treatment of the life-world. These discussions center on how the social

person becomes a social person by interacting with others. The self is what it is because of the ways it experiences the world, its interests, and its personality. The self develops these experiences when it interacts with other selves over time. It learns from other selves through participating in interaction. It develops its perspectives, ways of seeing the world and its place in society. So the social being is such through social interaction and not an atomistic entity.

The person becomes a person through interaction in the life-world. The life-world, for Habermas, is the complex of social relationships where people participate in interaction by using shared values, experiences and understandings. In this complex of social relationships, people's impressions of themselves develop through the responses they find in others as they engage in concrete conflicts and collaborations. For Habermas, the life-world ought to be such that the self develops democratically. This would also mean that the life-world ought to be democratic. The discourse ethic justifies the notion of democratic development of the person in a democratic life-world by arguing equal participation in discourse grounded on the rules of language. While it sets the grounds for social personhood development in the life-world, it is essentially a foundation for normative development. Norms are to be developed democratically; that is, by the participation of everyone who can participate and for the benefit of everyone who would want to benefit. Norm development through discourse is grounded in linguistic interaction. Linguistic interaction includes commitments to rules of argumentation that possible participants accept once they begin to take part in discourse. No possible participant can be excluded from interaction for arbitrary reasons. Likewise,

no claim or proposal can be excluded without being tested for acceptance by all other participants.

The just social system is a system grounded in the discourse ethic based on the communicative ideal. The communicative ideal is the situation in which all participants are taking part in relationships aimed towards a common understanding. That is, they are making claims, defending claims and accepting or excluding claims based on reasons that everyone can accept. Also, these claims are about interests that they have and share with others. No persons would accept outcomes that automatically damage their interests. And, everyone wants outcomes that both promotes their interests and contributes to the participatory power in future interaction. Thus, the just social system is based on authentic communicative interaction that aims for democratic participation and interaction for the benefit of everyone.

V. The Transgression and Harm

A justified claim to reparations, according to the general conception, comes after an offense, injustice or transgression that leads to a harm, loss or disruption of the just social relationship. For African Americans, such a transgression was the historical process of racialization that developed hierarchical schisms along racial lines. This process was influenced by attitudinal, structural, cultural and political factors and changed with distinct changes in the history of the United States. The process was a transgression against the constitutional order that established political and social rules according to the universal principles of freedom and justice. The harm materialized from the process as it constructed racial divisions in society that subjugated classes by contributing to the

diminution of participatory power in social relationships of those classes and by contributing to the inequality in social benefits. It produced normative barriers to social interaction that left African Americans with limited direct participation opportunities. And, the harm was perpetuated by Whites having little consideration of African American perspectives, interests and desires. They had limited access to the moral community and that translates to limited access to the social and political communities. Because of racialization, schisms have developed along attitudinal, cultural, economic and political lines. In essence, it produced a society that has an undemocratic social participation scheme and undemocratic system of social relationships.

VI. The Discourse Ethic Argument for Reparations

What corresponds to Aristotle's historical just system of distribution is the constitutional order which set the standard for political and social relationships. The rules were based on universal principles of freedom and equality as formulated in the Enlightenment. Social relationships were to be governed by justifications based on reason rather than based on tyranny, coercion or whim. That is, no one could be excluded from social and political protections arbitrarily. No one could be excluded from the rights of citizenship arbitrarily. The social order of the United States was not static, however. After the establishment of the Constitution, the social order changed to become more democratic in some respects. However, these changes occurred with limited or no input from African Americans, and these changes left African Americans out of the full benefits of social cooperation.

Besides the historical just social order that one can reference, one can reference the general just social order in order to explain the harm of the oppression. The ‘general just social order’ is the term I am using for the counterfactual claim ‘what ought to have happened.’ This is distinguished from the ‘historical just social order’ which is the term for the actual order as stipulated by the Constitution. Given the general social order, the members of society are to have equal participatory power in the evolution of the society. If not total equality, they ought to have equal power without arbitrary exclusion. Even if the historical just social order does not meet the standards of the general just social order, then one can still say that persons in that society ought to be allowed the same participatory powers as any others to contribute to the evolution of society.

A just social order, whether historical or general, includes persons who have a certain social standing. I argued, following Habermas, that the social being is a person who attains its personhood through social interaction. And, also following Habermas (and Du Bois), the development of this social being ought to be democratic. The person ought to be able to contribute on equal grounds with the development of society, and in turn, to its own development. The abstract general social person ought to be developed democratically by social interaction. This would entail that these persons see themselves as persons that enjoy mutual recognition who have their perspectives taken into account on the same grounds as everyone else. And, they recognize the moral standing of everyone else. They see themselves as being a part of a democratic society.

In the historical constitutional order, the citizens saw themselves as being a part of a constitutional order where they had their rights protected and could be assured, for the most part, that they were seen as citizens. Given the argument for democratic

personhood development, all persons affected by social interaction should have been allowed development through democratic processes. These assurances were denied African Americans (and other non-Whites) from the start of the constitutional order for arbitrary reasons.

Racialization, the social construction of races, is the offense because it caused social schisms that disrupted the just social order and caused alienation between social persons. This transgression leads to the present harm of unequal democratic political power and the social alienation of African Americans. Given the harm of racialization that is an anathema of the just social order, reparations are due in order to provide African Americans with the necessary social powers of participation and the social benefits guaranteed to everyone without arbitrary exclusion.

In conclusion, then, one can address the complex of issues associated with a reparations formula that was first brought up in chapter two. By addressing this complex the issues, one can get an understanding of the argument. The first issue is 1) the just relationship. I determined, from chapter five, that the just relationship was the social and political order that was established with the implementation of the Constitution. This was the historical just relationship that one can look back to in order to determine to where an unjust relationship ought to be repaired. The constitutional order set the standard for rights, equal treatment under the law and due process. Along with the consideration of constitutional order as the just social relationship, however, Chapter Four discusses how the commitment to enlightenment principles implies a commitment to allow individuals in the moral community and equal political participation without arbitrary exclusion.

For the second issue, 2) an injustice (transgression or offence) that disrupts the just social relationship, I determined that it was the history of racially organized oppression that was the injustice. And, this history of oppression is the cause of the current structural, institutional, and attitudinal racism that harm African Americans today. The third issue, 3) a party that contributed to the injustice, it was the society of persons throughout history that contributed to the harms. The oppression was political, economic and cultural. Thus, the party that contributed to the injustice was the entire society over history that contributed to oppression and failed to protect African Americans from oppression.

The African American community is the party that is harmed, 4), in the injustice. The African American community is the community that is socially constructed into structural and institutional racism by way of a history of oppression that targets people of African descent. This oppression results in unequal relationships in the moral community and participatory power. The party that benefited from the injustice, 5), is the majority White population. However, Whites do not necessarily benefit from the transgression in a material or a direct way. They benefit from the differential power relationships born of the history of oppression. In general, Whites have more power in economic, cultural and political relationships. This makes the current situation undemocratic and unjust.

The sixth, 6), issue is the consideration of what party repairs the harm. I have determined that it is the collective white community responsible for the reparations. This is true because it is the collective white community that benefits from the historical oppression by acquiring differential social, political and economic power. And, though only specific members of the community made the policies that ensured the harm, it was

the participation or lack of participation of the entire community that allowed it to happen. In essence, the community failed in its obligation to protect African Americans from harm. The nature of the harm, 7), is the structural, institutional and attitudinal racism that defines the differential power relations in economic, cultural and political interactions. What is to be given in the reparation 8) is the development of policies that ameliorate the structural, institutional and attitudinal racism. And for the last issue, 9) the outcome of a reparations program would work towards making racism, and thus race, a meaningless issue in social relationships.

The concept of reparations I have developed relies on the notion of a coming to terms with the past. The past in the case I am referring to is a past of systematic oppression and alienation. Social realities of contemporary society are rooted in events, processes, decisions and actions of the past. One can easily see that aspects of the infrastructure such as buildings, bridges, highways and communication networks that citizens use today were built at various times in the past. Likewise, policies, laws, rules and ideas that affect society today were devised at certain moments in history. And, as pointed out in Chapter Four and Five, the way people see themselves, others and the world is rooted in past interactions.

The problem that concerns us, though, is that the unrequited past racial oppression damages the ability of today's African Americans to interact on equal grounds. The process of "coming to terms with the past" requires that the white majority, in general, recognize that contemporary social conditions and relationships have foundations in past events, processes, decisions and actions. And, Whites have to recognize that the racial hierarchy that they benefit from is rooted in past oppression. And, they have to recognize

that these social realities are unjustified and see that Blacks have a democratic place in social interaction.

In Chapter Five I demonstrated that oppression harmed the collective Black community. The discriminatory policies affected Black's ability to participate on equal grounds with members of the White majority. As well, this oppression manifested in a process of racialization that socially constructed races in a social hierarchical order. Whites have dominant positions in this hierarchical order. With this dominant position, they have more political, cultural and economic influence in social interaction. The collective white community has the responsibility to repair because the dominant position in the hierarchy is rooted in historical privilege and this historical privilege contributes to the contemporary social inequality. Whites are responsible because they produced, allowed or accepted policies, acts and states of affairs that contributed to the oppression. Furthermore, their responsibility is tied to the benefit of the position in the social hierarchy.

It is true that not all Whites intentionally and actively took part in oppression throughout history. Only the political elite actually formulated and enacted discriminatory policies. And, only some people planned, conspired and took part in violent acts against African Americans. Nevertheless, Whites generally accepted and tolerated the oppression of Blacks throughout the history of the United States. This toleration is significant even if it is premised on a misunderstanding of the social realities. The active participation of oppression, the acceptance and the tolerance are bi-products of the social thought processes of the white community. And these thought processes developed through the social interactions that included Whites but limited Blacks. As

well, all Whites are responsible because they benefited from the social derogation of Blacks who have less influence in policy making, economic decision making and input into cultural interaction. By responsibility, I mean that Whites are required to give up social power in order work towards democratic social relationships.

Given this understanding of “coming to terms with the past”, one can now understand that the objective of reparations derived from the discourse ethics perspective is to eradicate the hierarchical social order that evolved from a history of oppression. Instead of a social order in which political, economic and cultural power of some citizens is limited because of racial schisms, the goal of reparations is to diminish those racial schisms in order to eventually produce a society where racialized histories would be irrelevant with regards to social interaction. In effect, reparations will change a racially hierarchical society into a democratic society.

The notion of “coming to terms with the past” also addresses the problematic issue of whether one should argue for the establishment of justice for African Americans rather than argue for reparations. The former relies on the premise that African Americans, as a community, never enjoyed justice in the United States, and the focus of an argument ought to be the focus of philosophical concern. Furthermore, the concept of reparations requires an established system of justice to which policies should repair. The recognition of historical wrongs is essential for reparations.

The establishment of justice, however, does not rely on history in the same way. The historical significance is momentary even though it is not ahistorical. The establishment of justice comes about when at one moment, there is injustice, inequality, or a lack of recognition of political and social powers, and the next moment there is a

system of legal, social and economic rights. An example of this is a revolution that overthrows a dictatorship in order to establish a democracy. This established order of justice would be recognized as the right state of affairs. Reparations, though, would be required when there is a deviation from this newly established just social order. The concept of Reparations also connects the history to the present because the harms done in the past affects contemporary social relationships. In effect, historical harms contribute to contemporary harms when the victims of oppression have unequal power in social relationships. Furthermore, reparation requires those responsible to acknowledge the historical oppression and how that oppression affects the contemporary victims.

I contend, furthermore, that there was an established just order that included everyone without arbitrary exclusion in the United States with the inception of the Constitution in 1783. At the same time, the injustice that requires African American reparations also began. The injustice continued up to contemporary times, and it is this injustice that requires a coming to terms with the past. And, because the harms done to African Americans require that the majority population come to terms with the historical past, the reparation is the appropriate concept rather than the establishment of justice.

VII. Consideration of Objections and Alternative Views

VII.1 Objections to Reparations

VII.1.1 Horowitz

The topic of reparations is as contentious in contemporary United States political discourse as it is in philosophical discourse. Much of the discussion is racist or rhetoric designed to stoke racial animosity and does not deserve philosophical analysis that is

concerned with whether reparations can be justified. However, because the contemporary popular discussion on reparations is so influential in the political discussion, some analysis is necessary. David Horowitz's article "Ten Reasons Why Reparations for Blacks Is a Bad Idea for Blacks—and Racist Too"¹⁹² is an example of contemporary popular discussion on reparations. First, he does not give an argument for why the call for reparations is racist. He appeals to the title of Randall Robinson's book *The Debt: What America Owes to Blacks*¹⁹³ as an example of the racist nature of the reparations defense. It is not clear why the claim that American owes Blacks is a racist claim, especially if the United States really owes Blacks something. He also claims that the request for reparations is a call for separatism because Blacks would be setting themselves apart from the country.¹⁹⁴ This is strawman argument first because no one who argues for reparations, for any group, argues that the group ought to be separated. And, second, the most cogent arguments for the positive side argue for reconciliation and not a separation from the United States.

Horowitz also claims that reparations are unjustified because "...No one Group ...Benefited Exclusively From [slavery's] Fruits" and "Only a Tiny Minority of White Americans Ever Owned Slaves..."¹⁹⁵ This argument argues against reparations for slavery and ignores the more cogent argument of reparations for the entirety of the history of oppression. Furthermore, Horowitz does not consider the argument that society itself owes reparations because the society is responsible for equal protection, due process and social benefits to all citizens. I make this argument in chapter two (page 34). He also ignores the systematic nature of historical oppression. This systematic oppression included social, economic and political oppression. It was the entire society

that directly or indirectly contributed to, abetted or allowed this oppression. And, Whites benefited from the differential power relations that resulted from it. I discuss the systematic nature of the history of oppression in chapter five.

He alludes to the fact that Blacks have a higher quality of life than most other descendents of Africans in other countries.¹⁹⁶ The hidden argument from this statement would be that Blacks do not deserve reparations because Blacks in other countries have suffered more than Blacks in the United States. This is a red herring argument. Nothing turns on the quality of life of anyone in any other country. The relevant premises that ought to be considered are that Blacks are citizens of the United States, and Blacks suffer the effects of a history of oppression. The fact that Blacks also benefit from their labor, though true, is irrelevant. The relevant point to be made is that the degree that Blacks benefit from society should not depend on race or a history of oppression.

Also, the claim that only a small number of Whites owned slaves is also immaterial. A corollary to such a claim is that most Whites do not benefit from the oppression of African Americans, and forcing these Whites to pay reparations would not be just. The first part of the argument is dismissed when one realizes that my idea of reparations is concerned with the contemporary effects of the history oppression rather than the injustices of a particular point in history. The argument that most Whites do not benefit from oppression is addressed by the fact that African Americans suffer today because of the systemic inequalities due to historical oppression. They do not enjoy social conditions that would otherwise have been available had they not been oppressed. Citizens are already guaranteed certain benefits from collective effort (i.e. the society and government). Examples of these benefits include constitutional rights, civil rights, social

justice and equal protection. A just society would ensure that everyone benefited from the collective social contribution. Sociological and historical research (Feagin, Conley, Katznelson) demonstrate that Whites, in general, have benefited at the expense of Blacks. These benefits were economic as well as cultural and political dominance.

Furthermore, Horowitz, like many other conservative social commentators, ignores important historical and social facts in their discussion of reparations and other race policies. He ignores the history of oppression that has effects on the current African American community. He could be intentionally allowing these lapses in his argument for racist or political purposes. Contemporary political discourse is infested with strategic reasoning and such reasoning could be the root of his argument against reparations. Nevertheless, he does not provide good reasons for why African Americans ought to be separate from White Americans in terms of distribution of goods and participatory power. On the contrary, social relationships should not depend on alleged racial affiliations or any other arbitrary criterion. For all of these reasons, Horowitz's argument against reparations is not tenable.

VII.1.2 Kershnar

Stephen Kershnar argues against reparations by arguing that the claim for compensation for the institution of slavery cannot be defended.¹⁹⁷ He argues against the inheritance grounds for compensation. The inheritance argument proceeds in this way. The slave owners owed the slaves. The descendants of the slaveholders owed the descendants of the slaves. The contemporary descendants of slaveholders owe the contemporary descendants of the slaves. Kershnar argues against this defense of reparations by

pointing to epistemic problems for inheritable compensation. One problem is that it is unlikely that descendants would have the ancestor's entire claim.¹⁹⁸ There is also the problem of the alleged compensation for pain, suffering and the actual act of slavery.

David Lyons deals with the inheritance and the compensation parts of arguments such as Kershnar's. Lyons suggests that we ought to consider that part of the historical oppression that has an effect on the contemporary situation. He also thinks that compensation is the wrong way to look at reparations. Instead, for Lyons, one ought to look at how the history of oppression damages the opportunity potential of African Americans. I agree with Lyons that a reparations argument ought to depend on how the history of oppression affects contemporary social relationships. However, my view is that a reparations discussion ought to consider how the history of oppression damages the participatory powers of the current generation of African Americans. Kershnar does not attack the strongest possible arguments for reparations, making his case not really an argument against reparations but an argument against a strawman.

VII.2 Objections to My View of Reparations

VII.2.1 Social Justice or Reparations

One could object to the use of reparation as the relevant concept to talk about social justice for African Americans. This objection could stem from the belief that there was never a just social order that one could repair. Instead, the objector might argue, a just social order should be established to start with. The objector might argue that it seems that the argument is really an argument for social justice or how social relationships ought to be organized. Regardless of any particular history or current social organization,

society ought to be organized democratically (following Habermas at least). Social Justice is the more general concept and it is the concept that more is more appropriate for my concerns because there never was a just order for African Americans.

From the conclusion of the corrective justice argument in chapter two, one of the important requirements for an argument for reparations is the condition of a just social order that a transgression is supposed to disrupt and to which a reparations regime is to return. The case for reparations for African Americans is difficult because of the trouble with determining the just social order from which a reparations argument is derived and a reparations regime is to repair. A common objection to reparations for African Americans (for slave reparations at least) is that there was no United States society before the institution of slavery. Some objectors even argue that there was never a just social order with regards to African Americans, so a reparations regime would only return the situation to an unjust order. And this objection would cover all historical oppression of African Americans, including Jim Crow oppression. Still, some argue that, because of the problem of fixing a just social order, reparations is not the appropriate concept to use. Instead, some regime of social justice or equal opportunity ought to be implemented.

Against such objections, one approach is to consider the constitutional order at the signing of the Constitution in 1787. The Constitution is the guide for the legal, political and social systems. As such, legislation and policies must be consistent with it. Likewise, the constitution must be internally consistent; that is, none of the amendments can contradict the constitution or any other amendments. While not specifically referring to the enlightenment, the basic principles of the constitution alluded to the enlightenment principles of universality and rationality. Because of this, the policies and legislation of

the society required good, non-arbitrary reasons. Once the society adopted the constitution for its background for the social order, society obligates itself to abide by the principles in making and implementing the policies and legislation. The just social order was the constitutional order. From its establishment, though, African Americans were excluded from it even when the rationality of the constitution militated against the oppression that they suffered.

The fact, then, that African Americans never benefited on equal grounds from the social order does not mean that there was no just social order. Furthermore, the real issue of reparations concerns how the history of oppression affects the current social relationships. Once one determines that there was a history of oppression that has an effect on current relationships, and that there was a just social order that a society is grounded on, then one can accept reparations as the proper concept.

VII.2.2 The Question of Whether my Solution is Feasible Given Its Socialist Implications

An objector might suggest that the policies that would derive from my conclusion would be infeasible in the contemporary politics. I am calling for equal participatory power in social relationships. These relationships include cultural, political and economic relationships. The Objector might translate this to mean that I suggest that we need wholesale change in the way social relationships operate in the United States. Currently, none of the types of relationships operate according to the democratic model, much less the Habermasian democratic model. The objector would not need much evidence to point to that fact (and I would not require much). From here, the objector would suggest that, regardless of the cogency of my argument, a more practically appropriate policy

would be to attempt to implement a less ambitious reparations program; perhaps one with a combination of compensation and equal opportunity.

In response to this objection, I agree that the current political climate in the United States is not beneficial to any discussion of reparations. However, there is nothing in my argument that would suggest that there needs to be rapid wholesale change comparable to a revolution. Changes can be slow and build on each other. There is nothing that says that one needs to implement one big policy called a “Reparations Bill” and call it finished. Policies could be implemented on a gradual basis. The only criterion is that the policies have to work towards participatory democratic social relationships. We also have to recognize that difficult does not mean impossible (or improbable). Impossible means that such a policy would contradict current reality. The problems with the feasibility of reparations policies come from racial animosity within the political culture. We can find out the reason for the current political culture and undermine it as a barrier to reparations. Later in this chapter, I give suggestions for reparative policies based on the discourse ethic.

VII.3 Other Alternative Theoretical Approaches to Reparations

VII.3.1 Robert Fullinwider’s Case for Reparations

I analyzed the four of the major bases for moral arguments for reparations in chapter three in order to get an understanding of the focus of the contemporary debate.

Following a cue from David Lyons, I analyzed the moral debt argument, the material disadvantage argument, the unjust enrichment argument, and David Lyons’ own equal opportunity argument. While these arguments are important because it lays out the

contemporary debate, a couple of other arguments that do not fall into Lyons' analysis are worth some attention. For Robert Fullinwider, the wrongs done to African Americans were the corporate acts of a nation that imposed or tolerated regimes of slavery and post-slavery injustices.¹⁹⁹ By corporate acts, Fullinwider means the acts are done with the support of the greater society. To accept the reasonableness of reparations we have to abandon the 'individualistic' models of law by thinking in terms of group rights and group wrongs.²⁰⁰ It is society that owes Blacks and that debt is paid by the government. Furthermore, in a democracy, the members of a society are obligated to underwrite government debts. Blacks are also citizens; therefore they also pay into reparations (in the form of taxes).²⁰¹

In a similar argument to Lyons', he argues that basing reparations of slavery and the on the benefits accrued to whites would be a mistake. Such a move leads to intractable complications, and it is unnecessary to the discussion of corrective justice. To defend this idea he refers to what might have happened if white society respected the emancipation amendments,

Had the federal government done nothing after 1865 except vigorously protect the civil and voting rights of [B]lacks, the legacy of slavery would have faded considerably if not wholly by now through the industry of [B]lacks themselves. That the legacy still persists owes much, if not all, to the post-Civil War oppression of African Americans and it is this wrong that offers the most direct and salient basis for reparations.²⁰²

In response to this specific claim, my concern with reparations is the current condition of African Americans that was spawned by the history of oppression. While I agree that a rigorous defense of the Civil War Amendments would have been beneficial to contemporary African Americans, I do not think that it would have addressed the issues

of attitudinal racism and the problem of cultural segregation. Likewise, the institution of slavery is a major harm to the moral psychology of African Americans and cannot be overlooked when thinking of corrective justice. Thus, a policy of symbolic reconciliation ought to be considered. In general, it would be necessary to do more than just protect civil and voting rights of African Americans since 1865 in order to allow them to be equal participants in social interaction. It would also be necessary to actively get Blacks to be equal participants in social relationships. This would require more than a commitment to civil and legal rights.

To be sure, there is much to agree with in Fullinwider's suggestion that policy recommendations concentrate on redistribution of wealth to the community. "Because the effects of a hundred years of racial oppression have been dispersed so widely throughout the African American community, it makes sense to adopt some scheme of reparations that morally approximates rather than actually effects the restoration of victims to their 'rightful places'—the position they would have occupied but for the past history of oppression."²⁰³ Here, however, he makes the mistake of thinking of 'rightful place' as a place in economic relationships rather than a place in social relationships. I make this critique keeping in mind that the historical oppression damaged the participatory power in social relationships in general and not just economic relationships.

He further suggests that United States political institutions could follow the precedent set by Germany after World War Two in dealing with reparations for Jews. Germany paid reparations to easily identifiable victims. But, more importantly, Germany made reparation payments to organizations that represented Jews. Fullinwider suggests a similar program could be implemented for African Americans.²⁰⁴ This is a good

suggestion for repairing economic relationships, but more would be needed for social relationships in general.

VII.3.2 Charles Ogletree: Reparations by Litigation

My theory promotes reparations based on a notion of corrective social justice, where social justice consists of members of society having equal participation and benefit from this participation in all aspects of social relationships. Charles J. Ogletree Jr., however, promotes a course for reparations through litigation.²⁰⁵ On the one hand, Ogletree's position is a strategy in so far as it is an attempt to use the law to remedy past wrongs. On the other hand, one can see it as a type of argument. The argument would start with the fact of the historical oppression and follow with the expectation of equal treatment under the law. The expectation is backed by the United States Constitution. African Americans, during the historical oppression, suffered individual and collective harms from segregation, discrimination and prejudice. Furthermore, some Blacks suffered from direct physical and property violence while all Blacks suffered from the indirect violence of the threat of force and the lack of full protection of rights from the state. Ogletree uses these premises to argue that all African Americans ought to be awarded reparations. Furthermore, this point can be argued as a legal matter.

For Ogletree, reparations are to provide a sense of closure, "One of the fundamental goals of reparations for African Americans is to ensure that those who were sacrificed are not forgotten in our rush to move beyond the painful lessons of our past."²⁰⁶ This sense of closure, however, is to be brought about by a redistribution of resources from the offending group to the offended group. He continues,

...reparations is another manifestation of the progressive agenda articulated by President Lyndon B. Johnson and his vision of addressing the needs of the 'Great Society.' Reparations is, in other words, yet another expression of the demand for political, social and economic equality that, since the failure of the civil rights movement in the 1970s, has been stifled and suppressed in this country.²⁰⁷

My response to this is to criticize both the strategy and the argument as attempts to deal with life-world problems through system processes without dealing with the divisions directly in the life-world. As I have argued in Chapter 5, the product of the historical oppression is the unequal participation in social relationships. There are divisions in moral, political, economic and cultural interactions that make up the life-world. The litigious process is part of the system. Its proper role is to help resolve issues that cannot be resolved through discourse in the life-world.

With this in mind, true reparations are prevented by relying on litigation. The main problem that such a program has to overcome is that support for such a strategy may not be taken up by Whites because not enough of them want Blacks as equal participants in moral, cultural, political and economic relationships. Without popular support, a legal remedy is hampered because the legal system is dominated by Whites who also reside in the white life-world. Ogletree suggests that such a problem might be overcome if a secondary strategy is applied. To defend this point he borrows from Derrick Bell's idea of interest convergence.²⁰⁸ Bell suggests that racist attitudes in Whites are so prevalent that they would not support legislation or legal rulings that directly favor Blacks outright. Instead, the best we can hope for is policies that conform to both Black and White interests; a strategy he calls interest convergence.²⁰⁹ Ogletree

uses this idea to suggest ways that reparations can be litigated that would benefit Whites as well as Blacks.

Reparations, understood in this light, can only be politically successful to the extent that it can be presented as providing short- or long-term benefits for the empowered portion of the population. To the extent that reparations is predominantly, or only, a 'black thing,' it has little chance of succeeding.²¹⁰

He suggests a strategy of small victories with Jim Crow litigation such as a lawsuit for the Tulsa Riot. This would get the greater population to get used to reparations litigation. And, it would get Whites to see the justice of reparations by seeing how real live victims were affected by incidents like Tulsa. My response to the strategy of interest convergence is that it sidesteps the real issue of the reparations debate. The real issue is the diminished participatory power that African Americans have, in general, due to historical oppression. Ogletree's suggestion, furthermore, sacrifices discursive processes towards common understandings for strategic trading off of interests. With this strategy, the parties do not have to recognize common interests, perspectives and desires. Also, the dominated parties stand to lose in this arrangement; or at least, they would not attain full benefits of democratic interaction. They would only get the fulfillment of interests that coincide with the interests of the dominant party. And, this would not necessarily lead to equal democratic power.

VII.4 A Challenge to Habermas' Universalism

Another objection could derive from my use of Habermas' communicative ethics to make my argument for reparations. One criticism such criticism, that might have significance in the reparations debate, could come from a fellow critical theorist and communicative

ethicist, Iris Marion Young. In her book *Justice and the Politics of Difference*, she suggests that Habermas' commitment to universalism could interfere with a particularist perspective.²¹¹

Yet even Habermas seems unwilling to abandon a standpoint of universal normative reason that transcends particularist perspectives. As Seyla Benhabib (1986, pp. 327-51) argues, he vacillates between privileging the neutral and impartial standpoint of the 'generalized other' and what she calls the standpoint of the 'concrete other.' Like the theories of Rawls and Ackerman, one strain of Habermas's theory relies on an a priori conception of moral reason.²¹²

The claim is that though Habermas' theory is concerned with the moral position of 'the other,' his commitment to universal reason puts pressure on theory's consideration for particularity.

Normative reason must be rationally reconstructed as constituted by subjects who begin with a commitment to discursive understanding and to being persuaded by the force of the stronger argument. This initial shared motive to reach consensus, coupled with the assumption of a discussion situation free from domination, accounts for how moral norms can be general and binding.²¹³

The arguments about moral norms are based on the universal rules of reason and commitments to reach consensus. This situation makes moral norms binding for everyone, and it means that Habermas's theory depends on an impartial starting point so that the interaction attains universality.

Young goes on to admit that "Habermas's conception of dialogic reason finds valid only the expression of generalizable interests, a term whose meaning is equivocal. Sometimes it seems to mean only those interests that are universal, which everyone shares and everyone agrees to respect for everyone else."²¹⁴

Young gives another possible interpretation of "interests."

Another interpretation of generalizable interests, as Benhabib argues, derives from the insight that an emancipatory politics involves the expression and

interpretation of needs. In a democratic discussion where participants express their needs, no one speaks from an impartial point of view, nor does anyone appeal to a general interest.²¹⁵

People are forced to acknowledge the interest and influence of others because their needs are often met with the actions and decisions of others. Young suggests that the latter interpretation of “interests” is more appropriate. “In this move from an expression of desire to a claim of justice, dialogue participants do not bracket their particular situations and adopt a universal and shared standpoint. They only move from self-regarding need to recognition of the claims of others.”²¹⁶

Young suggests that Habermas adopts the interpretation as “universal interests” with the participants in ideal discourse being impartial as they make and check claims. This standpoint, however, limits the power of particularist claims. This, if true, would challenge my use of Habermas in defending a particularist claim such as reparations. I am making the point that African Americans have a particular claim to reparations that must be addressed. In having this particular claim, African Americans can not be impartial participants in social interaction. The very thing that makes them African Americans, historical oppression, is the justification for reparations. I defend this claim in Chapter Five where I argue that racialization is the process of social construction that developed the Black/White divide in the . From this objection, one might suggest that the use of Habermas would defend the claim to impartial treatment for African Americans and not reparations. Reparations would be treating their particularities and not treating them the same as everyone else.

I respond to this critique by arguing that Habermas insists that in the ideal speech situation, persons interact from common grounds, and through discourse, work towards

common understandings. The common grounds are not common or universal perspectives. The common grounds are mutually accepted rules of interaction. One of these rules of interaction includes mutual perspective taking where interlocutors see the perspective of others in order to work towards common understandings. There is no requirement that the actual perspectives be the same, universal or impartial. All perspectives, on the other hand, must be considered in order to see whether interests can be facilitated. African American oppression is one perspective that ought to be considered in the discussion on reparations. In essence, the Habermasian view satisfies Young's concern for particularist perspective.

VIII. Concluding Remarks and Considerations of Possible Reparations Policies

The purpose of the preceding thoughts is to lay out the argument for the justification for reparations to African American Community due to their historical oppression. The concept of reparations requires that a party is alienated from a just situation via a transgression. My argument centers on the fact African Americans are excluded from full democratic participation in social interaction through actions, neglect and policies of the majority society. Participation in social interaction includes participation in political, economic and cultural discourses. In these discourses, African American opinions, feelings, interests and perspectives are not included to the extent that they are for Whites. The asymmetric discourse is a product of the attitudinal and structural racism. This racism, itself, is a product of a process of racialization resulting from a history of oppression. This racialization process worked to produce distinct social groups called races. Because of cultural, political and economic separations, members of particular

racess are predisposed to communication with other members of their race more than members outside of their race. This is an instantiation of Habermas's notion of distorted communication. For hierarchical racial systems, this phenomenon leaves members of minority and subjugated races at a discursive disadvantage. Their interests, feelings, opinions and perspectives are not considered on equal grounds as with those of the dominant race. Likewise, outcomes of the interactions are less likely ones that the members of the minority races would agree with. As justice requires democratic participation in relationships and democratic acceptance of the possible outcomes, a system that is characterized by asymmetric participation ought to be remedied. Thus, reparations for African Americans are justified to remedy the asymmetric relationships bourn of the history of oppression.

While this conclusion is specifically concerned with the reparations for the oppression of African Americans, it has implications for all groups that are oppressed due to their historical situation. The first examples that come to mind are other historically oppressed ethnic groups (Mexican Americans, Native Americans, other formerly colonized groups, Palestinians and others), women in all societies, and subjugated classes and castes. Furthermore, if this conclusion is pressed to its logical conclusion, then contemporary societies would have to endure gradual but wholesale changes in their economic, political and cultural structures. The societies would have to allow direct democratic participation in these facets of society, and where direct participation is not feasible, they still would have to allow for consideration of the interests and perspectives of everyone involved. Further discussion of such societies would be too extensive for the current project.

I have now completed my arguments justifying reparations, and now I will say a few things about the process by which reparations policies might be instituted. The commitment to change is apparent when ruminating about the effects of racialization and reparations. What ever else race and racism might be, they are also normative barriers to communication engendered by historical effects of oppression. The goal of reparations is to eliminate harm by recognizing and coming to terms with the history that led to the harm. Moreover, a claim that obligates one to a democratic relationship implies a claim that obligates one to work towards that relationship when that relationship does not already obtain. The claim “we ought to be democratic”, if true, implies that one ought to act democratically, one ought to allow democratic participation, one ought to defend democratic action and one ought to ensure steps that reproduce democracy. As such, barriers to democratic interaction ought to be remedied by coming to terms with the historical past. The normative implications of this argument for reparations obligate us to take action by developing policies that are aimed at coming to terms with the past. That is to say, policies ought to be geared towards overcoming the effects of racist oppression.

With this in mind, I consider the damages of the historical oppression of African Americans, and the argument for reparations to make the following suggestions for reparative policies. These reparative policies would be aimed at elements of social relationships that I list as cultural/moral relationships, economic relationships and political relationships. These elements act in a network to explain social relationships in general. The historical oppression damaged the participatory power of African Americans in all of these elements. Thus, in order to repair the social standing of African

Americans to the communicative ideal, policies ought to be implemented that repair these elements.

A reparative program for the damaged moral relationship would consist of a campaign of reconciliation. This would be designed to get persons to think about race issues rationally. It should also get persons to see the interests, perspectives, desires and intentions of persons of other races. This is important so that persons would see that the humanity of members of an opposing race is not different from theirs. This would also show the persons that they have interests and desires in common with the other persons. A campaign of reconciliation would work to tear down the attitudinal barriers to communicative action. From there, discourse towards common understanding is possible. It would provide a necessary foundation for solidaristic action. When the racial barriers are broken down, and people can begin to see that they have shared interests and understandings, they can begin to work together on those interests for mutual benefit. Within the campaign for reconciliation, a step must be made for symbolic reparations. That is, there must be a public recognition of past oppression. Such a public recognition might entail an official apology, a monument as a reminder and an official recognition of oppression and the lingering harm. This would show that members of the dominant population see that the oppression was harmful, and that they recognize the humanity of the members of the oppressed race.

Also, the campaign of reconciliation would address the asymmetric power relations in cultural discourse. This aspect of the campaign would foster recognition of other values and ways of life. It would emphasize shared values, ways of life and cultural

symbols. It would also promote open debate about cultural principles while only accepting those principles that can possibly be universally accepted.

Such a campaign could be an education program and can be led by organizations (whether it be governmental, nonprofit, or a nongovernmental organization) dedicated to racial reconciliation. Members of this organization could consist of social workers, educators, community organizers who are committed reconciliation and educated with ways in talking and educating about such change. These organizations can start media programs, town hall discussion groups and workshops. The specifics of the program would have to be worked out more on practical grounds.

A reparations program aimed at repairing asymmetric political power would ensure real equal participation in political discourse. It would ensure that each person's interests, perspective and desires are considered. And, it would ensure that policies would be designed to benefit each individual, and no one would be harmed by the policies. Furthermore, policies ought to reproduce political power for everyone. Every policy decision, along with any other benefit, would contribute to the democratic power of each individual. For instance, policies concerning the distribution of representation should ensure that every legitimate view be represented. The above would be proper reform for any political system and not just a system infected by historical racial oppression. This only demonstrates, however, that true reparations require a democratic restructuring. Reparative policies specific to historically oppressed peoples would include policies that strengthen the political power of those people. To do this, a reparative program would ensure minority participation in representative politics. Examples of such policies might include: ensuring minority participation equal to the

percentage in the population; ensuring access to communication and media that informs the public about how policies would affect their community; actively recruit political organizers for historically oppressed communities; and, start a campaign of political education.

Similar policies to repairing asymmetric political relationships can be used to repair economic relationships; that is, such policies would include reforms to bring about democratic economic relationships. To start, the program ought to ensure economic policies are not implemented for individual or personal gain but instead for the benefit of the entire society. The program would ensure economic policies that reproduce democratic economic power. Examples of such policies would include more access to education, employment development, and innovation development. Also, economic policies would work towards collective benefit. An example of this would be a shared industries initiative in which each community is mandated to have an industry and a market. This would ensure that everyone has employment and income. And, it would encourage mutual recognition through mutual trade, which in turn would work towards economic solidarity.

Another policy suggestion would challenge how funds are distributed in the United States. Currently, different regions, which are often racialized, vie for funds for particular projects. The regions that win the most funding are often the regions that have more political power and often have White majorities. I would suggest that funds be distributed by need rather than political competition. One way this could be accomplished is to establish a sort of triage system in which the most funding for projects would go to the region in the most need for the funding first. The “need” would include

the need for projects (infrastructure, education, markets) or for employment. When the regions with the most need are satisfied, then distribution to less needy regions can start.

The specific reparative programs for the African American community would be a campaign to develop policies that increase the economic power of this community. Such a policy would include increasing the economic policy making power of the community. The program should concentrate on increasing the employment for the members of the community. It should increase the spending on infrastructure in the affected communities.

The policies I suggest would alter if not fundamentally overturn the current economic and political structures in the United States. As well it should since these structures are infected with structural racism and oppression. Likewise, these structures are undemocratic. Governing elite control them with little to no input from people that are affected by the decisions of those elite. The decisions are not made based on the interests, desires, needs and volition of everyone affected. Likewise, these policies are inconsistent with capitalism. Capitalism, as I understand it, is an economic-political system in which the system is designed for the benefit of capitalists with capitalists controlling the mechanism of the system. The policies I suggest would work to benefit everyone and allow for democratic control of economic-political policy. There can be capitalists in this arrangement. But they would not have inordinate control or benefit from social decision making.

The above are some policy suggestions designed to erase the remnants of oppression and bring society to more democracy. Even these suggestions would be subjected to the discursive process.

Chapter One Notes

¹Such social science and historical research include: W. E. B. Du Bois, *Black Reconstruction in America: 1860-1880*, (New York: The Free Press, 1992), Eric Foner *Forever Free: The Story of Emancipation and Reconstruction*, (New York: Alfred Knopf, 2005), Ira Katznelson, *When Affirmative Action Was White: The Untold Story of Racial Inequality in Twentieth Century America*, (New York: W. W. Norton and Company, 2005), Joe Feagin *Racist America: Roots, Current Realities, and Future Reparations*, (New York: Routledge, 2001), Melvin Oliver and Thomas Shapiro, *Black Wealth/White Wealth: A New Perspective on Racial Inequality*, (New York: Routledge, 2006), Dalton Conley *Being Black, Living in the Red: Race, Wealth, and Social Policy in America*, (Berkeley: University of California Press, 1999).

²Aristotle, *The Ethics of Aristotle: The Nicomachean Ethics*, Trans. J. A. K. Thomson, (London: Penguin Books, 1976), 279-187.

³Such research can be gleaned from the same sources as in note one. Further information comes from Gary B. Nash, *Red, White, and Black: The Peoples of Early North America* 4th Ed. (New Jersey, Prentice Hall, 2000), the website www.slavenorth.com/Index.html, and Eric Foner *Reconstruction: America's Unfinished Revolution 1863-1877* (New York: Harper & Row, 1988).

⁴David Lyons, "Corrective Justice, Equal Opportunity, and the Legacy of Slavery and Jim Crow," The Boston University School of Law Working Paper Series, Public Law & Legal Theory Working Paper No. 03-15, (2004).

⁵The idea that reparations are concerned with compensation for damaged property is taken for granted for many thinkers. This is exemplified by works in *Reparations for Slavery: A Reader*, eds. Salzberger and Turck (New York: Roman and Littlefield, 2004) and the work from Rodney Robert's *Injustice and Rectification* (New York: Peter Lang, 2002). Rodney Roberts himself, however, introduces the idea that there might be more to reparations than compensation in his article "Justice and Rectification: a Taxonomy of Justice" in the same work. David Lyons suggests that equal opportunity ought to take precedence over compensation for reparations.

⁶Jurgen Habermas, *Between Facts and Norms: Contributions to a Discourse Theory of Law and Democracy*, trans. William Rehg, (Cambridge: MIT Press, 1998), 152-154, 273-273, and 300-302, also "Three Normative Models of Democracy" in *Inclusion of the Other: Studies in Political Theory*, ed. Ciarin Cronin and Pablo De Greiff, (Cambridge: MIT Press, 2001), 344-249, *The Theory of Communicative Action*:

Vol. 2: *Lifeworld and System: A Critique of Functionalist Reason*, trans. Thomas McCarthy, (Boston: Beacon Press, 1981), 72-76.

⁷Lyons, 2-3.

⁸Ibid., 42-43.

⁹Habermas, *Theory of Communicative Action*, 72-74.

¹⁰David Horowitz, "Why Reparations for Slavery is a Bad Idea—And Racist Too." In *Reparations for Slavery: A Reader*, eds. Ronald Salzberger and Mary Turck (New York: Roman and Littlefield, 2004), 130.

¹¹Stephen Kershner, "The Case against Reparations" In *Reparations for Slavery*, 151.

Chapter Two Notes

¹²Aristotle, *The Ethics of Aristotle: The Nichomachean Ethics*, trans. by J. A. K. Thomson, (New York: Penguin Books, 1953).

¹³Janna Thompson, "Coming to terms with the Past in Australia", in *Reparations: Interdisciplinary Inquiries*, edited by Jon Miller and Rahul Kumar, (Oxford: Oxford University Press, 2007), 69.

¹⁴W. F. R. Hardie, *Aristotle's Ethical Theory*, (Oxford: Clarendon Press, 1968), 182.

¹⁵Aristotle, *Ethics, Book V*, 1130b32-1131a22.

¹⁶Otfried Höffe, *Aristotle*, translated by Christine Salazar, (New York: State University of New York Press, 2003), 157.

¹⁷Hardie, 188.

¹⁸Ibid., 189.

¹⁹Aristotle, *Ethics, Book V*, 1131a22-b14.

²⁰Ibid., 1131b14-1132a2.

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- ²¹Ibid., 1131a22-b14.
- ²²Ibid., 1132a2-19, 1132b11-15.
- ²³Ibid., 1132b15-20, 1132a19-b3.
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- ²⁵Ernest J. Weinrib, "Corrective Justice in a Nutshell", *The University of Toronto Law Journal*, Vol. 52, no. 4. (Autumn, 2002): 349.
- ²⁶Ibid., 350.
- ²⁷John Locke, *Two Treatises of Government*, ed. Peter Laslett (Cambridge: Cambridge University Press, 1988), 387.
- ²⁸Ibid., 388.
- ²⁹Ibid.
- ³⁰Ibid.
- ³¹Rodney Roberts, "Justice and Rectification: a Taxonomy of Justice", in *Injustice and Rectification*, ed. by Rodney Roberts, (New York: Peter Lang, 2002), 7.
- ³²Roberts cites *Nicomachean Ethics* (1130a-13) J. O. Urman, *Aristotle's Ethics*, Oxford: Blackwell, 1988, pp. 70-71) 7.
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³⁸Roberts cites Bernard Boxill, “The Morality of Reparations”, *Social Theory and Practice*, 2:1 (Spring 1972): 117 [p. 127.inf], 9.

³⁹*Ibid.*, 10.

⁴⁰*Ibid.*

⁴¹*Ibid.*

⁴²*Ibid.*, 11.

⁴³*Ibid.*, 12.

⁴⁴*Ibid.*, 15.

⁴⁵*Ibid.*

⁴⁶*Ibid.*

⁴⁷*Ibid.*, 17.

⁴⁸Axel Honneth, *The Struggle for Recognition: The Moral Grammar of Social Conflicts*, Trans. by Joel Anderson (Cambridge: MIT Press, 1995), 131.

⁴⁹*Ibid.*, 132.

⁵⁰Nicholas Rescher, “Collective Responsibility”, in *Reparations for Slaver: A Reader*, ed. by Ronald P. Salzberger and Mary C. Turck, (Rowman and Littlefield Publishers, New York, 2004), 171.

⁵¹*Ibid.*, 172.

⁵²Larry May, *Sharing Responsibility*, (Chicago: University of Chicago Press, 1992)

⁵³*Ibid.*, 4.

⁵⁴*Ibid.*, 5.

⁵⁵ Ibid., 6.

⁵⁶ Ibid., 9.

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⁵⁷ David Lyons, “Corrective Justice, Equal Opportunity, and the Legacy of Slavery and Jim Crow,” The Boston University School of Law Working Paper Series, Public Law & Legal Theory Working Paper No. 03-15.

⁵⁸ Ibid., 5.

⁵⁹ Aristotle, *The Nicomachean Ethics*, trans. J. A. K. Thomson (London: Penguin Books, 1976), book 5, p. 19.

⁶⁰ Ibid., 180-182.

⁶¹ Janna Thompson, “Memory and the Ethics of Reparation,” Proceedings of the Seventh Annual Gilder Lehrman Center international Conference at Yale University, Repairing the Past: Confronting the Legacies of Slavery, Genocide, & Caste, (Connecticut: Yale University, 2005), p. 1.

⁶² Janna Thompson, “Historical Obligations,” originally in *Australasian Journal of Philosophy* 78, n0. 3 (2000): 334-45, in *Reparations for Slavery: A Reader*, Edited by Ronald P. Salzerberger and Mary Turck, (New York: Rowman & Littlefield, 2004), 224.

⁶³ Ibid.

⁶⁴ Ibid.

⁶⁵ Ibid., 225.

⁶⁶ Ibid., 227.

⁶⁷ Ibid., 228.

⁶⁸ Ibid., 229.

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- ⁶⁹ Ibid.
- ⁷⁰ Lyons, 5-6.
- ⁷¹ Ibid., 6-7.
- ⁷² Bernard Boxill, "A Lockean Argument for Black Reparations," The Journal of Ethics, 7: 63-91, 2003.
- ⁷³ John Locke, Two Treatises of Government, ed. Peter Laslett (Cambridge: Cambridge University Press, 1988), sections 175 to 196.
- ⁷⁴ Ibid., 182.
- ⁷⁵ Ibid., 180.
- ⁷⁶ Bernard Boxill, 74.
- ⁷⁷ Locke, 179.
- ⁷⁸ Lyons, 6.
- ⁷⁹ Jeremy Waldron, "Superseding Historic Injustice," *Ethics*, Vol. 103, No. 1, (Oct., 1992), pp. 4-28, 7-9.
- ⁸⁰ Ibid., 8.
- ⁸¹ Ibid., 11.
- ⁸² Ibid., 16.
- ⁸³ Jeremy Waldron, *The Right to Private Property*, (Oxford: Clarendon Press, 1988), 443-444.
- ⁸⁴ Waldron, "Superseding Historic Injustice," 5.
- ⁸⁵ Ibid.
- ⁸⁶ Ibid., 6.

⁸⁷ Ibid.

⁸⁸ Boxill, 87.

⁸⁹ Lyons, 8.

⁹⁰ There is abundant sociological and historical research to back these claims, most notably: Dalton Conley, *Being Black, Living in the Red: Race, Wealth, and Social Policy in American*, (Berkeley: University of California Press, 1999), 25-53; Joe Feagin, *Racist American: Roots, Current Realities, and Future Reparations*, (New York: Routledge, 2001), 37-103; Ira Katznelson, *When Affirmative Action was White: An Untold History of Racial Inequality in Twentieth-Century America*, (New York: W. W. Norton & Company, 2005); Melvin Oliver and Thomas Shapiro, *Black Wealth/White Wealth: A New Perspective on Racial Inequality*, (New York: Routledge, 2006), 35-54.

⁹¹ Ibid., 8-13.

⁹² Ibid., 33.

⁹³ Ibid.

⁹⁴ Ibid., 34.

⁹⁵ Ibid., 34.

⁹⁶ Lyons, "Reparations and Equal Opportunity," a paper derived from a contribution to a symposium put on by Boston College Third World Law Journal, 24 B. C. Third World L. J. 2004.

⁹⁷ I base these claims on sociological and historical research of Dalton Conley, Joe Feagin, Ira Katznelson, Melvin Oliver and Thomas Shapiro.

⁹⁸ Robert Fullinwider, "The Case for Reparations," in *Reparations for Slavery: A Reader*, edited by Ronald P. Salzberger and Mary Turck, (New York: Rowman & Littlefield, 2004), 148.

⁹⁹ Lyons, 177.

¹⁰⁰ Ibid., 182-183.

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- ¹⁰¹ Ibid., 183-184.
- ¹⁰² Robert Nozick, *Anarchy, State, and Utopia*, (Oxford: Basil Blackwell, 1974), 151.
- ¹⁰³ Jeremy Waldron, *The Right to Private Property*, (Oxford: Clarendon Press, 1988), 258.
- ¹⁰⁴ Lyons, “Reparations and Equal Opportunity,” 182-183.
- ¹⁰⁵ John Rawls, *Justice as Fairness: A Restatement*, (Cambridge: Belknap Press, 2001), 42.
- ¹⁰⁶ Ibid., 43.
- ¹⁰⁷ Karl Marx and Frederick Engels, *The Communist Manifesto in Economic and Philosophic Manuscripts of 1844*, Trans. by Martin Milligan (New York: Prometheus Books, 1988), 231.
- ¹⁰⁸ Karl Marx, *Karl Marx: Selected Writings*, ed. by David McLellan (Oxford: Oxford University Press, 1977), 207-208.
- ¹⁰⁹ Marx, *The Communist Manifesto*, 231.

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- ¹¹⁰ Jürgen Habermas, “Labor and Interaction: Remarks on Hegel’s Jena *Philosophy of Mind*,” in *Theory and Practice*, trans. John Viertel (Boston: Beacon Press, 1973), 144.
- ¹¹¹ Ibid. 145.
- ¹¹² Ibid.
- ¹¹³ Ibid., 152.
- ¹¹⁴ Ibid., 153.

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- ¹¹⁵Ibid., 154.
- ¹¹⁶Ibid., 159.
- ¹¹⁷Ibid., 161.
- ¹¹⁸Ibid., 167.
- ¹¹⁹Jürgen Habermas, *The Theory of Communicative Action, Vol. 2: Lifeworld and System: A Critique of Functionalist Reason*, trans. Thomas McCarthy (Boston: Beacon Press, 1981), 117.
- ¹²⁰Ibid., 124.
- ¹²¹Ibid.
- ¹²²Ibid., 125.
- ¹²³William Rehg, *Insight and Solidarity: A Study in the Discourse Ethics of Jürgen Habermas* (Berkeley: University of California Press, 1994), 25.
- ¹²⁴Ibid., 29.
- ¹²⁵Jürgen Habermas, “What is Universal Pragmatics?”, in *Communication and the Evolution of Society*, trans. Thomas McCarthy (Boston: Beacon Press, 1979), 3.
- ¹²⁶Jürgen Habermas, “Discourse Ethics: Notes on a Program of Philosophical Justification”, in *Moral Consciousness and Communicative Action*, trans. Christian Lenhardt and Shierry Weber Nicholsen (Cambridge: MIT Press, 1999), 63.
- ¹²⁷Jürgen Habermas, *The Theory of Communicative Action, Vol. 1: Reason and the Rationalization of Society*, trans. Thomas McCarthy (Boston: Beacon Press, 1984), 25.
- ¹²⁸Rehg, 30; Habermas “Discourse Ethics”. 66.
- ¹²⁹Rehg, 25.

¹³⁰Rehg, 38; Habermas, “Genealogical Analysis of the Cognitive Content of Morality”, in *The Inclusion of the Other*, ed. Ciaran Cronin and Pablo De Greiff (Cambridge: MIT Press, 2001), 42.

¹³¹Habermas, “Genealogical Analysis of the Cognitive Content of Morality”, 42.

¹³²Rehg, 41.

¹³³Habermas, *The Theory of Communicative Action, Vo. 1*, 88.

¹³⁴Habermas, “Discourse Ethics”, 67.

¹³⁵Rehg, 46.

¹³⁶*Ibid.*, 47.

¹³⁷*Ibid.*, 49.

¹³⁸*Ibid.*, 52.

¹³⁹*Ibid.*, 57.

¹⁴⁰*Ibid.*, 58.

¹⁴¹*Ibid.*, 59.

¹⁴²*Ibid.*, 60.

¹⁴³Rehg, 62; Habermas “Discourse Ethics”, 89.

¹⁴⁴Rehg, 64.

¹⁴⁵*Ibid.*, 65.

¹⁴⁶*Ibid.*, 66.

¹⁴⁷*Ibid.*, 68.

¹⁴⁸Thomas McCarthy, *The Critical Theory of Jürgen Habermas* (Cambridge: MIT Press, 1982), 292.

¹⁴⁹Habermas, “Some Difficulties in the Attempt to Link Theory and Praxis”, in *Theory and Practice*, 25.

¹⁵⁰Habermas, *Between Facts and Norms: Contributions to a Discourse Theory of Law and Democracy* trans. Williams Rehg (Cambridge: MIT Press, 1998), 121.

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¹⁵¹Gary B. Nash, *Red, White, and Black: The Peoples of Early North American* 4th Ed. (New Jersey, Prentice Hall, 2000), 141.

¹⁵²*Ibid.*, 141.

¹⁵³*Ibid.*, 153.

¹⁵⁴*Ibid.*, 154.

¹⁵⁵*Ibid.*

¹⁵⁶Joe Feagin *Racist America: Roots, Current Realities, and Future Reparations*, (New York: Routledge, 2001), 10.

¹⁵⁷From the website www.slavenorth.com.Index.html

¹⁵⁸Feagin, 57.

¹⁵⁹Feagin, 30.

¹⁶⁰*Ibid.*

¹⁶¹Ira Katznelson, *When Affirmative Action Was White*, (New York: W. W. Norton & Company, 2005), 36.

¹⁶²Feagin, 23, 24, 147, 150.

¹⁶³Scott Ellsworth, *Tulsa Race Riot: A Report by the Oklahoma Commission to Study the Tulsa Race Riot of 1921*, (2001) at www.ok-history.mus.ok.us/trrc/freport.pdf. (accessed 13 February 2008).

¹⁶⁴Feagin, 66, 105-108, 119-121.

¹⁶⁵Katznelson, 6.

¹⁶⁶Feagin, 109.

¹⁶⁷Feagin, 89-101;111-121; Richard A. Apostle, Charles Y. Glock, Thomas Piazza, Marijean, Suelzle, *The Anatomy of Racial Attitudes*, (University of California Press, Berkeley, 1983), 223-224;

¹⁶⁸Feagin, 24-27; 65-66; Joe Feagin, Hernán Vera, Pinar Batur, *White Racism: The Basics*, 2nd ed. (New York: Routledge, 2001),12-15; Dalton Conley, *Being Black, Living in the Red*, (Berkeley: University of California Press, 1999), 25; 31-43; Melvin Oliver and Thomas Shapiro, *Black Wealth/White Wealth: A New Perspective on Racial Inequality*, (New York: Routledge, 2006), 93-128

¹⁶⁹George Lipsitz, “The Possessive Investment if Whiteness: Racialized Social Democracy and the ‘White’ Problem in American Studies,” in *American Quarterly*, Vol. 47, No. 3, (September 1995), 370. (accessed 23 August 2008).

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¹⁷¹*Ibid.*, 371.

¹⁷²Henry Louis Gates, Jr. in the Introduction to *The Souls of Black Folk* by W. E. B. Du Bois (New York: Bantam Books, 2005), xix.

¹⁷³*Ibid.*, xx.

¹⁷⁴W. E. B Du Bois, *The Souls of Black Folk* (New York: Bantam Books, 2005), 3.

¹⁷⁵*Ibid.* 3.

¹⁷⁶Winfried Siemerling, “W. E. B. Du Bois, Hegel, and the Staging of Alterity”, in *Callaloo*, 24.1, (Winter 2001) 325-333. Shamoan Zamir, *Dark Voices: W. E. B. Du*

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¹⁷⁷ G. W. F. Hegel, Phenomenology of Spirit, Trans. A. V. Miller (Oxford: Oxford University Press, 1977), 109.

¹⁷⁸ Ibid., 110.

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¹⁸⁰ Du Bois 3.

¹⁸¹ Ibid.

¹⁸² Hegel, 111.

¹⁸³ Du Bois, 9.

¹⁸⁴ Du Bois 3.

¹⁸⁵ Ibid., 8-9.

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¹⁸⁷ Hegel, 12.

¹⁸⁸ Ibid, 3.

¹⁸⁹ Ibid.

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¹⁹² David Horowitz, “Ten Reasons Why Reparations for Blacks Is a Bad Idea for Blacks—and Racist Too,” in *Reparations for Slavery: a Reader*, eds. Ronald P. Salzberger and Mary C. Turck, Rowman (Littlefield: New York, 2004), 127.

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- ¹⁹³Ibid., 128.
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- ¹⁹⁷Stephen Kershner, "The Case against Reparations," in *Reparations for Slavery: a Reader*, eds. Ronald P. Salzberger and Mary C. Turck, Rowman (Littlefield: New York, 2004), 151.
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- ²⁰⁰Ibid., 143.
- ²⁰¹Ibid., 144-145.
- ²⁰²Ibid., 148.
- ²⁰³Ibid., 148.
- ²⁰⁴Ibid., 148-149.
- ²⁰⁵Charles Ogletree Jr., "Tulsa Reparations: The Survivor's Story", in *Redress: for Historical Injustices*, Michael T. Martin and Marilyn Yaquinto (Durham: Duke University Press, 2007), 452
- ²⁰⁶Ibid., 452.
- ²⁰⁷Ibid.
- ²⁰⁸Ibid., 453.
- ²⁰⁹Ibid., 452.

²¹⁰Ibid., 457.

²¹¹Iris Marion Young, *Justice and the Politics of Difference*, (Princeton: Princeton University Press, 1990), 106.

²¹²Ibid.

²¹³Ibid.

²¹⁴Ibid., 107.

²¹⁵Ibid.

²¹⁶Ibid.

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