

# Reparations for African Americans

## A Lockean Debate for a New Political Order

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“Life, Liberty, and the pursuit of Happiness,” the innate rights of all men, is perhaps the most famous line of the Declaration of Independence.<sup>1</sup> However, many remain unaware of its philosophical roots in John Locke’s assertion of the fundamental human rights to life, liberty, and property.<sup>2</sup> The Founding Fathers, the writers of this famous document, were highly influenced by John Locke through their European political and academic backgrounds.<sup>3</sup> While for some American Founders, such as Thomas Jefferson, Lockean theory was more implicitly evident within their writing, others, such as Alexander Hamilton, directly cited his rhetoric as a source for understanding American independence.<sup>4</sup> This Lockean influence persists not only in the Declaration of Independence, but also in the body of the U.S. Constitution and the Bill of Rights.<sup>5</sup> However, despite the proliferation of Lockean principles in the American governmental structure, the claims of equality of man did not extend to enslaved African Americans and later attempts to integrate them within the American social contract have ultimately failed, thus necessitating a new political order, as asserted by Locke.

Locke establishes that slavery is only justifiable after war or forfeiture of rights and cannot be an inherited, permanent position, a direct contrast to the

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1 Tohid Asadi, “En Route to the US Constitution: Founding Fathers and Lockean Philosophy,” *Historia Constitucional: Revista Electrónica de Historia Constitucional* 16, no. 16 (September 2015): 412, <https://doi.org/10.17811/hc.v0i16.429>.

2 Matthew Miyamoto, “Political Legacy: John Locke and the American Government,” (Undergraduate thesis, University of Oregon, 2016), 20.

3 Asadi, “En Route to US Constitution,” 419.

4 Miyamoto, “Political Legacy: John Locke and the American Government,” 1-3; Asadi, “En Route to US Constitution,” 414-15, 418.

5 Miyamoto, “Political Legacy: John Locke and the American Government,” 1.

American institution of slavery.<sup>6</sup> In chapter four of his renowned text, Locke discusses slavery.<sup>7</sup> Firstly, he defines the liberty of man both in the natural state and when in society.<sup>8</sup> In the natural state, liberty means to be free from any superior power, only being ruled by natural law.<sup>9</sup> In contrast, when in society, liberty means to be unrestrained from any law other than those from the established legislative power, enacted within its mandate and consented to by the commonwealth.<sup>10</sup> Consequently, just as man cannot rightly take his own life as it acts against the preservation aspect within the law of nature, no man can voluntarily enter into slavery, as it would give another person absolute power over himself, where that person can decide his death.<sup>11</sup> Instead, Locke declares complete slavery as a continuation of the state of war.<sup>12</sup> Hence, elements of the Constitution and the conditions of slavery juxtapose Locke's natural rights theory on freedom and consent. In the body of the Constitution, the government made slavery constitutional by counting slaves as three-fifths of a person to calculate the allotted representatives for Southern states. By reducing the value of a slave to three-fifths of a white person, the American government disregarded African Americans' Lockeian claim of the innate equality of all men. Furthermore, slavery denied Black Americans the "property rights of use, ownership, or management" of their labor.<sup>13</sup> This denial goes against Locke's definition of property, which states that men create their property when they combine their labor with nature.<sup>14</sup> The final contradiction between American slavery and Locke's rhetoric is its hereditary nature. Through Locke's argument, the enslavers would not have legitimate power over the life, liberty, or property of children born from slaves, making them freemen by right. Thus, the Lockean principles which helped to develop the American nation are incompatible with its institution of slavery.

Consequently, within Locke's philosophical framework of a political society, African Americans would be entitled to corrective justice. John Locke argued that reparations from the offender are necessary to repair the damage caused by a crime or violation of rights, as is the case for slavery.<sup>15</sup> Reparations must give the "satisfaction due to any private Man, for the damage he has received," and this

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6 John Locke, *Second Treatise of Government*, trans. Jonathan Bennett (Early Modern Texts, 2008), 10, <https://www.earlymoderntexts.com/assets/pdfs/locke1689a.pdf>.

7 Locke, *Second Treatise of Government*, 9-10.

8 Locke, *Second Treatise of Government*, 9.

9 Locke, *Second Treatise of Government*, 9.

10 Locke, *Second Treatise of Government*, 9.

11 Locke, *Second Treatise of Government*, 9-10.

12 Locke, *Second Treatise of Government*, 10.

13 Adrienne D. Davis, "The Case for United States Reparations to African Americans," *Human Rights Brief* 7, no. 3 (2000): 4.

14 Locke, *Second Treatise of Government*, 11.

15 Bernard Boxill and J. Angelo Corlett, "Black Reparations," *The Stanford Encyclopedia of Philosophy*, 2024, sec. 2.

right stems from the right of self-preservation.<sup>16</sup> Scholars argue that Locke's use of "some person or another" allows for the recognition of generational damage, permitting descendants to make a claim for the inequalities caused by slavery and the government's inaction to remedy their ancestors' original harm.<sup>17</sup> Furthermore, the descendants of the enslaved and the enslavers have inherited their right to reparations and debt of repayment, respectively, as those rights and debts are considered property which each has inherited.<sup>18</sup> This interpretation establishes financial compensation to the descendants of the enslaved for the injustices their ancestors faced as well as the inequalities they suffered due to the historical legacy of slavery.

However, Brian Smith reframes Locke's reparative rhetoric not as property or financial restoration but as the reclamation of ancient liberties as he considered the enslaved to be conquered people.<sup>19</sup> This lens of analysis emphasizes not only the loss of passing down property but also the loss of the right to choose their political community.<sup>20</sup> Locke defines conquest as an invalid source of political authority regardless of whether the conquest was unjust or lawful.<sup>21</sup> Unjust conquest is akin to robbery, and thus the aggressor gains no right over the life of the victim while the victim, or their descendant, has their natural right "to seek the relief of the law" for their self-preservation.<sup>22</sup> On the other hand, with lawful conquest, the conqueror has despotic power only over the conquered, and shall receive only "reparation for the damages received and the costs of the war."<sup>23</sup> However, he asserts that this reparation has to maintain the rights of the innocents, such as a wife or child, as the law of nature demands the preservation of property to "the greater right of those who are in danger of perishing without it."<sup>24</sup> Hence, Locke maintains that if the conqueror already has sufficient resources, they should relinquish part of their claim to reparations.<sup>25</sup> Additionally, the children of the conquered are freemen and are entitled to revolt against any government forced upon them until they have "laws [they have consented to] ... and also ... allowed property [they are entitled to]."<sup>26</sup> Through Smith's argument, the enslaved and their descendants are conquered people who were under unjust subjugation. The hereditary and second-class nature of slavery meant that African Americans were denied political rights, and restricted from seeking a legal

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16 Boxill and Corlett, "Black Reparations," sec. 2.

17 Boxill and Corlett, "Black Reparations," sec. 2.

18 Boxill and Corlett, "Black Reparations," sec. 8.

19 Brian Smith, "John Locke on Historical Injustice: The Redemptive Power of Contract," *Critical Review of International Social and Political Philosophy* 24, no. 4 (2024): 9.

20 Smith, "John Locke on Historical Injustice," 7.

21 Locke, *Second Treatise of Government*, 58.

22 Locke, *Second Treatise of Government*, 58.

23 Locke, *Second Treatise of Government*, 59-60.

24 Locke, *Second Treatise of Government*, 61.

25 Locke, *Second Treatise of Government*, 61.

26 Locke, *Second Treatise of Government*, 62-63.

appeal as they had “no court other than that of the [conquerors].”<sup>27</sup> Consequently, the descendants of the enslaved have the right to resistance until they have renegotiated the social contract and to create a new political order “agreeable to the parties living in the generational wake of historical transgressions.”<sup>28</sup> Thus, true corrective justice would require the establishment of, and agreement to, new laws created by equal input from the descendants of the enslaved and enslavers, not simple improvements to the current political order. As a result, this Lockean reframing of slavery as conquest would explain the failure of the Reconstruction Amendments, which only added to the political order without reconstructing it.

The Thirteenth, Fourteenth, and Fifteenth Amendments are commonly known as the Reconstruction Amendments because they aimed to provide African Americans with equality after the Civil War.<sup>29</sup> Yet, given that Black Americans have faced persistent marginalization, the amendments ultimately achieved minimal success. The Thirteenth Amendment prohibited slavery and involuntary servitude except as a punishment for crime within territories under U.S. jurisdiction, drawing similarities to Locke’s definition of just conquest as this punishment would serve as reparations for the crime committed.<sup>30</sup> The Fourteenth Amendment granted African Americans birthright citizenship with accompanying rights and privileges to life, liberty, and property, and due process and equal protection under the law, directly providing the fundamental rights defined by Locke.<sup>31</sup> Finally, the Fifteenth Amendment provided all citizens, regardless of their race or previous servitude, the right to vote, allowing them to be equal participants in the social contract as Locke emphasizes.<sup>32</sup> These three Amendments represent the goals of the Post-Civil War era to acknowledge their place as equal citizens to white Americans.

Unfortunately, African Americans continue to face several disparities despite shedding their slavery status. Black Codes and their successor, the Jim Crow laws, which lasted until the 1960s, were used to restrict the lives of ex-slaves, “dictating... [their] work hours[,] duties[, and] behaviour” while the government provided white Americans with preferential treatment.<sup>33</sup> Furthermore, the government neglected issues affecting African Americans by providing little assistance to erode educational and economic disparities.<sup>34</sup> In some instances, the government exacerbated these inequalities, such as having more restrictions when providing Black farmers with loans in comparison to those given to white

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27 Smith, “John Locke on Historical Injustice,” 3-4.

28 Smith, “John Locke on Historical Injustice,” 4.

29 Davis, “Case for United States Reparations,” 4.

30 Edieth Y. Wu, “Reparations to African-Americans: The Only Remedy For The US Government’s Failure To Enforce The 13th, 14th, And 15th Amendments,” *Connecticut Public Interest Law Journal* 3, no. 2 (2003): 344.

31 Wu, “Reparations to African-Americans,” 347.

32 Wu, “Reparations to African-Americans,” 357.

33 Wu, “Reparations to African-Americans,” 344-346.

34 Wu, “Reparations to African-Americans,” 353.

farmers with similar credit scores, dropping the percentage of Black farmers to 1%.<sup>35</sup> Additionally, there were a “myriad of roadblocks” stacked against African Americans’ right to vote as white Americans used racial violence, claims of voter fraud, and literacy and financial requirements to impede Black people from voting.<sup>36</sup> These issues have persisted as African Americans face “entrenched patterns of disadvantage and structures of inequality” in sectors such as education, housing, and employment.<sup>37</sup> In particular, Black Americans face mass incarceration, which also results in the loss of voting rights; sub-proletarianization, which leads them to depend on their physical labor under conditions similar to those experienced in slavery; and hyper-segregation, which creates “[an] urban, black ‘underclass.’”<sup>38</sup> Therefore, despite the attempts of the Reconstruction Amendments to provide equality, the unfavorable reality of current African Americans ultimately showcases their limitations and explains the ever-present desire for reparations.

Since the abolishment of slavery, there have been no reparations given to African Americans.<sup>39</sup> After the Civil War, there was a notion of compensation to be given to African Americans for injustices suffered under slavery. In 1865, General Sherman’s “Special Field Order No. 15” guaranteed each African American family 40 acres of land and authorized loaning them mules, leading to the coined promise of “40 acres and a mule.”<sup>40</sup> However, President Andrew Johnson overturned this plan, leaving the recently freed Black Americans with limited resources.<sup>41</sup> Approximately a century later, advocacy for reparations resurfaced slightly within the Civil Rights Movement.<sup>42</sup> Two influential documents were ‘The Black Manifesto’ by activist James Forman, which demanded financial compensation from churches and synagogues which benefited from slavery, and *The Case for Black Reparation* by Professor Boris Bittker, which argued that financial compensation should be used for long-term institution building rather than individual payments.<sup>43</sup> However, these texts did not provide an adequate push for a reparations movement.<sup>44</sup> It was not until compensation was given for the atrocities committed in World War II to Japanese Americans and Holocaust survivors that the legislative push for African American reparations began to pick up more steam,

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35 Wu, “Reparations to African-Americans,” 353.

36 Wu, “Reparations to African-Americans,” 357-359.

37 Thomas McCarthy, “Repairing Past Injustice: Remarks on the Politics of Reparations for Slavery in the United States,” *Global Dialogue* 14, no. 2 (2012): 112, 114.

38 McCarthy, “Repairing Past Injustice: Remarks on Politics of Reparations,” 115.

39 John Torpey, “Paying for the Past?: The Movement for Reparations for African-Americans,” *Journal of Human Rights* 3, no. 2 (2004), <https://doi.org/10.1080/1475483042000210702>; William Darity Jr. et al., “Black Reparations in the United States, 2024: An Introduction,” *RSF: The Russell Sage Foundation Journal of the Social Sciences* 10, no. 2 (2024), <https://doi.org/10.7758/RSF.2024.10.2.01>.

40 Torpey, “Praying for the Past,” 172-173.

41 Torpey, “Praying for the Past,” 173.

42 Torpey, “Praying for the Past,” 173.

43 Torpey, “Praying for the Past,” 174-175.

44 Torpey, “Praying for the Past,” 175.

using those cases as precedents.<sup>45</sup> In 1989, Detroit Congressman John Conyers proposed legislation to investigate whether slavery created systemic difficulties and to provide restorative solutions if proven to be the case.<sup>46</sup> Unfortunately, this bill never moved out of committee. More recently, there have also been class-action lawsuits brought to the courts aimed against private companies for “their history of complicity with slavery” such as the case of *Farmer-Paellmann v. Fleet-boston Financial Corp.*, filed March 26, 2002.<sup>47</sup> Nevertheless, this lawsuit, like all similar claims made on behalf of the descendants of the enslaved, even ones made against the government, failed.<sup>48</sup> The courts provided reasons such as sovereign immunity, statutes of limitations, and the fact that previous slavery compliance was legal for their times.<sup>49</sup> Thus, the slavery-induced property and liberty violations remain unresolved.

Due to these failures, scholars have investigated the political, social, and philosophical obstacles to reparations, ultimately concluding that there is a need for institutional recognition and reform, proving Locke’s arguments. In 2022, scholars conducted a study consisting of 2,857 participants to investigate public opinion on symbolic reparations for slavery in the U.S.<sup>50</sup> They discovered that white Americans disagreed with reparations because of their feelings of deservingness and their perception that it was “the inability of Black Americans to bridge the inequality gap.”<sup>51</sup> In particular, the scholars noticed that many of them resisted possible negative connotations of their racial identity regarding their ancestors’ role in slavery.<sup>52</sup> Thus, they conclude that attaining racial justice for the legacy of slavery is not simply about appealing to the factual nature of its legacy, but rather confronting the views of deservingness that are conditioned by racial identity.<sup>53</sup> Consequently, the authors emphasize the need for symbolic reparations, such as governmental acknowledgement, apologies, and curricular reforms as well as material reparations, such as “direct monetary compensation, or funding for community/public policy initiatives.”<sup>54</sup> Other scholars, such as Sujaya Rajguru, also note a holistic framework to address America’s history of slavery and systemic racial discrimination. This strategy, informed by corrective measures taken in South Africa, Peru, and Guatemala, involves four main components: amendments to the Constitution; the establishment of a Truth and Histo-

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45 Torpey, “Praying for the Past,” 175-176.

46 Torpey, “Praying for the Past,” 175.

47 Darity Jr. et al., “Open Access Black Reparations: An Introduction,” 7.

48 Darity Jr. et al., “Open Access Black Reparations: An Introduction,” 7.

49 Darity Jr. et al., “Open Access Black Reparations: An Introduction,” 7.

50 Ashley V. Reichelmann et al., “Racial Identity, Reparations, and Modern Views of Justice Concerning Slavery,” *Public Opinion Quarterly* 86, S1 (2022): 554, <https://doi.org/10.1093/poq/nfac018>.

51 Reichelmann et al., “Racial Identity, Reparations, and Modern Views of Justice,” 569.

52 Reichelmann et al., “Racial Identity, Reparations, and Modern Views of Justice,” 570.

53 Reichelmann et al., “Racial Identity, Reparations, and Modern Views of Justice.”

54 Reichelmann et al., “Racial Identity, Reparations, and Modern Views of Justice,” 553.

ry Commission; educational reform on slavery history; and reparations. Notably, although Rajguru recommends amending the Constitution with rhetoric “[acknowledging] the trauma the United States and its people [have] faced,” the use of South Africa as a model asserts a more radical approach, a rewritten Constitution.<sup>55</sup> After the injustices of Apartheid, South Africa created a new Constitution with its preamble asserting that “the people of South Africa, [r]ecognise the injustices of [their] past . . . and [b]elieve that South Africa belongs to all who live in it, united in [their] diversity,” amongst other changes.<sup>56</sup> In Lockean understanding, this rewritten Constitution denotes a new social contract after the egregious racial discrimination that occurred. Therefore, the United States with such similar history would also require a new constitutional political order.

In conclusion, on account of the Founding Fathers, the philosophies of John Locke are the cornerstone of the American nation, and thus, unsurprisingly, the argument for collective justice for African Americans for the harms of slavery would be no different. Through an analysis of Lockean principles regarding conquests and historical recollection of the failures of reparations, this research showcases that the push for justice should not be considered through merely financial compensation, but by means of institutional reestablishment of the American political order to provide true liberty and equality for African Americans. Consequently, this paper adds to the broader understanding of collective justice and the requirement of a new social contract to achieve its goals. Future research can investigate the specific steps required to make this new political order feasible for the American context.

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55 Sujaya Rajguru, “Fulfilling the Promises of Our Preamble: A Holistic Approach to Transitional Justice in the United States,” *Harvard Civil Rights-Civil Liberties Law Review* 58, no. 1 (2023): 373, <https://journals.law.harvard.edu/crcl/wp-content/uploads/sites/80/2023/04/Fulfilling-the-Promise-of-Our-Preamble.pdf>.

56 Rajguru, “Fulfilling Promises of Our Preamble,” 375.