Critical Notice

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David Gordon and Wanjiru Njoya, *Redressing Historical Injustice: Self-Ownership, Property Rights and Economic Equality,* 2023.

The title of this recent volume (henceforth GN 2023) in the Palgrave Studies in Classical Liberalism hints at some of the questions to be discussed. Concern with social justice raised in Njoya's previous volume in the series is now extended to the matter of supposed injustice of an historical nature, about which the most obvious question might be as to where after centuries of human history we should even start. In her earlier *Economic Freedom and Social Justice*, Njoya made passing reference to the campaign against Cecil Rhodes, something I followed with interest both for the reasons she mentions it and the fact that I am an Old Member of the establishment next door. Also, as it turns out, not long before the Rhodes storm hit Oriel, I had occasion to chat at an alumni luncheon with the then Provost, Moira Wallace, who would go on to bear the brunt of it and withdraw from the fray.

In this work the authors take up some of the questions symbolized by the failed attempt to remove the Rhodes memorial from Oriel which resulted instead in the departure of its first woman Provost. Symonds reminds us that this was not the first controversy the famous benefactor faced at Oxford. Various influential dons including A. V. Dicey, and H. A. L. Fisher opposed the proposal to award Rhodes an honorary DCL, an event which only took place in 1899 when Lord Kitchener made acceptance of his own degree contingent upon Rhodes getting his (Symonds 1991, p. 163), as originally resolved some years before. As for the more recent accusation to the effect that Rhodes should be toppled from his pedestal because he was a racist who drove Africans off their ancestral lands to establish the colony named after him, Biggar responds that "The truth is a good deal muddier" (Biggar 2023, p. 102).

Not only were the lands in question not ancestral, having been conquered 50 years previously by the Ndebele, the right of the British South Africa Company to mine on the periphery of the Ndebele territory had been granted by their king in exchange for royalties and weapons. The alleged "violent conquest" occurred 3 years later when an army of Ndebele, supposedly without the king's approval, renewed their longstanding hostility to the Shona living near settler farms around Salisbury. The fact that the settlers responded to the threat to themselves and the Shona with Maxim guns was thought by one critic to be clear evidence of disproportionate force used to carry the day and with the BSAC ruling what later became Rhodesia (Ibid., pp. 103; 331-332).

While Darwin notes that:

> We live in a world empires have made. Indeed, most of the modern world is the relic of empires, colonial and pre-colonial, African, Asian, European and American. Its history and culture is

> riddled with the memories, aspirations, institutions and grievances left behind by those empires (Darwin 2013, p. 1),

many seem particularly focused on the last of these imperial legacies. Thus the *United Nations Declaration of the Rights of Indigenous Peoples* states that "Indigenous peoples have the right to the lands, territories and resources which they have traditionally owned, occupied or otherwise used or acquired" (26.1). Moreover,

> Indigenous peoples have the right to redress, by means that can include restitution, or when this is not possible, just, fair, and equitable compensation, for the lands, territories and resources, which they have traditionally owned or otherwise occupied or used, and which have been confiscated, taken, occupied, used or damaged without their free, prior and informed consent (Flanagan 2020, p. 3).

To which our response in the spirit of Gordon and Njoya is *Quod erat demonstrandum*. It has simply been assumed by our globalist would-be overlords that aboriginal lands were ancestral, owned in the sense that we might understand it in the light of centuries of common law, and taken from them without their consent such that their descendants are entitled to compensation, despite by definition never having suffered the alleged injustice themselves, by taxpayers who as a matter of history could have played no role in whatever happened at the time. In its rush to grandstand with another resounding proclamation, the UN and its acolytes seem to have forgotten the caveats entered by Stone:

> If we were to accept it as a part of the task of present international justice to right all historic wrongs between former generations of peoples, we would then confront further impossible questions: How, if at all are we to assess and liquidate wrongs committed by former generations of some peoples against others? After how many generations, and on what terms, could collective moral indebtedness in justice be written off, and the past left to bury its dead (Stone 1984, p. 99).

Nor as I recall Stone, once pointing out in a lecture, should we simply focus on those legacies latterly thought to be inviting remedy, but rather:

> In many cases the entitlement of the ex-colonial people would have to be adjusted to allow for benefits already received. The same relations that saw gross exploitation also often saw the transmission of substantial elements of educational, administrative, social, economic and technological skills, as well as managerial and technical resources, that later became part of the ex-colonial people's inheritance and at least a first beginning of development (Stone 1984, p.100).[1]

With respect to Stone's first remark concerning the difficulty of righting historic wrongs, Gordon and Njoya agree that:

> There are serious practical hurdles that cast doubt on the feasibility of paying reparations for historical grievances. But even if a way were to be found to resolve those issues, such wealth transfers would still constitute an unjustified encroachment on property rights. Therefore, the ethical arguments cannot be avoided, and it is necessary to evaluate the underlying considerations of ethics, morality and justice" (GN 2023, pp. 33-34).

The authors briefly consider the merits of utilitarianism which seeks the greatest good of the greatest number, a calculus which our rulers, would-be and otherwise, often fancy they are able to make. One of the problems with utilitarian assessments of such initiatives is that practical problems tend to get swept

under the rug in the search for a workable compromise. Biggar offers many examples of alleged wrongs in the past that do not stand up to scrutiny, any more than does the claim that living individuals can be called to account for the sins of dead generations with whom they have no more connection than they do to the intended recipients of compensation.

As for decolonization which spawned later enthusiasms such as UNDRIP, Biggar also observes that the justice seekers are very selective about who is put on the stand:

> What is remarkable, however, is that the contemporary controversy about empire shows no interest at all in any of the non-European empires, past or present. European empires are its sole concern, and of these above all others the English- or as it became known after the Anglo-Scottish Union of 1707, the British-one. The reason for this focus is that the real target of today's anti imperialists or anti-colonialists is the West or more precisely the Anglo-American liberal world order that has prevailed since 1945 (Biggar 2023, p. 4).

Our authors note that one reason practical concerns tend to be lost sight of is that other agendas are likely at work, as they were during what Davis (2021) rightly styled the pseudo pandemic, such as replacing the liberal order responsible for the prosperity of the advanced nations with the 'prosperity for me but not for thee regime' touted in Davos. Details may be cast aside in the interests of social justice about which Hayek once remarked that: "Much the worst use of 'social', one that wholly destroys the meaning of any word it qualifies, is in the almost universally used phrase 'social justice'" (Hayek 1991, p. 117). Of course it is not by chance that the Anglo-Americans are thought ripe pickings for addressing the errors of the past. Pardy (2023, p. 6) reminds us that under the more recent enthusiasm of Critical Race Theory "it is racist to deny the intrinsic advantage of white privilege or to claim to be colourblind. The new racism means failing to condemn or favour the right races." Similarly, objective reasoning about the merits of redressing historic wrongs is itself racist and thus "will not dissuade those who regard reparations as necessary to meet the demands of social justice" (GN 2023, p. 32).

According to our authors, the rough and ready utilitarianism espoused by our naked emperors has no trouble resorting to coercion when it comes to putting a finger on the scales of social justice, including Richard Epstein whose classical liberalism attempts to remedy what he sees as a deficiency in more libertarian theories which "do not offer a comprehensive explanation of the role of *forced exchanges* in structuring a political system." For Epstein his richer political theory will offer

> a principle that justifies the state's use of force so long as it both supplies compensation to the individual against whom coercion is used and offers them a fair division of the social surplus that is created by public action" (Epstein 2003, p. 7).

As our writers observe "on this interpretation of utilitarian reasoning redistribution may be justified if it would serve a beneficial social purpose that makes it worth the encroachment on liberty. The same reasoning applies to reparations" (GN 2023, p. 33).

The question to be asked is who gets to decide whether the compensation for the use of coercion is right and whether the benefits outweigh the disadvantages. Presumably the same crowd who arranged the pseudo pandemic in the first place, then ensured we comply with useless measures to ward it off, as well as doing their best to prevent any independent assessment of the whole process. As for knowing whether there was any social surplus to be passed around fairly or otherwise, de Jasay (1998, pp. 260-261) rightly contends:

> Given the intricate nature of the social and economic stuff that is being churned, it is altogether on the cards *both* that the industry that was meant to be helped, was actually harmed, *and* that nobody can tell which way any net effect went, if there was any at all…It is in the state's interest to

> foster systematic error…It seems *a priori* probable that the more highly developed and piecemeal is the redistributive system and the more difficult it is to trace its ramifications, the more scope there must be for false consciousness, for illusions and for downright mistakes by both the state and its subjects.

So, while utilitarianism all too readily blows with the political wind, our authors opt to follow Rothbard and others in the natural law tradition which they argue offers a more secure foundation for our ethical judgments. For Biggar (2023, p. 99), for example, to subscribe to natural morality "is to say there are moral principles built into the rational nature or minds of all human beings, wherever they are located, which carry moral authority even where there is no law." On this view the time-honoured prohibitions against force, fraud and theft did not get checked at the door with the arrival of the state but remain paramount individual rights derived from the principle of self-ownership which for the authors "delineates the boundaries beyond which state power and majority rule ought not to encroach upon the rights of the individual" (GN 2023, p. 25). As it happens Biggar, like Epstein, thinks that individual rights are not absolute, such as in the case where someone else has more than he needs and you have little or nothing:

> in such a situation it may be morally permissible for you to take what you need from their surplus without their permission. The reason for this is that those who have more than they need are morally obliged to supply those who have less than they need; and if they fail to do their moral duty, those in need may do it for them (Biggar 2023, p. 99).

The traditional duty of avoiding aggression against the person or property of others is a negative one in that it simply requires us not to harm other people provided they observe a similar rule. Biggar, on the other hand, thinks we have a positive duty of charity towards the less fortunate, failure to observe which will entitle the latter to aggression. Those more inclined to think our fundamental duty is to respect the liberty of others provided they reciprocate, such as myself, would deny that a duty of charity is enforceable. In fact, following Narveson (1988, p. 264), we would consider it as an act to be encouraged by all and practiced by those so inclined, a *virtue*, rather than a *right,* which its holder, whether individual or state, may back up with force:

> We shall, in fact, make charity a *virtue*, in a quite understandable sense of that hoary term: those who manifest the disposition in question are doing something that we should approve and support, namely, by offering such things as praise and congratulations to those who do them. This is that department of morality in which the carrot rather than the stick is to be employed.

However, Epstein for his part would likely not be in favour of the less fortunate taking the law into their own hands, as the saying goes, since this is a right that since Hobbes we have delegated to the sovereign. Thus, he argues:

> it is almost inconceivable in practice that informal alliances of individuals who mingle with each other on a daily basis would be sufficient to police everything from petty street crime to strong arm warlords, especially if tensions are exacerbated by serious racial or religious differences" (Epstein 2003, p. 6).

Moreover, a full account of the sovereign legal system will show that

> coercion is *justified* on the ground that it allows all individuals to achieve a higher state of well-being than they could do by their own efforts, either as individuals or as portions of small

> voluntary groups that are formed under rules that meet the test for creating ordinary contracts (Epstein 2003, pp. 6-7).

Those experiencing daily life in many contemporary cities might wonder, given the social disintegration that occurred during and after the pseudo pandemic, whether the sovereign has proved any bulwark against the proverbial war of all against all. If anything, sovereign authority appears to have been captured by would be world rulers who are intent upon establishing their reign while the serfs return to an earlier stage in history where they were neither owners of themselves or their property. But as de Jasay reminds us, *pace* Epstein:

> The assertion of centralized sovereign power at the end of the Middle Ages enabled states to establish and protect their monopoly of certain lucrative aspects of exclusion, for other potential providers were put at a disadvantage by virtue of their disarmed and subject status. The state, moreover, can become and remain a monopolist without possessing any of the supposed merits of the "monopoly of the legitimate use of force".
>
> History, both past and contemporary, is rich in examples where it abuses its sovereign power and gets away with providing a law-enforcing and property-protecting service that is neither efficient nor impartial. What one needs to retain from this is that the assumption of exclusion cost by society, by owners, or by both in some proportion, is a contingent fact, not a necessary truth arising from the immanent features of social life (de Jasay 1997, p. 180).

Thus, we might be inclined to modify Biggar's rough and ready definition of natural law to read that there are principles which carry moral authority where there *is* law, which is to say that our fundamental liberty, including the liberty of using what we own, preceded the sovereign's writ. On this view, Gordon and Njoya, rightly conclude that for example, eminent domain is "unjust tout court… because it amounts to the seizure of property by the state, without the owner's consent" (GN 2023, p. 37). Mises on the other hand thinks that a natural law perspective will be unable to provide any satisfactory answer to the question why the state should not intervene as it pleases, since "The formula *car tel est notre bon plaisir* is the only maxim of the sovereign law giver's conduct" (Mises 1998, p. 718). However, our authors support Rothbard's view that we cannot avoid asking what it is for property to be justly acquired. Economists such as Mises thus wrongly assume that the question of property is purely economic, since this is itself to make an ethical assumption that "all goods "now" (the time and place at which the discussion occurs) must be accepted and defended as such," including any that may have been criminally acquired (2002, p. 52).

We agree with the authors that:

> An inquiry into the ethics of the property rights debates, and an ethical defence of liberty, becomes necessary. Principles of natural law in that way offer a theoretical framework within which to evaluate the meaning and content of property rights, thereby enabling an evaluation of the moral claims advanced under the banner of social justice (GN 2023, p. 39).

One such claim is that those who hold property owe something to those that don't, perhaps because the latter have descended from people who are alleged to have been discriminated against in the past. One's first reaction might be to ask why inequality might be considered a moral issue in the first place. Waldron seems to think it one, concluding that

> there is no right based argument to be found which provides an adequate justification for a society in which some people have lots of property and many have next to none. The slogan that property

> is a human right can be deployed only disingenuously to legitimate the massive inequality we find in modern capitalist countries (1988, p. 5).

To which Narveson rightly responds:

> Those are not sententious observations, as Waldron thinks they are, instead claims which can be seriously disputed, and that need support. Total absence of discussion on the topic of where a supposed right to equality might come from is symptomatic. Once the need for a decent account is recognized, perhaps we will get somewhere in treatments of this topic, but not, I think, before (1990, p. 138).

In a similar spirit our authors do indeed dispute claims like those of Waldron and show how a right to property may best be defended, rejecting any analogous *ad hominem* to the effect that only the greedy or sociopathic fail to see that equality is self-evident. The conviction that inequality is simply wrong may further be thought to support the view held by Biggar and Waldron that the needy may help themselves to the excesses of others, though the latter agrees at least in his earlier work that "Necessity in our law is no defence to theft or trespass." No problem, however, since

> this constraint can be turned into the basis of an argument for a redistributive welfare state—a system which, by ensuring that the situation of desperate need never arises for anybody, effectively guarantees that property rights never have to be asserted and enforced in the face of such need (Waldron 1988, p. 183).

We have already questioned whether there is any way of knowing whether the churning of the redistributive state would achieve the goals envisaged by Waldron and others or whether the upshot would be one where: "*Both* Peter and Paul will be paid on several counts by robbing *both* of them in a variety of less transparent ways, with a possibly quite minor net distribution in favour of Paul emerging as the residual byproduct" (de Jasay 1998, p. 261). Nor is there any guarantee that the net beneficiary, if that could really be determined, would be the needy person supposedly entitled to the wealth of his betters. And as our authors continue to point out, those who have less will benefit from a society which respects their self-ownership and owning whatever else flows from that "because contrary to popular wisdom the poor need property rights more than the rich, who are able to rely on other mechanisms such as patronage or social connections to secure loans or protect their wealth" (GN 2023, pp. 45-46).

Rather than the grand plans of socialism from Waldron to the WEF, Easterly (2006, p. 383) reminds us that "the Planners have dominated the past generation of efforts of the West to help the Rest. The utopian Planners cannot transform the Rest—at least not for the better. While the Rest is transforming itself, the Planners' global social engineering has failed to help the poor and will always so fail." Similarly, de Soto (2000, p. 227) reminds us that "1. The situation and potential of the poor need to be better documented; 2. All people are capable of saving; 3. What the poor are missing are the legally integrated property systems that can convert their work and savings into capital."

As to the argument that the notion of property is peculiar to Western culture, Gordon and Njoya respond that while a different society is free to enjoy the fruits of its own cultural heritage, they question whether respect for different cultures implies redistribution to support the collectivism to which such cultures claim to be attached (GN 2023, p. 47). De Soto on the other hand thinks there is no reason for culture to stand in the way of property as a means to increased wealth:

> Legal property empowers individuals in any culture, and I doubt that property per se directly contradicts any major culture. Vietnamese, Cuban and Indian migrants have clearly had few problems adapting to U.S. property law. If correctly conceived, property law can reach beyond

> cultures to increase trust between them and, at the same time, reduce the costs of bringing things and thoughts together. Legal property sets the exchange rates between different cultures and thus gives them a bedrock of economic commonalities from which to do business with each other (de Soto 2000, p. 226; see also Easterly, 2006, p. 90).

Indeed, our authors further argue that even if a society is thought to be more inclined to communitarian socialism, that is not to say that there is no place for individual liberty and the institution of property both of which are essential to economic progress: "The fact that a culture does not appear to recognize property rights does not mean that individual people in that society do not wish to exercise and defend such rights" (GN 2023, p. 54). They also note that although property is essential to the basic human right of liberty, it is notably absent from documents such as the Canadian Charter (GN 2023, p. 58), not that this has prevented the current Canadian government from acceding to the UNDRIP requirements that "indigenous people have the right to the lands, territories and resources which they have traditionally owned, occupied or otherwise used or acquired" as well as "the right to redress, by means that can include restitution, or when this is not possible, just, fair, and equitable compensation…" (Flanagan 2020, p. 2).

The authors had earlier observed that indigenous people in Canada who had a cultural aversion to work were thought entitled to receive social support. Thus, while happy to insist on upholding their supposed historic property rights, the indigenous industry shows little respect for the property rights of others by using the coercive power of the state to extract reparations from the present productive workforce as well as compensation for their abstention from labour markets, with the authors correctly noting that:

> Undermining property rights on grounds that such rights are not recognized in the culture of others is difficult to justify, given that there are, after all, people in all cultures who find market participation challenging and would prefer to withdraw from society altogether if an appropriate means of material subsistence could be secured (GN 2023, pp. 47, 55).

One useful distinction in the discussion of rights is that between negative and positive rights. A human right, or natural right to liberty and property is a negative right, meaning that you are at liberty to acquire property, and having done so according to relevant longstanding conventions, at liberty to put it to such uses as you choose, provided in so doing, you do not infringe upon a similar liberty of others. Positive rights on the other hand typically give rise to an obligation upon e.g. government to provide you with some good, such as food or lodging, funded by coercive transfers from your fellow taxpayers. An example of such rights may be those mentioned by the authors as

> the types of political "group" rights created by equality group legislation. Political group rights are defined in such a way as to reflect social and moral expectations of distributive justice, a good example being antidiscrimination legislation. By contrast, natural rights arise from self-ownership and thus are not artificially constructed in a bid to reflect any political ideology (GN 2023, p. 60).

In fact, de Jasay (2009, p. 4) thinks it important with respect to property that we see it as a freedom rather than a right or bundle of rights a la Alchian. A freedom holds between a person and an act, such that:

> The person is free to perform any act in the set that does not breach the rules against torts (offenses against person and property) and (a less stringent requirement) the rules of civility…To say that a person has a "right to a freedom" is tantamount to saying that he has a right not to be wronged—a redundant and silly proposition. It also implies that he would not have this freedom if he had not somehow obtained a right to it—an implication that is at the source of much silly theorizing.

De Jasay is further concerned that to speak of "property rights" "conjures up the notion that property is conferred by "society "upon the proprietors and the corresponding obligation to respect it is imposed by "society" on everybody." Since, "if the right to property is in society's gift, it can always take back the right it has conferred and with that extinguish its own obligation to protect it" (de Jasay 2009, p. 6).

In Chapter 3 Gordon and Njoya discuss in greater detail questions related to historic injustice claimed to have been the cause of inequality in various racial minorities. We have already touched on some of the background, which following his assessment of one of the more recent globalist power grabs, namely the pseudo pandemic and its egregious encroachments on individual liberty, Tucker (2024, p. 216) sees us as having returned to a period when:

> penitents… roamed from town to town, in garbs of woe, flogging themselves and begging as penance for pestilence and war. They were infused with a fiery, apocalyptic and millenarian passion that they could see terrible moral realities to which others were blinded. The theory was that plagues were being visited upon the earth by God as punishment for sin. The answer was contrition, sorrow, and acts of penance as a means of appeasement, in order to make the bad times go away.

In addition to the degrowth preached by latter day flagellants, Tucker notes another of their enthusiasms, inspiring the concerns of the present chapter, namely decolonization, (Tucker 2024, p. 218) which:

> means feeling so guilty about the space you inhabit that your only moral action is to stay put and reflect on the sufferings of those you have displaced. You can of course say a prayer of supplication to them so long as you never appropriate any aspect of their culture, since doing so would seem to affirm your rights as a human being.

And in view of the UNDRIP inspired claim that native peoples have "the right to the lands, territories and resources they traditionally owned", this will entail the right to compensation for any taken under colonization. Our authors also remind us of the claim that descendants of slaves might also be entitled to redress, as for example, in California where there is a proposal for those who can prove they are descended from slave ancestors in the South, noting astutely that "in principle this proposal is little different from the racial laws of Apartheid or Jim Crow" (GN 2023, p. 72). Or as Friedman (1982, p. 115) once observed, allowing government to discriminate on the basis of race sets us on the road to Nuremberg.

Thus, the authors observe: "The dominant reparations discourse, therefore, fails to acknowledge that the premise itself, the justice of the reparations case, is in dispute" (GN 2023, p. 72). Indeed, as Flanagan (2008, pp. 18-19) concludes with respect to Canada,

> the standard definition of aboriginal rights is a legal fiction; aboriginal peoples cannot justifiably claim 'property rights which inure to native peoples by virtue of their occupation upon certain lands from time immemorial'… In many cases, the patterns of habitation upon which the land-surrender agreements of the nineteenth century were based were only a few decades old… Whatever the remote ancestry of aboriginal peoples may be, their current presence in most parts of Canada is quite recent, historically speaking.

For example, "The ancestors of today's Southern Ontario population of natives and non-natives all arrived in this part of Canada about the same time," that is, considerably later even than time immemorial such as arbitrarily fixed at 1189 by the Statute of Westminster I. Indeed, as Flanagan further notes, "a great many of the current locations of aboriginal peoples in Canada are more recent than the arrival of European colonists" (Ibid.).

With respect to the question as to whether America was stolen from the Indians, D'Souza observes that "Theft, with respect to the Indians, is rendered problematic because the Indians themselves had no concept of property rights." However, he agrees that the picture is complicated by the fact that while the hunting and gathering tribes were of necessity on the move others were sedentary, occupying land at least until displaced by others with superior martial capabilities. Apparently in response to the question as to whether they rather than previous occupants are entitled to compensation for the Black Hills treaty the US government failed to uphold, a Sioux spokesperson claimed that it was simply a question of the fact that her tribe was dominant, which is to say that "the Sioux indeed got land in the typical way that Indians got land—by defeating and displacing the previous inhabitants." Thus, D'Souza (2014, p. 92) concludes: "Here in a nutshell, we see the problem of asserting a "we got here first" land claim; almost inevitably there was someone who was there earlier who can assert the same claim against you." To which de Jasay (2009, p.7) again would reply that the presumption of good title holds until proven otherwise:

> It is blatant nonsense to try and switch the burden of proof to the owner, and ask him to prove that his title is good; for he can never prove the negative assertion that there is no flaw hidden in it somewhere out of sight. It is he who wants us to believe there is one, who must spot the hidden flaw.

If as the Sioux representative says, it is just a matter of conquest and dominance, and they owe nothing to those they displaced, then it is not clear why Europeans who in turn displaced them should in theory owe any compensation as a result, though in practice they may have undertaken treaty obligations to do so. Should the compensation be on a grander scale such as a demand for the surrender of Manhattan, D'Sousa (2014 p. 104) responds:

> We cannot give you back Manhattan because Manhattan was never yours. You sold a piece of land that was virtually worthless and on it others have built a great and glorious city. It is unjust to demand back what was never yours in the first place.

In the case of the Black Hills, they are now worth a fortune because of uranium and other minerals. The Indians lacked the knowledge and skills to discover and develop such deposits but now want the land returned so they can benefit from the expertise of others. Thus, D'Sousa (2014, p. 104) concludes:

> The same is true for the rest of America. The land now is not the same as the land then, and demanding a return of land which others have developed and whose value others have increased is not justice; it is stealing.

In the words of Gordon and Njoya:

> It is not simply about ascertaining what happened in a historical event, but also what has happened in the course of time that has transpired since that event…the property itself, even if proved to have been stolen, may have been so transformed in the meantime that it cannot justly be treated as the same resource that was originally stolen (GN 2023, p. 85).

Indeed it cannot, but there is some question as to whether those who appear to be seeking relief for past wrongs are really interested in justice as we might understand it. As the authors further point out: "If dispossession were given effect based on a mere assertion by a claimant to ancestral entitlement, with no requirement for evidence or proof, that would not amount to justice in any recognizable sense of the term justice" (GN 2023, p. 92). Indeed as Widdowson reminds us it isn't in the interests of the claimants or their minders to seek a just outcome since:

> There is, however, a socially accepted industry that provides a product, the consumption of which actively increases the need for more. It is funded by Canadians through labour exploitation and taxation, and it is highly profitable. The Aboriginal Industry is an amalgamation of lawyers, consultants, anthropologists, linguists, accountants, and other occupations that thrive on aboriginal dependency (Widdowson and Howard 2008, pp. 19-20).

The authors question the justice of the fact that supposed reparations for historic events are funded by present day taxpayers who by definition were in no way responsible for any alleged losses (GN 2023, p. 96). They further note that among the many difficulties confronting any attempt to respond to claims about historical events is that they are adjudicated in the present in the light of current political discourse much influenced by a doctrine of social justice derived from "an ideological political programme animated by socialist ideology" (GN 2023, p. 103). While acknowledging that the matter might be decided differently today, presentism is likely to render any claim for reparations suspect (GN 2023, p. 91).

However, the industry which Widdowson likens to the tale of swindling tailors weaving new clothes for the emperor out of illusory silk (Widdowson & Howard 2008, Ch. 1) is nothing if not inventive. Inspired by critical race theory, the minority which now finds itself in straitened circumstances holds that this is a result of the same discrimination which their forbears suffered. Thus, what was once a demand for reparations is now dressed in the garb of the welfare state and its predilection for redistribution. Despite the lip service institutions like the LSE pay to the ancient motto *Cognoscere causas*, there is little interest on the part of the social justice warriors as to what the actual causes might be of the inequalities they find so troublesome. It is thus hard to avoid the conclusion that: "The claims about racial injustice as the main determinant of economic outcomes in that way reveal themselves to be based less on reason and logic than on rhetoric and myth" (GN 2023, p. 103).

One such myth whence the whole edifice of Canadian aboriginal grievance is derived is found in the conversations the Baron de Lahontan claims to have had with an allegedly cosmopolitan Huron chief named Adario, the epitome of Rousseau's noble savage if ever there was one. While what has since become known as the Adario motif was most likely simply a literary device familiar to writers of the period, it

> gives credence to the conception of history that aboriginal problems were caused by the destruction of viable and "sovereign nations' during European conquest, and therefore restoring aboriginal traditions through land claims and self- government must be the answer to native dependency and dysfunction (Widdowson and Howard 2008, p. 51).

This myth underpins the UNDRIP provisions mentioned earlier as well as the Canadian Charter of Rights and Freedoms where Section 15 (1) assures us of equal protection under the law without discrimination based, e.g. on race. Inspired by the Baron's myth that a noble aboriginal society existed prior to European settlement, subsection and (2) hastens to add that

> Subsection (1) does not preclude any law, program or activity that has as its object the amelioration of conditions of disadvantaged individuals or groups including those that are disadvantaged because of race… (Hogg 1985, p. 868).

Our authors remind us again that although causes supposedly matter they are easily forgotten about in the effort to compensate those who trace any present misfortune to the curse of discrimination laid upon their forefathers. This could be due to the sort of "moral emotion" common to the earlier Romantics and which for Widdowson requires an extensive revision of history because the small bands of hunters and gatherers and horticulturalists that existed at the time of contact were much less economically and politically developed than European nation states making the transition to industrial capitalism" (Widdowson

and Howard 2008, p. 51). For that matter, of course, as Narveson rightly points out "the case for regarding discrimination, properly so called, as an injustice has not been clearly supported in western thought, despite its enormous impact on western practice (Narveson 2002, p. 223).

Section 35 (1) specifically acknowledges aboriginal treaty rights but goes on to clarify at (3) with respect to (1) that "treaty rights" includes rights that now exist by way of land claims agreements or may be so acquired (Hogg 1985, p. 876). The living tree doctrine has proven more than capable of overcoming what might have first appeared as an impediment to finding further rights, namely that they are "subject only to such reasonable limits prescribed by law as can be demonstrably justified in a free and democratic society" (Ibid. p. 863).[2] Or as the authors write while it is far from obvious why land claims should extend to radical and unforeseeable changes in use over time:

> Paradoxically, it is often said that colonial treaties are "living trees" but the reinterpretation of such treaties to keep up with changing times tends only to be in the direction of the continued expansion of treaty rights to include new forms of land use, rather than to question whether such rights have survived the evolving land use including the costs attendant upon the expansion of the welfare state and of the general population size (GN 2023, p. 86).

Those charged with watering the living tree and finding ever new rights and privileges to compensate for all the imaginary ills suffered under colonization and thereby blighting the lives of later generations are the unelected judiciary and our would-be world governors who issue ex cathedra pronouncements such as UNDRIP. Our authors mention the example of Vancouver (GN 2023, p. 119) which has acknowledged that it rests upon the traditional territory of various tribes who prefer the more grandiose designation of earlier treaty documents and now call themselves nations. As proof of their having drunk the UNDRIP Kool-Aid the city recently renamed Trutch Street, Musqueamview, a translation of the utterly unreadable and unpronounceable Musqueam version which is now the street's real name, Trutch having been weighed in the woke balance and found wanting. Not that present day Vancouver, endless tiresome land acknowledgements notwithstanding, owes anything to the supposed erstwhile guardians of the territory on which it now stands.

As Conway (2004, p. 52) once observed:

> The respect owing to national minorities extends to honouring any formal treaties previously entered into by states with minorities that are still binding. It includes, therefore, their need to continue to respect and protect such territorial enclaves belonging to national minorities as their ancestors may have formerly been granted and within which they might continue to wish to remain domiciled. Should, under such conditions, minority cultures be unable to survive without further state support, there is no reason to suppose any legitimate interest would be served by minorities being artificially propped up through state subsidy or other special group rights.

Doubtless Conway is right that no legitimate interest, at least as I and the authors understand it, is served by the living tree and the state and lobbying interests which feed it by reading latter day sensibilities back into agreements forged in a different age. Recent Canadian lawsuits for example contend that the government has failed in its duty of care to the aboriginal people because the $4 per person annuity provided for in the treaty has not kept up with inflation. If that amount hasn't changed, the industrial revolution has brought wealth to float the welfare state in its wake with endless programs, benefits such as tax exemptions on goods and services, and technological developments never contemplated at the time of signing in the 19th century.

Or as Best (2024, p. 4) writes:

> Canadian taxpayers provide Aboriginals with free medical and dental care, massive grants for reserve operations and infrastructure, funding for schools and education, grants for post-secondary education, special business start-up loans and loan guarantees, housing assistance and loan guarantees, special programs for youth and women, employment initiatives, funds for land claims lawsuits, funds for "consult and accommodate" expenses, grants and low interest loans to enable them to acquire equity positions in resource projects, and funds for various associations from Friendship Centres to the Assembly of First Nations, and much more.

Best (2024, p. 5) goes on to add that both parties and the courts were aware of these voluntary payments far in excess of the treaty annuities. Thus:

> To not consider these billions of dollars of non-treaty payments would result in double recovery and unjust enrichment for the Aboriginal plaintiffs, which are classic common law principles used by courts in calculating damages or reducing or even eliminating damages.

Although Conway (2004, p. 52) thought that "there is no reason to suppose that present-day liberal democracies owe their cultural minorities anything more than that same degree of tolerance and respect that they owe their cultural majorities," just the opposite seems to have been the case in Canada from 2015 on when Trudeau assigned the highest priority to the welfare of the country's aboriginals, resulting in what Flanagan (2024, p. 2) has called an avalanche of money for the sorts of reasons Best listed above, and many others, with the government now spending more on First Nations than on national defence. Included are specific claims brought under a more expansive doctrine of the honour of the Crown alleging a failure to observe the exact wording of a treaty, as well as class actions such as those alleging harms suffered under government mandated education to infrastructure deficiencies on reservations. These blessings vouchsafed by the great white father were no doubt accelerated by the decision of the government to negotiate rather than litigate; as Flanagan (2024, pp. 8-10) further notes, because of higher birthrate, aboriginals stood to gain more than the non- aboriginal population from increases in the non-racial Universal Canada Child Benefit, with the only obvious result, however, that aboriginals have become more dependent on the government than before.

Gordon and Njoya (2023, p. 120) rightly contend that:

> For purposes of analytical clarity there must be a way to distinguish legitimate from spurious claims, otherwise any democratically elected body could simply vote in favour of giving away the land in the expectation that this would be considered a valid disposition of property. The idea in the context of Canada is twofold: first that this is simply an evolving way of implementing rights defined in nineteenth-century treaties, and second that it implements "reconciliation" by recognizing indigenous land rights as recommended by the United Nations Declaration on the Rights of Indigenous Peoples. The question remains is this still recognizably private property.

Indeed, there must, though it isn't just elected bodies we have to worry about. There is the deep state which tends to pride itself on outlasting the current government, along with the courts who seem disposed to fill what they consider a legislative vacuum, inspired no doubt by the arborescent shapes found in their tea leaves. Then there is the fourth estate which the Canadian government coopts to deliver its propaganda, while excluding agencies which do not toe the party line. The Truth and Reconciliation Commission delivered its report about a decade ago, followed more recently by a collection of essays *From Truth Comes Reconciliation* whose title suggests the possibility of finding the truth about various grievances lodged by descendants of earlier immigrants to the territory of Canada.

However, it would appear that the chances of our being reconciled with the truth, or whatever else it is we are supposed to be reconciled with, are rather slim, as one historian observes:

> So, is the Final Report of the Truth and Reconciliation Commission good history? No, it is not; it fails at a fundamental level. No undergraduate student writing a history paper would be allowed to get away with making extraordinary claims without backing them up by reference to their sources. Far too often, we are told of genocide or other atrocities without so much as a single foot note to indicate the basis of the conclusion. … The conclusions were overtly determined before the investigation, testimonies were made in violation of the canons of oral history, many of the authors saw themselves as crusaders righting ancient wrongs, and fundamental questions were left unasked and unanswered (Bowler 2021, p. 141).

Further, Widdowson has demonstrated that

> the advocacy orientation of the TRC has distorted our historical understanding of the residential schools. Contesting this rewriting of history, however, will be difficult because of the acceptance of neotribal rentierism in Indigenous politics, specifically their interaction with the dominant society and the federal government. Honest discussions of Indigenous circumstances are impeded because lawyers, consultants, and neotribal elites have an interest in extracting transfers from governments and other institutions. In the case of the IRS, "rent" can be extracted by claiming that Indigenous people were victims of "cultural genocide.… And because rent-seekers imply that Indigenous voices must be uncritically accepted in order for reconciliation to occur, the dubious nature of this accusation remains unchallenged (Widdowson 2021a, pp. 114-115).

With respect to the authors' final question above as to whether we are talking about private property perhaps those who thought they had clear title to property in Vancouver could be in for a surprise. One of the discoveries of the Supreme Court of Canada was that there was such a thing as aboriginal title, which being *sui generis* was of a collective nature and when extinguished reverted to the Crown. While the inhabitants of Vancouver may take comfort from Pardy's reassurance that aboriginal title has not so far been granted over private property, he notes that the British Columbia government recently granted this title to Haida Gwaii even though the territory included properties held by non aboriginals. Thus, Pardy concludes:

> We have built a constitutional menace. Property rights, abandoned for political expediency, have no constitutional status. Fee simple is merely a gloss on the state's authority to do with your property as it wishes. In contrast, Aboriginal rights, thanks to our courts, have become more powerful than any Charter right (Pardy 2025, p. 3).

As de Jasay puts it:

> The basic idea is that property is both socially produced and socially protected, therefore individual owners hold it only by the grace and favor of society. Society will uphold their right to it against other individuals, but not against itself. This is a highly simplified and radical form of a variety of related doctrines that all accept individual ownership ("private" property) but advance reasons it should be entirely subject to the political will of society that may legitimately restrict or regulate its use and disposition and may also expropriate it with or without compensation, the detailed provisions ranging from "democratic capitalism" to "social democracy." Parrot talk adopts the simplified form (de Jasay 2010, p. 22).

Our authors cite legislative use of eminent domain without compensation in South Africa in pursuit of land justice on the grounds that such provisions are common to liberal democracies, noting that:

> Subjecting private property to state encroachment in that sense is incompatible with the individual liberty that lies at the heart of the rule of law (GN 2023, p. 121).

Or as they put it earlier:

> From a natural rights perspective eminent domain power is unjust, in principle, because it amounts to the seizure of property by the state without the owner's consent. Theft is wrongful, even when it is done by the state… (GN 2023, p. 37).

Although Pardy noted that the courts had not yet granted aboriginal title over private property, given its lack of constitutional protection, he saw nothing to prevent eminent domain being used to engineer that:

> Expropriation statutes exist in jurisdictions across Canada. They provide governments with the authority to confiscate property and prescribe the conditions under which they will provide compensation for the taking (Pardy 2025, p. 3).

Our authors and Prof. Pardy would likely share Epstein's view that:

> The state is not the source of individual rights or of social community. It presupposes that these exist and are worth protecting, and that individuals reciprocally benefit from their interactions with one another… The strength of natural law theory is in its insistence that individual rights (and their correlative obligations) exist independent of agreement and prior to the formation of the state.

Epstein also holds that:

> The state, however, cannot simply arise (even conceptually) out of a series of voluntary transactions from an original distribution of rights. Free riders, holdouts, and radical uncertainty thwart any omnibus agreement before its inception (Epstein 1985, pp. 332-334).

Lest we be at the mercy of the usual suspects, Locke is summoned to the rescue with" a sovereign that could maintain good order without extracting monopoly rents from the exclusive legitimate use of force" (Epstein 1985, p. 10).

Interestingly, Epstein claims that the doctrine of eminent domain could supply just that minimal amount of clout necessary by

> the state's right to force exchanges of property rights that leave individuals with rights more valuable than those they have been deprived of.
>
> To assure us that we are no longer subject to the whims of a sovereign of a distinctly Hobbesian caste and will die with our rights on, the state's right will be subject to two provisos: First, the eminent domain logic allows forced exchanges only for the public use, which excludes naked transfers from one person to another. Second, it requires compensation, so everyone receives something of greater value in exchange for the *rights* surrendered (Epstein 1985, p. 332).

However, as Somin (2015, p. 113) notes, the later much discussed Kelo case "upheld the condemnation of nonblighted residential property for transfer to private interests solely on the ground that the resulting transfer might increase economic development." The private interests in this case were the Pfizer corporation who had lobbied the city authorities for a development which never happened. As for just compensation, the fact that the plaintiffs were more handsomely rewarded than they might have been was due to public outcry over the narrow Supreme Court decision (Somin 2015, p. 233). And as Epstein further commented:

> … the controversial five to four 2005 *Kelo* decision allowed New London to force Suzette Kelo and fourteen other landowners from their homes as part of its comprehensive development plan. In one sense, *Kelo's* outcome was not strictly compelled, because the 'public use' language could have been read to allow condemnation only in cases of supposed blight or supposed oligopoly. By any ordinary definition, the modest homes in *Kelo* were not blighted. Nor can anyone describe these embattled landowners as oligopolists… Now that little people were hurt, the public furor combined the populist suspicion of developers on the Left with the respect for property rights on the Right (Epstein 2008, p. 83).

Let me start to wrap up my comments on Gordon's and Njoya's thorough and well-argued discussion of some of the questions about legal responses to alleged historical wrongs. The more straightforward versions might amount to the return of stolen property which may have been sold on to a third person. According to libertarian and broad common law principles the original owner retains title and the third person who thought the thief had title can only recover from the thief. Epstein offers a more subtle variation on the theme:

> A owns property, which is then taken by B. C then takes the property from B. The question is then whether the infirmity in B's title is sufficient to defeat his action to recover the thing from C. The common law answer is no. Note what happens if the rule is otherwise. If B cannot recover from C there is no way to prevent C taking the thing from B in the first place. Yet C secures no title hence he cannot prevent D from taking the thing from him. Denying B's action has the unhappy consequence that once the possession of property deviates from the proper chain of title, it must forever remain beyond the pale of private property (Epstein 1985, pp. 346-347).

Our authors propose an alternative doctrine which seems to have been overlooked in the rush to UNDRIP inspired reparations, namely the doctrine of quieting older titles. As Epstein (1985, pp.347-348) again writes:

> With property titles as with contract claims, some statute of limitations is needed to wipe ancient titles off the books… Once the flawed title is cleared by a statute of limitations, the normal process of mutually beneficial transactions can improve everyone's lot, notwithstanding the initial deviation from the ideal position.

Or as Gordon and Njoya write:

> The common law recognizes the importance of quieting titles rather than endlessly relitigating claims to have been the "first" owner of property which has passed through many hands through the centuries with its original use lost in the mists of time. The law of adverse possession or the limitation of actions is founded in this principle. This principle is essential to the avoidance of endless uncertainty and war, and at common law it will quiet titles even when the original acquisition was wrongful (GN 2023, p. 137).

But as Widdowson (2008, p. 38) has reminded us, it isn't in the interest of the aboriginal industry to settle grievances since they provide a living for the credentialed class and cover for politicians:

> By turning aboriginal policy into a legal question, the government disguises its impotence in dealing with aboriginal problems. And since these legal processes are likely to stretch far into the future, the politicians encouraging them will never have to take responsibility for the inevitable policy failure.

Indeed, the industry promotes "neotribal rentierism" which does nothing to encourage the recipients to lead productive lives, but rather: "The dependency and anomie that this perpetuates then creates the basis for further demands for reparations and the additional extraction and dispersal of "rent" (transfers)" (Widdowson 2021b, p. 90).

Moreover, as Epstein concludes, again in agreement with our authors, if it is a matter of deciding whether an aboriginal claimant is:

> in the position of A, the original owner, or C the stranger to the title… the factual question may prove intractable, as some of the claimants will be descendants of original owners, and others will be strangers, and still others a bit of both…Is it worth reducing total wealth, including that held by innocent parties, in an effort to run a compensation scheme that is sure to go awry if it is ever implemented? … My own judgment is that any effort to use massive social transfers to right past wrongs will create far more tensions than it is worth, so treating all errors as a giant wash is the best of a bad lot (Epstein 2008, pp. 348-349).

In their own conclusion our authors remind us of the influence of UNDRIP, something we noted earlier on, which encourages the very "neotribal rentierism" opposed by Widdowson and fails to consider any limits to rectification, such as those suggested by Epstein: "Do we limit recoveries to damages? From whom and in what amount? Should some setoff be given for payments under government welfare programs, which were designed to offset these past injustices?" (Ibid.). Given the arguments marshalled by the various witnesses we have called in support of those of our authors one might wonder why a government elected by popular suffrage would take the slightest notice of a piece of paper issued by the unelected UN whose prime interest seems to be increasing its own power at the expense of its member states using as a smoke-screen righting historic wrongs.

On the contrary, as Gauthier has pointed out:

> it is surely plausible to hold that the European incursion into North America was an integral part of a tremendous expansion of global productive capacity that has effectively broadened horizons, bettered living conditions, added to life expectancies, and expanded populations of peoples throughout the world. *That these benefits have been distributed unequally is in itself no proof of injustice.* … And in particular, we wish to rescue from the indiscriminate obloquy that has fallen upon the imperial idea, that very real and significant strand in which the more advanced power seeks to better its own situation in a manner that makes effectively to others the prospect of increasing their numbers, prolonging their lives, adding to their material goods, and enlarging their opportunities (Gauthier 1988, pp. 297-298, my emphasis).

The modern welfare state has as we have noted taken it upon itself to assume the opposite of what Gauthier claims, namely that inequality is proof of injustice, the hazards of which a jurisprudent already mentioned drew our attention to years ago:

> The unclear guidance and questionable outcomes resulting from indulgence in the presumption of equality are not its only dangers. Even greater dangers arise from the method of thought encouraged by the presumption. It invites us constantly to take the easy course of identifying justice with equality, and it diverts us from the real difficulties of doing justice in modern Western democracies. These difficulties are to identify the empirical differences in badges of entitlement relevant to justice and to devise rules corresponding to these differences (Stone 1978, p. 1019).[3]

As our authors remind us, it is time to hearken to the words of the prophet Nozick when he says:

> Moral philosophy sets the background for, and boundaries of, political philosophy. What persons may and may not do to one another limits what they may do through the apparatus of a state, or do to establish such an apparatus. The moral prohibitions it is permissible to enforce are the source of whatever legitimacy the state's fundamental coercive power has (Nozick 1974, p. 6).

As defensible as I have tried elsewhere to show this thesis is (Booker 2022), it is completely at odds with the shakedown industry of neotribal rentierism in its various manifestations from reparations, to never ending taxpayer support, to compensation for ills suffered in indigenous schools, to property surrender, to the duty to consult when developments affect reservations or lands claimed to have some traditional significance. With respect to the latter, for example, it is clearly important that "the duty to consult fulfills its purposes as a procedure but does not become an effective veto power, which it is not meant to be" (Newman 2014, p. 172).

It is not surprising then that our authors conclude that the whole reparations game amounts to nothing more than robbing Peter to pay Paul:

> Egalitarians often regard tax revenues as a store of wealth to be allocated to whatever ends society may desire, and in that light they presuppose the existence of a "reserve fund" of assets to be redistributed (GN 2023, p. 187).

To which de Jasay (1998, p. 232, n15) would rightly reply:

> No operative meaning can be credited to such statements as "society has chosen a certain allocation of resources. There is no method for ascertaining whether "society" preferred the allocation in question, and no mechanism by which it could have chosen what it supposedly preferred.

As Pardy pointed out above, although the Canadian state may so far have shown some restraint when it comes to seizing private land there is no constitutional impediment to its doing so. Should this come to pass we shall likely have as much success with any complaint as Nozick (1974, p. 169) managed to reduce his tax bill by his *ex cathedra* pronouncement that: "Taxation of earnings from labor is on a par with forced labor." And in case you should think with Nozick that you are really entitled to your pretax income Murphy and Nagel (2002, p. 74) are happy to remind us that we are mistaking a matter of accounting for one of morality:

> Pretax income, in particular, has no independent moral significance. It does not define something to which the taxpayer has a prepolitical or natural right, and which the government expropriates from the individual in levying taxes on it…People do have a right to their income, but its moral force depends on the background of procedures and institutions against which they have acquired that income—procedures that are fair only if they include taxation to support various forms of equality of opportunity, public goods, distributive justice, and so forth.

Despite the fact that Rawls and his apostles thought that all reasonable people should agree with some such view, our authors ably responded to it in Ch.3 where they saw it as: "a fundamental ideological difference concerning the importance of self-ownership, property and liberty in a theory of justice, and sharp disagreement over the egalitarian insistence that justice must only be understood in a distributive sense" (GN 2023, p. 75). As to the matter of determining something as basic as what is mine and what is yours, Murphy and Nagel further claim that: "The right answer will depend on what system best serves the legitimate aims of society with legitimate means and without imposing illegitimate costs….But it cannot appeal, at the fundamental level, to property rights" (Ibid.).

If we feel compelled to respond to the "ownership as a myth school", as de Jasay calls it, and to discover how best to distinguish mine from thine, we need look no further than Gordon and Njoya, *Redressing Historical Injustice*, who provide a strong case for rejecting any view that property is held by grace and favour of the sovereign. To the extent that Murphy and Nagel appear to be saying anything more than what we are all too aware of, namely that we are required to render unto Caesar an ever increasing portion of our gross earnings, and that it is fit and meet that it be so, de Jasay observes that:

> it is largely smoke-and-mirrors work. It relies on the tacit fiction that the tax treatment of income and wealth is the outcome of judging and evaluation done by a single mind, the mind of "society". The result is necessarily consensual and non-conflictual…Post-tax property "rights" then, are either a matter of the will of a single imaginary actor, society, or a matter of an equally imaginary new convention that has supplanted the old one Hume was the first to identify (de Jasay 2009, p. 16).

And as de Jasay goes on to remind us:

> Most modern theories of how society ought to work rest on some idea of agreement. Almost invariably, however, the agreement is fictitious, hypothetical, one that would be concluded if all men had equal "bargaining power" or saw things through the same "veil" of ignorance or uncertainty about the future. Or felt the same need for a central authority. The social contract, in its many versions, is perhaps the best known of these alleged agreements. All are designed to suit the normative views of their inventors and to justify the kinds of social arrangements they should like to see adopted. Yet the only agreement that is not hypothetical, alleged, invented is the system of voluntary exchanges where all parties give visible, objective proof by their actions that they have found the unique common ground that everybody accepts, however grumblingly, but without anyone being forced to give up something he had within his reach and would have preferred. The set of voluntary exchanges, in one word, is the only one that does not impose an immorality in pursuit of a moral objective" (de Jasay 2009, pp. 48-49).

Finally, Gordon and Njoya (2023, p. 74) observe yet another smoke-and-mirrors move:

> By linking historical injustice to existing inequality and thence to claims of reparations, that discourse presumes that the concept of justice supplies the necessary analytical link between the claims made and the proposed solutions. This would mean that we require no further explanation for equalizing wealth beyond describing inequality as "injustice". The concept of justice is relied on to explain why taxpayers should fund the bill for such payments: simply put, doing so would amount to justice. By invoking the notion of justice in that simplistic way, it is presumed that no further reason or rationale need be supplied to substantiate the case.

To which Flew (1989, p. 209) would add a sadly underappreciated corollary which one might hope would discourage enthusiasts, though he thinks that less likely perhaps than the 2nd Coming:

> If in so far as equality of outcome truly is so mandated, then all those who are at present holding more than their perfectly (or approximately) equal share are thereby and necessarily in possession of stolen property; and most shameful of all, but equally necessarily, property stolen from others worse off than themselves.

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NOTES

1 I have yet to hear of any such balancing of benefits against harms in the context of compensation for alleged historic wrongs.
2 Pardy (2025) reminds us that Section 35 is not part of the Charter of Rights and is not subject to legislative override under Section 33:3.
3 See also (GN 2023, p. 78) where the authors' make similar point with reference to Flew.