REPARATIONS FOR AMERICAN CHATTEL SLAVERY

by Stephen Darwall
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Ten or so years ago, whenever I could find the time, I began to immerse myself in the history of American chattel slavery and its legacy. In 2014, while I was occupying the office of the chair of the Yale Philosophy Department in Connecticut Hall, I was brought face to face with an inscription above the door: "Eli Whitney 1792 Occupied this Room." I happened then to be reading Edward Baptist's *The Half Has Never Been Told: Slavery and the Making of American Capitalism*, a study of cotton slavery in the United States. Thinking about Whitney's role in cotton production prompted me to write an op-ed piece in the *Yale Daily News* about Yale's, and ultimately my own, complicity with slavery and its legacy. Cotton and textile production would have been impossible without Whitney's invention of the cotton gin, which pulled cotton fibers from the seed and enabled the mechanization and "rationalization" of cotton slavery and textile manufacturing well beyond the relatively feudal forms that tobacco slavery and production took.

This made possible massive profits and the South's, indeed the U.S.'s, integration into an increasingly capitalist global economy. Whereas in 1791 the U.S. produced only one percent of the world's cotton, by 1860 U.S. cotton production had soared to 67 percent of a vastly larger world total. In 1830, cotton represented fully 61 percent of our national exports. Having also recently read Thomas Piketty's *Capital in the Twenty-First Century*, I knew that it was not until the beginning of the industrial revolution in England in the 1790s that Western economies escaped the "Malthusian trap" and began accumulating national wealth, leading ultimately to the standards of living we enjoy in the developed world today. Only when the knitting machines in Manchester's textile mills could hum with cotton provided almost entirely by the American enslaved could wealth accumulation take off and make possible the investments on which even our current prosperity depends.

My point in the *Yale Daily News* was that although Eli Whitney, a Yale undergraduate from Massachusetts, was not directly involved in the slave trade, he was a critical contributor who massively profited from it. In this way, I argued, he was not unlike many of my readers and myself. The purchase of enslaved labor was financed by bonds (like today's securitized mortgages) that were sold throughout the North and also globally.

A little over two years ago, I began to think about offering an undergraduate seminar on "The Morality of Reparations," which I gave first in Fall 2020 and again in Spring 2022. I approached the course with trepidation, owing partly to my position of white male privilege, but also due to my relative ignorance of relevant literatures, including Black activist literature. I am extremely indebted to Will Darwall for discussion of what to include and to all of the students in the two seminars for their forbearance and open-minded and open-hearted engagement.

Thinking through these issues with my students has been one of the most challenging, bracing, and ultimately satisfying experiences of my life. Although Olúfémi O. Táíwò rightly emphasizes that since racialization and the slave trade were global phenomena, reparations must ultimately also be global, my main focus in the two seminars was on the United States. What follows are some of the results of my students' and my attempts to think through the morality of reparations, conceived broadly to include measures of many different kinds at many levels, institutional and personal.

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We now know an enormous amount, in granular detail, about the history and contours of American slavery and its aftermath, including: the convict leasing program, which tied formerly enslaved people to the plantation and other sites of exploitation "legally"; the terror of the Klan and intimidation of Black people at the end of Radical Reconstruction; Jim Crow, housing and school segregation; mass incarceration, and so on. Formerly enslaved Americans and their descendants, fleeing white terror and seeking a better life in the North, undertook a "Great Migration" only to find themselves confined to Northern urban ghettos where they faced increasing challenges brought on by the North's own style of segregation, urban decay, crumbling schools, massive unemployment, drugs, and violence. If white Americans do not know this sorry history, it is because it is something they cannot or will not bear to think about.

The Thirteenth Amendment, which outlawed slavery, was ratified in 1865. Under the cover of Section 2, the Congress then passed the Civil Rights Act in 1866, an important step in the political empowerment of the formerly enslaved during Radical Reconstruction. The Act gave Black citizens an assortment of political and other basic rights, notably, the right not to be discriminated against in housing. This was later overturned, however, paving the way for *de jure* housing discrimination as a matter of local, state, *and* federal law and policy right up until the Federal Fair Housing Act of 1968.

For most Americans today, housing is the major component of their wealth. Median Black family income is about 60 percent of that for whites in the U.S. That is of course a shocking figure. But it is nothing like the difference between white and Black average *wealth*. Median white household wealth is about $134,000, whereas median Black household wealth is roughly $11,000. This means that median Black household wealth is only *about 8%* of median white household wealth. And that means that housing segregation has brought *wealth segregation* in its train. Moreover, if, as Richard Rothstein shows in *The Color of Law*, housing segregation is not just *de facto* but *de jure*, then *wealth segregation has been effectively de jure* as well.

IT IS NO OVERSTATEMENT TO SAY THAT WHAT TOMMIE SHELBY CALLS THE "DARK GHETTO" WAS ITSELF LARGELY A CREATION OF GOVERNMENTAL POLICIES

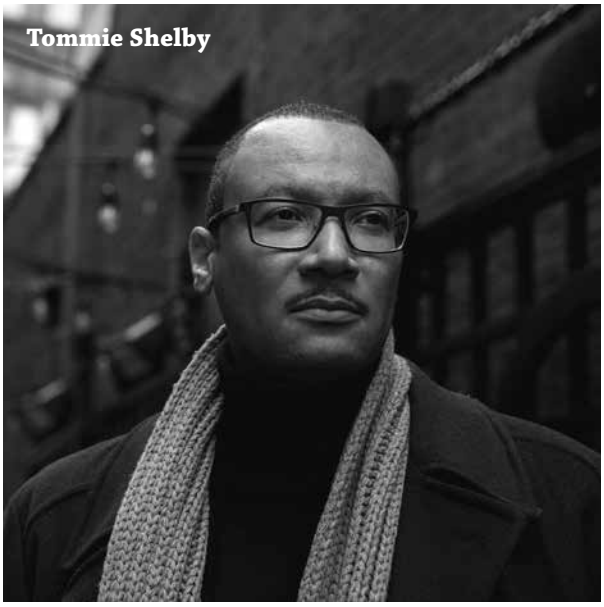
It is clear that the enormous wealth disparities between Black and white American citizens are the continuing legacy of slavery, amplified by continuing oppression pursued through putatively legitimate institutions at every governmental level together with interlocking social and cultural institutions, including the very institutions in which academic philosophy is practiced. What is an adequate response to this manifest injustice?

We may distinguish between *reparations*, conceived broadly to include any attempt to address past and continuing *injustice*, on the one hand, and *repair*, on

the other, which seeks to heal emotional wounds the injustice has caused. I address the latter issue in a forthcoming book, *The Heart and Its Attitudes*. What measures might be taken, I there ask, to heal broken hearts and spirits, most obviously, of Black Americans, but also of whites, whose souls have been misshapen by white supremacy? Here, however, I focus on the former: reparations for injustice and the abolition of white supremacy.

Clearly, very significant measures are called for at every level. A minimal first step nationally would be for Congress to pass HR 40, originally introduced by John Conyers into the House of Representatives in 2017. HR 40 seeks "to address the fundamental injustice, cruelty, brutality, and inhumanity of slavery in the United States and the 13 American colonies between 1619 and 1865 and to establish a commission to study and consider a national apology and proposal for reparations for the institution of slavery, its subsequent *de jure* and *de facto* racial and economic discrimination against African-Americans, and the impact of these forces on living African-Americans, to make recommendations to the Congress on appropriate remedies, and for other purposes." Whatever substantive steps justice requires nationally, these should result, and be seen to result, from just democratic procedures. So passing HR 40 is a necessary first step.

Concerning what justice requires substantively, there are two main schools of thought. These are not mutually exclusive, but they do approach the fundamental issues in different ways. One is to focus on injuries to *individuals*: those who were initially forced to leave their homelands in Africa, to die in or endure unspeakably harsh conditions during the Middle Passage, and those then forced into slavery in the American Colonies and, later the United States, as well as those who were born into slavery on our shores. But it also includes, at the very least, those who have descended from the enslaved: "American Descendants of Slavery," as the ADOS Foundation calls them. It arguably also includes many more Black Americans who have no ancestral ties to American chattel slavery. These individuals descend from citizens who were subjected to later forms of discrimination and violence such as lynching and police violence, Jim Crow, and various forms of segregation and discrimination, and many descendants have been subjected to these themselves.


Tommie Shelby

This individualist approach follows the model of the law of torts; it seeks to provide just compensation for those who have been unjustly injured – to make them whole in the sense of being no worse off, all things considered. A common challenge when it comes to injuries suffered by the enslaved, as well as by later individuals no longer alive, is that there is no way that individuals who are dead can be compensated now. In reply, Bernard Boxill has forcefully advanced an "inheritance argument" that debts that were incurred by the United States, and therefore the American people, earlier, can be inherited and that these can be justly paid to those who would have inherited the compensation had it been paid earlier.

Individualist approaches are, however, insufficient in themselves, since they ignore *structural* or *systemic* racism. Even if every individual with a valid claim were to be provided reparations that justly compensate their injuries from white supremacy, it would do nothing to address systemic racism. It could, of course, take into account injuries that systemic racism has caused to individuals, but it might not touch the structural factors themselves and so would continue to make Black citizens vulnerable to white supremacy.

A just response to the legacy of American slavery would therefore have to speak to these systemic factors. Such a structural approach can fairly be termed *abolitionist*.

Just as the original abolitionists sought to end slavery as a sociopolitical system, present day abolitionism would seek to abolish ongoing white supremacy as a system of racist oppression.

The situation is analogous to the related but more familiar Constitutional process involving school desegregation in the 1950s through the early 1970s. In *Brown* in 1954, the Court found that laws mandating school segregation were unconstitutional because they violated the Fourteenth Amendment's Equal Protection Clause. It was only in later cases, however, that the Court came to realize that school desegregation could not be accomplished just by declaring *de jure* segregation unconstitutional. In a run of cases, prominently including *Green* (1968) and *Swann* (1971) – the famous bussing decision – the Court continued to seek and fashion remedies that, in the words of *Green*, would remove school segregation "root and branch." Just as further affirmative steps were (and still remain) necessary to uproot school segregation, so also would much need to be done fully to dismantle slavery and its white supremacist aftermath.

HOUSING SEGREGATION HAS BROUGHT MASSIVE WEALTH RACIAL INEQUALITY IN ITS TRAIN, TO THE EXTENT THAT IT MAKES SENSE TO SAY THAT IN THE U.S. TODAY, WEALTH ITSELF IS SEGREGATED BY RACE

As things transpired, the run of cases extending *Brown* through *Green* and *Swann* to eliminate school segregation "root and branch," came to a halt in *Milliken* in 1974, when a Court with four recent Nixon appointees held that the affirmative steps mandated earlier were not actually constitutionally required, and that so long as students were free to go to their neighborhood schools, "equal protection of the laws" was satisfied. Later decisions not only upheld *Milliken*, but found that affirmative efforts school boards might take to integrate beyond this were not only not required by the Constitution, but not permitted by it! Perhaps needless to say, we are no closer today to eliminating white supremacy "root and branch" than we are to eliminating school desegregation.

It is no overstatement to say that what Tommie Shelby calls the "dark ghetto" was itself largely a creation of governmental policies. African-American migrants from the South were permitted to live only in tightly circumscribed neighborhoods in the urban North in housing arrangements that made both exit and the accumulation of wealth virtually impossible. Job discrimination and later industrial decline left many trapped in increasingly poor, precarious, and dangerous neighborhoods. It seems obvious that rectification of racial injustice will require substantial abolitionist aspects. Shelby argues that:

> …black metropolitan neighborhoods with high levels of concentrated disadvantage should, on grounds of justice, be abolished. Ending ghettoization would . . . require a radical transformation of the basic structure of U.S. society, and . . . such efforts at fundamental change should include the ghetto poor as essential and equal partners.

It seems impossible to eliminate systemic racism root and branch without abolishing ghettoization.

Doing so is, however, consistent with substantial investment in these urban areas, accompanied by enhanced housing, schools, services, and community control. It is consistent also with the kind of integrating measures that Elizabeth Anderson calls for in *The Imperative of Integration*. Anderson convincingly argues that it is impossible for individuals in racialized groups to relate to one another as mutually accountable equals unless they encounter one another in daily life – in their neighborhoods, parks, and other public spaces.

I assume that an abolitionist remedy would involve various other measures as well. To mention just a few: significantly more aggressive school desegregation – utilizing schemes of the kind that school districts employed before *Milliken* and more recent cases like *Parents*; affirmative action in institutions of higher learning, justified not by diversity, but as a just

response to slavery and its aftermath; and greater access for Black citizens to grants and loans for housing and businesses to address the wealth segregation resulting from housing segregation and other forms of racial discrimination.

Additionally, tort remedies of various kinds are also called for. In these cases, however, descent from direct victims seems relevant in a way that it is not to the uprooting of forms of racist oppression that afflict Black citizens regardless of their ancestry. A good example might be Georgetown University's establishment of a commission to distribute $100 million to benefit descendants of enslaved peoples it once owned. On the national level, I agree with the ADOS Foundation that descendants of American slavery have a valid claim to substantial reparation of injuries to their ancestors, perhaps along the lines that Boxill argues. One relevant consideration is that although more recently arrived Black citizens chose to emigrate, those ensnared in American slavery were forced against their will. The American people thus bear a responsibility for what we might think of as slavery's original theft – the kidnapping of Black Africans for American slavery, ripping them from their homes and homelands and depriving them of their history and connections to their families, societies, and lands.

THE BLACK BODY HAS BEEN SOCIALLY MARKED AS FIT TO BE OWNED AS CHATTEL, CARNALLY POSSESSED, AND SUBJECTED TO UNSPEAKABLE INDIGNITIES

But how would individuals establish their descent from enslaved persons? This can hardly be an insuperable obstacle to reparations if the very reason why it is difficult to prove descent is because of American slavery itself, through the breaking up of families, not sharing records, depriving the enslaved of literacy, and the like. To the contrary, a just repair must itself include the painstaking research and public history necessary to "say the names" of enslaved *individuals* and establish lines of descent to contemporary Americans.

What form might such reparations take? One form that seems appropriate in light of the very idea of descent is to establish bonds for every newborn descendant. At maturity, the bonds would be available for personal investment. Rather than restricting them to approved uses, like education, it seems to be most appropriate for them to be unrestricted so that they can symbolize the freedom of which their ancestors were deprived.

Establishing lines of descent makes vivid the personal connections between enslaved individuals and individual descendants. And an accompanying public history also offers the opportunity for inquiry concerning connections of both of these groups and individual white citizens, past and present. This can help bring to life the significant fact that virtually every American has been caught up in white supremacy and bring it to public consciousness in ways that can enable Americans better to come to terms with the enormity of the phenomenon and their own relation to it.

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To create a just society it is necessary to establish relations of mutual respect and equality between all members. We have been focusing mainly on ways in which individuals have been injured by other individuals and by racist political institutions and policies. No less important, however, are relations of *social* dominance and oppression. It is helpful in understanding the depth and significance of white *social* supremacy, to consider the idea that Black Americans have been made to wear what the U.S. Supreme Court once termed "badges of slavery" in 1883. By this, the Court meant that legislation and practice concerning slavery had effectively imposed a socially recognizable mark on all Black Americans, whether formally enslaved or not, that labeled them as fit to be enslaved and therefore to be treated and viewed more generally with "contempt and pity," as W. E. B. Du Bois put it. To help illuminate the distinctive form of social subordination to which Black citizens have been subjected, it is worth going into this history in some detail.

The Thirteenth Amendment to the Constitution has two sections. The first runs as follows:

> Section 1: Neither slavery nor involuntary servitude, except as a punishment for crime whereof the party shall have been duly convicted, shall exist within the United States, or any place subject to their jurisdiction.

Section 1 thus abolished slavery and involuntary servitude. The second section is much less well known and discussed:

> Section 2: Congress shall have power to enforce this article by appropriate legislation.

This is an important addition. There are many intrastate matters that Congress cannot regulate. The Thirteenth Amendment's Section 2 made whatever is necessary to ensure that slavery and involuntary servitude did not continue to exist a federal affair. It removed grounds for complaint in this area that Congress was intruding on matters the Constitution reserved to the states.

The Thirteenth Amendment was ratified in 1865. Under the cover of Section 2, the Congress then passed the Civil Rights Act in 1866, an important step in the political empowerment of the formerly enslaved during Radical Reconstruction. The Act made central political rights of citizenship independent of "race" or "previous condition of slavery or involuntary servitude." It also gave Black citizens an assortment of other basic rights, most notably, again, the right not to be discriminated against in *housing*, which, if it had been secured, would almost certainly have dramatically affected Black American's wealth.

In 1883, the Court held that the Thirteenth Amendment's Section 2 only gave Congress the power to address what it called "badge[s]" and "incidents" of slavery. To deny Black citizens, *whether formerly enslaved or not*, central political and economic rights, such as the right to enter into contracts, it said, would impermissibly impose on them a "badge of slavery," whereas allowing individuals to take account of race in private economic decisions, rental and housing sales, for example, would not. That was what the Court held.

What did the Court mean by "incidents" and "badges of slavery"? One part of the legal idea that the Court was invoking was that, before Abolition, race had been treated as a *legal* "badge of slavery" in slaveholding states when, for one example, being Black was taken as legally presumptive evidence of being a slave or when, for another, a denial of political rights like the right to vote to the enslaved was also extended to free Blacks because, though formally free, they wore the "badge of slavery" since their skin color was taken to be a socially recognizable mark of slave status.

Similarly, in states where Black citizens had been denied the vote because of slavery, this denial was a legal "incident," that is, a legal consequence, of slavery. So, according to the Court's reasoning in 1883, Section 2 of the Thirteenth Amendment gave Congress the power to guarantee former slaves the right to vote, since its prior denial had been a legal consequence of slavery. In other words, the Court held in 1883 that Section 2 gave Congress the authority to outlaw not just the institution of slavery itself, but also its former legal consequences ("incidents") as well as its socially recognizable, status-defining marks or "badges".

I have gone into this legal history because I believe that the notions of "incidents" and, especially, "badges" of slavery are important for understanding the distinctive forms of *social* inequality *and inferiority* to which Black people have been subjected in my country. Social treatment has been an ineliminable, and arguably the central, aspect of American white supremacy.

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Relational hierarchy exists when people relate to one another on terms of superiority or inferiority. It contrasts with *relational equality*, where people relate to one another as equals. Arguably, the function of the modern concept of race was to rationalize forms of oppression and subjugation like chattel slavery. So inferiority of a more fundamental (ideologically normative) kind was built into the racial idea of Blackness from the start. That does not mean, of course, that the concept could not be, or that it has not been, repurposed for other, even emancipatory, uses. But it should be uncontroversial that this was the concept in play in the ideology and practice of American chattel slavery.

Chattel slavery was a relation of superiority/inferiority that was encoded legally and socially within an institution of property. What Southerners called their "peculiar institution" involved a distinctive form of property in people that gave masters virtually unlimited legal and social authority over their enslaved, including, importantly, mastery over their bodies. Masters had largely unconstrained powers of command that made deference not only often the only reasonable response, but what defined the social and legal role itself.

Without the "peculiar institution," there could have been no "badges of slavery," no public signifiers that its bearer is fit to be treated as chattel. Du Bois said that the "real essence" of the "badge of color" is "its social heritage of slavery; the discrimination and insult." But just as slavery's "incidents" outlived Abolition, so also did its badges. Both have to be addressed if the legal *and* the social aspects of slavery are to be overcome.

It is no overstatement to say that ghettoization was itself largely a consequence of governmental policies. Moreover, the government's dividing children into schools by race and dividing citizens into neighborhoods by race gave them a racial social badge as well. Rothstein shows that many cities were substantially more integrated before governmental actions in the early twentieth century. This means that governmental policy actually *added* to the badges of slavery. Even if the government no longer actively supports housing segregation (and its badge of slavery), the American people remain responsible for removing the badge of slavery it created with official housing segregation *as well as* for eliminating badges of slavery resulting from governmental support of slavery itself.

Earlier I mentioned that housing segregation has brought massive wealth racial inequality in its train, to the extent that it makes sense to say that in the U.S. today, wealth itself is segregated by race. Surely this too functions as a badge of slavery, one that turns the phrase "deserving poor" on its head. Owing to slavery and its aftermath, Black poverty has become a social signifier of deserving *to be* poor owing to inferior status, of being someone who is to be viewed, as Du Bois noted, with "contempt and pity."

BALDWIN EMPHASIZES THAT WHITE SUPREMACY DISTORTS THE LIVES OF WHITE OPPRESSORS AS WELL AS THOSE OF THEIR VICTIMS

Moreover, the violence, visceral fear, and violation of the body that characterized slavery and that have been such grievous aspects of African-American life ever since have been both cause and effect of the Black body being made a badge of slavery as well. The Black body has been socially marked as fit to be owned as chattel, carnally possessed, and subjected to unspeakable indignities. Can there be any serious doubt that this badge of slavery contributed, and still does contribute, to the history of lynching, racist violence, and violent intimidation that has characterized the African-American experience, and still does, including the police violence that inspired the Black Lives Matter Movement.

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There are other significant badges of slavery as well. One obvious one that must be mentioned is the mass incarceration of the last thirty to forty years, most notably of African-American males. In 1980, 10 percent of Black males who did not complete high school were incarcerated. By 2008 this number had increased to 37

percent, *almost four times the earlier figure*. Today, the chances are roughly one-in-three that a Black male will be imprisoned sometime during his life.

Loïc Wacquant uses the term "hyperincarceration" to refer to the more targeted imprisonment of those in ghettoized urban neighborhoods in the industrial North. With white as well as middle-class Black urban flight, a progressively challenged social infrastructure, the War on Drugs (partly fought with an increasingly militarized urban police force), and a conservative turn in American politics that decimated social programs, hyperincarceration became America's urban policy of choice.

Badges of slavery are social signifiers that those who wear them are to be regarded and treated as inferiors. But there is no such thing as inferiority without superiority. So badges of slavery were from the very outset badges of the superiority of those who did not have to wear them. At first, of course, these were primarily whites in the slaveholding South, but never exclusively. Even Northern Radical Republican abolitionists were likelier to favor "colonization," that is, forced emigration of freed slaves to newly constituted colonies in Africa, than full integration into American society. "Badges of slavery," therefore were, and remain, simultaneously badges of white supremacy, to be seen by those who did and do not bear them as signifying a *de jure* or normative superiority in order to rationalize *de facto* racial hierarchy.

White social supremacy cannot therefore be abolished without the destruction of the racial social markers or badges that mediate it. And that ultimately cannot be done without undermining the modern concept of race itself. As James Baldwin put it in his 1965 Cambridge Union debate with William F. Buckley:

> It is a terrible thing for an entire people to surrender to the notion that one-ninth of its population is beneath them. And until that moment, until the moment comes when we, the Americans, we, the American people, are able to accept the fact, that I have to accept, for example, that my ancestors are both white and Black. That on that continent we are trying to forge a new identity for which we need each other [and that] I am one of the people who built the country – until this moment there is scarcely any hope for the American dream, because the people who are denied participation in it, by their very presence, will wreck it.

The first several times I heard this passage, I took "the people who are denied participation in it, by their very presence, will wreck it" to be a strategic remark, along the lines of: continued oppression will bring "the fire next time." But that is not what Baldwin is saying, I think. His point is that "the very presence" of a racially subjugated group in relation to which those in the subjugating group identify themselves (as superior) is sufficient *by itself* to undermine any "American Dream" worth wanting *for both groups*. Baldwin emphasizes that white supremacy distorts the lives of white oppressors as well as those of their victims.

Serious reparations proposals are frequently resisted by white people on the grounds that they are too costly (for whites). The lesson we learn from Baldwin is that *not* rectifying the manifest injustice of white supremacy and healing its consequent wounds is likely more costly still.

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Acknowledgements

I am indebted to Anthony Morgan and two anonymous readers of *The Philosopher* for helpful suggestions.

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