BRATISLAVA INTERNATIONAL SCHOOL OF LIBERAL ARTS

The U.S. slavery reparations: Does the government of the United States owe reparations to the descendants of slaves?: A Lockean account

Bachelor Thesis

Bratislava 2018 **Barbora Sedlačková**

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Declaration of Originality

I hereby declare that this bachelor thesis is the work of my own and has not been published in part or in whole elsewhere. All used academic and other sources of literature are referenced and listed in Bibliography

Bratislava, February 15, 2018

Barbora Sedlačková,

Signature: _____

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Abstract

The purpose of this study is to analyze and interpret arguments presented in *The Second Treatise of Government* by John Locke in order to contribute to the current debate over reparations for slavery in the United States. The thesis consists of three parts. The first is theoretical and deals mainly with Locke's concepts of slavery, reparation and restraint, property, conquest, and the state of nature. In the other two parts, these concepts are applied to the historical events. From this analyses, we derive two arguments. First, the descendants of slaves are entitled to claim reparations, because they inherited this right from their ancestors, who were unjustly enslaved. Second, the descendants of slaves are entitled to claim reparations because of the harms they are still caused today.

Reparácie za otroctvo v Spojených Štátoch: Dlhuje vláda Spojených Štátov reparácie potomkom otrokov?: Štúdium na základe Johna Locka

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Abstrakt

Táto bakalárska práca analyzuje a interpretuje argumenty prezentované v *Druhom pojednaní o vláde* od Johna Locka, za účelom prispieť k súčasnej debate o reparáciách za otroctvo v Spojených Štátoch. Práca sa skladá z troch častí. Prvá je teoretická a zaoberá sa hlavne Lockovými teóriami o otroctve, reparácii a reštrikcii, majetku, podrobení územia, a o prirodzenom stave. Nasledujúce dve časti tieto teórie aplikujú na historické udalosti. Následne sme z tejto analýzy vyvodili dva argumenty. Podľa prvého majú potomkovia otrokov právo žiadať reparácie, ktoré zdedili po svojich predkoch, ktorí boli nespravodlivo zotročení. Druhý argument tvrdí, že potomkovia otrokov majú právo žiadať reparácie kvôli ujmám, ktoré sú im spôsobované dnes.

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Introduction

Considering an issue of reparation for slavery, John Locke is a rather controversial person. There are many contradictions to be found between his life and his theoretical principles. In his *Second Treatise of Government* he claims that one only becomes a slave if he "by his fault forfeited his own life by some act that deserves death" (Locke, 1980, §24). He is aware that it is, indeed, a miserable state to be in, and one must do everything not to fall into such a state. He also claims that when one unjustly exercises power over another, he becomes a criminal, liable to punishment (Locke, 1980, §176). However, as James Farr notes, during his life, Locke "was fully informed or involved in colonial slavery, the slave trade, and new world conditions for Africans, Indians, and English colonists" (Farr, 2008, p. 497). Another point of controversy is his alleged role in writing the *Fundamental Constitutions of Carolina*, the documents promoting slavery, and denying democracy and liberalism, the principles very different from Locke's theories. Even though his full authorship has never been confirmed, his handwriting was identified among the corrections on a draft. These corrections change the statement that "Every freeman of Carolina shall have absolute Authority over his Negro Slaves," to "absolute power and Authority over his Negro Slaves" (Bernasconi & Mann, 2005, p. 92). To put it briefly, Locke's hands are dirty and it is most likely that, being alive today, he would not agree with the results provided here, even in spite of the fact that they derive from his work. We therefore, examine merely his written work.

There are countless questions to be asked regarding reparations for slavery. Whether they should be made, from whom they should be demanded, to whom they should be made, and in what form or amount, to mention just a few of them. Thus, considering the complexity of this topic, we only deal with the most fundamental question – whether the reparations should be made. While this question could be analyzed from many different perspectives, we took John Locke's *Second Treatise*, to serve as a framework for our study.

Bernard Boxill has written a similar study in 2003, providing two arguments for slavery reparations on Lockean grounds. The first one is called an inheritance argument and suggests that African Americans "have a claim to collect the

compensation that was owed to their ancestors but was never paid" (Boxill, 2003, p. 69). However, he puts this statement right at the beginning as a prerequisite for his further argument and proceeds straight to the question of who should they be demanded from. He claims that the fact that "most white citizens consented to the government's support for slavery" (p. 76) by not expressing dissent and therefore, considering Lockean claim that those who "assisted, concurred, or consented to that unjust force" (Locke, 1980, §179) are to be punished as the transgressor himself, Boxill concludes that African Americans "have inherited titles to a part of the assets held by the entire white population" (Boxill, 2003, p. 77). The first and the most important flaw in this argument is the prerequisite of inheritability of reparation. This statement, if left alone, does not sound very convincing on Lockean grounds, as he claims that only the victim alone, and nobody else can claim reparation (Locke, 1980, §11). Even though, as we will show later, by more detailed study it is, indeed, defensible, Boxill does not provide such an explanation. Moreover, the second part of his claim, namely that the *entire* white population is to blame, does not follow from his premise that *most* white citizens consented. Boxill calls his second argument counterfactual. It suggests that every government and every white generation since Jim Crow "has unjustly prevented its black population from recovering from injuries originating in slavery" (Boxill, 2003, p. 87) and thus have a duty to provide reparations. Even though this could be made into a strong argument, he concludes that it relies "on the controversial premise that slavery has harmed the present generation" (p. 68) and that it would require "details of social causation and slavery's legacy" (p. 90). According to his proposal, we shall therefore provide such study.

This thesis also provides two arguments closely related to Boxill's – one that African Americans inherited the right to claim reparations, and the other that there is a new claim to be made today, for the harms caused by the current system. However, for their defense, we have used arguments from Locke's work that differ from Boxill's and that we believe serve the purpose better. To understand his perception of reparation and slavery, it is necessary to look beyond these concepts, at some of his ideas from which they emerged.

Chapter One – John Locke

John Locke believed that people are rational but at the same time self-interested (Locke, 1980, §124). This allows people to live peacefully in what Locke calls the state of nature, "a state of perfect freedom to order their actions, and dispose of their possessions and persons, as they think fit, within the bounds of the law of nature" (Locke, 1980, §4). As people are rational, bound by laws of nature, and, moreover, nature possesses enough resources for everybody to live well, everybody is equal and there is no need for anyone to exercise power over another. In other words, there is no need for government. Nevertheless, Locke is not precisely clear about what these laws of nature are. In his Essays on the Law of Nature, he suggests that this law is a set of moral principles, implanted in our hearts by a superior power (Locke, Essays on the Law of Nature, 2006). It is what is universally considered right or virtuous, and this universality serves as one of the proofs of its existence. Moreover, he distinguishes between a natural right that gives us license to act freely and a natural law that commands or forbids (Locke, Essays on the Law of Nature, 2006). All the feelings of fault, guilt, bad conscience, and so on exist because of the law of nature that is conceivable by our reason.

However, people do not act only according to reason, but are also self-interested. Therefore, they will try to acquire more and more property until they reach the point where their actions constrain the freedom of others, and that means violation of the laws of nature. As the laws of nature secure "preservation of all mankind" (Locke, 1980, §7), their violation threatens it. In this case then, an execution of superiority over another in the sense of harming is necessary. Any violator thus becomes a serious threat, even more so if his deed is repeated by him or others. Consequently, punishment for breaking the law of nature is inevitable. Because of the equality of people, there is no universal judge. Thus, Locke claims, "every man hath a right to punish the offender, and be executioner of the law of nature" (Locke, 1980, §8) Naturally, even after great harm was done, the executioner cannot allow any passionate emotions to shape his judgement, but has to rely solely on reason, for, as Locke claims, "ill nature, passion and revenge will carry them too far in punishing others" (Locke, 1980, §13) According to Locke, punishment can serve only two legitimate purposes, reparation and restraint.

Reparations are applicable when the transgressor not only committed a crime and broke the law of nature, but when, by committing that crime, he hurt some other person or persons, or their possession. The injured person, however, does not have to be a direct victim of the transgressor's crime, but can suffer an injury as a consequence of his action that might have been aimed at something or somebody else. In that case, it is a right of the victim to demand reparation – "satisfaction for the harm he has suffered" (Locke, 1980, §10) an improvement of his condition caused by the crime – from the transgressor as a form of punishment, but also any other man can help the victim with the recovery. Moreover, Bernard Boxill notes that Locke never in his argument states that the damage received has to follow the transgression immediately (Boxill, 2003). Therefore, one is entitled to claim reparation even for a crime that happened long time ago, if it affects him now. This is the sacred right of the victim, no one else has the right to lay claim to reparation nor can this right ever be taken away from him (Locke, 1980, §11).

Restraint serves to deter the transgressor and others from committing a like crime. Thus, the punishment ought to be equally serious as the crime and threatening enough that it would not be worth committing again. In order to preserve mankind, such measures are necessary, as punishment is an inseparable part of the law of nature. Unlike reparation, restraint can be occasionally remitted if an executioner of the law decides it is better for society. Nevertheless, even in that case, reparations have to be acknowledged to the injured party.

Locke describes all of the above as happening in the state of nature that ends when one person comes to power over another, thus restraining the latter's freedom. While the natural instinct of every individual is preservation and protection of himself and his freedom, he has a natural right to get rid of everything that threatens them. Therefore, individuals put themselves into a state of war that is "a state of enmity and destruction" (Locke, 1980, §16). The difference between the state of nature and the state of war is that in the former there is no need for a common judge, as people live according to reason and every person is equal, while in the latter reason changes into a force used to come to power over another while there is "no common superior on Earth to appeal to for relief" (Locke, 1980, §19). The moment of transition from the state of nature to the state of war is forcible violation of the natural law of equality among people, and thus the state of war represents a crime against the law of nature.

Consequently, the concept of force used against another's life can be understood as central to the crime itself, leading to the state of war. Locke also notes two instances of the state of war: one emerging in society and the other in the state of nature. The former ends as soon as force ceases and a common authority can judge both parties. The latter is continuous, "with a right to the innocent party to destroy the other whenever he can, until the aggressor offers peace, and desires reconciliation on such terms as may repair any wrongs he has already done" (Locke, 1980, §20). In both cases, the war does not end until it is judged fairly – the transgressor punished, and the victims compensated. If there is no possibility of fair judgement, the war has to continue. This is the main reason why people join societies: the need of a common judge to avoid wars or to make them shorter (Locke, 1980, §21).

However, what if the use of force is committed by a government? According to Locke, the reason for which one joins societies is to have a government that will "preserve himself, his liberty and property," and the government "can never be supposed to extend further, than the common good" (Locke, 1980, §131) .Andrew Dilts notes that, if the government stops following this aim and exceeds its authority, "it becomes an aggressor itself and is liable to be punished according to the natural right possessed by the public" (Dilts, 2012, p. 70). Thus, the government itself becomes subject to reparation and restraint.

Locke claims that to take another's freedom is to enslave him, and one must do everything not to fall into such a state. As soon as freedom is taken away, everything else, being subordinate to freedom, can possibly be taken away as well (Locke, 1980, §17). However, Locke does not talk merely about the condition where a transgressor explicitly wants to kill or enslave a person. He also claims that it is "lawful for a man to kill a thief, who has not in the least hurt him, nor declared any design upon his life" (Locke, 1980, §18). Dilts points out that "the aggressor only becomes a thief in retrospect" (Dilts, 2012, p. 65), meaning that, in the moment of robbery we cannot know the precise intentions of the robber. He might be a murderer, a tyrant, or merely a robber. We will only discover which after the crime. In fact, the very concept of robbery necessarily includes the possibility of murder, for if the victim knew the transgressor was only a robber, there would be no motivation to give the robber his or her possession. The robber needs the victim to feel that his life and freedom are threatened to rob him of his possession. However, it may still be asked how the theft, the loss of possession,

can be compared with murder and justly punished by death. Such a question can be answered by looking to Locke's understanding of property.

"God," Locke says, "has given the Earth to the children of men; given it to mankind in common" (Locke, 1980, §25). At the same time, however, we clearly claim property in many things even in the state of nature. Labor, for Locke, is the crucial element in acquiring property. He claims that "labor put a distinction between [the object] and common: that added something to [the object] more than nature, the common mother of all, had done" (Locke, 1980, §28). The first thing we own is our body. From the day we are born, each of our actions is labor, making our body our property. However, while children cannot use their reason properly yet, they are subjected to their parents, and therefore their right to property is limited (Locke, 1980, §57). On the other hand, Locke also claims that "the possession of the father [is] the expectation and inheritance of the children" (Locke, 1980, §72), thus not leaving them without property. From that day we get out of the "imperfect state of childhood" (Locke, 1980, §58), every object becomes our property into which we put something exclusively of our own labor. For example, the apples we picked from the ground, the potatoes we planted, or the house we built. Although our body possesses the power to pick all the apples from a tree, the fact that they can rot restricts us from doing so, for after a while they would be of no use. Thus, there would still be enough for everybody. Therefore, Locke writes that God "gave [the world] to the use of the industrious and rational" (Locke, 1980, §34). Steven Smith notes that, from this passage, the Lockean state changes into a "commercial state," where the world belongs to "people who through their own efforts increase and enhance the plenty of all" (Smith, 2012, p. 162).

However, the invention of money completely changed this order of things. People living in a village, growing food, and cultivating soil have no reason to hoard crops, for a rotten harvest has no value for them. Neither do they have reason to keep in their possession land they are not able to cultivate, for it is labor that makes it valuable. However, when people invented money in any form—from rocks, seashells, metals, and diamonds to green pieces of paper—they have "by a tacit and voluntary consent, found out, a way how a man may fairly possess more land than he himself can use the product of, by receiving in exchange for the overplus gold and silver, which may be hoarded up without injury to any one; these metals not spoiling or decaying in the hands of the possessor" (Locke, 1980, §50). How could this become morally

justifiable, then? The answer is that the conception of property changed. It was not gained by work anymore, but by money. As a consequence, it allowed for accumulation of lands in the hands of rich lords that they were unable to cultivate or use for different purposes, while poor people had no land on which to work. Nevertheless, money, like the acquired property, to a great extent represented the amount of labor put into an object. Therefore, while it is our labor that creates property, society by consent established money as reflecting this amount of labor in the form of exchange, or the wage. This is Smith's "commercial state," where the work of every individual secures the preservation of society. Wages are then a necessary and inseparable part of work in a market society, as property legitimately acquired, and can never be legitimately taken away from anybody. Therefore, we can see that our property is everything into which we put our bodily work, everything that is necessary not only for our comfortable life, but for our mere existence. It is our "life, liberty, and estate" (Locke, 1980, §87). It follows that our property is not merely a consequence of our life, but it is our life. This aspect of the relationship between property and life allows for the same punishment for the thief as for the murderer.

According to Locke, in the state of nature everybody is absolutely free until they voluntarily enter a society, a commonwealth with rules and laws that have been agreed upon and are the same for everybody, and thus remain free under the government. One's life cannot be preserved, Locke claims, without the freedom that is an innate and inseparable part of it. Therefore, if one cannot separate one's freedom from one's life, one cannot consciously sell or give away this freedom to anybody else. However, we know that being a slave means that the person has no rights or possession. This fact implies that even the fundamental possession of the slave's body, which is a condition for life, is absent. Thus, as Dilts notes, "slavery is a form of living death" (Dilts, 2012, p. 67). The slave is alive in the sense that his biological processes are functioning. However, what makes him a human being, that which is naturally in people, namely freedom, is not in him anymore, but instead belongs to somebody else. Therefore, Locke says that the only slavery that can legitimately exist is the one where a man, by committing a certain crime, deserves a death sentence but the victim uses the transgressor's services as he pleases. In this case, slavery is nothing else but "the state of war continued, between a lawful conqueror and a captive" (Locke, 1980, §24). Hence, the internal death that results from the absence of freedom and possession is

merely a substitution for the external death that would result from the death sentence. The owner then only transformed the form of the slave's death and made use of it. While in the state of nature man has no "liberty to destroy himself" (Locke, 1980, §6), in the state of legitimate slavery when his "life" seems to him worse than a physical death, the slave can "by resisting the will of his master […] draw on himself the death he desires" (Locke, 1980, §23). This aspect of slavery therefore emphasizes that it is "anything but a stalemate or stable condition, but a continued conflict" (Dilts, 2012, p. 67), a continued state of war.

At the same time, Locke distinguishes between slavery and servitude. While one cannot sell oneself into slavery, having no power to give away his freedom, one does have the power to sell oneself into servitude. In the latter, the relationship works on a contract that assures some wage for the servant. This contract also means that the master does not own his life and cannot deprive him of it. Moreover, servitude is only temporary and one has to be granted freedom when the contract expires. A servant is also temporarily a part of his master's family. By contrast, a slave, being entirely subjected to his owner, cannot belong to any family or society, for he does not own anything, and while the aim of the society is the preservation of property, which he does not have, he is not considered as belonging to civil society (Locke, 1980, §85). The question that now arises is, how does one become a part of a society, whether civil or political.

Society, Locke claims, first emerges between man and wife (Locke, 1980, §77). Then it extends to the whole family and all the family relations, among which he includes that of master and servant. This conjugal society has procreation as its primary aim. However, as opposed to other animals, people need to take care of their children long after birth. Therefore, they are to remain together for much longer period of time, helping each other and supporting their children. Locke also acknowledges that conjugal society does not merely serve practical purposes, but that there are other aspects to it as well, such as mutual affection and harmony of interests, all for the sake of the well-being of children and parents. Even though the head of a family is the husband, he has no power over the life of his wife or any other family member. His wife remains free, not deprived of a single right she had before, and even able to initiate divorce if necessary. Because the roles of husband and wife complement each other in their aim, there is no necessity for the husband to possess absolute power, for "nothing

being necessary to any society, that is not necessary to the ends for which it is made" (Locke, 1980, §83), and that being the preservation of property.

The second type of a society, even though emerging from the first one, is different. In the state of nature, every person has a right to preserve his property and to punish offences (Locke, 1980, §87). However, after some time, the need for a common judge will bring people together in order to form a civil or political society. In that case, every person has to give up these rights and give them to elected authorities, whose aim is to protect them. Thus, all the people, giving up the same rights, are to be subjected to the same rules. However, not all groupings of people unified into one body can be called a society. An authoritarian regime with one absolute ruler, cannot serve the final ends of society. Such a ruler does not represent the common judge to whom the citizens chose to appeal and cannot assure the preservation of citizens' property, as he follows his own interests. In that case, it is not a society but the state of nature, where every person is a judge in his own case.

By nature, people are free and equal and "no one can be put out of this estate and, subjected to the political power of another without his own consent" (Locke, 1980, §95). Only when a group of people agrees to create a society with certain goals, voluntarily giving up those rights that help to fulfill these goals to a chosen juridical authority, does a civil society emerge. From the moment the society is created, it becomes one body and "acts as one body" (Locke, 1980, §96). At the same time, an individual becomes subjected to the majority in society that has the advantage in all democratic decisions. The question that now arises is, how did people who were born into a society choose it? Here we come back to Locke claiming that everybody is born free until he voluntarily enters society. Everybody can therefore choose the government to which he wants to give up his rights or make his own, for "nothing can make any man [a member of a commonwealth], but his actually entering into it by positive engagement, and express promise and compact" (Locke, 1980, §122).

As mentioned earlier, slaves cannot be part of civil society because they are not capable of any property, the preservation of which is the chief end of society (Locke, 1980, §85). However, neither are they in the state of nature, as they are not free and equal. Slavery is thus a perpetual state of war. Locke claims that the state of war can only end with fair judgement, reparation, and restraint (Locke, 1980, §20). But how are

slaves to claim reparation if they are not part of civil society and cannot own property? Chapter XVI, Of Conquest, may provide an answer.

Locke emphasizes repeatedly that government can only emerge by means of universal consent. However, there are various examples in historical records that may appear to show the opposite, namely that a new government can be created by a foreign power conquering a society. Since government comes from society and not the other way around, it can only be founded on a consent. If a person who waged an unjust war conquered another territory along with its citizens, the conqueror should be treated by the conquered like any other criminal, thief, or murderer. The conqueror surely used force to conquer the territory, and by that entered the state of war that can only end with an appeal to justice, reparation, and restraint. However, what if such an appeal is not possible? What if it is not in a people's power to obtain justice? To this, Locke answers "If God has taken away all means of seeking remedy, there is nothing left but patience. But my son, when able, may seek the relief of the law, which I am denied: he or his son may renew his appeal, till he recover his right" (Locke, 1980, §176). When we look back to Locke's discussion on reparation and restraint, he emphasized that the victim alone can demand reparation from the perpetrator. (Locke, 1980, §11). Nevertheless, this falls under the supposition that there is a judge who considers the acts of both parties, whether according to reason and the law of nature by people in the state of nature or according to an established law by a government in a civil society. But when he talks about conquest, Locke mentions exactly those conditions where "justice is denied, or I am crippled and cannot stir, robbed and have not the means to do it" (Locke, 1980, §176). These, therefore are the conditions where people are denied their rights by the government under which they live. The condition of slavery he mentioned before, was assumed to exist under a lawful government, where a person could appeal to justice and therefore, the reparations were only to be claimed by the victim herself. However, if we assume that the slavery exists under an unlawful government with no possibility to appeal to justice, the claim for reparations is inheritable on Lockean grounds and can be claimed by as many generations as necessary, until the debt owed to them is paid off.

Since it may be confusing to discuss a chapter on conquest of countries and societies in individual terms, this vocabulary will be changed to what we have already clarified. When Locke speaks about conqueror and conquered, it is nothing other than

perpetrator and victim or lawful master and slave, for the person or society that has justice on its side, also has "an absolute power over those, who, by putting themselves in a State of War, have forfeited them [their own lives]" (Locke, 1980, §180). Moreover, we can regard all of these situations as happening in the state of nature because there is no universal government that would rule over everybody, and thus different societies and countries are in the state of nature with each other. Therefore, as everybody has a right to property in the state of nature, they also have the right of inheritance. The father, possessing enough resources to provide a comfortable life for himself, his wife, and his posterity, all of whom are bound to him, so he also has an obligation to share this property and render it to them after his death. The crimes he had committed cannot influence his innocent posterity significantly. Therefore, any reparations that are demanded from him cannot lead to putting them in danger of perishing. This claim then implies that "the child's right to inherit his father's goods is limited by their [father's victims] right to seek reparation from his father" (Boxill, 2003, p. 79). The same condition goes for the case we have explained previously concerning reparations. Because of the fact that, according to Boxill, Locke does not limit the time between the transgression committed and the damage received, one can claim reparation long after the actual crime if it affects him now. Whether it be demanded from the descendants of the transgressor or the government itself, this condition of not putting the innocent in danger of perishing has to be met in any case.

This argument of inheritance therefore elaborates on Locke's theory of property, which is no longer only that into which we put our bodily work or what we bought for money we made through our work. It is also what we inherited from our ancestors to become our own rightful possession. Moreover, later in Chapter XVI, Locke claims that people have "a right to the possession of their ancestors, though they consent not freely to the government" (Locke, 1980, §193). Thus, it implies that the right of inheritance is a natural right, because it does not depend on a government, as it exists in a state of war as well. Locke also claims that people have no obligation to consent to a government until they are able to choose it freely and "also till they are allowed their due property, which is so to be proprietors of what they have, that no body can take away any part of it without their consent, without which, men under any government are not in the state of freemen, but are direct slaves under the force of war" (Locke, 1980, §192). Consequently, everything I am owed, either personally in the form

of debt or reparation, or in the form of a denied inheritance, when my ancestors were denied this right, is my rightful property. I have an obligation to claim this right from the government and, as long as it is denied, I am in a state of war, with the government itself the aggressor.

Chapter Two - Justifications of Slavery before the Civil War

The slave trade in America reaches as far as to the beginning of the sixteenth century. Of course, the institution of slavery has been known for thousands of years. From almost all of the ancient civilizations to modern history, slavery had constituted a big part of a social life. The reasons for enslavement were various – captives in wars, religious beliefs, and so on. From the fifteenth century however, we can trace the beginnings of the race-based slavery in Spain and Portugal, which found the trade with Africa more profitable when cheap labor force was needed. As a consequence, this gave rise to the slave stereotypes in Europe (Haynes, 2002). In America, this concept was created with the same purpose of economically advantageous trade, and became embodied in the Constitution short after. These events keep influencing people all around the world even today. In this chapter, let us look at the justifications of the race-based slavery in America in its beginnings and its peak. We will then analyze the writings of John Locke to find his response to the American slavery.

Of the Beginnings of Slavery

At first, race did not play a significantly important role in the American slave industry. The plantation labor was needed in the biggest amount and for the cheapest price possible. This could be achieved easily through slavery. Native Americans and Europeans were not ideal slaves, as Native Americans were too aggressive and Europeans too expensive (Alexander, 2012). In Africa, on the other hand, the slave trade was already well developed, so it was possible to import a big amount of people for a relatively small price. Moreover, African people were much fitter for the work in a tropical environment, and therefore could “last longer”. Part of the reason was also their genetic immunity to diseases that appeared in such an environment, such as malaria and yellow fever (Harari, 2014). Another advantage was that the majority of them did not speak English and thus, they became isolated. By not being able to communicate with the slave owners and using only their native language that was considered primitive, they did not make people feel sympathy of respect towards them, and that made them be controlled more easily (Alexander, 2012). All of this indicated a big economic advantage of enslaving African people. However, to sell this idea to the

American citizens, a strong story was needed. Suddenly, politicians, historians, biologists, and theologians started offering a variety of proofs about their "natural" inferiority in order to add an aspect of rationality to the slave owners. One of the myths was that the life in Africa was so horrible that slavery was actually a deliverance for them. In a speech delivered in 1837, called Slavery a positive good, John C. Calhoun famously proclaims, "Never before has the black race of Central Africa, from the dawn of history to the present day, attained a condition so civilized and so improved, not only physically, but morally and intellectually" (Calhoun, 1837). Other scholars, politicians, or scientists were arguing that Africans were less intelligent with underdeveloped brains that lacked the sense of morality (Harari, 2016).

At the time, religion played a big role in people's lives, and therefore priests were very influential. One of the most popular Biblical stories told in churches and among Christians was the Curse of Ham. In Genesis 9, Noah is drunk from wine, lying naked in his tent. His son, Ham, the father of Canaan, sees him and comes to tell his brothers. They, however, cover their father with a garment, without looking at him. When Noah awakes and finds out what happened, he curses Ham's son, Canaan, and condemns him to be a servant of his brothers (Gen. 9:20-27, English Standard Version). In the original text, there is no mention of race at all. How is it then possible that Ham became so strongly associated with African Americans that his story worked as an argument for slavery? One of the explanations is that in some languages the name Ham was mispronounced and believed to mean "black, dark, or heat" (Goldenberg, 2003). Many times the Biblical words have been misinterpreted by contemporary priests, to imply that as a part of punishment God made his face black (Haynes, 2002). Professor Stephen R. Haynes also claims that another reason for racialization of the curse was that Ham resembled of contemporary enslaved people – a plantation worker and a "dishonorable or disorderly" person (Haynes, 2002, p. 12). Whatever the reason was, the fact is that all of these modifications of the original text and associations of Ham and Canaan with African Americans only happened after the introduction of the race-based slavery. As Haynes notes, "the application of the curse to racial slavery was the product of centuries of development in ethnic and racial stereotyping, biblical interpretation, and the history of servitude" (Haynes, 2002, p. 8). Therefore, this argument, used so many times over that period, is invalid, for it does not follow the original text, the authority of which has given the strength to the argument.

Legal Justifications

However, the most important were secular, and more precisely, legal justifications of slavery. For the first few years after the slave trade in the United States had grown bigger, the Articles of Confederation kept silent about the legal role of slaves in the country. It was not until the discussion over the Constitution in 1787 that the question of representation in the House of Representatives arose, which inevitably brought about the question of the political status of slaves. The issue was whether the slaves were to be counted as persons. This was indeed a big controversy, as it would influence the number of representatives in the House from each state. In some of the Southern states, the slave population comprised as much as 50 percent of the population, thus doubling the House representation from these states (Gates, 2014). Consequently, Northern states, having significantly fewer slaves, argued that they were, in fact, not persons but property, and should not be counted as part of the population and, on the contrary, taxed as any other property. Therefore, in 1787, a Three-Fifths Compromise was enacted as a part of the Constitutional Convention. It stated "Representatives and direct taxes shall be apportioned among the several States which may be included within this Union, according to their respective numbers, which shall be determined by adding to the whole Number of free Persons, including those bound to Service for a Term of Years, and excluding Indians not taxed, three fifths of all other Persons" (U.S.Const. art. I, § 2, cl. 3). In other words, in taking the census, every five slaves would be counted as three free persons and from that, the number of representatives and taxes would be calculated. The Southern states acquired the representative advantage, which reflected in the next couple of elections, however, they also had to pay higher taxes.

The following year, this issue was discussed by James Madison in the fifty-fourth of the Federalist Papers. He claims that the Three-Fifths Compromise was, in fact, a necessary decision, in order to find a middle ground between the North and the South. According to him, slaves are indeed in some respects persons, and in other respects property (Madison, 1788). They do not work for themselves, but for their master, who can sell them, as any other property, to another master. Being so subordinated and lacking liberty, they may even appear to be closer to animals, that have always been considered property. On the other hand, they are protected by law

against any violence and punishable themselves, as they are also regarded as thinking persons (Madison, 1788). At the same time, Madison acknowledges that even if this characteristic ensured the relative satisfaction in the Southern as well as in the Northern states, it only applied to them under the contemporary laws, and as soon as these laws are changed, they "could no longer be refused an equal share of representation with the other inhabitants" (Madison, 1788).

However, not all the states had the same opinion on slavery. At the beginning of the nineteenth century, eleven free states in the North and eleven slave states in the South created a relative balance that was to be disrupted in 1819. In that year, Missouri decided to enter the Union as a slave state. The acceptance would result in higher representation of pro-slavery states in the Congress, and therefore, even though the Congress admitted Missouri as a slave state, it also admitted Maine as a free state, thus maintaining the balance. This decision was called the Missouri Compromise and while it prolonged the peace among states, at the same time it sparked the debate in the Congress about the future of slavery in the country, what, eventually, led to the Civil War (Missouri Compromise, 2009). Five years later, Missouri Supreme Court made a decision referred to as "once free, always free," meaning that if a master takes his slave to live in a free territory, the slave automatically becomes free, and stays free even if he comes back to a slave territory (Missouri Digital Heritage).

This decision was challenged in one of the most controversial cases brought to the Supreme Court – Dred Scott v. Sanford (mistakenly spelled Sandford). Dred Scott was a black slave from Virginia, born in 1799, and owned by the Blow family. After moving to Missouri, he was sold to John Emerson, who took him to Wisconsin, a free state, where Dred Scott met his future wife, Harriet Robinson. Emerson then took both of them back to Missouri. Scott then repeatedly appealed to courts, in order to free himself and his family from slavery. These attempts continued for eleven years and escalated in 1857 when his case was taken to the U.S. Supreme Court (Dred Scott Decision, 2009).

The Chief Justice of the Supreme Court at the time was Roger B. Taney, who became notorious for the opinion he had written for this case. First, he stated that African Americans, either free or enslaved, were not and could not be citizens of the United States, according to the Constitution, and therefore they could not sue in a court

of the United States. His argumentation was, "when the Constitution was adopted, they [African Americans] were not regarded in any of the states as members of the community which constituted the State" (Scott v. Sandford, 1857). Therefore, the rights given to the citizens did not apply to them. Taney then admitted that African Americans could be granted all the rights possessed by other citizens by a government of a state, however, a state citizenship did not give them the citizenship of the United States and thus neither the right to sue in the court (Scott v. Sandford, 1857). These claims have been challenged by many scholars. Robert Burt notes that when the Constitution was framed, there were in fact some Northern states that had African American citizens. Taney's second part of the argument is also invalid, as according to the Constitution, federal and state citizenships are the same (Burt, 1985). Secondly, Taney continued that the Missouri Compromise was unconstitutional because the Congress did not have the right to prohibit slavery in any State. Moreover, he stated that notwithstanding the "once free, always free" doctrine, Scott was not a free person when he returned to Missouri. His argumentation was that slaves were regarded by the Constitution as property, and the government of the United States had to protect the citizen's property regardless of a State they lived in or moved into. Thus, granting freedom to a slave as soon as he enters a free territory could be regarded as "an exercise of authority over private property which is not warranted by the Constitution" (Scott v. Sandford, 1857). At this point, the reference to the Constitution is flawed as well. The Constitution repeatedly referred to slaves as persons rather than property, even the Three-Fifths Compromise defined them as "other persons." The only reason the court kept referring to slaves as property, even despite the Constitution, was the Fifth Amendment and the Bill of Rights that granted every person his "life, liberty, and property" (U.S. Const. amend. V). Therefore, to admit that slaves were, in fact, persons would mean admitting that slavery had long before become unconstitutional. Furthermore, Taney made a point that even though the public opinion had changed since the time the Constitution was adopted, they were obliged to stick to the original definitions and meanings embodied in the Constitution (Scott v. Sandford, 1857). This suggested that notwithstanding the public opinion, there was almost a constitutional obligation to preserve the institution of slavery.

The Dred Scott decision had a significant impact on the future of the United States. Taney's decisions overturned the Missouri Compromise, the "once free, always

free" doctrine, violated the Three-Fifths Compromise, and the Constitution of the United States on many levels. Thus, it is no surprise that such decision sparked anger, especially in the North. Many courts rejected this decision. Consequently, the Union made a big jump toward its own dissolution – the Civil War.

Lockean Response

Presented here were some of the main justifications of slavery in the pre-Civil War era. As noted in the first chapter, even though Locke in the Second Treatise of Government claims that slavery is the abolition of the man's natural right of freedom (Locke, 1980, §22), he also admits that certain type of slavery is acceptable. This slavery works only as a punishment and a substitution for a death sentence. Could, then, the preceding arguments be justified on Lockean grounds?

Considering this definition of justifiable slavery, what seems to be the closest example is the Curse of Ham. The contemporary interpretations of the Curse provided that the African American slaves were carrying the guilt of Ham, and therefore slavery was their punishment. Since they were seen as inheriting this guilt, the enslavement in exchange for a death sentence could be justified. On the other hand, it may be objected whether the transgression committed by Ham can be considered a crime against the law of nature requiring a death sentence, or if it was a crime at all. Once again, Locke is not precisely clear about what the laws of nature are. He suggests that they are moral principles that are universally considered as being right or wrong (Locke, Essays on the Law of Nature, 2006). However, as we said before, central to all crimes is a force and Ham's transgression did not involve a force in any form. There has been an ongoing discussion on what precisely the nature of Ham's transgression is. Whether it was seeing his father naked or gossiping about it with his brothers, neither of them involved a force, and definitely did not require a death sentence. Another aspect that makes this argument invalid is the fact that it depends on the inheritance of guilt. Locke mentions repeatedly that the transgressor's posterity does not bear any responsibility for his crimes (Locke, 1980, §183). Although they can be asked reparations for the crimes of their parents, the reparations can only include that, which was inherited but did not lawfully belong to the family. Moreover, it can never put the posterity in danger of perishing (Locke, 1980, §183). Therefore, besides the rightful debt, they can never be

blamed for the transgressions of their ancestors. Consequently, considering even that version that was used as a justification for slavery, it would still be invalid on Lockean grounds. More importantly, there was not a single mention of race in the original text and therefore, the argument itself is invalid in its nature.

The secular justifications were not concerned with the initial guilt and excused slavery as being natural for the mental inferiority of African Americans, or as securing the economic stability of the country. These arguments are initially wrong on Lockean grounds. In section 183, Locke claims that all governments are in the State of Nature with each other. In the State of Nature everybody is equal, and thus one cannot justifiably come to a power over another notwithstanding his or her mental capacities or the purposes. Therefore, these arguments are invalid.

In the Three-Fifths Compromise, and later in the fifty-fourth of the Federalist Papers, it is established that African American slaves are partially persons and partially property (Madison, 1788). It is difficult to consider it on Lockean grounds, for he does not discuss the possibility of such a situation. The reason for it is this: in his Essay Concerning Human Understanding, he claims, "everyone is conscious to himself that he thinks" (Locke, An Essay Concerning Human Understanding, 1959, p. 18). He thus attributes thinking to people and makes it the first human trait. He then continuous that people have the power of abstraction, and that the ability to possess general and abstract ideas, is what distinguishes people from everything non-human (p. 41). Nobody, not even the slave owners, would claim that the African American slaves are not conscious, thinking beings, who have abstract thoughts. It may be objected that property, as well as slaves, are in full ownership of some other person. Nevertheless, as Locke claims at the beginning of the Second Treatise, people have a right "to dispose of their possessions and persons, as they think fit" (Locke, 1980, §4). When one becomes a slave, while he has no possession, he, and not his master, has the power to dispose of himself. Therefore, according to Locke, even if one is enslaved, he does not, and cannot become a property.

Considering the Dred Scott decision, the arguments provided at the Supreme Court can be easily disproved by the Constitution, as mentioned earlier, and the Lockean response would not be much different. According to the first argument, African Americans can never become citizens of the United States, because they were

not members of the society when the Constitution was formed, and granted rights to the citizens. Under the same logic, it could be then said that any foreigner moving to the United States would never be entitled to the rights possessed by the citizens, because he was not a member of the society in its beginnings. Indeed, neither the generations after the founding one, nor Taney himself would possess these rights.

According to Locke, the African American slaves were not, in fact, members of the society. Not only because he explicitly claims that slaves, not having any liberty and property, cannot be any part of civil society (Locke, sect.85), as they were only enslaved by injustice, but also because they did not consent to the government they lived under. Therefore, they were in the state of war with the American government. Consequently, the American laws did not apply to them, and thus appealing to the court that was not theirs, would not make sense. However, even if it was obvious that the state African Americans were in was caused by a crime on the part of the American government and the slave owners, there was no common judge and no means of appealing to justice. In that case, Locke claims, "there is nothing left but patience," and repeated appeals to justice by their descendants, until it is given to them (Locke, sect.176). Taney also argued that Scott lost his freedom as soon as he came back to Missouri, notwithstanding the "once free, always free" doctrine. That means that a person was granted liberty in a free state, and after coming back to a slave state, although under the same federal government, his liberty was taken away. Therefore, if a government takes away somebody's freedom without any guilt on his side, it fails to fulfill its purpose to preserve people's "lives, liberty, and property" (Locke, 1980, §131). Thus, as Andrew Dilts notes, it exceeds its authority, "becomes an aggressor itself, and is liable to be punished according to the natural right possessed by the public" (Dilts, 2012, p. 70).

In this chapter, we argued that the justifications of slavery in the United States provided by priests, politicians, and embodied in the Constitution, are invalid on the Lockean grounds and most of them were unlawful as such. Therefore, according to the arguments provided in chapter XVI: Of Conquest in the Second Treatise of Government, the descendants of slaves have a right to claim reparations, because African Americans were enslaved unlawfully, and they were denied justice, when they appealed to the courts.

Chapter Three – The New Jim Crow

For now, we have laid down an argument that follows from Locke's work, considering that the situation of the African American slaves in the United States was identical to that of a conqueror coming to power over another people's lives in an unjust war: that the claim for reparations comes from the initial crime on the part of the United States, and that the descendants of slaves inherited this right, because it was denied to their ancestors, by an unlawful government. However, there is also another argument to be made that does not depend on the premises of an unjust conqueror, and therefore can derive solely from Locke's theory of reparation and restraint. Locke claims that one has a right to claim reparation when somebody has hurt him or his possession. The African American slaves were, obviously, hurt. They were deprived of all their property and their liberty, degraded, and many times physically harmed, without any initial transgression on their part. Therefore, they were clearly entitled to claim reparations from their masters or from the government. However, at the time, this was impossible for them. Locke also states that only the victim alone, and nobody else, can claim reparation (Locke, 1980, §11). Therefore, under this logic, it is impossible for descendants of the victims to inherit the right. How can, then, the descendants of slaves possess the right to claim reparations if the institution of slavery has been abolished and the direct victims of it died long before? We argue that the reason for reparation is not merely the enslavement of the African Americans and the failure of the contemporary government to compensate it, but it is also the fact that the subsequent social and political environment created a new system of oppression, which, even after getting rid of the racial vocabulary, still targeted African Americans. We argue that this current system makes the descendants of slaves the direct victims, and they are therefore entitled to claim reparation.

It has been more than 150 years since slavery was officially prohibited in the United States. However, after the end of Reconstruction in 1877, what followed was the segregation movement, Jim Crow laws, and discrimination in all areas of everyday life. The first proposal for reparations for slavery was refused. Laws, established during or right after Reconstruction, considering voting right, loans, education, prison system and many others, made it impossible for African Americans to integrate fully into the predominantly white society.

Even though the second reconstruction in the second half of the 20th century was more successful, and finally allowed African Americans to vote, the racial prejudices in people's mindset were not so easy to eradicate. The differences in standard of living between black and white communities are still immense today. The average African American in the United States earns only 60.72 percent of an average white person's income (Semega, Fontenot, & Kollar, 2017). After university graduation, African Americans owe 46 percent more (Scott-Clayton & Li, 2016), and their dropout rate is 40 percent higher than that of their white peers (NSC Research Center , 2017). We can look at almost all data on poverty, incarceration, housing debt, and so on, and all show similar results. Perhaps it could be argued that these facts have nothing to do with the heritage of slavery in the society, but rather with the unwillingness of many African Americans to integrate and to obey the American laws and that the United States has successfully gotten rid of racial discrimination. The most apparent example is the election of the first African American president – Barack Obama. For many people his election represented the official end of racial discrimination, and the proof that society became color blind. How is it, then, possible that much of the African American communities have still not recovered from racial segregation, Jim Crow, and slavery? If we want to prove that African Americans are still oppressed, even in spite of the race-neutral vocabulary, we have to start from the beginning, from the time this system was being formed.

The End of Slavery

The Emancipation Proclamation issued by Abraham Lincoln in 1863, during the Civil War, officially freed slaves held in the South. Nevertheless, it only applied to the slaves in the states that were in rebellion. Moreover, their future status depended on the result of the war and thus, many of them joined the Union Army. Therefore, it was not until the end of the Civil War in 1865 that they were really granted freedom.

However, the freedom did not necessarily mean equalization with the white population. In fact, in Michelle Alexander's words: "the notion of racial difference – specifically the notion of white supremacy – proved far more durable than the institution that gave birth to it" (Alexander, 2012, p. 26). Before the Civil War, slaves were the backbone of the Southern economy and thus, when four million of them left

overnight; they left the South in ruins. Plantation owners started panicking. Indeed, most of the white people were scared. They thought African Americans needed to be controlled, and therefore most of the Southern states enacted the so-called Black Codes, in order to restrict their newly acquired freedom. These Codes, among others, made it a crime not to work. Those who did not have a written proof of a job were sent to prisons, and, through them, back to plantations (Alexander, 2012). As the economy was growing again, almost every white person was working. However, African Americans were poor, uneducated, many of them even illiterate, as they were stripped of the opportunities to become educated beforehand, and so finding a job was an incredibly hard task. Even if they found one, their salaries were very low. As a consequence, they did not have money to educate their children, who, in turn, could not get well-paid jobs. This vicious circle only made the prejudices stronger. The fact that even years after the Civil War there were almost "no black professors, lawyers, doctors, or even bank tellers" worked for many as a proof that they were "less intelligent and hard-working" (Harari, 2016, p. 176).

On the other hand, the Black Codes did not last long. The year 1865 is marked as the beginning of the Reconstruction era. It included the Thirteenth Amendment, which abolished slavery in the whole Union; the Fourteenth Amendment, which invalidated the Three-Fifths Compromise and granted African Americans "equal protection of the laws" (U.S. Const. Amend. XIV); and the Fifteenth Amendment, which granted the right to vote to everybody (Purvis, 1995). Even though the results were apparent – African Americans started to be appointed to offices and their literacy rates were growing - these amendments were also subjects to many controversies.

The Thirteenth Amendment, although abolishing slavery, did not abolish the institution as such, because it allowed for one very important exception: slavery as a punishment for crime. Moreover, while the Fifteenth Amendment granted the right of citizenship and the right to vote to everybody, regardless of "race, color, or previous condition of servitude" (U.S. Const. Amend. XV), the Fourteenth Amendment delimited the right to vote by stating that it does not have to apply to "participants in rebellion, or other crime" (U.S. Const. Amend. XIV). This resulted in the mass incarceration of African Americans, taken to prisons for minor crimes, such as mischief and insulting gestures (Alexander, 2012). The rhetoric of black criminality served as an excuse. The raising anti-black emotions resulted in the necessity of a new racial order

that would legalize the already present discriminatory practices. This order is known as Jim Crow.

Jim Crow

Jim Crow was a set of laws that imposed racial segregation in the Southern States. As a consequence, African Americans were banned from certain public places, could not attend the same schools, use the same restrooms, restaurants, fountains, or public transportation, as the white people. In spite of the Fifteenth Amendment, which ensured the right to vote for everybody regardless of their race, most of them were denied this right, and not only when they were convicted criminals. While for most of them it was impossible to find a decent job, they were poor, and thus unable to pay poll taxes in order to vote. Moreover, because they lacked the previous education, they could not pass the literacy tests. Even though these measurements also affected poor and uneducated whites, they had one advantage – grandfather clause, which allowed them to vote, as long as their ancestors had this right (Alexander, 2012).

Furthermore, besides the voting right, in many cases, they were also denied mortgages, insurances, or student loans. For an average African American at the time, it was almost impossible to get a legitimate mortgage. Therefore, they were forced to buy their houses "on contract" – a system that, as Ta-Nehisi Coates claims, "combined all the responsibilities of homeownership with all the disadvantages of renting – while offering the benefits of neither" (Coates, 2014). The sellers would sell the property for a much higher price than the original one, set very strict conditions, and then take the property back as soon as a single payment was missed. In 1934, the Federal Housing Administration was created. It established a system that rated city areas from those inhabited exclusively by white people, marked "A" and colored in green, to those inhabited exclusively by African Americans, marked "D" and colored in red. This so-called redlining ripped the African American communities of the means of obtaining mortgages, insurances, and loans (Coates, 2014).

These factors resulted in the massive migration of African Americans to the North, to escape from the power of Jim Crow. Their newly acquired political power in the North contributed to the already strong anti-Jim Crow sentiments. The Jim Crow laws were repeatedly challenged in courts. Unlike the abolition of slavery, we cannot

trace the exact moment of the end of Jim Crow, however, it has usually been referred to in relation to Brown v. Board of Education. In this case, the Supreme Court decided that the racial segregation in public schools was unconstitutional. After this decision however, the Southern States passed many new Jim Crow laws and the protests grew bigger. This, eventually, led to the Civil Rights Act of 1964 by which the Congress proclaimed all the Jim Crow laws as unconstitutional. It also prohibited any kind of discrimination according to the Fourteenth and Fifteenth Amendments and gave the African Americans back their right to vote by the Voting Rights Act of 1965 (Alexander, 2012).

The New Jim Crow

Naturally, these events arose negative emotions and, more importantly, fear among many people. In approximately the same period of time as the Civil Rights Act was enforced, the crime rates began to rise. It was caused mainly by the baby boom generation from after the Second World War, which was now in the age between fifteen and twenty-four and therefore, most likely to commit crimes (Alexander, 2012). However, the rising crime rates were covered by media as a direct consequence of the more freedoms and privileges granted to African Americans. The central theme of the following election in 1968 thus became the "law and order" – the war on crime. Nixon offered a very powerful image of criminality in the United States that focused mainly on the African American communities. During his presidency he declared the War on Drugs, which identified the drug abuse as the "public enemy number one" and started incarcerating people for minor crimes, such as possession of marijuana. However, this war only reached its full potential with the election of Ronald Reagan in 1980. As Michelle Alexander claims, "between 1980 and 1984, FBI antidrug funding increased from $8 million to $95 million, [while] funding for agencies responsible for drug treatment, prevention, and education was dramatically reduced" (Alexander, 2012). Therefore, Reagan's administration enforced the notion that drug abuse is merely a crime issue, rather than a health issue. Moreover, the opinion polls from that time show that most of the citizens did not perceive drug abuse as being an issue at all (DuVernay, 2016). Why was it, then, made into one?

Because of the deindustrialization, many people lost their jobs and the poverty rates began to rise. African Americans, many of whom still lacked education and resources, were unable to find new jobs. These poor communities were exposed to drugs the most. Furthermore, when the new drug appeared on the market – crack cocaine, which was smaller and more affordable than the powder cocaine, it was clear that it would hit exactly those communities. Reagan's administration switched its focus to crack immediately. One may ask whether these measures were intentionally discriminative. When Richard Nixon proposed the "law and order" strategy, it became to be known as the Southern Strategy, which increased the support of white voters. In 1981, Reagan's campaign strategist Lee Atwater was caught on tape explaining this strategy, "You start out in 1954 by saying nigger, nigger, nigger. By 1968 you can't say nigger, that hurts you. So you say stuff like forced-bussing, state's rights and all that stuff. And all of these things you're talking about are totally economic things. And the by-product of them is – blacks get hurt more than whites" (DuVernay, 2016). He, thus, revealed the true intentions of the administration.

After the declaration of the War on Drugs, many new drug-related laws were being enacted, such as death penalty, denial of public housing, student loans, and a "five-year mandatory minimum for simple possession of cocaine base" (Alexander, 2012, p. 53). These various mandatory minimums for drug possession, later also enforced by Bill Clinton, meant that the judges had no longer the power to consider the circumstances, but had to give the sentence imposed by the law. Moreover, the denial of public housing and student loans to those convicted of a crime meant that they were many times unable to integrate back into the society, to get an education, a job, and to get out of the ghetto. By the end of the twentieth century, more than ninety percent of all prisoners were African Americans and the prison population climbed from 357 000 in 1970, to 2 015 000 in 2000 (DuVernay, 2016). This was, in Alexander's words, the New Jim Crow.

However, we have seen that after the Reconstruction and the Civil Rights Act, all kinds of discrimination based on race were restricted, and the laws stand on the ideas of equality. The higher percentage of African Americans in prisons only seemed to be a consequence of their inability to follow the law that was strictly race-neutral and should affect everybody the same. According to the National Institute of Drug Abuse, "white students use cocaine at seven times the rate of black students, [and] use crack

cocaine at eight times the rate of black students" (National Institute on Drug Abuse, 2000). Nevertheless, African Americans have been imprisoned for drugs thirteen times more often than white people (Alexander, 2012).

The race-neutral language does not guarantee that the acts will be race-neutral as well. It is up to police officers to decide who looks suspicious and laws grant them enough excuses to hide racial biases. For example, the Florida law called stand-your-ground, allows them to kill someone if they feel threatened, regardless of whether the person is even armed. Other laws allow them to stop a vehicle for minor offenses in order to search for drugs (Alexander, 2012). This racial-profiling is one of the reasons for massive incarceration of African Americans. Moreover, it is far more likely that the police will arrest somebody in a ghetto, where most of the drug-related activity takes place outside, for the lack of a private space.

Once arrested, one would expect to go to the trial. However, that is not what happens in most cases. Mandatory minimums are so high and waiting for trial so long that the defendants are usually told by prosecutors that it is more profitable for them to plead guilty and spend few years in prison than to wait for the trial, which can then give them much longer sentences. Even waiting for the trial, which would find them innocent, may take longer than the sentence imposed by the prosecutor. What they are not told is what consequences such a plea has. Once they are convicted of a crime, and especially a drug-related crime, there are more than 40 000 collateral consequences including denial of student loans, some business licenses, food stamps, life insurances, and public housing (DuVernay, 2016). Subsequently, this stigma follows them for the rest of their lives. Moreover, this discrimination also affects the right to vote – an integral part of democracy. Forty-eight out of fifty states do not allow prisoners to vote and some of them take away this right even for years after the release, or for a lifetime. In some states, getting the right to vote back, even if one is entitled to do so, is so complicated and costly that only few people actually do so. According to Alexander, in 2012, "one in seven black men nationally had lost the right to vote, and as many as one in four in those states with the highest African American disenfranchisement rate" (Alexander, 2012, p. 193).

Jim Crow ended more than fifty years ago and is condemned by a vast majority of the population today. Even though poll taxes, literacy tests, and grandfather clauses

were officially race-neutral, the real practices were not. The omnipresent "white only" signs, public lynching, and the general notion of white superiority served as a proof of legalized racism and a direct violation of the Fifteenth Amendment. From that time, the society has made a significant progress. Not only that African Americans are no longer segregated from public spaces, but also people's attitude has changed. Majority of people today does not agree with racial discrimination in any form and laws are exclusively race-neutral. However, as we have seen, that does not mean that the legalized discrimination does not exist anymore, it is mostly the vocabulary that has changed. It is no longer a slave, Negro, or black, but criminal. The criminal justice system is built on programs, such as the War on Drugs, which specifically targeted African American communities. Since then, they have been caught in a vicious circle, in which mass incarceration prevents the economic growth of these communities, taking away their rights to vote, to education, job, housing, even food, and thus sending them back to prisons. When one is convicted a criminal, he or she becomes a subject of legalized discrimination for the rest of their lives. Moreover, while studies show that white professionals are probably the group of people the most likely to commit a drug-related crime (Alexander, 2012), the group incarcerated the most is young African American men. In fact, one in three is expected to go to jail. Today, there are more incarcerated African Americans than slaves in 1850 (DuVernay, 2016) and the current laws are more effective in preventing African Americans from voting than those during the Jim Crow era (Alexander, 2012). This is the era of the new Jim Crow.

Lockean Response

Locke claims, "He, who has suffered the damage has a right to demand [reparation] in his own name, and he alone can remit" (Locke, 1980, §11). As shown in the previous chapter, African Americans were unjustly enslaved, suffered damage in the form of deprivation of their liberty and property, and thus were entitled to claim reparation. During the Jim Crow era, African Americans were ripped off their liberties again. By the Emancipation Proclamation, they were granted the status of citizens of the state, whose chief end, according to Locke, is the preservation of life, liberty, and property. What the Jim Crow laws did by degrading one group of people, by taking their rights to vote away, by allowing lynching, was taking away everything it was

supposed to preserve. Thus, the state itself became an aggressor, and African Americans victims, entitled to claim reparation, again.

In the years following the Jim Crow era, the vocabulary changed from race to crime, however, still targeting the same group of people. Of course, criminal activity, and in this case, drug-related criminal activity, is an offense against the laws of the state and requires restraint. However, the establishment and execution of these laws come from the false premises of superiority over a group of people. Moreover, according to Locke, the commonwealth can only be made "by the consent of every individual" (Locke, 1980, §96). As we have shown before, African Americans were brought to the commonwealth by force, without possibilities to either consent or leave, thus entering the state of war. Since then, they were systematically deprived of their right to vote, to execute their power as citizens of the United States. The drug-related crimes are punished in the form of imprisonment and after their release, their debt to the society should be paid off. However, by depriving them of their rights to education, job, housing, in some cases vote, or food, the United States is extending its authority, failing to preserve their lives, liberties, and property, entering the state of war and becoming an aggressor. Therefore, we claim that Locke's arguments that everybody has a right to "make satisfaction for the harm he has suffered" (Locke, 1980, §10), and that the victim "has a right to demand [reparation] is his own name" (Locke, 1980, §11), are enough to serve as a proof in our case. We claim that African Americans have a right to claim reparations in their own names for the current harms caused by the criminal justice system, which has its roots in legalized discrimination.

Conclusion

Locke's theories of reparation and slavery are complex, even though he only dedicates a few paragraphs to them in his *Second Treatise*. Therefore, only by examination of his whole work, can we piece the argument together. The first chapter works as a theoretical framework for the whole theses. Locke begins by stating that every person either in the State of Nature or in a commonwealth has a right to claim reparation in his or her own name when he or she has suffered harm caused by somebody's transgression (Locke, 1980, §10). When one commits a crime deserving a death sentence, the victim has a right to enslave him, for the transgressor has already forfeited his life (Locke, 1980, §23). For Locke, this is the only kind of slavery that can exist – between the lawful conqueror and the captive. In this case, the slave does not have a right to claim reparation from his master, for this is his deserved punishment. However, we know that African Americans were not captives in a lawful war and justly enslaved. Rather, they were captives of an unjust conqueror. With no means of seeking remedy, they stayed in the state of war, as well as the generations after them, and the right to claim reparation is on their side until it is recovered.

In the second and third chapter, we have provided two separate but interrelated arguments that justify the African American claim for reparations in the United States on Lockean grounds. The first one states that today's African Americans have a right to claim reparations for the enslavement of their ancestors, because, just as captives in an unjust war, they had no one to appeal to for justice and thus bequeathed their right for reparations to their posterity. The second argument states that today's African Americans have a right to claim reparations in their own name, for the harms they are caused by the Jim Crow system and the contemporary criminal justice system. The second chapter discusses the justifications of slavery in the pre-Civil War era. We have shown that the religious, as well as the legal justifications were flawed, not only on the Lockean grounds, but also on the legal grounds. The connection between African Americans and the Curse of Ham was merely an issue of misinterpretation of the original text and racial prejudices of the priests. The Three-Fifths Compromise, the Missouri Compromise, the "once free, always free" doctrine, and the Dred Scott decision, only reflected the contemporaneous confusion over the legal role of slaves and the growing tensions between the North and the South. Moreover, by these laws

and decisions it became more and more clear that the government of the United States was the aggressor that constituted the use of force within its borders, the unjust conqueror, and the subject to reparation and restraint.

Finally, the third chapter examines the events after the Civil War. The abolition of slavery was, in the eyes of many, supposed to fully emancipate African Americans into the society. However, what happened instead was a mere change of legal language to race-neutral. As slaves, African Americans were denied their rights to vote, to education, job, or housing. During Jim Crow, they were denied these rights again in the form of poll taxes, literacy tests, and omnipresent discrimination. Today, many African Americans are denied the same rights under the label "criminal." Ever since the first African American was taken from the shores of Africa, they were subjects to legalized discrimination. Every single generation was therefore entitled to claim reparations, and so is the current one.

It may be objected that granting these reparations to every individual African American or a descendant of a slave would be tremendously expensive and cause many troubles. To this, Locke answers, "no more than justice does" (Locke, 1980, §176). The legitimate argument, however, could be made, if the cost of reparations put lives of innocent people at risk. For Locke claims "the fundamental law of nature being, that all, as much as may be, should be preserved," therefore, "if there [is] not enough fully to satisfy both, viz, for the conqueror's loses, and children's maintenance, he that hath, and to spare, must remit something of his full satisfaction" (Locke, 1980, §183). Thus, even if paying full reparations put the citizens of the United States at risk of perishing, the United States would still be obliged to pay as much as it can. These arguments hold regardless of the form they are in, which is not, however, the subject of this study.

Resumé

Už od čias, kedy bolo v Spojených Štátoch zrušené otroctvo Emancipačným prehlásením a následne Trinástym dodatkom, sa naprieč krajinou ozývali hlasy žiadajúce reparácie za ujmy spôsobené otroctvom, segregačnými zákonmi a vládnymi krokmi, ktoré značne skomplikovali integráciu Afroameričanov do spoločnosti. Reakcie na tieto žiadosti sa rôznia, a taktiež aj spôsoby argumentácie. Táto práca skúma dielo novovekého filozofa Johna Locka, primárne jeho *Druhé pojednanie o vláde,* ktorého myšlienky slúžia ako základ argumentácie pre reparácie za otroctvo.

Lockova teória vychádza zo zadefinovania prirodzeného stavu, v ktorom sú si všetci rovní a zároveň dokonale slobodní. Tento stav sa však končí vtedy, keď človek obmedzí slobodu niekoho iného, a tým vstupuje do vojnového stavu. V takom prípade, ak bolo ublížené obeti alebo jej majetku, je jej prirodzeným právom žiadať reparácie od páchateľa. Toto právo však nie je dedičné a môže ho využiť iba samotná obeť. Locke kladie veľký dôraz na majetok a tvrdí, že všetko, do čoho vložíme prácu, sa stáva našim majetkom a nikto iný naňho nemá nárok. V prípade otroka je to iné, keďže jeho práca nie je vlastnená ním, ale jeho pánom. Locke však zároveň tvrdí, že jediné legitímne otroctvo je také, kde človek spáchal zločin zasluhujúci si trest smrti a ten, kto bol jeho činom poškodený, môže využívať jeho služby, až dokým sa otrok nerozhodne, že smrť je lepšia, ako život v otroctve. V takomto prípade nie je otrok ani členom rodiny, ani členom spoločnosti, ale v pretrvávajúcom stave vojny. Jediný spôsob, akým sa niekto môže stať členom spoločnosti, je dať svoj súhlas s vládou, ktorej zároveň odovzdáva časť svojich práv. Jedine pod podmienkou súhlasu verejnosti sa tak človek môže stať legitímnym vládcom. Čo však s vládcami ktorí neprávom pokorili inú spoločnosť? Podľa Locka sa takýto človek ničím nelíši od kriminálnika, zlodeja alebo vraha a podľa toho by mal byť súdený. Avšak v prípadoch, kedy neexistuje žiaden sudca, ktorý by mohol tohto nelegitímneho vládcu odsúdiť, nezostáva ľuďom nič iné, ako čakať na spravodlivosť a na reparácie za spôsobené ujmy. Keď tá nepríde, tento nárok na reparácie zdedia ich potomkovia.

Druhá kapitola rozoberá argumenty, ktoré boli používané na obhajovanie otroctva v čase jeho vzniku. Jeden z najpoužívanejších argumentov medzi veriacimi bola Kliatba Chána, podľa ktorej boli Afroameričania potomkami prekliateho

Noemovho syna. Bola však mylne interpretovaná, aby obsahovala zmienky o farbe pleti. Aj keď padnutie do otroctva na základe zločinu je podporované Lockovou teóriou, rázne odmieta dedenie viny. Mimo náboženskej sféry bolo otroctvo taktiež zakotvené v Ústave, v rámci takzvaného Trojpätinového Kompromisu. Podľa neho boli otroci ľudia a zároveň majetok, čo však podľa Locka nie je možné. V roku 1857 prebehol súd medzi otrokom Dredom Scottom a Johnom Sanfordom., počas ktorého predseda Najvyššieho súdu, Roger B. Taney, učinil množstvo protiústavných rozhodnutí, ktorými obhajoval otroctvo. Tieto rozhodnutia sú jednoducho vyvrátiteľné, ako po zákonnej stránke, tak aj podľa Locka. V závere tejto kapitoly tvrdíme, že argumenty používané na obhajobu otroctva boli mylné a v mnohých prípadoch nezákonné, a preto môžeme pokladať otrokárstvo v Spojených Štátoch za vzťah nezákonného dobyvateľa a obetí, ktoré nemali žiadneho sudcu, na ktorého by sa mohli obrátiť, čo robí ich nárok na reparácie dedičným.

Tretia kapitola ponúka iný argument, podľa ktorého majú Afroameričania nárok na reparácie nie iba kvôli zotročeniu ich predkov, ale kvôli súčasnému spoločenskému a politickému prostrediu, ktoré im zabraňuje v plnom zotavení sa z ujm spôsobených otroctvom. Z tohto dôvodu sa stávajú obeťami aj v dnešnej dobe a sú oprávnení žiadať reparácie. Táto kapitola skúma vývoj postavenia Afroameričanov v spoločnosti po zrušení otroctva. Od zavedenia segregačných zákonov im bolo odopierané množstvo základných práv, ako napríklad právo voliť, či právo na vzdelanie alebo prácu. Tvrdíme, že aj po zrušení týchto zákonov im zostalo množstvo z týchto práv odopretých, aj napriek tomu, že všetky zákony sú výhradne rasovo neutrálne. V dnešnej dobe je pretrvávajúci rasizmus cítiť najmä v kriminálnej justícii. Množstvo kriminalistických zákonov bolo namierených špecificky na Afroamerické komunity. V dôsledku toho sa dostali do začarovaného kruhu, kde masové zatýkanie zabraňuje ekonomickému a spoločenskému rastu týchto komunít, odopiera im základné práva, a tým ich vracia naspäť do väzení. Človek uznaný vinným sa opäť stáva predmetom legalizovanej diskriminácie.

Týmto výskumom sme došli k záveru, že Afroameričania majú právo žiadať reparácie na základe dvoch argumentov. Po prvé, zatiaľ čo boli všetci zotročení neprávom, v Spojených Štátoch nebola vláda, ktorá by uznala reparácie, ktoré im právom patria. Z toho vyplýva, že tento nárok majú až dovtedy, dokým im nebude uznaný. Po druhé, aj po zrušení otroctva, vlády Spojených Štátov sústavne podrobovali

Afroameričanov legalizovanej diskriminácii vzchádzajúcej z rasovo neutrálnych pojmov, čo ich oprávňuje žiadať reparácie za súčasné ujmy.

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