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RESEARCH ARTICLE

The Currency of Racial Justice*,**

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Abstract
Racial justice is widely seen as a central moral and political ideal of our time, especially on the liberal-egalitarian left. And racial justice goes hand in hand with racial equality. The centrality of these ideals would be hard to justify if they had no bearing on material or economic inequality, or applied solely to semiotic and cultural issues. But we argue that, at present, the only plausible basis for understanding racial equality as a distinctive aim for the economic domain—rather than a mere implication of more general egalitarian or progressive principles—rests on minimal state, right-libertarian foundations. As such, racial equality is a strange focus for the left.

I. Introduction

"Racial Justice" is one of the central moral ideals of the 21st century, in the United States, and increasingly elsewhere around the globe.[1] Racial justice and racial equality go hand in hand. Scholars and advocates understand the racial inequalities observed

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[1]In philosophy, perhaps nobody has done more to advance this perspective than Charles Mills. In a distinguished body of work, Mills pressed the claim that the social contract tradition (often represented by Rawls' Theory of Justice), and Anglo-American political philosophy more generally, is inadequately sensitive to the history of racial injustice. *See, e.g.*, Charles Mills, *Theorizing Racial Justice*, THE TANNER LECTURES ON HUMAN VALUES (2020), 48-49; *Retrieving Rawls for Racial Justice? A Critique of Tommie Shelby*, 1 CRITICAL PHILOSOPHY OF RACE 1 (2013); *White Supremacy as Sociopolitical System*, ch. 7 of Mills, *FROM CLASS TO RACE: ESSAYS IN WHITE MARXISM AND BLACK RADICALISM* (2003); *Racial Justice*, 92 PROCEEDINGS OF THE ARISTOTELIAN SOCIETY 69 (2018).

in a wide range of contexts—police violence, corporate workplaces, COVID-19 exposure; the Oscars—as evidence (or constitutive) of racial injustice.

So racial justice is seemingly egalitarian, and it includes a wide variety of equalisanda. These various equalisanda can be categorized, roughly, into three basic domains, which we might call the "political," the "economic," and the "cultural."[2] These three domains are causally interrelated.[3] The exact nature and dimensions of their relationship is a matter of deep and long standing debate.[4] Since Rawls' *Theory of Justice* was published in 1971, analytic political philosophy in the Anglo-American tradition has been largely preoccupied with questions about the distribution of income and wealth.[5] Philosophers who think of racial justice as a central normative ideal have sometimes balked at this focus.[6] But none of these theorists deny the importance of the economic domain outright, even if they also regard "recognition" or some form of civic or political status as normatively fundamental.[7]

Income and wealth matter, even if they are not the only objects of moral or political concern. They are the kinds of things that people want, regardless of whatever else they might want—"Primary Goods," in Rawlsian jargon.[8] Especially in a capitalist society, the quality of one's opportunities to live a life one has reason to value is determined to a significant degree by one's income and wealth.[9] And both income and wealth are powerful determinants of people's happiness or subjective sense of well-being—at least up to a certain point.[10]

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[2]Mills uses the terms "civic political status," "one's entitlement to fair (race-independent) professional and economic opportunities for careers and the accumulation of wealth," and one's "socially recognized personhood." Mills, *Theorizing Racial Justice*, 48-49.

[3]Pierre Bourdieu, Distinction: A Social Critique of the Judgement of Taste (1984); T.H. Marshall, Citizenship and Social Class (1950); Thorstein Veblen, Theory of the Leisure Class (1899); Lauren Rivera, *Hiring as Cultural Matching: The Case of Elite Professional Service Firms*, 77 Am. Soc. Rev. 999 (2012); Martin Gillens and Benjamin I. Page, *Testing Theories of American Politics: Elites, Interest Groups, and Average Citizens*, 12 Perspectives on Politics 564 (2014).

[4]*See, e.g.*, Oliver Cromwell Cox, Caste, Class and Race (1948); Nancy Fraser & Axel Honneth, Redistribution or Recognition (2003); Charles Taylor, Multiculturalism and the Politics of Recognition (1992); Iris M. Young, Justice and the Politics of Difference (1990); Axel Honneth, Recognition: A Chapter in the History of European Ideas (2020).

[5]John Rawls, a Theory of Justice (1971); for an intellectual history of post-Rawlsian analytical political philosophy, see Katrina Forester, In the Shadow of Justice (2019).

[6]*See, e.g.*, Chris Lebron, The Color of our Shame (2013); Charles W. Mills, *White Supremacy as Sociopolitical System*, ch. 7 of Mills, From Class to Race: Essays in White Marxism and Black Radicalism (Lanham, MD: Rowman & Littlefield, 2003); Charles Mills, *Racial Justice*, 92 Proceedings of the Aristotelian Society 69 (2018); Elizabeth Anderson, *What is the Point of Equality?*, 109 Ethics 287 (1999); Elizabeth Anderson, The Imperative of Integration (2010).

[7]Anderson, for example, explicitly states that at least a certain level of income and wealth may serve as preconditions to equal civic participation or democratic citizenship. Elizabeth Anderson, *What is the Point of Equality?*, 109 Ethics 287 (1999). Satz argues, similarly, that what constitutes an adequate education for democratic citizenship depends partly on what educational opportunities others have, so the threshold of adequacy must have a partly egalitarian element. Debra Satz, *Equality, Adequacy, and Education for Citizenship*, 117 Ethics 623 (2007).

[8]John Rawls, A Theory of Justice (1971).

[9]*See, e.g.*, Amartya Sen, Inequality Reexamined (1992); Amartya Sen, The Idea of Justice (2009).

[10]*See, e.g.*, Andrew Jebb et al., *Happiness, Income Satiation and Turning Points Around the World.* 2 Nature Human Behavior 33 (2018).

This paper thus examines racial equality as an economic goal. For illustrative purposes, we focus on wealth inequality between Black and White people in the United States. This enables us to draw on robust empirical literature and easily accessible data and to engage with a well-developed philosophical corpus that analyzes this inequality from a normative perspective. But we suspect that our argument generalizes to economic inequalities between socially-distinguished racial groups in other contexts when the income or wealth distributions of the two groups substantially overlap and each of these groups is itself characterized by substantial intraracial inequality.

In Part II we observe that, given the fact of intra-racial inequality, there are an infinite number of interventions that would close the racial wealth gap. Many of these have no plausible normative justification. Others seem to have nothing to do with "racial justice" specifically and could only be justified by a more general commitment to economic justice. We thus focus the paper on reparations for slavery and other historical injustices against Black people in America. Reparations have both the potential to close the racial wealth gap and a plausible racial-justice-related normative justification. We show that reparations would be a significant improvement on the status quo, from the perspective of egalitarian or more broadly "progressive" principles of distributive justice.[11] But, we argue, race-based reparations would also be *suboptimal* from the perspective of those same principles.

This raises the question: how might reparations be justified, if not by these principles? In Part III, we examine arguments for reparations based on principles of *corrective* rather than distributive justice. The goal of this examination is to see whether corrective principles can justify racial equality as a distinctive aim for the economic domain—an aim that is independently valuable, apart from any more general reasons to eliminate or reduce wealth inequality *tout court.* We argue that the only such argument that is likely to succeed in this respect depends on a minimal-state, libertarian outlook. This is a strange result for the race-conscious progressive.

In Part IV, we consider whether it might be possible to avoid this strange result by combining class- and race-based principles in an "intersectional" or hybrid theory of justice. We show that such theories run into internal contradictions due to the incompatibility of egalitarian and libertarian principles. We argue that the only coherent theory of this kind would give sufficientarian or democratic egalitarian principles lexical priority over libertarian ones. A theory like this would have purchase only in the most generous welfare states, like Norway—which, not coincidentally, has no history of race-based chattel slavery. So this reasoning has most purchase in societies where it is least likely to be relevant.

This paper is about principles of justice, rather than political strategy. But in Part V, we briefly consider how the two overlap. Though race-based reparations would represent an improvement relative to the status quo by both egalitarian and libertarian lights, they are unlikely to anchor a winning political coalition. We give

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[11]By "progressive," we mean to include sufficientarian, utilitarian, and democratic egalitarian principles. Civic standing or democratic citizenship is the fundamental *equalisandum* in democratic egalitarian theories of justice. But those theories do have implications for the distribution of income and wealth, and democratic egalitarians (often drawing on the British sociologist T.H. Marshall) emphasize that some threshold of income and wealth can be an important precondition for achieving equal civic standing. *See* Anderson, *What is the Point of Equality* 287. So, with respect to income and wealth, democratic egalitarianism has much in common with Sufficientarianism—both are "threshold" views.

reasons for doubting that race-based reparations (or similar proposals) are feasible in a society in which the economically dominant racial group is a majority.

We conclude that racial equality is not a promising ideal for the distribution of wealth—at least not for progressives. What this implies for racial equality in other domains, and racial justice in general, depends on difficult questions about the relationship between the politics of distribution and the politics of recognition, which we cannot settle here. Our view is that attention to race will continue to be important, since, as an empirical matter, race is often a useful proxy for the kind of "concentrated" disadvantage that those on the progressive left should seek to eliminate.

II. Racial Equality and Distributive Justice

The average White family in today's United States is around six-and-a-half times wealthier than the average Black family.[12] And, on average, White households have almost two-and-a-half times the income of Black households. These gaps have their origins in a history of injustice and oppression—from the race-based enslavement of millions of Black people, who produced much of the wealth that eventually made the United States a global power; to the century of Jim Crow segregation that followed; to the various racial exclusions of the postwar social compact.[13]

Many argue that wealth is a better proxy for advantage than income.[14] This is especially true for Black people in the United States.[15] As Oliver and Shapiro note in their now-classic study, familial wealth is both an important indicator and determinant of life chances and a window into inequalities that are the product of the past.[16] Philosophers of race—Mills foremost among them—argue that part of what makes racial justice distinct from economic or class-based justice is that the former is necessarily backward-looking, historical, or "corrective," rather than forward-looking or present-focused.[17] As Ta-Nehisi Coates puts it, "[p]erhaps no statistic better illustrates the enduring legacy of our country's shameful history of treating black people as sub-citizens, sub-Americans, and sub-humans than the wealth gap."[18] Closing the racial wealth gap has thus been understood as an especially important demand for racial justice.

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[12]All data are from the 2022 edition of the Survey of Consumer Finances.

[13]See, e.g., RICHARD ROTHSTEIN, THE COLOR OF LAW: A FORGOTTEN HISTORY OF HOW OUR GOVERNMENT SEGREGATED AMERICA (2018); MELVIN L. OLIVER & THOMAS M. SHAPIRO, BLACK WEALTH/WHITE WEALTH: A NEW PERSPECTIVE ON RACIAL INEQUALITY (1995); WILLIAM A. DARITY & KIRSTEN MULLEN, FROM HERE TO EQUALITY: REPARATIONS FOR BLACK AMERICANS IN THE TWENTY FIRST CENTURY (2020).

[14]See, e.g., THOMAS PIKETTY, CAPITAL IN THE TWENTY-FIRST CENTURY (2014).

[15]Middle-income Black families commonly face a host of neighborhood-level disadvantages from which White families with similar incomes are spared. See, e.g., Mary Patillo, Black Middle-Class Neighborhoods, 31 ANN. REV. SOCIOLOGY 305 (2005).

[16]MELVIN L. OLIVER & THOMAS M. SHAPIRO, BLACK WEALTH/WHITE WEALTH: A NEW PERSPECTIVE ON RACIAL INEQUALITY (1995).

[17]See, e.g., CHARLES MILLS, THE RACIAL CONTRACT (1997); Charles Mills, Theorizing Racial Justice, THE TANNER LECTURES ON HUMAN VALUES (2020); Erin Kelly, The Historical Injustice Problem for Political Liberalism, 128 ETHICS 75 (2017).

[18]Ta-Nehisi Coates, The Case for Reparations, THE ATLANTIC (2014).

If the racial wealth gap is an indicator of injustice, or unjust in and of itself, then one might think that closing the racial wealth gap should *ipso facto* represent progress towards justice. But things are not so simple.

First, there is the question of how the racial wealth gap should even be defined: in terms of *mean* inequality, or inequality at the *median*? As of 2022, the median Black family in the United States had around $44,000 in net assets, while the median White family had around $284,000.[19] By contrast, the mean net worth of Black families in 2022 was around $212,000, compared to $1,362,000 for White families. So, while White families are around 6.5 times wealthier than Black families regardless of how we measure the gap, the racial wealth gap is much larger at the mean than it is at the median, in absolute terms (around $1,150,000 vs. $240,000).

One reason the absolute racial wealth gap is bigger at the mean than the median is the colossal level of *intra-racial* wealth inequality in today's United States. The wealthiest ten percent of Americans hold around three-fourths of total national wealth, and the wealthiest quintile holds around eighty-five percent. The bottom half of the American public, by contrast, collectively holds only around two percent of the nation's wealth. The figures are similar when disaggregated by race: eighty percent of Black wealth is in the hands of the top twenty percent of Black households (and, notably, the bottom half of Black Americans collectively have net negative assets).

Because the wealth distribution is so right-skewed, it would take 2.8 trillion dollars to raise the wealth of all Black households to at least the level of the median White household, but 17 trillion to raise mean Black wealth to the level of mean White wealth. And if one narrowly targeted the gap at the median—by, say, transferring money only to those families between the Black median ($44,000) and White median ($284,000)—the median gap could be closed at an even smaller cost.

Thus, as Darity and Mullen note, closing the gap at the median would do very little to change the disparity in resources (and thus, power) between Whites and Blacks.[20] For this reason, discussion of the racial wealth gap typically focuses on the racial wealth gap at the mean rather than the median. We follow suit in this paper. Yet while focusing on closing the mean racial wealth gap might address the issue of group-level (per capita) power disparity, interventions targeting the mean do not necessarily do anything to address the interests of poor Black people. To see why, consider two hypothetical interventions that close the mean racial wealth gap, but which have opposite implications for the overall distribution of wealth:

1. *Perfect Equality:* The federal government confiscates all wealth and redistributes it equally between all households.

If there is no wealth inequality to begin with, there can be no racial wealth gap. But it is also possible to achieve mean racial equality while achieving almost perfect overall inequality, as in:

2. *Kleptocratic Equality:* The federal government confiscates all wealth and redistributes it, proportionally, between the wealthiest person in each racial group.

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[19]For ease, we round all dollar values in this paper to the nearest $1,000.

[20]William A. Darity & Kirsten Mullen, From Here to Equality: Reparations for Black Americans in the Twenty First Century (2020), 94 26, p. 331 ("Ninety-seven percent of white wealth is held above the white median net worth, so targeting median net worth ignores a vast amount of white-owned wealth.").

David Steward, the richest living Black person, receives around $16 trillion; while Elon Musk, the richest white man alive today, receives around $93 trillion.[21]

In both worlds, the mean household, Black or White, would have around $1,059,000 in net assets. The wealth gap between the median White and Black households would also be eliminated. Under *Perfect Equality*, the median Black and White households both hold the same amount of wealth as the mean household: namely, $1,059,000. Under *Kleptocratic Equality*, by contrast, both the median Black and White households would have no net assets whatsoever.[22]

Perfect Equality and *Kleptocratic Equality* demarcate a spectrum of redistributive interventions that closes the mean racial wealth gap. Toward one end of the spectrum (*Perfect Equality*) lie points that achieve racial equality while also achieving overall equality. On the other end of the spectrum (*Kleptocratic Equality*) lie points that achieve racial equality alongside (almost) perfect inequality. Of course, *Perfect Equality* and *Kleptocratic Equality* are contrived possible worlds; we use them merely to illustrate the range of redistributive measures that could close the racial wealth gap. But neither hypothetical intervention is "narrowly-tailored" to the goal of racial equality.[23] They achieve racial equality partly via dramatic transformations of the intra-racial distribution of wealth. Perhaps it is precisely because they dramatically transform the intra-racial distribution of wealth that they seem so perverse?

Consider, then, a third way to achieve mean racial equality. This hypothetical intervention is narrowly-tailored to racial equality, in the sense that it could be achieved exclusively by inter-racial transfers of wealth:

3. ***Align The Curves***: The federal government redistributes from White families to Black families in such a way that Black families at each percentile of the intra-racial Black wealth distribution hold the same wealth as White families at the corresponding percentile of the intra-racial White wealth distribution.

Align The Curves is perhaps the most intuitive reaction to the facts of American racial inequality. As Figure 1 shows, one way of representing racial inequality is to plot the wealth gap between Black and White families who sit at equivalent positions in their race-specific wealth distributions. Today, a Black family at the 25th percentile of the Black wealth distribution is at the 12th percentile of the overall wealth distribution, while a White family at the 25th percentile of the White wealth distribution is at the 32nd percentile, overall. One might think that the objective of racial equality is to eliminate this difference. Visually, this would be a world in which the White and Black lines were both perfectly overlapping and straight; hence, *Align the Curves*.

Align the Curves equalizes every aspect of the White and Black wealth distributions (the median, the mean, the 25th percentile, the 75th percentile, the top one percent share…). Yet it also has an extremely inegalitarian feature: due to the skewed nature

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[21]In the 2022 Survey of Consumer Finances (SCF), the total stock of household wealth is around 139 trillion dollars. The real number is larger, but for consistency we base all calculations and simulations described in this paper on the SCF.

[22]This helps illustrate why it is insufficient for social scientists to use these properties as a proxy for reasoning about the normative significance of interventions.

[23]We borrow the concept of "narrow tailoring" here from 14th Amendment jurisprudence. *See, e.g.*, *Adarand Constructors, Inc. v. Peña*, 515 U.S. 200 (1995); *Grutter v. Bollinger*, 539 U.S. 306 (2003).
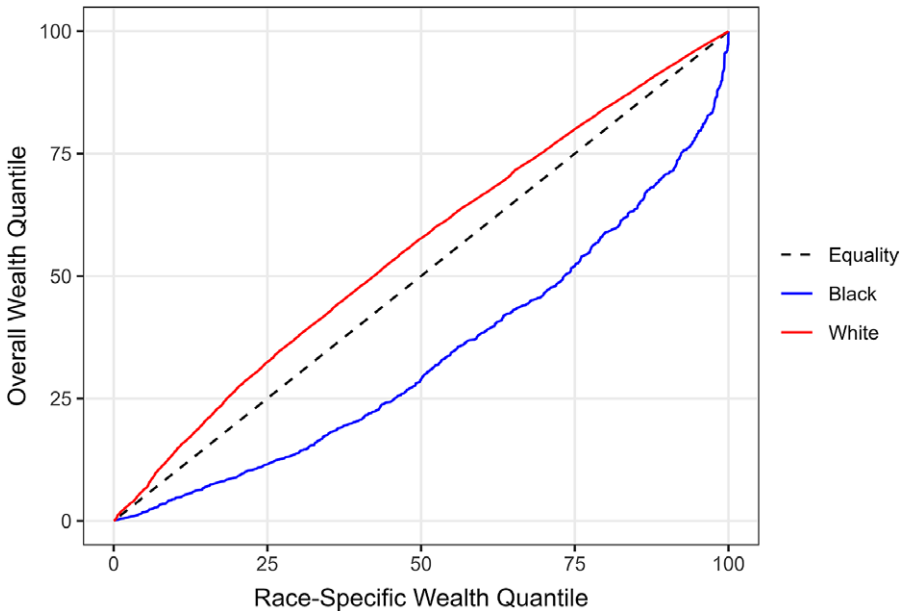
Figure 1. This graph visualizes Black-White wealth inequality in the United States. The *x*-axis gives a household's position in their race-specific wealth distribution, while the *y*-axis gives a household's position in the overall wealth distribution. At every quantile, the racial wealth gap is the gap between the red and blue lines. One way of achieving racial equality would be to align the red and blue lines with the dashed line.

of the overall wealth distribution, *the biggest beneficiaries are the already wealthy.* That is, *Align The Curves* requires an enormous redistribution of wealth from the richest White Americans to the richest Black Americans and a meager redistribution of wealth from the poorest White people to the poorest Black Americans. The richest White people in America—people like Elon Musk, Jeff Bezos, Bill Gates, and Warren Buffet—have estimated assets north of $100 billion each (Musk's assets are valued at around $250 billion as of 2024). The richest Black Americans, by contrast— people like Robert F. Smith, David Steward, Oprah Winfrey, and Michael Jordan— have assets worth "only" around $1-10 billion each. *Align The Curves* would demand equality between Smith, Steward, and others in the top 1 percent of the Black wealth distribution, and Musk, Bezos, and others in the top 1 percent of the White wealth distribution. By contrast, White people at the bottom of the intra-racial wealth distribution have negative net assets. Thus, all *Align The Curves* could offer very poor Black families is a little less debt (and, to very poor White families, a little more).

Thus, even though *Align the Curves* is a facially egalitarian reaction to the facts of racial inequality, it has no plausible egalitarian foundation. Consider what this implies. The facts of intra-racial wealth inequality mean that there are an infinite number of ways to close the racial wealth gap. Which Black people should benefit? And how much? Which Whites (or non-Blacks) should bear the burdens? And how much? On its own, the ideal of "racial equality" gives no answers.

Of course, *Perfect Equality, Kleptocratic Equality*, or *Align the Curves* are highly contrived interventions. Our point, in constructing them, is to draw out the difficulty of answering these questions by appealing simply to racial equality. But one might wonder whether they can be better answered by the kind of intervention that is most commonly defended by scholars, activists and policymakers today:

4. **Reparations:** The federal government levies a one-time progressive tax on all households, raising enough revenue to close the mean Black-White wealth gap by redistributing the proceeds equally to all Black households. Under this scheme, each Black household receives $999,000.[24]

Reparations would close the mean racial gap, as its proponents intend.[25] It would also dramatically equalize Black wealth. Today, the wealth-based Gini coefficient in Black America is 0.83. Under *Reparations*, it would be 0.13—a more equal distribution of wealth than is found in any country in the world. In the United States, the least advantaged are disproportionately Black. A monetary reparations program sufficient to close the mean Black-White wealth gap would thus eliminate some of the most entrenched and debilitating social and economic disadvantage in the United States. From a broadly egalitarian or progressive perspective, *Reparations* would thus represent a dramatic improvement in the status quo.

But some Black Americans are very rich, and some non-Black Americans are very poor. *Reparations* mandates large payouts to the first and have nothing to offer the second. It is not clear why this is the right thing to do. Thus, even though *Reparations* would be better than business as usual, it also seems suboptimal from a broadly egalitarian or progressive perspective. On any of the standard, "patterned" principles of distributive justice, it seems that we could find much better uses of the roughly $15 trillion that it would take to close the racial wealth gap. Why distribute so much to the already wealthy? And why neglect to distribute anything to some of the presently poor? Below, we examine the possibility that this might be justified by appealing to *corrective* rather than *distributive* justice.

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[24]Though reparations proposals take different forms (including many that are non-monetary), in a recent book on the subject, William Darrity and Kristen A. Mullen argue that the size of the reparations bill should be calibrated by that amount necessary to eradicate the racial gap in mean wealth between Black and White households. WILLIAM A. DARITY & A. KIRSTEN MULLEN, FROM HERE TO EQUALITY: REPARATIONS FOR BLACK AMERICANS IN THE TWENTY FIRST CENTURY (2020).

[25]The kind of race-based reparations we simulate has three features. First, we target the mean Black/White racial wealth gap, rather than calculating the bill by working backwards from the amount of unpaid wages or uncompensated damages. Second, we raise the revenue for it by taxing households at rates equal to the progressive structure of the American income tax (rather than raising it in a flat way). Households with zero or negative net worth pay no tax. Third, we distribute it to Black households as a universal, flat grant (rather than in a progressive way). Later in the paper we discuss the consequences of modifying the third feature, and distributing it in a means-tested rather than flat manner. Note that, in our implementation, the total amount transferred is smaller than the figure we cited earlier as the figure that would be sufficient to raise the wealth of the mean Black household to the level of the mean White household. The reason for this is that some of the gap is closed by the fact that wealth is being taken away from existing households and not simply produced out of thin air. To see this, it may help to consider a simple example. To close a gap between two people who have $10 and $20 respectively, a third party can either give $10 to the first, confiscate $5 from the second and transfer it to the first, or raise $7.50 by taxing both at twenty-five percent and redistributing the proceeds to the poorer of the two people. Our implementation of reparations is like the third of these scenarios, except that the tax is progressive. For more details, see the replication code.

III. Racial Equality and Corrective Justice

Mills, among others, argues that the distinguishing feature of racial justice, as opposed to social or economic justice more broadly, is that the former is "historical" rather than forward-looking or present-focused.[26] In one line of work that was still in progress when he passed away in 2021, Mills defends three principles of corrective racial justice: "end racially unequal citizenship"; "end racial exploitation"; and "end racial disrespect."[27] He was unable to draw out the implications of these three principles before he died. But he did make the following revealing statement:

> Ending racial exploitation would not just mean say, prohibiting unequal pay for equal work, banning sweatshop labor, and abolishing the (in actuality if not designation) national racial division of labor, but initiating a refurbished and aggressive affirmative action program across the country as well as *reparative measures to correct for the huge wealth advantage whites have accumulated over the years at the expense of people of color through "unjust enrichment,"* a concept not usually so broadly defined in liberal jurisprudence, but arguably manifest in the long history of discrimination in hiring and promotion, federal backing of restrictive covenants, mortgage discrimination, the racist postwar implementation at the local level of the G.I. Bill, inferior education (again—though here in its economic implications) in segregated inner-city schools that denies blacks and Latinx an equal chance to develop human capital, and so forth.[28]

The concept of "unjust enrichment" that Mills invokes here comes from private law theory and doctrine, rather than forward-looking or present-focused theories of distributive justice.[29] Tellingly, Mills also cites Darity and Mullen's case for reparations as his source for this statement.

Mills was unable to develop his positive theory of corrective racial justice in anything approaching the depth of his critical contributions before he passed away. But others—most notably Bernard Boxill—have defended a case for reparations that is similar to Mills' in drawing on backward-looking principles of corrective justice.[30] Can Boxill's argument tie up the loose ends of Mills' case?

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[26]Charles Mills, *Theorizing Racial Justice*, The Tanner Lectures on Human Values (2020), p. 16-17; Erin Kelly, *Redress and Reparations for Injurious Wrongs*, 41 Law & Philosophy 105 (2021).

[27]Mills, *Theorizing Racial Justice*, 49. Mills saw these principles as being justified by a modified quasi-Rawlsian thought experiment involving a "veil of ignorance" that would give decision-makers in the Original Position information about the history of racial injustice in the society they are choosing principles for, but still prevent them from knowing their own racial identity, among other things.

[28]Mills, *Theorizing Racial Justice*, p. 53 (emphasis added).

[29]*See Lipkin Gorman v. Karpnale Ltd* (1988) UKHL 12; Peter Birks, Unjust Enrichment (Oxford, 2005); Andrew Burrows, *A Restatement of the English Law of Unjust Enrichment* (Oxford University Press, 2012).

[30]Bernard Boxill, *A Lockean Argument for Black Reparations*, 7 J. Ethics 63-91 (2003); Bernard Boxill & J. Angelo Corlett, *Black Reparations*, Stanford Encyclopedia of Philosophy (2016). Unlike Mills, Boxill does not defend the view that racial justice is fundamentally distinct from social or economic justice in general, or that racial equality should be understood as a self-standing ideal, independent from more general egalitarian or progressive principles, however. And his earlier work indeed suggests something closer to the opposite, given that much of it applies standard liberal-egalitarian principles to issues of racial inequality, such school integration and busing programs. *See* Bernard Boxill, Blacks and Social Justice (1984).

Boxill 's case for reparations is made up of two parallel arguments, which he calls the "Harm Argument," and the "Inheritance Argument," respectively. Both the Harm Argument and the Inheritance Argument begin from the same assumed premise, and both aim to derive the same conclusion from that starting point. But they take different argumentative routes to that conclusion, as the branched diagram below illustrates.

AP. *Principle of Corrective Justice*: Those who wrongfully harm others are obligated to repair those harms as best they can, and the state is obligated to ensure they do so.
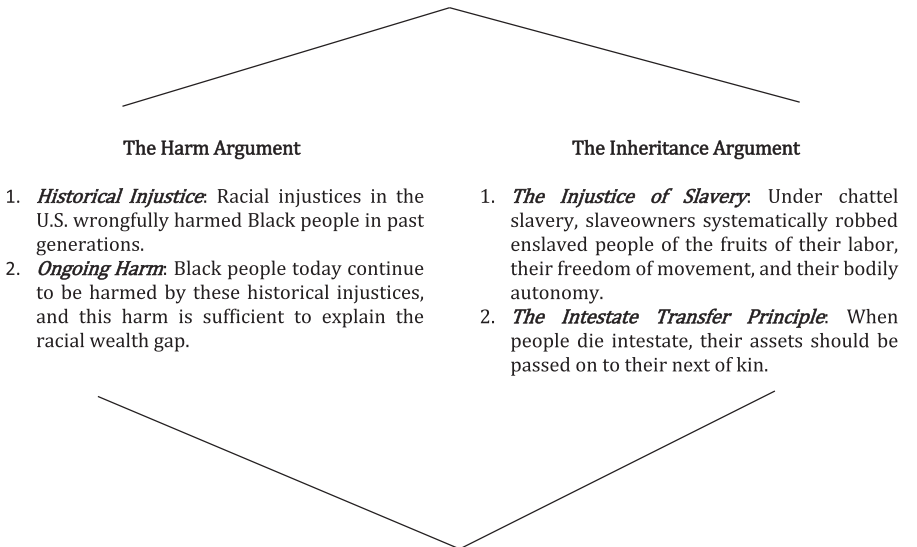
The Harm Argument

1. *Historical Injustice*: Racial injustices in the U.S. wrongfully harmed Black people in past generations.
2. *Ongoing Harm*: Black people today continue to be harmed by these historical injustices, and this harm is sufficient to explain the racial wealth gap.

The Inheritance Argument

1. *The Injustice of Slavery*: Under chattel slavery, slaveowners systematically robbed enslaved people of the fruits of their labor, their freedom of movement, and their bodily autonomy.
2. *The Intestate Transfer Principle*: When people die intestate, their assets should be passed on to their next of kin.

3. **Liability and Ability**: There are public or private entities who are both liable and financially able to pay reparations for these harms.

∴ **Reparations:** The federal government should raise enough tax revenue to close the racial wealth gap and redistribute it equally to all Black households.

In examining the case for reparations, we are particularly interested in whether some version of either of these arguments can justify the value of racial equality as a distinctive aim for the economic domain. As such, rather than adjudicating the strength of standing objections to these arguments (or the case for reparations more generally), we focus on what form such an argument would have to take to imply the following mid-level corollary:

∴ **Racial Equality as Distinctive Aim**: Corrective Justice demands closing the racial wealth gap, independent of other reasons to eliminate or reduce wealth disparity more generally.

In order to justify this conclusion, the case for reparations cannot entail a more general egalitarian outlook which itself entails racial equality. Below, we examine these arguments in turn. The Harm Argument, in our view, is closer to defenses of reparations that have gained traction outside of academic philosophy.[31] But, as we show, only the

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[31]Shades of this argument can be seen in contemporary writing, though these writers do not explicitly lay out the normative case in anything approaching the depth that Boxill does. *See, e.g.*, Ta-Nehisi Coates, *The*

Inheritance Argument can justify racial equality as a *distinctive* aim. And, as we will show, that argument is inconsistent with progressive or egalitarian principles of distributive justice.

A. *The Overinclusiveness of the Harm Argument*

Let us begin with the Harm Argument. With the notable exception of Boxill, proponents of race-based reparations ground their claims in a history of racial injustice that extends beyond chattel slavery. Mills, Darity, Coates, and Kelly, for example, all focus on the kleptocratic system of debt peonage and sharecropping in the late 19th-century Jim Crow South, along with redlining and other forms of mid-20th century housing and mortgage discrimination in the North.[32]

Those regimes were systematically institutionalized, state-sanctioned forms of historical injustice—not just interpersonal wrongs committed by private individuals. The actions that made up these unjust regimes were not legally recognized as forms of wrongful harm at the time they were committed. Rather, these systems were legally enabled and enforced by the Federal and state governments.[33] Slavery, kleptocratic debt peonage, redlining, and other forms of housing discrimination were all consistent with contemporaneous understandings of contract, tort, and property law;[34] and the legal permissibility of slavery was explicitly written into the U.S. Constitution.[35]

This marks an important difference between the case for reparations and the standard way that the Principle of Corrective Justice is understood and deployed in the context of private law—where civil liability requires a finding of harm that is legally recognized as wrongful.[36] The idea here, by contrast, is that the state should at least sometimes ensure that victims of historical injustice are compensated, even if the injustice in question was not legally recognized as wrongful at the time it occurred. What kinds of historical injustice generate valid claims to reparations, then?

Both the kleptocratic regime of debt peonage under Jim Crow and the midcentury system of redlining and housing discrimination were obviously unjust from any progressive or egalitarian perspective. But if the Harm Argument is to furnish a justification for race-based reparations in particular, or a justification for thinking of racial equality as a *distinctive* economic aim, then not all forms of "historical injustice" can generate valid claims for reparations.

Case for Reparations, The Atlantic (2014); William A. Darity & Kirsten Mullen, From Here to Equality: Reparations for Black Americans in the Twenty First Century (2020); Because we are focused here on the substantive task of analyzing this argument and others, rather than adjudicating their influence or popularity, and given space constraints, we cannot give an exegesis of these works to show in any conclusive way that they implicitly rely on something like Boxill's normative framework.

    [32]Charles Mills, *Theorizing Racial Justice*, The Tanner Lectures on Human Values (2020), 49; Ta-Nehisi Coates, *The Case for Reparations*, The Atlantic (2014); William A. Darity & Kirsten Mullen, From Here to Equality: Reparations for Black Americans in the Twenty First Century (2020); Erin Kelly, *Redress and Reparations for Injurious Wrongs*, 41 Law & Philosophy 105 (2021).

    [33]Rothstein, The Color of Law.

    [34]*See, e.g.*, Richard Rothstein, The Color of Law: A Forgotten History of How Our Government Segregated America (2018); Cheryl I. Harris, *Whiteness as Property*, 106 Harv. L. Rev. 1707 (1993); Douglas A. Blackmon, Slavery by Another Name (2008).

    [35]*See, e.g.*, Akhil R. Amar, America's Constitution: A Biography (2005); Noah Feldman, The Broken Constitution, Lincoln, Slavery, and the Refounding of America (2021).

    [36]*See, e.g.*, Jules L. Coleman, *Corrective Justice and Wrongful Gain*, 11 J. Legal Stud. 421 (1982); Donoghue v. Stevenson, [1932] UKHL 100.

If all we meant by "historical injustice" were "an injustice that happened in the (perhaps distant) past," then it would follow that much or most present-day poverty in general (including White poverty) can plausibly be traced to historical injustice in the same way as the racial wealth gap. At least until the rise of the social democracies in the Nordic countries during the second half of the 20th century, no capitalist society could plausibly be held to have met the demands of any progressive or egalitarian theory of justice.[37] So any society—and certainly the United States—will have a history of past class injustice, including injustice against poor Whites and other non-Black people. Consider, for example, the system of (White) indentured servitude that preceded the institutionalization of chattel slavery in the American colonies. Though perhaps not as brutal as debt peonage under Jim Crow and certainly less pervasive, that system was in some other respects similar in kind: indentured servants agreed to exploitative labor contracts under economic duress.[38] No progressive theory of justice could justify such a system. So poverty and inequality in the past uncontroversially violated egalitarian or progressive principles of justice—whatever one's precise formulation of those principles happens to be—wrongfully harming the poor, including the non-Black poor.

Furthermore, the intergenerational transmission of various forms of advantage and disadvantage—including wealth and poverty—through families, schools, and other institutions entails that present-day children of those who were poor in past generations, including Whites and other non-Blacks, continue to be harmed by these historical injustices.[39] This is a basic feature of any capitalist society in which social mobility is highly constrained. Poor people today—including poor White people—are likely to have parents and grandparents who were unjustly deprived of what they were owed, from an egalitarian or progressive perspective, in past generations.

Corrective justice thus cannot demand closing the racial wealth gap *independently* from reasons to reduce wealth disparity more generally, unless the kind of past injustice it is concerned with is defined more narrowly. Call this the "Overinclusiveness Problem."

One natural response to the Overinclusiveness Problem would be to argue that only historical *racial* injustices generate valid claims for present-day reparations. But this response is circular, given our purposes here. Remember, we are examining the case for reparations as part of a more general philosophical inquiry into the value of "racial equality" and the nature of "racial justice." If there is a case for race-based

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[37]For a defense of the Nordic model on roughly Rawlsian grounds, *see* Lane Kenworthy, Social Democratic Capitalism (2020), and Lane Kenworthy, Would Democratic Socialism Be Better (2022). Rawls himself argues that his theory of justice is incompatible with "welfare-state capitalism," and condones only a "property owning democracy" or "liberal socialism." John Rawls, Justice as Fairness: A Restatement §41 (Erin Kelly, ed., 2001). But *cf.* Jeppe von Platz, *Democratic Equality and the Justification of Welfare-State Capitalism*, 131 Ethics 4 (2020)

[38]*See, e.g.*, Audrey Smedley, Race in North America: Origin and Evolution of a Worldview (2011); David W. Galenson, White Servitude in Colonial America: An Economic Analysis (1981); Christopher Tomlins, Freedom Bound: Law, Labor, and Civic Identity in Colonizing English America (2010).

[39]*See, e.g.*, James S. Coleman, *Social Capital in the Creation of Human Capital*, 94 Am. J. Soc. S95 (1988); Annette Lareau, Unequal Childhoods: Class, Race, and Family Life (2003); Robert D. Putnam, Out Kids: The American Dream in Crisis (2015); Thomas Piketty & Gabriel Zucman, *Wealth and Inheritance in the Long Run*, in Handbook of Income Distribution, Vol. 2 (Anthony B. Atkinson & Francois Bourguignon, eds.) (2015).

monetary reparations sufficient to close the Black-White wealth gap in the United States, then this justifies thinking of racial wealth equality as a distinctive economic aim. This, in turn, would show that racial justice has important implications for the economic domain and that the "currency" of racial justice is not solely semiotic or cultural. Yet the argument that only historical *racial* injustice could generate a valid claim for present-day monetary reparations must assume (or show) that racial justice is distinct from class-based or economic justice at the outset. The case for reparations cannot explain the distinctiveness of racial justice if that distinctiveness is one of its premises. What we need is a theory of why racial injustice is distinctive in this particular way, not one that simply assumes as much from the beginning.

Perhaps somewhat paradoxically, a good deal of what might be thought of as past racial injustice in America (and elsewhere) also targeted groups who are either no longer considered to be racial groups at all, or who are likely wealthier, on average, than American Whites. For example, if Irish-Americans today were owed monetary reparations for those historical injustices, then the justification for reparations could no longer be "narrowly tailored" to the aim of racial equality because the Irish are no longer considered to be a distinct, non-White racial group (even if they arguably were in the past).[40] And if the descendants of Chinese-American victims of historical racial injustice were owed monetary reparations for those injustices today, reparations would likely exacerbate, rather than reduce, racial wealth inequality.[41]

Why are African-Americans owed reparations for historical racial injustice, then, but not Chinese- or Irish-Americans today? One answer, in light of these observations, might cite the scope of Black disadvantage in the United States. But this line of thought again proves too much. Not all of the poor in America, or of the "truly disadvantaged," to use William Julius Wilson's term, are Black. And the rate of Black poverty relative to White poverty (or poverty rates among other groups) has little to do with the wealth gap. That gap is driven almost entirely by inequality at the top of the distribution.

The Harm Argument thus cannot explain the feature of "racial justice" that, according to Mills and others, is supposed to distinguish it from "economic justice" or "class-based justice"—namely, its backward-looking, historical orientation—so long as it takes a broad view of the historical racial injustices for which Black people in the U.S. are owed reparations, today.[42]

B. Childrens' Rights and the Non-Identity Problem

Boxill, however, develops a version of the Harm Argument that is based on chattel slavery, specifically. Because chattel slavery in the United States was a uniquely anti-

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[40]*See* Noel Ignatiev, How the Irish Became White (2009); David R. Roediger, The Wages of Whiteness: Race and the Making of the American Working Class (2022). Others disagree. *See* Kevin Kenny, *Diaspora and Comparison: The Global Irish as a Case Study* 90 J. Am. Hist. 134 (2003); Barbara J. Fields & Karen E. Fields, Racecraft: The Soul of Inequality in America (2012).

[41]National wealth data is disaggregated by race, but not ethnicity. But Asian-Americans in general are wealthier, on average, than White Americans. Chinese-Americans tend to have higher incomes, on average, than other Asian-Americans. *See* Rakesh Kochhar & Anthony Cilluffo, Income Inequality in the U.S. Is Rising Most Rapidly Among Asians (Pew Research Ctr., 2018). And household income is strongly correlated with household wealth. *See* Thomas Piketty & Emmanuel Saez, *Income Inequality in the United States*, 1913-1998, 118 Q.J. Econ. 1 (2003).

[42]This problem arises in Mills; Darity and Mullen; Coates, and Kelly. In Boxill's framework, these implications could be viewed as a "feature" rather than a "bug," however.

Black institution, this allows Boxill to sidestep the Overinclusiveness Problem.[43] But limiting the scope of the Harm Argument in this way also raises the most well-known objection to reparations—namely, what Derek Parfit called the "Non-Identity Problem."[44] It has been over a century and a half, after all, since the legal institution of chattel slavery was abolished in the United States. So showing that the institution of chattel slavery has caused harm to African-Americans living today demands a more complex historical analysis of the roots of present-day inequality than, for example, an ordinary interpersonal tort claim.

The idea of the Non-Identity Problem is that African-Americans today cannot claim that they have been harmed by historical injustices that occurred generations ago because, in the absence of those historical injustices, they would never have been born.[45] That is not to say that, if chattel slavery had never been institutionalized, there would be no Black people in America.[46] Rather, the argument is that a radically different American (or world) history would have yielded a completely different population. Rather than an African-American population made up of the set of particular individuals alive today {Aubrey, Brandon, Charlotte…}, there would be a completely different population (even if it were exactly the same size) made up of a non-overlapping set of particular individuals {Delillah, Evelyn, Frankie…}.

Boxill, along with George Sher, offers a creative amendment to the Harm Argument designed to avoid the Non-Identity Problem.[47] He argues that the harm we should focus on is not the original injustice of slavery, but the subsequent failure to pay reparations to the formerly enslaved for that injustice—including, importantly, the failure to do so after they had children. That subsequent failure to pay reparations harmed the descendants of the enslaved, "by keeping [their] parents in poverty and ignorance… therefore, also keeping [them] in ignorance and poverty," and "by causing [them] to be raised by parents with the various disabilities that the experience of slavery normally causes its victims."[48] And so the children of the formerly enslaved —and their children, grandchildren, and so on—have a claim to reparations for their impoverished upbringing.

But this amendment severely limits the sum of the reparations to which present-day African-Americans are entitled. According to the logic of this argument, the size of any such claim depends on three factors: (1) the extent of material support that children have a right to from their parents, (2) the extent of the state's obligation to

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[43]Note that we here grant Boxill his solution to The Overinclusiveness Problem, even though it is not obvious that he supplies principled reasons for focusing on slavery. Our point in this section is that, even if we could devise some such solution, it would greatly reduce the size of the reparations bill (and thus, not ensure anything like racial equality), unless it is taken in the direction of the inheritance-based arguments reviewed in the next section.

[44]Michael Levin, *Reverse Discrimination, Shackled Runners, and Personal Identity*, 37 PHIL. STUD. 137 (1980); Christopher Morris, *Existential Limits to the Rectification of Past Wrongs*, 21 AM. PHIL. Q. 175 (1984); PARFIT, REASONS AND PERSONS (1984). (Parfit did not conceive of this problem as an objection to reparations.)

[45]Levin, *Reverse Discrimination*; Morris, *Existential Limits*.

[46]Stephen Kershnar makes this somewhat related argument in *The Inheritance-Based Claim to Reparations*, 8 LEGAL THEORY 243 (2002).

[47]Bernard Boxill & J. Angelo Corlett, *Black Reparations*, STANFORD ENCYCLOPEDIA OF PHILOSOPHY (2016); George Sher, *Transgenerational Compensation*, 33 PHIL &. PUB. AFF. 181 (2005); Andrew I. Cohen, *Compensation for Historic Injustices: Completing the Boxill and Sher Argument*, 37 PHIL & PUB. AFF. 81 (2009).

[48]Bernard Boxill & J. Angelo Corlett, *Black Reparations*, Section 7.

provide children with the material preconditions to flourishing or opportunity, and (3) the child's own socioeconomic status.

First, how much parental support are children entitled to, as a general matter? Progressives and egalitarians cannot coherently argue that children are entitled to the maximum amount of material support that their parents could possibly provide. Indeed, from an egalitarian perspective, the fact that the life prospects of children depend on the class position of their parents is a marker of injustice.[49] And from a libertarian perspective, children are entitled to even less from their parents. As Nozick puts it, justice demands that property flow "from each as they choose, to each as they are chosen"—if parents choose not to pass their assets down to their children, that is their moral prerogative.[50]

Second, the fact that the descendants of enslaved people grow up in poverty thus cannot be seen as a simple consequence of the failure of the state to pay reparations for slavery; it is also a failure of the state to provide for the basic needs of children in the present. Imagine, for example, that the U.S. never pays reparations to the descendants of the enslaved, but builds a robust Norwegian-style social democratic welfare state, in which all children have access to generous preschool and early childhood programming; high-quality public K-12 and postsecondary education; an excellent public healthcare system; and a smorgasbord of other public goods, including housing, transportation, parks, libraries, and the like. In such a society, no children grow up in poverty, and it is plausible that parents are not obligated to provide their children with advantages beyond what the state already provides to all (even if they are obligated to provide them with emotional support and special care). The descendants of the enslaved in such a society would have little basis for claiming that the state's failure to pay reparations has wrongfully harmed them—at least according to the logic of Boxill and Sher's version of the Harm Argument.

According to that logic, only Black children who grow up in poverty have a claim to reparations; and the size of those claims is limited to the amount of material parental support they could claim a right to, were their parents able to provide it. This could not plausibly amount to anything even approaching the $15 trillion tax-and-transfer required to close the racial wealth gap. So the Harm Argument only escapes the Overinclusiveness and Non-Identity Problems if its practical implications are much less radical than many proponents (particularly Darity and Mills) take them to be.[51]

C. *The Inegalitarian Implications of the Inheritance Argument*

The Inheritance Argument, by contrast, avoids both problems.[52] It takes the institution of chattel slavery as the sole basis for the present-day case for reparations, thus

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[49] *See, e.g.*, Harry Brighouse & Adam Swift, Family Values (2014); Harry Brighouse & Adam Swift, *Legitimate Parental Partiality*, 37 Phil. & Pub. Aff 43 (2009); Harry Brighouse & Adam Swift, *Parents' Rights and the Value of the Family*, 117 Ethics 80 (2006).

[50] Robert Nozick, Anarchy, State, and Utopia (1974), 160.

[51] Unlike Darity and Mills, Boxill does not defend the idea that the monetary reparations owed to present-day African-Americans would be sufficient to close the racial wealth gap.

[52] One might wonder whether the Inheritance Argument is vulnerable to its own kind of Overinclusiveness Problem. Have there not been other forms of historical injustice that require redress on libertarian grounds? Our view is that the only plausible case is the case for reparations to Native Americans. Other examples (*e.g.*, White indentured servants) represent, from a right-libertarian perspective, something like voluntary

avoiding the Overinclusiveness Problem. It does not claim that present-day African Americans face ongoing *harm* from slavery or any other historical injustice, thus avoiding the Non-Identity problem. Further, due to the fact that the bill owed to the formerly enslaved was never paid, and thus plausibly compounds over time, its practical implications are in fact very significant.[53] But, as we argue here, because it relies on the Intestate Transfer Principle, the Inheritance Argument tacitly assumes that the intergenerational transmission of large sums of money within families is morally legitimate. Consider the two ways in which one might defend this principle.

First, one could argue that children have an overriding *right* to inherit their parents' assets or estates when the parents pass away.[54] This position is inconsistent with any progressive outlook on distributive justice. Recall that in order to close the racial wealth gap, a race-based reparations program would have to redistribute around a million dollars to every Black family in the United States. In light of this, the tension between the Intestate Transfer Principle, and any broadly egalitarian or progressive outlook on distributive justice should be obvious. How could a progressive or egalitarian think that any child has an overriding right to inherit this much of their parents' wealth, while others grow up in poverty? Indeed, the idea that children have an overriding right to inherit their parents' wealth is not even consistent with minimal state libertarianism![55]

Second, and more plausibly, one might defend the Intestate Transfer Principle by understanding it as a way of respecting people's right to do as they wish with their *own* property. When people die without leaving a will, this involves making some informed guesses about what they would have wanted to do with that property. Given the choice, most people pass their accumulated wealth or assets down to their children or other blood relatives.[56] So the default assumption under the common law is that this is what they would have wanted to do.[57]

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exchange in a market with unequal bargaining power. And even though the libertarian case for Native American reparations is probably sound, we do not think it affects the argument of this paper very dramatically. First, for a tragic reason, the payout is probably less significant than it might first appear. The majority of the original inhabitants of the continent do not have descendants. Those descendants who have survived do have a claim to their per capita share of the correct payout (whatever that is), but not also to the claims of those descendants who did not survive. Second, and perhaps more importantly, Native Americans are still a distinct, non-white racial group. So, even if it is the case that both Black descendants of slaves and Native American descendants of the original inhabitants of North America are both entitled to reparations, those reparations would still be race-based. In other words, this would still be a matter of racial justice, specifically.

[53] *See*, *e.g.*, Thomas Cramer, *Estimating Slavery* Reparations, 96 SOCIAL SCIENCE QUARTERLY 639 (2015); Christopher Lewis and Adaner Usmani, *The Libertarian Case Against Property* (unpublished manuscript, 2024).

[54] *Cf.*, *e.g.*, George Sher, *Transgenerational Compensation*, 33 PHIL. & PUB. AFF. 181 (2005); Andrew I. Cohen, *Compensation for Historic Injustices: Completing the Boxill and Sher Argument*, 37 PHIL & PUB. AFF. 81 (2009).

[55] NOZICK, ANARCHY, STATE, AND UTOPIA (1974), 160.

[56] *See*, *e.g.*, Monique Borgerhoff Mulder, et al., *Intergenerational Wealth Transmission and the Dynamics of Inequality in Small-Scale Societies*, 326 SCIENCE 682 (2009); Thomas Piketty, *On the Long-Run Evolution of Inheritance: France 1820-2050*, 126 Q.J. ECON. 1071 (2011); Edward N. Wolff, *Inheritances and Wealth Inequality, 1989-1998*, 92 AM. ECON. REV. 260 (2002).

[57] *See*, *e.g.*, Susan N. Gary, *The Probate Definition of Family: A Proposal for Guided Discretion in Intestacy*, 45 U. MICH. J.L. REFORM 787 (2012); Adam J. Hirsch & William K.S. Wang, *A Qualitative Theory of the Dead Hand*, 68 IND. L.J. 1 (1992).

This formulation of the Inheritance Argument does not entail that present-day African-Americans *themselves* have a right to reparations, as such. Rather, it implies that those who were enslaved in the past had a right to reparations; that this right was not extinguished when they died; and that we should respect their property rights in the present by passing what they are posthumously owed down to their next of kin.

But this formulation of the Inheritance Argument is not much better by progressive or egalitarian lights than the previous one. Consider this menu of progressive— or as Nozick would put it, "patterned"—principles of distributive justice.[58]

Luck Egalitarianism: Income and wealth should be distributed so that everyone has an equal opportunity for advantage or well-being.

The Difference Principle: Inequalities of income and wealth must redound to the benefit of the least well-off.

Sufficientarianism: All citizens must have the material bases for meeting their basic needs.

Democratic Egalitarianism: All citizens must have enough income and wealth to participate in democratic deliberation and public debate as equal citizens.

Utilitarianism: Income and wealth should be distributed in a way that maximizes aggregate well-being.

Under any of these principles, the unfettered inheritance of multiple generations of familial wealth, while millions of people remain in poverty, is unjust. This is perhaps most obvious when judged by Luck-Egalitarian or "fair equality of opportunity" principles. Under a regime of unfettered inheritance, people's prospects in life depend on whether they are lucky enough to be born into the right family. And the inegalitarian consequences of inheritance compound when wealth is passed down across multiple generations. Most people who are lucky enough to inherit anything when their parents pass away do so relatively late in life. Wealthy people tend to live longer than average. Those born into wealthy families are often in their 50s and 60s before their parents pass away. By that time, their social position tends to be firmly established. Inheritance across a single generation is more likely to provide the children of the wealthy with a nest egg for retirement than a head start in life. However, inherited wealth that is passed down for multiple generations in families allows those families to confer the kinds of advantages on their children that determine their social position as adults. And when wealth stays in families for many generations, those advantages compound just as the wealth itself does.[59]

Furthermore, it is highly doubtful that the unfettered inheritance of wealth across multiple generations in families would generally redound to the benefit of the least well-off in societies that are already very unequal. This would rule out an appeal to The Difference Principle. And it is difficult to see how there could be a Sufficientarian right to bequeath large sums of wealth to one's children while other children are living in abject poverty if one believes that all citizens must have the material basis for satisfying their basic needs. The kind of compound advantage that "old money" in families can buy creates effectively permanent hierarchies of status, power, and

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[58]This menu is meant to be representative rather than exhaustive.

[59]The compounding inegalitarian effects of inheritance is what inspired the "Rignano" scheme of progressive taxation, under which inherited wealth can be taxed more heavily when it is passed down across multiple generations. See Daniel Haliday, The Inheritance of Wealth: Justice, Equality, and the Right to Bequeath (2018).

recognition that undermine Democratic Egalitarian values.[60] A utilitarian could argue that permitting large inheritances within families incentivizes production, innovation, and investment on the part of parents.[61] But the expectation of large inheritances also disincentivizes production, innovation, and investment on the part of spoiled children.[62] And when wealth is passed down in families for many generations, the parents grow up as spoiled children themselves. Especially in light of the declining marginal utility of wealth, it is highly unlikely that allowing wealthy parents to hand down their wealth to their already privileged children represents the most efficient use of their assets.

To our knowledge, there is only one theory of justice that offers a principled basis for permitting the intergenerational transmission of large sums of wealth in families across multiple generations: namely, minimal state libertarianism. The most influential and well-developed formulation of this view, of course, is Robert Nozick's Historical Entitlement Theory. Nozick sets out the Entitlement Theory in a simple and elegant inductive definition:

1. **Principle of Acquisition**: A person who acquires property by mixing their labor with unowned natural resources has a right to that property.
2. **Principle of Transfer**: A person who acquires property through a voluntary exchange with someone else who rightly owned it, has a right to the property in question.
3. **Inductive Step**: Nobody has a right to own anything except by (repeated) applications of 1 and 2.

On this view, there is nothing unjust about the accumulation of inherited wealth over many generations in the family. And Nozick himself appends a Principle of Rectification to the theory, under which societies with a history of injustice (defined in terms of violations of the Principles of Acquisition and Transfer) must attempt to redistribute holdings so that they conform as closely as possible to what would have happened in the absence of those injustices.[63] The Inheritance Argument for reparations thus fits naturally with minimal state libertarianism.

In sum, the Inheritance Argument for reparations seems like the only viable way to justify closing the racial wealth gap as a matter of corrective justice, and the only coherent way to justify racial equality as a distinctive aim for the material domain (again, by this we mean an aim which is valuable independent from any more encompassing reasons to eliminate or reduce wealth inequality in general). But that argument depends on a background view under which justice permits the intergenerational transmission of large sums of wealth in the family across multiple generations, which seems fundamentally inconsistent with egalitarian or progressive principles.[64]

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[60]*Id.*

[61]*See, e.g.*, Gary S. Becker & Nigel Tomes, *Human Capital and the Rise and Fall of Families*, 4 J. Lab. Econ. S1 (1986).

[62]*See* Douglas Holtz-Eakin et al.*, The Carnegie Conjecture: Some Empirical Evidence*, 108 Q.J. Econ. 413 (1993).

[63]Nozick, Anarchy, State, and Utopia, 152-153.

[64]*See* Christopher Lewis and Adaner Usmani, *The Libertarian Case Against Property* (unpublished manuscript, 2024).

IV. Intersectional Principles

But must one really abandon all progressive or egalitarian commitments to affirm the distinctive importance of racial equality? Consider a *simultaneously* race-focused and class-conscious (or "intersectional") response to the arguments we made above.[65]

Means-Tested Reparations: The federal government levies a progressive wealth tax on every U.S. household, sufficient to close the mean Black-White gap, and redistributes the proceeds to Black households according to a need-based formula that maximizes the position of the least wealthy.

Distributing the benefits of a reparations program in this progressive fashion would create even greater intra-racial Black equality than the standard Reparations proposal we've focused on thus far. Under *Means-Tested Reparations*, the wealth Gini amongst Black Americans would be a striking 0.03, or almost perfect equality. This might help alleviate some of the concern that race-based reparations would be a suboptimal way to promote egalitarian, or otherwise progressive "patterned" principles of justice.

Race-conscious progressives could justify *Means-Tested Reparations* on the basis of two or more principles, as such: one principle to justify the racial focus of the proposal, and another to justify the proposal's class focus. And of course, there is a good precedent for relying on multiple principles of justice in progressive and liberal-egalitarian thought, most obviously in Rawls' Theory of Justice.[66] One might think some kind of "intersectional," multi-principle justification might be offered for *Means-Tested Reparations*. The first principle under such a theory would have to justify some kind of racial eligibility criterion: reparations benefits should be limited to Black people or descendants of those who were enslaved in the U.S. The second principle, in turn, could justify allocating those benefits based on present-day income or wealth, so that, for example, the reparations program would maximize the position of the least well-off Black Americans.

Consider the principles necessary to defend such an argument, however. As we argued above, no progressive theory or principle of distributive justice could recommend a racial eligibility criterion for any redistributive social program under anything like the political, historical, and sociological conditions of today's United States. There are too many non-Black people living in poverty. Barring some unforeseen theoretical development, the first set of principles in this intersectional justification would thus have to be libertarian ones. The rationale for means-testing could then be drawn from our menu of progressive principles. But what would it mean to combine such principles in an intersectional theory of class-conscious racial justice?

One way of doing so would be to combine the requisite principles in a *weighted* formula. After all, many of our intuitive normative principles seem to retain their importance even when they clash, without one completely overriding the other in

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[65]We use the term "intersectional" loosely here. For the canonical statement and development of "intersectionality" as a theoretical framework for analyzing how race, class, gender, and other overlapping aspects of social identity work together in employment discrimination, among other contexts, see Kimberle Crenshaw, *Demarginalizing the Intersection of Race and Sex: A Black Feminist Critique of Antidiscrimination Doctrine, Feminist Theory and Antiracist Politics*, U Chi. Legal Forum 139 (1989).

[66]John Rawls, A Theory of Justice (1971).

every conceivable case of conflict.[67] Yet there is little reason to think that a weighted formula could justify anything like *Means-Tested Reparations* since we are here weighing two principles that are locked in conflict. Insofar as the kinds of principles necessary to justify the racial eligibility criterion—namely, something like Nozick's principles of Acquisition, Transfer, and Rectification—are given weight, they weaken the justification for means testing, or distributing the benefits of a reparations program in progressive fashion according to any "patterned" principle. A progressive intra-racial distribution of reparations payments would constitute theft, according to the Nozickian view. It would amount to taking property that rich Blacks rightfully own and giving it to poor Blacks on the basis of some patterned principle that the Entitlement Theory condemns. And insofar as the sort of principles necessary to justify making reparations means tested or class-sensitive—namely, one or more of the progressive "patterned" principles—is given weight, they likewise weaken the case for race-based, rather than class-based redistribution in the first place.

Would combining these multiple principles in a tiered structure with lexical priority relations solve the problem that weighting does not solve? We think not. To see why, we examine the two logically possible priority relations, in turn.

First, consider the coherence of a tiered theory in which the set of principles necessary to justify the racial eligibility criterion for reparations (namely, Nozick's principles) has lexical priority over a second set of one or more "patterned" principles necessary to justify a means-tested or progressive distribution of reparations benefits. Under such a theory, any progressive intra-racial distribution of reparations payments would constitute theft, and so would be summarily ruled out by the first set of (Nozickian) principles. Giving Nozick's libertarian principles lexical priority over the "patterned" principles would thus leave the latter with no room to operate, except in rare cases where the patterned principles demand exactly what a free market produces.

The more plausible hybrid theory might combine sufficientarian or democratic egalitarian principles with Nozickian libertarian principles in a tiered framework, in which the sufficientarian or democratic egalitarian principles have lexical priority. Neither sufficientarianism nor democratic egalitarianism comprehensively dictates how income or wealth ought to be distributed, once the relevant threshold is met—i.e., once everyone has sufficient income and wealth to meet their basic needs, or to participate in the democratic process as equal citizens. Once that threshold is met, then Nozick's principles of acquisition, transfer, and rectification could dictate how income and wealth should be distributed above the relevant threshold.

But this second lexical ordering of libertarian and progressive "patterned" principles of distributive justice could not justify anything like *Means-Tested Reparations* in a society that even remotely resembled today's United States. Under *Means-Tested Reparations*, every Black family would have almost a million dollars of net assets. But there would still be millions of very disadvantaged non-Black

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[67]*See*, *e.g.*, Martha Nussbaum, The Fragility of Goodness (1986); Elizabeth Anderson, *Practical Reason and Incommensurable Goods*, in Incommensurability, Incomparability and Practical Reason (Ruth Chang, ed.)(1997); Michael B. Gill & Shaun Nichols, *Sentimentalist Pluralism: Moral Psychology and Philosophical Ethics*, 18 Phil. Issues 143 (2008); Bernard Williams, Ethics and the Limits of Philosophy 17 (1985).
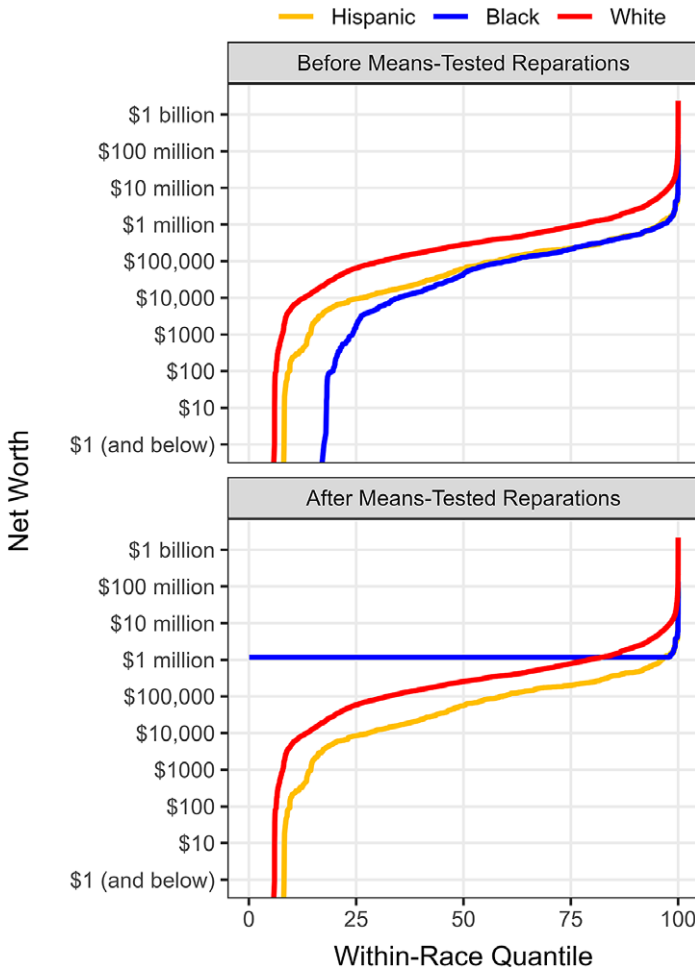
Figure 2. This figure shows the distribution of household wealth before (top panel) and after (bottom panel) *Means-Tested Reparations*, which is a scheme of reparations in which we redistribute the reparations bill in a way that maximizes the position of the least wealthy black family. Visually, this is the equivalent of 'filling up the bucket' to the left of the blue curve in the first panel. The x-axis denotes a household's within-race percentile, and the y-axis is the level of household wealth to which that percentile corresponds. As the graphs show, much like the standard *Reparations* proposal considered earlier, *Means-Tested Reparations* introduces racial inequality at the bottom of the distribution between Black Americans and non-Blacks.

people in the United States, a disproportionate fraction of whom would be Hispanic. Remember, after all, that large fractions of the Black population are wealthier than significant fractions of the non-Black population. *Means-Tested Reparations* would thus introduce a big wealth disparity between the poorest Black people (who would now all be quite wealthy) and the poorest non-Blacks. We show this directly in Figure 2, below.

Any plausible rendering of Sufficientarianism or Democratic Egalitarianism would require that *all* citizens in a just society would have to be brought above a minimal threshold of income and wealth. This is a minimum threshold that, as

Figure 2 shows, is surely significantly higher than what millions of poor people in the United States—including poor Hispanics, Native Americans, Asians, and Whites—today enjoy.[68] The poorest Black households in the U.S., who would now have almost a million dollars in net assets, would be catapulted far above any such threshold. So such a policy would be extremely suboptimal in light of this kind of tiered theory of justice.

Perhaps the only societies in the world that could plausibly be thought to satisfy the distributive demands of Sufficientarian or Democratic Egalitarian principles are the social democracies in the Nordic countries—perhaps just Norway, in particular.[69] But it is no coincidence that the Nordic countries have no history of race-based chattel slavery.[70] Nor is it a coincidence that the populations of those countries are much more racially homogenous than the United States.[71] Indeed, some comparative social scientists think these very facts *explain* the emergence and generosity of the social democratic welfare state in the Nordic countries.[72] The history of race-based chattel slavery in the United States—and the ideology of racism it spawned as a post hoc justification for that economic system—helps explain why the United States has not followed the path of the Nordic countries and instead remains the most unequal society in the advanced capitalist world.[73]

So, the only off-the-rack intersectional justification for something like *Means-Tested Reparations* is politically and historically impotent. It applies only in the kinds of historical and political contexts where it would make the least difference. If we are right, it follows that progressives and egalitarians must choose. They can commit themselves to racial equality, but only by embracing right-libertarianism.

V. Political Strategy

Some support for race-based reparations, or for other policy proposals intended to promote racial equality in the material domain, may be based on strategic compromise,

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[68]*See, e.g.*, Jeppe von Platz, *Democratic Equality and the Justification of Welfare-State Capitalism*, 131 Ethics 4 (2020); Jeppe von Platz, *Social Cooperation and Basic Economic Rights: A Rawlsian Route to Social Democracy*, 47 J. Soc. Phil. 288 (2016); Liam Shields, Just Enough: Sufficiency as a Demand of Justice (2016).

[69]*See, e.g.*, Lane Kenworthy Social Democratic Capitalism (2019); Lane Kenworthy, Would Democratic Socialism Be Better? (2022).

[70]*See, e.g.*, Orlando Patterson, Slavery and Social Death: A Comparative Study (1982).

[71]Indeed, even among the Nordic countries, there is a strong inverse correlation between racial hetero-geneity and the generosity of the welfare state. *See, e.g.*, Alberto Alesina & Eliana La Ferrara, *Ethnic Diversity and Economic* Performance, 43 J. Econ. Lit. 762 (2005). Norway has the most generous welfare state among those countries, and the most racially homogenous population (ensured by the most restrictive immigration policies). Alberto Alesina & Edward Glaeser, Fighting Poverty in the US and Europe: A World of Difference (2004). As Sweden has grown more racially diverse, its social policy spending has also grown more austere. *See* Vanessa Barker, Nordic Nationalism and Penal Order: Walling the Welfare State (2018).

[72]Norway's discovery of immensely rich oil deposits in the Norwegian continental shelf also played some role in its particularly generous form of social democracy. Lane Kenworthy, Social Democratic America (2014) 117-118, 128-130. From the perspective of political philosophy, the Norwegian oil deposits could be thought of as being like "manna from heaven." Ronald Dworkin, *What is Equality? Part 2: Equality of Resources*, 10 Phil. & Pub. Aff. 283 (1981)

[73]*See*, W.E.B. Du Bois, Black Reconstruction in America (1992); Fields, *Slavery, Race and Ideology*.

rather than first principles of moral or political philosophy.[74] Mills, for example, argues that since race-based reparations would be an improvement on the status quo by *both* egalitarian and libertarian lights, it could potentially garner broader support than class-based or social democratic forms of redistribution in a society like the U.S.[75]

However, the fact that a given policy might be supported by a broad set of first principles in political philosophy does not, unfortunately, imply that such a policy would garner widespread support from the public. As Mills himself puts it in more recent work, "far from being in the vanguard of the struggle for racial justice, Lockean liberals and libertarians have usually been on the other side of the barricades."[76] Political outcomes, in our view, are more often driven by the perceived self-interest of voting publics, often divided into contending classes, than by reasoned reflection on first principles or the logical implications of any considered philosophical outlook.[77]

Though there have been instances where governments have paid monetary reparations for past injustices, these have all either involved relatively insignificant sums (e.g., Germany's reparations to the state of Israel),[78] or instances in which the powerful have exacted tribute from the powerless (e.g., Haiti's reparations to France after the abolition of slavery following the Haitian revolution).[79] We count no cases in which powerful majorities have willingly redistributed significant sums to powerless minorities.

There are several reasons to believe that reparations sufficient to close the racial wealth gap will never be paid. Consider the two main reasons why modern societies redistribute from haves to have-nots. First, some accounts emphasize the role of benefactors. In some places and in some times, elites are more likely to identify and empathize with the poor. In these places, redistribution from rich to poor is more likely. This is a common explanation for why ethnically homogenous countries seem to redistribute more, from rich to poor, than heterogeneous ones.[80] Second, some accounts emphasize beneficiaries. In capitalist democracies, the poor wield two forms of leverage over the rich: they are numerous, so they have electoral power, and they typically perform roles on which elites depend for their reproduction, so they have structural power. These two mechanisms anchor the "power resources" view of redistribution, according to which the rise of social democratic redistribution was

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[74]Thanks to Ryan Doerfler for pressing us on this point. A different strategic case for race-based reparations runs through a concern with racial ideology: because race-based reparations would close the gap between Black Americans and White Americans, one might hope that it could weaken the material basis of racial ideology that obstructs the emergence of a robust social democracy. But we suspect, in fact, that reparations might worsen rather than improve race relations. See Adaner Usmani & David Zachariah, *The Class Path to Racial Liberation*, 5 CATALYST: A JOURNAL OF THEORY AND STRATEGY 51 (2021).

[75]Charles Mills *Retrieving Rawls for Racial Justice?: A Critique of Tommie Shelby*, 1 CRITICIAL PHIL. RACE 21 (2013).

[76]Mills, *Racial Justice*, at 81.

[77]*See, e.g.*, JAMES M. BUCHANAN & GORDON TULLOCK, CALCULUS OF CONSENT: LOGICAL FOUNDATIONS OF CONSTITUTIONAL DEMOCRACY (1962); RALPH MILIBAND, POLITICS AND MARXISM (1977).

[78]West Germany paid about 3 billion marks to the state of Israel over a period of 14 years. Its total GDP in this period was 3.7 trillion marks (i.e., across all 15 years), which means that it paid only ~1/1250th of its GDP in any given year. Compare this to the fact that social democracies spend something like 1/4th of their GDP on redistributive social programs in any given year. See the replication code for more details.

[79]*See, e.g.*, Laurent Dubois, *An Enslaved Enlightenment: Rethinking the Intellectual History of the French Atlantic*, 31 SOCIAL HISTORY 1 (2006).

[80]ALBERTO ALESINA AND EDWARD L. GLAESER, FIGHTING POVERTY IN THE U.S. AND EUROPE: A WORLD OF DIFFERENCE (2006).

jointly caused by universal suffrage (electoral power for the poor) and the rise of the industrial working class (structural power for the poor).[81]

Both of these arguments imply that a reparations bill sufficient to close the racial wealth gap is infeasible. The benefactor-led path requires us to expect White people (or the general population) to willingly redistribute large shares of their wealth to the Black population. But the United States is a country whose vicious history of race-based chattel slavery has had lasting cultural and ideological consequences.[82] Why expect White altruism in a land of White supremacy?[83] The beneficiary-led path would require that Black people wield some kind of power over White people. Yet Black people make up only around thirteen percent of the U.S. population—and, due in part to ongoing efforts to disenfranchise them, an even smaller minority of the electorate—which means they wield relatively little electoral power.[84] Further, Black people are more likely to be employed in the least strategic, least well-paid sectors of the working-class, or to be unemployed, which means they wield less structural power than do the White majority from whom reparations would have to be won.[85]

VI. Conclusion

We have argued that, at present, the only plausible basis for defending racial equality as a distinctive aim for the material domain is something like Nozick's right-libertarianism. This result may be alarming for some on the egalitarian and social democratic left. One response from that perspective is to concede the point about wealth, income, and other material goods, but to emphasize the importance of racial equality and racial justice as moral ideals for the political and cultural domains. Just as "racial justice" is not all there is to "justice" simpliciter, "economic justice" does not exhaust the subject of justice.

Perhaps. To decide whether this is reasonable one must rule on some first-order questions about the relationship between these different domains. Our own suspicion is that Anglo-American philosophy has had good reasons for focusing so much on the material. Especially in a capitalist society, it seems that money can buy human, social, and cultural capital more easily than any of the latter can be parlayed into

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[81]WALTER KORPI, THE DEMOCRATIC CLASS STRUGGLE (1983).

[82]See, e.g., Barbara J. Fields, Slavery, Race and Ideology in the United States of America, 181 NEW LEFT REVIEW 95 (1990); W. E. B. DU BOIS, BLACK RECONSTRUCTION IN AMERICA (1935); AVIDIT ACHARYA, MATTHEW BLACKWELL & MAYA SEN, DEEP ROOTS: HOW SLAVERY STILL SHAPES SOUTHERN POLITICS (2018).

[83]Lawrence D. Bobo & Vincent L. Hutchings, Perceptions of Racial Group Competition: Extending Blumer's Theory of Group Position to a Multiracial Social Context, 61 AM. SOC. REV. 951 (1996).

[84]Shaun Bowler Keith G. Bentele & Eric E. O'Brien, Jim Crow 2.0? Why States Consider and Adopt Restrictive Voter Access Policies, 11 PERSPECTIVES ON POLITICS 1088 (2013).

[85]See Kenneth A. Couch & Robert Fairlie, Last Hired, First Fired? Black-White Unemployment and the Business Cycle, 47 DEMOGRAPHY 227 (2010); Adaner Usmani & David Zachariah, The Class Path to Racial Liberation, 5 Catalyst: A Journal of Theory and Strategy 51 (2021). In this case, since we are considering whether a cross-class coalition of Black people could win redistribution from a cross-class coalition of White people, it is also relevant that Black people are less likely to own firms (i.e. less likely to be capitalists or shareholders). See ROBERT W. FAIRLIE & ALICIA M. ROBB, RACE AND ENTREPRENEURIAL SUCCESS: BLACK-, ASIAN-, AND WHITE-OWNED BUSINESSES IN THE UNITED STATES (2008). Ownership of productive assets also confers structural power in a capitalist economy, but there are far fewer Black owners of firms than White owners of firms. This is thus another reason to be pessimistic about the prospects for race-based redistribution.

income and wealth;[86] and that money can buy political influence more easily than political influence can be leveraged for financial gain.[87] But it is not the place of this paper to defend a view like this one. All we can say is that the egalitarian case for racial justice will depend, at least partly, on how asymmetrical these relationships are.

Importantly, even if the material domain is king, it does not follow that progressives should ignore racial inequality, or that a progressive outlook on social or economic justice entails "colorblind" social policy. Applying egalitarian or progressive principles to law and policy will require answering empirical questions about how we measure the kinds of things that are relevant to justice—disadvantage, poverty, resources, opportunities, well-being, and so on. In the U.S., and many other advanced capitalist societies, data on material disadvantage is scanty, and so race is often an important proxy for a kind of poverty and disadvantage that progressives should be especially concerned to redress: namely, that which is *concentrated* at the level of neighborhoods and social networks.[88] Living in a neighborhood where poverty and disadvantage are concentrated impedes social mobility,[89] drives unemployment,[90] undermines education,[91] encourages crime,[92] and leads to numerous other harmful outcomes.[93] In the U.S., Black people are much more likely than most non-Blacks to live in such neighborhoods.[94] At least in data-scarce environments, the application of egalitarian or progressive principles of justice to law and policy will sometimes require a combination of empirical data on race and conventional measures of "class."[95] In order to realize such principles, the evidence base for egalitarian social policy will likely have to be race-conscious, even if the policies themselves are not explicitly race-targeted. In sum, nothing in what we have said should be taken to imply that egalitarians or progressives should ignore race when thinking about justice.

What we have tried to show, however, is that "racial justice" and racial equality are hollow *normative ideals* for the material domain—unless one adopts a minimal state libertarian view that condemns ongoing redistributive taxation. Progressives who, wittingly or not, embrace these ideals will find themselves on shaky normative (not to

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[86] *See, e.g.*, Karl Marx, *The Power of Money*, in Economic and Philosophic Manuscripts of 1844; Gary S. Becker, Human Capital: A Theoretical and Empirical Analysis (1994).

[87] Lawrence Lessig, Republic, Lost: How Money Corrupts Congress—and a Plan to Stop It (2011); Zephyr Teachout, Corruption in America: From Benjamin Franklin's Snuff Box to Citizen's United (2014).

[88] *See, e.g.*, Douglas Massey & Nancy Denton, American Apartheid: Segregation and the Making of the Underclass 179-181 (1998); Sam and Mark Fossett, *Why Racial Employment Inequality Is Greater in Northern Labor Markets: Regional Differences in White-Black Employment Differentials*, 74 Social Forces 511 (1995).

[89] *See, e.g.*, Raj Chetty, Nathaniel Hendren, Patrick Kline & Emmanuel Saez, *Where is the Land of Opportunity? The Geography of Intergenerational Mobility in the United States*, 126 Q. J. Econ. 1553, 1608-1612 (2014).

[90] *See, e.g.*, John Kain, *Housing Segregation, Negro Employment, and Metropolitan Decentralization*, 82 Q. J. Econ. 175 (1968).

[91] *See, e.g.*, Robert J. Sampson, Patrick Sharkey & Stephen W. Raudenbush, *Durable effects of concentrated disadvantage on verbal ability among African-American children*, 105 Proc. Nat'l Acad. Sci. 845 (2008).

[92] *See, e.g.*, Robert J. Sampson, Stephen W. Raudenbush & Felton Earls, *Neighborhoods and Violent Crime: A Multilevel Study of Collective Efficacy*, 277 Science 918 (1997).

[93] *See, e.g.*, David M. Cutler & Edward L. Glaeser, *Are Ghettos Good or Bad?* 112 Q. J. Econ. 827 (1997).

[94] *See, e.g.*, Ruth D. Peterson & Lauren J. Krivo, Divergent Social Worlds: Neighborhood Crime and the Racial-Spatial Divide 53-62 (2010).

[95] William J. Wilson, The Truly Disadvantaged (1987).

mention political) ground as they seek to address injustice—including, and perhaps especially, in striving to rectify the specific disadvantages of the Black poor. One implication of this is that taking racial inequality seriously in philosophy does not demand that we reinvent the theory of justice wholesale. Instead, it demands that we attend to complex questions of public policy informed by both existing normative theories and empirical social science.