

Robin Hood Justice: Why Robin Hood Took from the Rich and Gave to the Poor (and We Should Too)

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ABSTRACT: The legend of Robin Hood exemplifies a distinct concern of justice neglected by theorists: the distributive results of systemic injustices. Robin Hood's redistributive activities are justified by the principle that the distributive results of systemic injustices are unjust and should be corrected. This principle has relevance beyond the legend: since current inequalities in the US are results of systemic injustices, the US has good reason to take from the rich and give to the poor.

KEYWORDS: corrective justice; distributive justice; reparative justice; systemic injustice

1. Introduction

Robin Hood and his merry band of outlaws took from the rich and gave to the poor.¹ Why did they do it? Were they justified in doing it? Should we do it too? Of course, Robin Hood is “essentially a fictional creation,”² and even if an outlaw by the name of Robin Hood once resided in Sherwood Forest it is doubtful that he gave much to the poor.³ Yet the legend of Robin Hood suggests answers to these questions that reveal an overlooked but powerful principle of justice, relevant beyond its legendary context: the principle that justified Robin Hood also justifies taking from the rich and giving to the poor today.

The justification for Robin Hood’s redistributive activities is *not* any of those supplied by the standard principles of distributive justice – sufficiency, equality, priority, liberty, and utility. Instead, Robin Hood is engaged in a sort of corrective-distributive justice. Robin Hood’s redistributive actions are not justified because they correct individual rights violations (though he does that too), nor is he exacting reparations for past wrongs (though that is present in the legend as well), nor is he resisting an unjust regime (though he also does that). Rather, Robin Hood’s redistributive actions are justified because they correct the distributive effects of systemic injustice. I will call this principle, that the distributive effects of systemic injustices are unjust and, therefore⁴, should be corrected, the *Robin Hood principle of justice*.

Whether contemporary societies may or should pursue redistributive policies is one of today’s most divisive political questions. This division is rooted, I believe, in disagreements about distributive justice. One remarkable feature of the Robin Hood principle is that it justifies redistributive policies apart from these disagreements.

The US has had its share of systemic injustices: colonialism, slavery, racism, the oppression of women, class domination, and so on. Current inequalities in access to wealth, income,

and opportunities are, to a large extent, results of these injustices. By the Robin Hood principle these inequalities are unjust and should be corrected. One way to do so would be to take from the rich and give to the poor.

2. “To the forest of merry Sherwood!”⁵

According to legend, Robin Hood was an outlaw for more than thirteen years, ending with the return of Richard Lionheart in 1194.⁶ Here is how Lancelyn Green sets the stage in *The Adventures of Robin Hood*:

William the Conqueror had divided the country amongst his followers, only in special cases leaving the old Saxon Thanes the ownership of even a small part of what had once been their properties. Often the new Norman earls and barons and knights [...] treated the Saxons as mere slaves [...] serfs with no rights of their own and no chance of real justice. [...] England was still an ‘occupied’ territory [...] and in every forest there were outlaws and gangs of robbers.⁷

Though Richard Lionheart was a direct descendent of William the Conqueror, he is usually depicted as a legitimate and righteous king. The problem, of course, is that Richard is absent – first on crusade and then held captive – and in his absence his brother John usurps the powers and prerogatives of the king and uses them to create an unjust system that enriches himself and his cronies by exploiting everybody else. Green describes John and his system thus:

John was a cruel, merciless man, and most of his followers were as bad as he. They needed money, and he needed money: the easiest way of getting it was to accuse some wealthy man of treason or law-breaking, make him an outlaw – and seize his house or castle and all his goods. For an outlaw could own nothing [...] When Prince John had seized a man's lands he would usually put one of his own followers in his place – provided they paid him large sums of money. Prince John's followers did not mind how they came by this money: for them the easiest way was to take it from the small farmers, the peasants and even from the serf. [...] Many a Sheriff, too, was appointed to keep order and administer justice in the towns and counties by Prince John – provided he paid well for the honour: and of course he had also to force the money from someone weaker. [...] Such a one was the Sheriff of Nottingham, the little town on the edge of Sherwood Forest.⁸

It is against this background of illegitimacy and injustice that we can understand Robin Hood's adventures. As Robin says: "We dwell here to set right the wrong."⁹

3. Robin Hood justice: subject and principle

The Robin Hood legend illustrates a principled approach to a neglected concern of justice: what we should do about the distributive results of systemic injustices.¹⁰ I call this and surrounding questions Robin Hood *justice*. The Robin Hood *principle*, as noted above, is that the distributive results of systemic injustices are unjust and should be corrected. By this principle, those less well off in a distribution have a justified complaint against it, if (or to the extent that) their position is

the result of systemic injustice. (In section 6 I return to the ambiguity between distributive results and distributive results that are disadvantages.)

One set of questions of justice concern what ought to be (whether in terms of systems, actions, distributions, or other). Another set of questions concern what we should do when things are not as they ought to be. This latter set of questions is the domain of corrective justice. Corrective justice divides according to the division between the justice of actions and that of systems. First-order corrective justice asks us how we should respond to unjust actions, and thus focuses on particular injustices between discrete agents (whether individual or collective) – such as a theft, an act of violence, or a breach of contract – and offers ways to think about what we should do in terms of repair, compensation, and punishment. Tort law and the penal system both belong to first-order corrective justice. While the tales of Robin Hood’s adventures take great pleasure in such particular justice,¹¹ the activities of Robin Hood are not (on my reading) primarily about correcting particular wrongs. Instead, Robin Hood’s activities aim to correct the distributive effects of John’s unjust system. Robin Hood is thus engaged in second-order corrective justice.

One area of second-order corrective justice concerns what we may and should do to change an unjust system. Here we find theories of political disobedience, rebellion, resistance, and the like.¹² While Robin Hood certainly tries to change the system, the sort of corrective justice that I call Robin Hood justice is *not* about what we should do to resist or change an unjust system (Ivanhoe is closer), but about what we should do in response to the distributive effects of systemic injustices.

Systemic injustices normally result from unjust systems rather than unjust acts.¹³ By *systems* I mean the complex of institutions, rules, and roles that define a political society and by which rights, obligations, goods, and opportunities are distributed in that society – Rawls’s con-

cept of the basic structure of society captures the relevant system.¹⁴ An *unjust system* is simply one where said complex of institutions, rules, and roles is unjust – for example, systems that bar or limit access to rights, goods, services, or opportunities based on irrelevant criteria such as race, gender, or religious affiliation. Such unjust systems give us paradigmatic examples of *systemic injustice*: cases where, say, blacks or women or Jews cannot own property or access education or profitable careers.

Cases of systemic injustice are systemic in both origin and impact. Think of a simple case where a class of people cannot hold property. The problem is not that particular members of that class are attacked or oppressed by other particular members (though that will often be the case and the unjust system enables such particular injustices), but rather that members of that class of people are systematically discriminated against and thus cannot participate as equals in their society. Such systemic injustice will have distributive consequences – at first primarily disadvantaging those discriminated against, but later on their descendants and other members of society who are impacted by the downstream effects of the injustice. These distributive effects are the subject of Robin Hood justice, and the main claim of Robin Hood justice is that such downstream distributive effects are themselves unjust and stand in need of correction. As indicated, we find examples of such unjust distributive effects in the history of discrimination and mistreatment of Native Americans, Blacks, and women. These groups are disadvantaged *today* because of the history of systemic injustices, and that connection between current disadvantage and historical injustice offers a reason for correcting their disadvantage by redistributive measures.

It bears noting that there can be systemic injustices without unjust systems, for systemic injustices can arise as the aggregate result of permissible acts in a just system.¹⁵ Such structural

injustices trigger the Robin Hood principle, but for the purposes of this essay I focus on the simpler cases offered by systemic injustices that result from the workings of unjust systems.¹⁶

Robin Hood justice assumes a partially proceduralist perspective on distributive justice, meaning that the justice of a distribution depends at least in part on the justice of its history.¹⁷ Pure procedural distributive justice says that a distribution that arose by just procedures is just, no matter what else is true about it. Few would accept pure procedural distributive justice.¹⁸ Robin Hood justice does *not* assume pure procedural distributive justice, but it does assume that distributions that arose by unjust procedures are unjust. In this sense Robin Hood justice presents a theory of (impure) procedural distributive *in*justice: a distribution that is the result of unjust procedures is for that reason unjust.

On my reading, then, Robin Hood is fighting the distributive effects of systemic injustice. His activities are not directed merely at correcting the particular wrongs committed by John or his cronies, but at correcting the systemic distributive impacts of an unjust system of institutions, rules, and roles designed to disadvantage Saxons, peasants, and anyone who is insufficiently supportive of John. The result is a distribution where John's supporters are rich and the rest are (absolutely or relatively) poor because of the workings of the unjust system. By the Robin Hood principle, the poor have a justified complaint against the distribution, not because they are poor, but because their poverty results from the workings of an unjust system.

To clarify the specific sort of injustice that triggers the Robin Hood principle, we can compare three variants of the legendary context:

1. Even worse: Richard leaves for the crusade, John rules, Richard never returns from the crusade, so John's rule continues. At the beginning of John's rule (T1) we have one distribution (D1), then John institutes the unjust system of rules, which (at T2) results in a

new distribution (D2). The poor have a justified complaint against D2 because it is the result of a systemic injustice.

2. The adventures of Robin Hood: Richard leaves for the crusade, John rules, but Richard returns. When Richard leaves (T1') there is one distribution (D1'), then (at T2') John's rule results in a new distribution (D2'), at which point Richard returns and creates a just system. Though the system is now just, the poor have a justified complaint against the distribution (D2') for exactly the same reason that they had a complaint against D2, namely, that it is the result of systemic injustice.
3. Much better: Richard skips the crusade and stays at home, maintaining a just system. At the beginning of the legend (T1*), the distribution (D1*) is the same as at the beginning of the first two legends, but in this legend factors other than systemic injustice leads (at T2*) to a distribution (D2*) that is automorphic to D2 and D2'. The poor have no complaint against D2* based on the Robin Hood principle, since their poverty is not a result of systemic injustice.

The three legends illustrate how the subject of Robin Hood justice is the distributive effects of systemic injustices rather than systemic injustices or distributions themselves. First, though the injustice of the distribution is an effect of the unjust system, the injustice of the distribution is distinct from the injustice of the system. Thus, in the second legend, when Richard returns (at T2') and creates a just system, the distribution (D2') is unjust in the same manner as the injustice of the distribution under John in the first legend (i.e. D2 at T2), for in both legends the distribution is the result of systemic injustice. Second, the injustice of the distribution is tied to the systemic injustice, so that the complaint of the (relatively) poor is justified by the historical connec-

tion between their poverty and the systemic injustice. Though D2, D2', and D2* are automorphic, the poor only have a complaint based on the Robin Hood principle against D2 and D2'.

While the Robin Hood principle is a principle of second-order corrective justice, it functions as a principle of distributive justice since it requires us to seek a just distribution by correcting inequalities that result from systemic injustices. One corrective measure is to take from the rich and give to the poor, but there might be other and better measures available. What the strategy for correction should be depends on the nature of the injustice, other concerns (including other concerns of justice) at stake, and facts about the society wherein we find the injustice.

Moreover, the legitimacy of a system is clearly relevant for justifying specific redistributive activities. Robin Hood's strategy of kidnapping and robbery would be impermissible in a legitimate system that offers adequate legal pathways for change, even if the distribution is the result of systemic injustice and thus in need of correction.¹⁹ This is why Robin Hood abandons his outlaw existence the moment that Richard Lionheart returns.²⁰ The unjust results of John's system still need correction, but at that point vigilante correction is impermissible; instead the correction must be pursued through legally available means (the legend indicates that Richard performs the required correction).²¹

At this point, you might still doubt that Robin Hood justice is truly a distinct concern of justice. On one hand, you might think that Robin Hood justice is simply a sort of reparative justice. On the other hand, you might doubt that the Robin Hood principle offers any directives not already covered by a principle of distributive justice. In the following two sections I try to remove these doubts and thereby also elaborate and defend the Robin Hood principle.

4. Robin Hood justice vs. reparative justice

That Robin Hood justice focuses on how systemic injustices undermine the justice of current distributions invites the thought that Robin Hood justice is a variant of reparative justice, but this thought is mistaken.

Robin Hood justice is concerned with how systemic injustices create injustices in the distribution of advantages, and the Robin Hood principle requires that we correct the distributive effects of systemic injustices. The main concern of Robin Hood justice is to ensure a just distribution in the present. Reparative justice, by contrast, is based on the idea that wrongs should be mended.²² The main concern of reparative justice is to repair the moral relationships that were damaged by past wrongs and thereby reconstruct proper moral relationships, and its main requirement, accordingly, is that we repair past wrongs.²³ Robin Hood justice is satisfied when the current distribution is not the effect of systemic injustices. Reparative justice is satisfied when damages to moral relationships have been repaired.

Standard cases of reparative justice include whether the colonial powers owe reparations to the colonized, what human rights abusers owe to their victims, whether descendants of slaves are owed reparations by the descendants of slave-owners or the state, and so on.²⁴ Though the same historical injustices may underlie calls for both reparative and Robin Hood justice, Robin Hood justice is not about these questions. Robin Hood justice asks instead how we should relate to the distributive effects of, say, colonialism and exclusionary laws, slavery and racism, gender inequality and oppression. Moreover, some historical injustices that create a demand for reparations do not trigger the Robin Hood principle, for many wrongdoings are not systemic or do not have systemic distributive effects. Some atrocities committed in war, for example, raise questions of reparative justice, but not of Robin Hood justice.

Thus, while the past matters for both sorts of justice, the concern of Robin Hood justice is how we should relate to *the current effects* of past injustices, for reparative justice the concern is what we should do to *repair the past wrongs*. In short, whereas reparative justice is about repairing broken moral relations between wrongdoer and wronged, Robin Hood justice is not about the relation between wrongdoer and wronged.²⁵

Because Robin Hood justice and reparative justice have different concerns and aims, their respective principles are satisfied by different measures. Reparative justice may require compensation to the victims of wrongdoing for the harm they suffered and perhaps also for the downstream material loss resulting from the harm.²⁶ However, since the aim of reparative justice is to repair damage inflicted on moral relationships, compensation is never enough – reparative justice always requires some public apology or other symbolic act whereby the wrongdoer (or the community) acknowledges the wrong and expresses regret for it.²⁷ Indeed, sometimes such a symbolic act is sufficient to repair the moral relationship, and in those cases reparative justice does not require additional compensatory measures. Robin Hood justice does not require compensation for loss, but the removal of current disadvantages that are results of injustice. Robin Hood justice does not require and is never satisfied by an apology, since the injustices that trigger the Robin Hood principle are distributive effects that an apology does nothing to address.

The preceding also indicates that Robin Hood justice is less concerned than reparative justice with identifying wrongdoers and assigning them responsibility for their wrongdoing and its effects. To satisfy the principle of reparative justice, the wrongdoer must not only recognize and acknowledge their fault; they also bear primary responsibility for repairing it. Robin Hood justice does not assign responsibility for correcting the results of systemic injustices to those that committed the injustice; indeed, some systemic injustices are structural and thus no agents can be

said to have committed them.²⁸ Instead, the responsibility for correction falls on whoever has the opportunity to correct the unjust distribution in the present (usually, the current government is responsible, no matter what connection it has to the past wrongdoing). Similarly, those who would benefit from the satisfaction of the Robin Hood principle need not be those who were wronged by the systemic injustice or even descendants of those who were wronged. Their complaint against the current distribution is justified by the Robin Hood principle if they are disadvantaged by the past systemic injustice – as they may be even though they have no direct relation to those who were wronged by it. If, for example, past systemic injustices of slavery and institutional racism is the source of current disadvantages for blacks today, then they have a complaint against the current distribution, no matter if they descend from slaves or victims of institutional racism. Questions of identity and non-identity that are central (and hard) for reparative justice have little relevance to Robin Hood justice.

Thus, by contrast with reparative justice, the Robin Hood principle does not say that we should take from the rich and give to the poor because the rich ‘owe’ the poor compensation for past wrongs. Insofar as it employs the second-personal vocabulary of owing at all, Robin Hood justice says that since society owes itself a just distribution, it should correct for the effects of past systemic injustices. Likewise, the reactive attitudes that often and appropriately accompany demands for reparative justice have less force or occasion in cases of Robin Hood justice.

The injustice of institutional slavery illustrates the distinction between reparative and Robin Hood justice. Robin Hood justice approaches the question of slavery in terms of the current effects of the unjust institution of slavery. Insofar as the injustice of slavery is the source of inequalities today, Robin Hood justice tells us that these inequalities are unjust and should be corrected, *not* to compensate those who were enslaved or their descendants for the wrong that

were committed against them, but because the disadvantages of the present are the effects of past systemic injustice. Reparative justice, by contrast, approaches the injustice of slavery in terms of the wrongs that were committed against the enslaved and what should be done in terms of apology and compensation to repair those wrongs.²⁹ The main questions of reparative justice are: Who wronged whom? Who now owes reparations to whom? What sort of apology would be appropriate? What sort of compensation is required? That reparative justice is challenged by the fact that the slave-holders and enslaved have long since died illustrates its focus on repairing the past wrong. Robin Hood justice is not interested in these questions and does not need to deal with the fact that slave-holders and enslaved are long gone. Nor are non-identity problems relevant for Robin Hood justice; the fact that some present African Americans might not have existed if not for the institution of slavery matters naught for their claim that the distributive disadvantages they suffer today are results of historical slavery and, therefore, are unjust and should be corrected. Of course, Robin Hood justice is consistent with reparative justice, and there is an independent case for reparations for slavery. But Robin Hood justice offers an alternative, required, and powerful perspective on the distributive effects of slavery and other past systemic injustices.

5. The Robin Hood principle vs. principles of distributive justice

Various principles of distributive justice could justify Robin Hood's activities, but the Robin Hood principle is independent of these other principles.

According to the principle of sufficiency, it is unjust that some have less than enough, if we can avoid it without sacrificing anything of vital importance.³⁰ This principle could justify Robin Hood's activities; when there is absolute poverty in a sufficiently rich society there may be cause for Robin Hood style redistribution from rich to poor. Yet, the Robin Hood principle is

not sufficientarian. Robin Hood's justification for taking from the rich and giving to the poor is not that poverty is bad, but that they became poor by the workings of an exploitative system. So, the Robin Hood principle does not justify redistribution even where there is absolute poverty and extreme riches, if the distribution is not the result of systemic injustice. Conversely, the Robin Hood principle may justify redistribution even if the relatively poor are absolutely well off.

According to the principle of equality, relative poverty is unjust. While the principle of equality offers a straightforward justification for taking from the rich and giving to the poor, the Robin Hood principle is not egalitarian, since it has no regard for equality as such. Indeed, the Robin Hood principle presents no measure for judging a distribution of holdings without knowledge of how the distribution came about.

According to the principle of priority, justice requires maximizing the position of the least well off.³¹ The principle of priority justifies taking from the rich and giving to the poor when doing so improves the lot of the least well off (as it often will). Yet, the Robin Hood principle is not prioritarian. The Robin Hood principle does not judge distributions in terms of the interests of anyone, not even the least well off. Conversely, if an actual distribution came about by the workings of a just system, then the Robin Hood principle cannot be used to justify redistribution, even if it increases the lot of the least well off.

According to the principle of utility, we should seek the distribution that maximizes utility. By the theory of marginal utility, a dollar (or pound) is worth more to the poor than to the rich, so taking from the rich and giving to the poor often increases net utility. Yet, the Robin Hood principle is not utilitarian. Where the principle of utility justifies redistributive measures by virtue of the outcome of redistribution, the Robin Hood principle looks to the past (to how the

distribution came about). The Robin Hood principle does not count the fact that redistribution would increase utility as a reason to redistribute.

One clear distinction between the Robin Hood principle and the principles of distributive justice canvassed above is that the Robin Hood principle is past-sensitive in a manner that the other principles are not. This backward-looking character of the Robin Hood principle means that it has affinities with the principle of liberty.

According to the principle of liberty, a distribution is just if and only if it arises from another just distribution by voluntary transactions (or transactions that violate no one's rights).³² A distribution that is the result of rights-violating transactions is unjust and should be rectified. The principle of liberty could justify Robin Hood's activities, insofar as the rich became rich by rights-violating transactions.

The Robin Hood principle is similar to the principle of liberty in two respects. First, both judge distributions by how they came about rather than their intrinsic features (e.g. the presence of absolute poverty, equality, the interests of the least well off, or utility). Second, both justify redistribution only when needed to correct past injustice. Yet, the Robin Hood principle is not a principle of liberty. The Robin Hood principle does not tell us what makes a distribution of resources just, but what we may (and should) do to correct a particular sort of distributive injustice. Using the terms introduced above, we can say that the principle of liberty is a principle of pure procedural justice; the Robin Hood principle is a principle of (impure) procedural *in*justice. In addition, the principle of liberty works at the level of first-order justice where injustice implies particular rights-violation. The Robin Hood principle, by contrast, is a second-order corrective principle and may justify redistribution, even when the rich violated no-one's rights and the poor did not have their rights violated.

In sum, the various principles of distributive justice could all justify Robin Hood's activities, but the Robin Hood principle covers a distinct type of injustice and offers a distinct and powerful justification of redistributive measures when the current distribution is the result of systemic injustices. That the Robin Hood principle differs from the various principles of distributive justice does not prevent it from working together with these in a theory of justice. In the following I suggest that the Robin Hood principle fits within a wide variety of theories of justice.

6. The Robin Hood principle as module

In this section I argue that the Robin Hood principle can be accepted by a wide variety of theories of justice, which also means that requirements based on the Robin Hood principle are acceptable to many who otherwise disagree about matters of distributive justice.

A theory of justice defines what justice is about, what justice requires, the grounds of the requirements of justice, and what we should do in response to injustices. A theory of justice usually affirms one or more of the principles of distributive justice canvassed in the preceding section together with principles covering other areas of justice such as corrective justice. Each theory will offer a distinct account of systemic justice and injustice, but insofar as they recognize the reality of systemic injustices, they should also accept that the distributive effects of systemic injustices are unjust and should be corrected.

The Robin Hood principle tells us what we should do about injustice, not what a just system looks like (this is a further analogy between the principle of political disobedience and the Robin Hood principle). The Robin Hood principle thus is consistent with a variety of theoretical accounts of what a just system is.

Of course, even if it appeals to a wide variety of theories of justice, the Robin Hood principle is inconsistent with any theory of justice that rejects the past as having any relevance to the justice of distributions. So, any theory of justice that affirms one (or more) of the non-historical principles of distributive justice *and* maintains that this (or these) tell us everything there is to say about the justice of distributions cannot accept the Robin Hood principle, for the Robin Hood principle implies that sometimes the history of a distribution makes it unjust.

In my view, theories of justice that make the history of a distribution irrelevant to its justice are absurd.³³ If Abe and Betty have the same, but Abe got his holdings by hard work and Betty stole hers from Abe, then that they both have enough, or that they have the same, does not mean that justice is served. Nor is increased utility sufficient to justify taking more from Abe and giving it to Betty. Of course, I cannot here settle the relevant questions, and I draw attention to such problems of purely ahistorical theories of distributive justice only to suggest that very few people would embrace them. The fact that the Robin Hood principle is inconsistent with pure egalitarian, prioritarian, or utilitarian theories of distributive justice does limited damage to my claim that the Robin Hood principle is acceptable to a wide variety of theories of justice, for few theories of justice claim that the history of a distribution is irrelevant to its justice (in section 8 I discuss the argument that historical concerns have no independent weight).

Since the Robin Hood principle is consistent with a wide variety of theories of justice, and since most theories should accept the force of the question that the Robin Hood principle answers, and since the Robin Hood principle presents a good answer to this question, most theories of justice can include the Robin Hood principle for dealing with the distributive effects of systemic injustice. The Robin Hood principle thus fits as a module into a wide variety of theories of justice. This is unsurprising, since in this the Robin Hood principle is like the other main princi-

ples of corrective justice: the principle that particular wrongs should be rectified and that we may resist illegitimate authority. Like other corrective principles, the Robin Hood principle will be given content and direction by its host theory of justice; like these other principles, the Robin Hood principle supplies a principled approach to an inescapable concern of justice.

Some readers might still think that the Robin Hood principle presupposes some sort of egalitarianism which could make it inconsistent with a wider range of theories of justice than the previous allows. The objection could start by pointing out that I have stated the Robin Hood principle in two different forms:

- i. The distributive effects of systemic injustice are unjust and should be corrected.
- ii. Disadvantages (or relative poverty) that result from systemic injustice are unjust and should be corrected.

There might, of course, be distributive effects that are not inequalities. Indeed, we can imagine cases where a systemic injustice results in an equal distribution of resources, or even that those wronged turn out to have more than the rest of society. So, I need to explain my focus on cases where systemic injustice has resulted in inequalities patterned on the injustice.

First, to clarify; my argument has employed a presumption of equality, but this presumption is not part of the Robin Hood principle. I accept this presumption of equality: those less well off in a distribution have a stronger position for challenging this distribution. So, those who have less than others and can show that their disadvantage is a result of systemic injustice have a stronger complaint than those who have more than others, but could have had even more if not for the systemic injustice. However, the Robin Hood principle stands free of this presumption. As a general principle, the Robin Hood principle calls for the correction of distributive effects that result from systemic injustice – whether or not these effects are inequalities.

I have focused on systemic injustices that result in disadvantages patterned on the injustice for two reasons. First, these offer a clearer picture of how the Robin Hood principle can justify complaints against a distribution and require redistributive measures. Second, as a matter of practical reality, systemic injustices have normally translated into inequalities that track the injustice. History offers many examples of such cases – in the following I focus on Robin Hood justice in the US.

7. Robin Hood justice in the US

We often agree that a system is unjust, and even, to some extent, on why it is unjust, even when we disagree about which theory of justice is best. Prince John's exploitative regime was clearly unjust. We can say that it was exploitative, unfair, extractive, and so on – and we can agree on these judgments without agreeing on (1) what a just distribution of privileges, resources, and opportunities would look like; (2) what a just system in general looks like; or (3) what, exactly, made John's system unjust. Of course, some persons might disagree (John and the Sheriff of Nottingham might), and there are people who defend slavery, oppression, and exploitation. But my claim is not that all possible or actual persons would agree that such systems are unjust, nor am I relying on some restriction of the domain of agreement to 'reasonable' persons. Rather, I claim that proponents of a wide variety of theories of justice who otherwise disagree about distributive justice in a large set of cases will agree that a system is unjust. This overlapping consensus on judgments of injustice means that the Robin Hood principle in many cases supports agreement about redistributive requirements between otherwise disagreeing theories of justice. In this section I argue that the US is such a case.³⁴

If sound, my argument turns the current debate about distributive justice in the US on its head. The current debate is hung up on disagreements about whether, why, and how we should care about poverty, equality, liberty, and prosperity. My argument suggests that we need not settle these contentious issues to find a strong case for redistribution.

The short history of the US presents an impressive list of systemic injustices. Highlights include colonization and the mistreatment of Native Americans; institutionalized slavery; gender oppression and violence; racism (legal, institutional, and cultural); exclusive and extractive policies favoring whites, males, the wealthy, and corporate interests. Before the improvements of the 20th Century (universal franchise, the New Deal, the Civil Rights Act, the Great Society, and so on) the political system of America was illegitimate and its system of institutions unjust.

America still has a long way to go: racism, gender inequality, inequality of opportunity, exclusions and extractions, and many other injustices persist.³⁵ Yet, the rules and institutions no longer embody or even allow these injustices. Thus, formally, if not substantively, America's systemic injustices are (mostly) in the past. However, these injustices still raise questions of corrective justice in the present. There are questions of reparative justice: what should be done to repair the injustices committed against Native Americans, slaves, or other unjustly treated groups? Moreover, to the extent that the current distribution is the result of these past injustices, we face the separate second-order corrective questions of Robin Hood justice.

It seems clear that the present distribution of resources is, to a large extent, the product of these past injustices. The inequalities in opportunity, wealth, income, and access to education, healthcare, and cultural enrichment in the US today are neatly patterned on past injustices: Native Americans, African Americans, and women are systematically disadvantaged when it comes to access to these goods. To be blunt, today's distribution of power, opportunities, and wealth is

to a large extent the result of the systemic injustices of the past. Thus, the Robin Hood principle tells us that the present distribution is unjust and that we ought to correct it.

The fact that the current political system is legitimate (or sufficiently legitimate) means that the second-order corrective justice required by the Robin Hood principle should be pursued through legally and politically available means. Robin Hood style vigilante corrective actions of robbery and kidnapping *might* have been justified in the past, but are impermissible now that it is possible to correct for the unjust distribution through the operation of constitutional democracy. Corrective measures could be of the Robin Hood variety, but suitably stripped of its outlaw component; Robin Hood justice could be pursued by taking from the rich and giving to the poor through progressive taxation of income, wealth, inheritance, and bequests.

8. Two objections

8.1 Entitlements and merit

Even if current inequalities in the US to a large extent are products of past injustices, it is also true that the current distribution is a result of many other factors: individual efforts and choices, luck, technological advances and innovation, local and global economic developments, and more. Moreover, it is not the case that the injustices of the past *pervade* the current distribution; many of those who are rich and poor are not rich or poor because of past injustices, but because of other factors (their choices and luck, economic developments, and so on). So, it might be objected that even if the Robin Hood principle is true and we ought to correct the distributive effects of past systemic injustices, a general strategy of taking from the rich and giving to the poor would unfairly and unjustly also take from and give to those whose holdings are unaffected by past injustices. So, the objection goes, we can take only from those who are rich because of past

injustices, and we can only take from them to the extent that their holdings are results of past injustices. Moreover, any corrective strategy justified by the Robin Hood principle must be able to identify what individual holdings are the results of past injustices and effectively correct these and only these. To do so requires historical knowledge and legislative agility well beyond our reach. Thus, the Robin Hood principle is unworkable.

A first reply is that we know more and are more agile than this objection allows. We know that certain groups today are disadvantaged because of past systemic injustices – women, African Americans, and Native Americans, to mention the obvious cases. And there is plenty we could do to seek to correct their disadvantage; anything that improves the lot of members of these groups would be a corrective.

More importantly, the objection assumes that the Robin Hood principle only justifies taking from the rich and giving to the poor insofar as those who are rich and poor are so by function of past injustices. But this assumption is false. The Robin Hood principle justifies measures that correct a distribution that is the result of systemic injustices (whether past or present). And it is possible (and seems likely) that taking from the rich and giving to the poor would in fact correct for the effects of past systemic injustices in the US, *even if* many who are rich and poor are *not* so because of past injustices. If taking from the rich and giving to the poor corrects for the distributive effects of past injustices, then the Robin Hood principle gives us reason to do it – also if some of those who are rich and poor are not so by virtue of these injustices.

The preceding discussion brings out an important feature of Robin Hood justice: the objection that we should take from the rich only insofar as they got rich by virtue of past injustices might rely on the assumption that the Robin Hood principle employs a standard of merit, such that those who are rich by virtue of past injustices do not deserve to be rich and therefore can be

justly taken from. This is mistaken. The Robin Hood principle does not rely on any claim that resources ought to be distributed according to merit (or any other pattern), nor does it say that those who are rich and poor by virtue of past injustices do not deserve to be rich or poor and, therefore, should not be rich or poor. The Robin Hood principle says that the distributive effects of systemic injustice are unjust, not that resources should track desert.

Nor does the Robin Hood principle rely on the principle that the benefits of injustice are tainted, so that beneficiaries of injustice (whether innocent or complicit) have no title to these benefits or that such benefits should be used to compensate the victims.³⁶ Such a ‘principle of disgorgement’ is similar to the Robin Hood principle in two respects: first, it is concerned with the distributive effects of historical injustices and, second, it can justify redistributive taxation as a remedy for historical injustices.³⁷ However, the Robin Hood principle is distinct from this principle in several related respects. First, the principle of disgorgement is about the relation between holdings and those who hold them – it claims that holdings are tainted by past injustices and that those who hold them, therefore, do not have a valid title to them. The Robin Hood principle is not about individual holdings, but about distributions, and it is not about the title of those who hold goods, but about the justice of the pattern of distribution. Second, the Robin Hood principle is not primarily about the *benefits* of historical injustice, but about the general distributive effects of systemic injustices – benefits and burdens, advantages and disadvantages. So, third, whereas the principle of disgorgement is primarily about material goods (property, money, and such), the Robin Hood principle has a wider scope – it also covers access to rights and opportunities. Fourth, the principle of disgorgement is primarily a principle of first-order corrective justice that directs specific beneficiaries of wrongdoing to disgorge the goods that they unjustly hold; the

Robin Hood principle is a principle of second-order corrective justice that is concerned with the systemic distributive effects of systemic injustices.

The distinction between the principles can be seen in both the sorts of injustices they cover and in the sort of redistributive measures they justify. If no-one benefitted from an injustice, the principle of disgorgement has no subject; but there is still a question of Robin Hood justice and the Robin Hood principle may still require corrective measures. The principle of disgorgement can only justify redistributive measures that take from the beneficiaries of injustice; the Robin Hood principle can also justify redistributive measures that take from some who did not benefit from the injustice in question.

8.2 Don't look back!

While Robin Hood justice is distinct from reparative justice, it looks vulnerable to the objection frequently raised against claims of reparative justice that we should care about creating a just society now and in the future, not about repairing past wrongs. This objection also challenges my claim that distributive justice must be past-sensitive, for the objection alleges that distributive justice leaves no room for backward-looking concerns.

Wenar offers a version of this objection.³⁸ According to Wenar, we can see that backward-looking considerations have no independent weight by conducting a thought experiment: pick your favorite principle of distributive justice (egalitarian, prioritarian, or other) and imagine that it is perfectly satisfied in a society with grave past injustices such as slavery. Now, if backward-looking concerns such as those that count in Robin Hood justice had any independent weight, then they should be able to counteract principles of distributive justice. However, we

would not allow a redistribution of resources for the sake of the past if our favorite principle of distributive justice was already satisfied:

If in America blacks and whites were now perfectly equal in wealth, power, and prospects, you would not insist on reparations for the injustices of slavery. Or, if you favor a difference principle, imagine that such a principle is exactly realized, and that only whites are in the worst-off group. Would you then require that these worst-off white citizens be made still worse off, so as to better the situation of the better-off blacks? If not, then you do not believe that such reparative claims have significant force of their own, separate from their overlap with principles of just distribution.³⁹

While Wenar's argument is directed against reparative justice, it works (or doesn't work) equally against Robin Hood justice, for the point is that we do not (and should not) give backward-looking considerations any weight apart from how well they support non-backward-looking principles of distributive justice.

One problem with this argument is that it equivocates between "having weight" and "having sufficient weight to override". Even if we agree that backward-looking considerations do not have sufficient weight to force a departure from a system that satisfies our favored principle of distributive justice, they might nevertheless count as reasons of justice – and as sufficiently weighty to move us when they are not in direct conflict with reasons of distributive justice.

Another problem is that the force of the rhetorical question at the heart of the argument is weak. The rhetorical question is meant to show that the past does not matter (much) to questions of distributive justice, since concerns of distributive justice override any interest in correcting for

past injustices. But why not say that corrective justice may require that we upset our favorite patterns? Staying for now with the simple case of first-order justice: if Betty robs Abe and her robbery makes them equal, I do not see why even an egalitarian cannot say that we should return the robbed goods to Abe. The power of the rhetorical question is limited to those who think that corrective justice cannot require redistributive measures – a position few would endorse.

Third, the preceding shows that Wenar's argument is question-begging: he assumes that distributive justice is past-insensitive, so that corrective measures upset distributive justice. But Robin Hood justice denies that we can assess the justice of a given distribution simply by seeing how well it conforms to a given pattern; if the distribution results from past systemic injustice, then that distribution is unjust, no matter if it conforms to some pattern. Robin Hood justice does not accept the presupposition of Wenar's counter-example that we can imagine distributive justice being satisfied before considering the justice of the history that led to the distribution.

Finally, though it is unclear what Robin Hood justice would say in response to the hypothetical cases introduced by Wenar, it does not matter, since these are not cases where the Robin Hood principle is triggered. The Robin Hood principle tells us that insofar as the current distribution is the product of past systemic injustices, it is for that reason unjust, and society ought to correct it. In the cases that Wenar imagines, the current distribution is *not* the product of the injustices of the past: the descendants of slaves have *more* than descendants of slave owners! So, the Robin Hood principle is not triggered in Wenar's thought experiment. Robin Hood justice *is* triggered by the actual situation in America, where descendants of slaves are disadvantaged because of the injustices of the system of slavery, and there it calls for corrective measures – possibly redistribution.

9. Conclusion

I have identified a distinct but neglected concern of justice: what we should do about the distributive effects of systemic injustice. I have also articulated and defended the principle that the distributive effects of systemic injustice are unjust and should be corrected. By this principle the distribution of resources in the US is unjust. This is not (merely) because some live in poverty, nor because some have more than others, nor because the least well off could be better off, nor because a different distribution would increase utility. The present distribution may be unjust for any and all of these reasons, but apart from these reasons (and, therefore, apart from our disagreements about distributive justice), the distribution of resources in the US is unjust because it is the result of systemic injustices: colonialism, slavery, racism, gender oppression, exclusions and extractions, and much else. So, we have reasons of justice to correct the distribution. One way to do so is to take from the rich and give to the poor.

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¹ As Robin says in the movie *The Adventures of Robin Hood* (1938): “You, the free men of this forest, swear to despoil the rich only to give to the poor!”

² Pollard *Imagining Robin Hood*, 15.

³ Pollard *Imagining Robin Hood*, 197-9.

⁴ In the words of Young: “To judge a circumstance unjust implies that we understand it at least partly as humanly caused, and entails the claim that something should be done to rectify it.” (in *Responsibility for Justice*, 95)

⁵ A line from the rhyme, *Robin Hood and the Butcher* (ca. 1500) (quoted from Dodson & Taylor, *Rymes of Robin Hood*, 156).

⁶ The argument of this essay does not depend on if or when Robin Hood really lived, but on how we imagine him and his time. Cf. Pollard, *Imagining Robin Hood*, chapters 1, 8, and 9.

⁷ Green, *The Adventures of Robin Hood*, 1-2.

⁸ Green, *The Adventures of Robin Hood*, 8.

⁹ Green, *The Adventures of Robin Hood*, 255.

¹⁰ Of course, this is just one interpretation of the legend, which can support many other interpretations. After surveying various interpretations of how the legend played into shifting social dynamics, Pollard concludes that “The early stories of Robin Hood [...] both affirmed and subverted the social order [...] there were contested meanings which were being continuously negotiated.” (*Imagining Robin Hood*, 182-3) I use the Robin Hood legend to exemplify a distinct area and principle of justice. Of course, my reading of the legend may or may not be correct, but what matters for my purpose is that my interpretation exemplifies this area and principle well, not that it is true to the original (or contemporary) social meaning of the legend.

¹¹ As when the Abbot of St. Mary ends up paying for Robin Hood's loan to Sir Richard at the Lee. Cf. the *Gest of Robin Hood*, in Dodson & Taylor, *Rymes of Robin Hood*, pp. 71-112.

¹² Also relevant here is the issue of whether systemic injustice can make otherwise 'deviant' behavior permissible, see Tommie Shelby "Justice, Deviance, and the Dark Ghetto."

¹³ This distinction has roots in Hume's distinction between the justice of practices and of acts. See also Rawls, "Two Concepts of Rules."

¹⁴ Rawls, *A Theory of Justice*, 6-7; *Political Liberalism*, 11-2; *Justice as Fairness: A Restatement*, 8-9; Freeman, *Rawls*, 464. Some reject Rawls's claim that the basic structure of society is the primary subject of justice, cf. Bedau "Social Justice and Social Institutions"; Gerald Cohen "Where the Action Is: On the Site of Distributive Justice"; Murphy, "Institutions and the Demands of Justice"; Young, *Responsibility for Justice*, chapter 2. That debate has little bearing on this essay, for whether the basic structure is the primary subject of justice or not, no one disputes that the basic structure of society is *a* subject of justice or that the basic structure of a society can be just or unjust (or more or less just).

¹⁵ Here I'm following Young's work on structural injustices, cf. *Responsibility for Justice*, chapters 1-3.

¹⁶ Rawls's definition of the basic structure leaves out informal structures (habits, norms, values, etc.) which are also sites and sources of injustice (cf. Young, *Responsibility for Justice*, chapter 2). While Robin Hood is fighting formal injustices, many fictional and real heroes and heroines have fought informal structural injustices, which suggests that the Rawlsian focus on the formal institutions of society is too narrow. Whether and how Robin Hood justice should be extended to informal systemic injustices is a question for another essay.

¹⁷ Cf. Rawls "Distributive Justice," 148-9; *A Theory of Justice*, 74-5.

¹⁸ Rawls, for example, rejects pure procedural distributive justice, since the result of permissible actions against a background of just institutions may bring about an unjust distribution: “[F]air background conditions may exist at one time and be gradually undermined even though no one acts unfairly [...] the overall result of separate and independent transactions is away from and not toward background justice. We might say: in this case the invisible hand guides things in the wrong direction.” (*Political Liberalism*, 267)

¹⁹ I shall not here try to define ‘adequate legal pathways for change’. The triangulation of justice, legitimacy, and political obligation is a complex affair and I don’t mean to settle any question here, but to indicate one intuitively plausible way to embrace the Robin Hood principle without embracing a justification of free-for-all vigilante implementation of it.

²⁰ However, according to the *Gest of Robin Hood* (stanza 250) Robin Hood becomes disillusioned with court life and returns to live in Sherwood Forest. See Pollard *Imagining Robin Hood*, 202-10 for a discussion.

²¹ Richard does not remain, but goes to Normandy and dies, making John the legitimate ruler, but these details are not relevant at this point in the argument.

²² Walker, *What is Reparative Justice?*, 9, 14, 29.

²³ Walker, *What is Reparative Justice?*, 29, 32, 43-4; “Making Reparations Possible: Theorizing Reparative Justice.”

²⁴ Cf. Part I of de Greiff, *The Handbook of Reparations*.

²⁵ Maybe reparative justice requires the correction of the distributive effects of past injustices, so that Robin Hood justice is implied by reparative justice, but that does not mean that it is not a distinct concern of justice.

²⁶ “[A] person or corporate entity that has been unjustly harmed should be restored as close as possible to the pre-harm baseline, insofar as the harm disrupted sensible expectations about the rights or resources that the victim would enjoy.” (Wenar, “Reparations for the Future,” 397)

²⁷ See Part III of Brooks ed., *When Sorry Isn't Enough*. On the shortcomings of the so-called compensation paradigm, see Gaus, “Does Compensation Restore Equality?”; Zutlevics, “Reconciliation, Responsibility, and Apology”; Walker, *What is Reparative Justice*, 16-28.

²⁸ Young, *Responsibility for Justice*, chapters 1-3.

²⁹ There is a growing literature on this subject see, e.g., Boxill, *Blacks and Social Justice*; “A Lockean Argument for Black Reparations”; Corlett, *Race, Racism and Reparations*; Robinson, *The Debt: What America Owes Blacks*; Brooks, *Atonement and Forgiveness: A New Model for Black Reparations*; McCarthy “*Vergangenheitsbewältigung* in the USA: On the Politics and Memory of Slavery” and “Coming to Terms with Our Past, Part II: On the Morality and Politics of Reparations for Slavery.”

³⁰ See Frankfurt’s defense of sufficientarianism in “Equality as a Moral Ideal.”

³¹ Cf. Parfit, “Equality or Priority?”

³² Cf. Nozick, *Anarchy, State, and Utopia*, 151.

³³ As in Nozick’s criticism of ahistorical principles, *Anarchy, State, and Utopia*, chapter 7.

³⁴ Since the Robin Hood principle is highly fact-sensitive, the argument of this section does not generalize to other countries. I believe that the Robin Hood principle is triggered in many of the world’s countries, but cannot here present the arguments that support this belief.

³⁵ Cf. Loury, *The Anatomy of Racial Inequality*.

³⁶ Butt argues that the beneficiaries of injustice “have obligations to compensate the victims of wrongdoing.” (“On Benefitting from Injustice,” 146). In “Disgorging the Fruits of Historical

Wrongdoing” Goodin argues that disgorgement of the benefits of wrongdoing is required even for innocent beneficiaries.

³⁷ Butt, “On Benefitting from Injustice”, 144-5); Goodin, “Disgorging the Fruits of Historical Wrongdoing”, 490.

³⁸ Wenar “Reparations for the Future”; see also Waldron “Superseding Historic Injustice.”

³⁹ Wenar, “Reparations for the Future”, 402