Introduction

Roy Brooks’s *Atonement and Forgiveness* remains the most comprehensive and convincing argument for redressing slavery.\(^1\) The book outlines two models of redress: the tort model, which focuses on compensation for past wrongs, and the atonement model, which seeks reconciliation. Brooks defends the second model. He says the “journey to racial reconciliation necessarily begins with the government tending an apology and then solidifying its remorse with reparations.”\(^2\) On this view, *reconciliation* requires atonement—that is, moral and material compensation for past wrongs. In “Framing Redress Discourse,” the convincing essay we read, Brooks offers more than a philosophical epilogue. In 2004 he made a case for the appropriate model of redress for slavery and Jim Crow. I read this new work as insisting that African Americans, the victims of slavery’s long and painful afterlife, ought to set the terms of repair, ought to determine what constitutes just restitution. This is a moral imperative and a pragmatic

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condition. It rules out a purely top-down and paternalist setting of the terms of repair and thus improves the chances of repair.

But there are at least four views of what racial justice requires in the post-civil rights era, and each entails a distinct set of normative commitments arising out of different practical judgments about what ought to be redressed, the best means for addressing those wrongs, and the ultimate end of redress. The four theories are: traditionalism, reformism, critical race theory, and limited separation. From the vantage point of each, the measure of economic, social, and legal progress is different. That is because each framework outlines a different conception of what racial justice requires. Whereas Atonement and Forgiveness made a powerful case for the atonement model of redress, this essay opens a new line of inquiry, one in which Brooks advances a twofold argument. First, he elucidates four post-civil-rights theories and insists that critical race theory goes the furthest toward maximizing racial justice. Second, and given that fact, it follows that critical race theory should determine the form redress takes. Brooks says he does not find “anything objectionable in reformism” but he thinks critical race theory offers the “superior approach.”

This commentary does three things. First it outlines the two models of redress on offer. Second it maps three of the four paths toward racial reconciliation and contests the plausibility of

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3 Brooks distills these four frames from a range of “suppositions regarding racial progress” by scholars and pundits since the end of the civil rights movement. Roy L. Brooks, “Framing Redress,” p. 10–11.

4 I would like to explain two of my authorial choices. In Brooks’s essay, “racial advancement,” “racial progress,” “racial justice,” and “racial reconciliation” are used interchangeably. I find the term “racial progress” confusing because you can make progress toward racial justice by minimizing racial injustice and thus maximizing racial justice while coming closer but still remaining far from achieving racial justice or racial reconciliation. In other words, you can go a little ways or a far ways toward attaining racial justice or racial reconciliation. For that reason, I have opted to view each theory as offering an inchoate conception of racial justice. Second, I have opted to refer to each theory as a theory rather than as a “norm” because doing so seems more faithful to the normative thrust of the paper’s argument and each theory’s moral ideals.


forgiveness given the demanding nature of the third post-civil-rights theory. Third, and finally, it suggests that limited separation might be best understood as contesting the very idea of reconciliation.

1. Two Models of Redress

Before discussing redress it is worth noting what is to be remedied. Brooks argues that slavery has at least four lasting injuries: (R1) racism, (R2) capital deficiencies, (R3) epistemic injustice, and (R4) African Americans’ relationship to the state. First, Brooks says little about racism qua racism. Second, Brooks defines capital deficiencies as unequal liberties, material inequalities, and social disadvantages resulting from slavery and its long afterlife. Those disparities were entrenched through group-based oppression, marginalization, and social closure. For instance, federal and local housing policy and racial covenants forced African Americans into separate and unequal communities. Third, African Americans suffer a hermeneutical injustice: omissions or distortions of the history of slavery and Jim Crow not only lead to under-representation of the resulting and persistent injustice African Americans suffer but also undermines African Americans’ ability to document those injuries and thus make a strong case for reparations. This is, in effect, an additional injury in need of redress. Fourth, the foregoing forms of injustice lead

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7 Here he only mentions racism and capital deficits. Regarding the latter he includes: basic (life, liberty, and dignity); financial (income, property, and investment); human (education and skills); and social (esteem, reputation, etc.) Elsewhere he insists on redressing the “the historical record” as a form of redress. Brooks, “Framing Redress,” p. 7 and p. 27.
10 Although hermeneutical injustice speaks more directly to Brooks’ argument for correcting the historical record, Miranda Fricker’s emphasis on testimonial injustice sheds important light on how African Americans’ claims regarding persistent injustice have been denied credibility based on racial prejudices about the speakers. Miranda Fricker, Epistemic Injustice: Power and the Ethics of Knowing (Oxford: Oxford University Press, 2007), p. 147–62.
many African Americans to distrust the state.\textsuperscript{11} An implicit premise running through the book and the paper says the United States has political authority but lacks moral authority in the eyes of African Americans because of its historical role in slavery and Jim Crow and its indifference to present forms of anti-black oppression.

For Brooks, the state is pivotal. “My hope,” he argued in 2004, “is that the government and the descendants of slaves can reach racial reconciliation through moral reflection rather than political confrontation.”\textsuperscript{12} A striking feature of the book and the article is the relative absence of whites from the process. Brooks is demanding a response, both moral and material, from the state, not from individual whites. A further point is worth noting. The state is the main agent of redress and also a primary subject of redress. The American state recovers its moral legitimacy when it “tenders an apology,” Brooks says.\textsuperscript{13} When the state makes meaningful amends for its historical sins it restores its legitimacy in the eyes of its victims and repairs its global image.\textsuperscript{14} That is why Brooks says the “apology is as much for the perpetrator as it is for the victim.”\textsuperscript{15} Brooks’s earlier work argued that it “might be more appropriate to view the perpetrator as the government entity itself—focusing on the government’s corporateness—rather than individual members of the government.”\textsuperscript{16} I prefer the term state and I would extend the caution from officials to citizens.

Focusing on the state allows Brooks to sidestep the thorny problem of assigning moral and material liability to contemporary whites for historical injustice: the American state endures

\begin{flushleft}
\textsuperscript{11} Brooks, “Framing Redress Discourse,” p. 7.
\textsuperscript{12} Brooks, Atonement and Forgiveness, p. xii.
\textsuperscript{13} Brooks, Atonement and Forgiveness, p. 146–47.
\textsuperscript{14} Brooks, Atonement and Forgiveness, p. xii.
\textsuperscript{15} Brooks, Atonement and Forgiveness, p. 146.
\textsuperscript{16} Brooks, Atonement and Forgiveness, p. 147.
\end{flushleft}
across time and thus generations. For example, our generation should be taxed to redress slavery for the same reason future generations will be taxed to repay a national debt our generation has incurred and bequeathed to those future generations, who play no part in accruing the debt. Slavery is a national debt American citizens and denizens must repay. As Americans, we have inherited from this republic, rights and wrongs. But how you wrest an apology and reparations from the state without acquiring broad consent from whites or why you should pursue a strategy in which the state leads the people, are questions better left to Brooks.17

Brooks argues that there are two prevailing models of redress: the *tort model* and the *atonement model*. The former is backward looking, victim-focused, and views reparations as compensation for demonstrable historical injuries.18 Basically, it views redress as a purely legal matter, rather than entailing a moral claim.19 It buys “justice on the cheap” to close the book on race.20 The atonement model, which Brooks prefers, is forward-looking, perpetrator-focused, and views reparations as involving both compensatory and rehabilitative monetary and non-monetary restitution.21 *Compensatory* reparations are generally directed at individual victims or their heirs and take monetary forms such as unrestricted cash payments or restricted cash payments (property or scholarship, for example). Compensatory reparations can also be nonmonetary: a memorial to a specific Native American. *Rehabilitative* reparations are directed toward the victim’s group or community, and designed to advance or empower the group though monetary

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17 I am not sure I fully understand the priority of the state over the people. But it strikes me that Brooks has very good reasons for why the state should be seen as the agent of historical harm and redress: the state as the *group agent* that expresses remorse and offers reparations (through consultation with African Americans). The end of those, on Brooks’s preferred theory, is the realization of structural transformation, not enacting moral conversion. Maybe I am just am a racial pessimist in believing, along with Brooks’s early work, that integration has, at best, a deeply mixed-record, in part because of unwillingness of many whites to bear the burden of history and do the right thing.

restitution such as an atonement fund and nonmonetary restitution such as a constitutional amendment mandating integrated schools.\textsuperscript{22}

The atonement model is a two-step process. And the first step includes two parts: (1a) one is the state’s \textit{apology}: its acknowledging the atrocities, confessing the deed, admitting the deed was an injustice, repenting for the deed, and asking for forgiveness.\textsuperscript{23} The state should pursue a restorative, not retributive, apology, one that admits guilt rather than seeks to punish guilt. Brooks says this process affords the perpetrator an “opportunity to reclaim its” moral character.\textsuperscript{24} (1b) Two, reparations solidify apology. The apology, or remorseful words, derives its moral force from the reparative act or \textit{deeds} that follow—reparations. (2) Forgiveness is the second step of the atonement model.\textsuperscript{25} Once the state offers a (1a) sincere apology and provides (1b) “sufficient reparations” the second step is triggered: the question of forgiveness, “which arrives on each victim’s desk like a subpoena; it necessitates a response.”\textsuperscript{26} Forgiveness is the victim-side of the model.

2. Three Paths to Reconciliation

For Brooks, the entire argument rides on sub-step 1b: sufficient reparations. But what counts as “sufficient reparations” depends entirely on the post-civil-rights theory one endorses. There are,

\begin{itemize}
  \item \textsuperscript{22} Brooks, \textit{Atonement and Forgiveness}, p. 156.
  \item \textsuperscript{23} Brooks, “Framing Redress,” p. 8.
  \item \textsuperscript{24} Since the state is apologizing I am not sure that, despite being a group agent we can speak of the state as having a moral character. Maybe Brooks means that the state’s apology affords white citizens an opportunity to reclaim their moral character by affirming or endorsing that apology. By using the pronoun “it” in reference to the perpetrator he seems, once again, to be clearly thinking of the state as the embodiment of the perpetrator: An apology “offers the perpetrator an opportunity to reclaim \textit{its} moral character and initiate conditions that help repair \textit{its} broken relationship with the victims.” On this view, restoring \textit{moral authority} rather than moral character makes more sense. And, again, I am in full agreement with Brooks that the state is the appropriate agent of redress. Brooks, “Framing Redress,” p. 8.
  \item \textsuperscript{25} Brooks, “Framing Redress Discourse,” p. 9.
  \item \textsuperscript{26} Brooks, “Framing Redress Discourse,” p. 9.
\end{itemize}
as I noted, four post-civil rights theories of racial justice, but, in this section, I will focus on the first three of them. Let us begin with traditionalism. First, it calls for (1a) partial apology. Second, it pushes back against (1b) reparations or any other race-conscious policy. It insists on color-blindness or what Brooks calls racial omission. In the courts, Chief Justice Roberts and Justice Clarence Thomas maintain that race-conscious policies are morally unfair and amount to discrimination.²⁷ Basically, they view laws that take race into account as discriminatory.²⁸ Traditionalists do not reject slave redress in principle. Rather, they argue that race-conscious policy aimed at correcting systemic disadvantages decay rather than restore civic bonds between black and white Americans.²⁹ Many question the premise that disadvantages tracking black lives result from structural injustice, including historical ones. For traditionalists like Shelby Steele and Thomas Sowell, the roots of racial inequalities are internal—moral failures and a culture of poverty. Thus integration will come once African Americans lift themselves up on the rungs of hard-work, thrift, and personal responsibility.³⁰ Basically, this view advocates a color-blind and minimalist approach to addressing race and reconciliation in America.

The reformist view differs from the traditionalist view in the following ways. First, reformists insist on full atonement: (1a) genuine apology and (1b) substantive reparations at both the individual and group level. Second, then, the reformist view sees race conscious policy as a vital means for realizing an integrated society.³¹ They conceive of sufficient reparations (1b) as a

²⁷ Justice Thomas, as Brooks notes, argues that African Americans suffer an expressive injury from such policies—affirmative action amounts to a form of racial paternalism that affirms racist stereotypes, encourages dependency on the part of the beneficiary, and superiority and resentment on the part of whites. Brooks, “Framing Redress Discourse,” p. 11.
²⁸ Brooks, “Framing Redress Discourse,” p. 11.
means for redressing system wide capital deficiencies.\textsuperscript{32} The reformist views compensatory reparations as an important feature of systematic reform: cash payments in the form of an income supplement to descendants of slavery, who can use those funds for education, housing, and employment, but need not do so. This view insists on rehabilitative reparations in the nonmonetary form of a “constitutional precommitment for racially integrated public schools.”\textsuperscript{33}

What really separates a traditionalist from a reformist are race-conscious policies. The latter endorses *racial preferences* as a means of promoting diversity and thus integrating American society. On this view, doing so goes a far way towards realizing racial justice and, consequently, the possibility of racial reconciliation.

The *critical race theory* view differs from the reformist view in subtle but important ways. First, it, too, insists on full atonement: (1a) a sincere apology and (1b) substantive reparations. Second, while it allows for compensatory reparations for individuals, it makes those payments conditional rather than direct. Where the reformist underlines *income* to benefit the household, the critical race theorist stresses *wealth* because it benefits the group as well. Compensatory reparations should be conditional cash payments toward the purchase of property, investments in black businesses, and education. Given distrust of the state, Brooks argues for an “atonement trust fund” for the descendants of the enslaved.\textsuperscript{34} Rehabilitative reparations would take the form

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\textsuperscript{32} By *system wide* Brooks means prioritizing education, employment, housing, voting, health care, and police reforms.

\textsuperscript{33} Brooks, “Framing Redress Discourse,” p. 28.

\textsuperscript{34} Brooks writes: “The federal government would finance, and reputable trust administrators selected by prominent black Americans would administer, a trust fund for every newborn black American child born within a certain period of time—five, ten, or more years . . . The purpose of the trust fund is to provide a core group of blacks with one of the most important resources slavery and Jim Crow have denied them—financial capital, family resources, or an estate, handed down from generation to generation . . . [Thus] each black child would receive the proceeds from the trust fund annually or upon reaching a certain age. He or she would then have the financial wherewithal to take a meaningful step toward a successful future, including enrolling in and graduating from college. The atonement estate would also be earmarked for elementary and secondary education, allowing parents to take their children out of inferior public schools.” Brooks, *Atonement and Forgiveness*, p. 159–60.
of a “constitutional precommitment for attendance [racial] quotas.”35 The reformist and the critical race theorist differ on means and ends. Regarding means: the reformist opts for racial preferences and the critical race theorist insists on racial quotas. Regarding ends: the reformist strives to racially integrate American society and thus reform it. The critical race theorist seeks to structurally transform American society. She is not interested in contesting segregation as an end in itself. Rather, she seeks to counter white hegemony—the enduring relationship between race and power in America.36 Doing so requires a far greater repair than the reformist envisions. Still, the critical race theorist is an integrationist but she is an integrationist with a hammer. She seeks to tears down core parts of American society whereas the reformist often accepts the structure created and fortified by white elites.

As I mentioned at the beginning of this section, Brooks’s entire argument of atonement redress rides on step 1b—“sufficient reparations,” but what counts as “sufficient reparations is contingent” on the model for racial justice one endorses. So, first, one has to decide on the framework they prefer. Brooks prefers the critical race theory frame.37 Second, the atonement model of redress says the process remains at the stage of apology (1a) until the state has made meaningful progress towards providing sufficient reparations (1b). Recall that reparations should remedy (R2) capital deficiencies and (R3) epistemic injustice, and in doing so will make significant progress toward African Americans reassessing their view of (R4) the state as morally illegitimate. The atonement fund would go some way toward correcting (R2) capital deficiencies. The state’s financing slavery museums and investing in African American history would make significant progress to “setting the historical record straight” and thus redressing (R3) epistemic injustice.

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36 Brooks, “Framing Redress Discourse,” p. 16.
37 Though Brooks is not opposed to the reformist one.
injustice. After living some time under these new conditions African Americans should experience the reparative benefits through reduced injustice and thus come to the conclusion that “sufficient reparations” have been made and they may therefore reconsider their view of the state (R4).

Finally, we arrive at the question of forgiveness, the second step of the atonement model. Negatively, forgiveness is a repeal, the withdrawal of resentment and moral hatred, and, positively, an effort to re-establish a broken relationship. Brooks insists that the tender of atonement, including substantial reparations, creates an “unconditional civic obligation on the part of the victim to participate in the process of reconciliation” because forgiveness acknowledges that the relationship is worthy of respect. And, moreover, civic forgiveness is important for African Americans to continue to make progress and therefore if the state fully atones for slavery then African Americans should commit themselves to racial reconciliation. Brooks insists the providing of (1b) sufficient reparations is what triggers the second step of atonement—it summons for forgiveness. But a judgment as to whether reparations are, in fact, sufficient, depends largely on the post-civil rights framework one endorses.

If you endorse the critical race theory view, as Brooks does, then it will likely take generations after reparations policies are passed for African Americans to be in a position to forgive. On the critical race theory framework structural transformation is the goal and it is difficult for me to imagine that the structural transformation of American society would not take multiple generations, especially given that progressive policies aimed at improving the lives of African Americans have always resulted in white racial resentment and, often, the retraction of

38 Brooks, Atonement and Forgiveness, p. 148.
39 Brooks, Atonement and Forgiveness, p. 165.
40 Brooks, Atonement and Forgiveness, p. 168.
41 Brooks, Atonement and Forgiveness, p. 169.
those rights. To avoid untimely forgiveness, African Americans would have to experience, first
hand, a range of structural transformations in the areas of education, employment, health care,
housing, and policing. If I am right, racial reconciliation is neither a necessary nor sufficient
condition for justice. It is, at best, a postscript to racial justice. It is a moral addendum that will
arrive on the wings of progress. Even Brooks admits that forgiveness, which is a precondition for
racial reconciliation is desirable but not a moral imperative.\textsuperscript{42} If true, does forgiveness play any
meaningful role? I share Professor Murphy’s worry that demanding forgiveness might prove
harmful. Even if it is not, the act of forgiveness seems impossible from the perspective of \textit{critical race theory}. Besides: providing robust reparations without forgiveness would afford Americans a
rare moment of Kantian poise: we do it because it is the right thing to do. This also eliminates the
desire to still buy justice, even at a higher price.

3. \textbf{A Road to Realism}

As we moved from \textit{traditionalism} to \textit{critical race theory} the terms of redress went from least to
most demanding.\textsuperscript{43} But it is unclear whether \textit{limited separation} would prove more or less
demanding than \textit{critical race theory}. In this brief, and final section, I would like to argue that
\textit{limited separation} might be better conceived of as rejecting reconciliation for several reasons.
Before turning to them, let me briefly note what \textit{limited separation} entails. First, it does not
require an apology from the state.\textsuperscript{44} Second, it embraces both compensatory and rehabilitative

\textsuperscript{42} Brooks, \textit{Atonement and Forgiveness}, p. 169. This is a real point of confusion because how can it be a necessary or
constitutive part of atonement redress if it is entirely arbitrary?

\textsuperscript{43} For reasons I make clearer below. I believe the conditions for redress move from least demanding to most
demanding from \textit{traditionalism} to \textit{reformism} to \textit{critical race theory}. But \textit{limited separation} poses a real problem
because it does not fit easily along this continuum. For starters, it does not require apology and it is not clear that it
demands greater reparations from the state than the \textit{socially transformative} view.

\textsuperscript{44} Brooks, “Framing Redress Discourse,” p. 32.
reparations, but it insists that such measures should go directly to African American institutions, rather than individuals. I am not sure that limited separatists would object to individual compensation. The most ardent black nationalists in American history, Martin Delany, Marcus Garvey, and even the authors of Black Power, embraced capitalism and, despite their emphasis on collective emancipation, insisted that individual economic empowerment is a collective good because it reduces dependency and thus vulnerability to domination. Third, the limited separatist looks inward to the black community rather than outward to American society. She dedicates her attention to improving her community and empowering black people by creating, maintaining, and strengthening autonomous black institutions and sustaining a more vibrant black economy. Fourth, she underlines the importance of black identity and racial solidarity.

The second, third, and fourth features of limited separation are linked in the following ways: (2) reparations in the forms of monetary and nonmonetary investments in (3) black institutions and business shore up the social and material bases of (4) self-respect and self-esteem (black identity) and reinforce the institutional foundation of racial solidarity. The limited separation view, which is indebted to Black Nationalism, has long argued that the capital deficiencies resulting from slavery have locked African Americans into cycles of poverty, confining millions to live at the beck and call of white employers and landlords. For much of American history, black people’s experience with integration has been one of racist treatment, hostile behavior, and outright cruelty. For many, black communities offer reprieve from such maltreatment: black institutions, organizations, and associations that cater to the preferences and interests of black people, from barbershops to bookstores, make life less alienating, less dignity-

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45 Martin Delany, *Conditions.*
undermining.\textsuperscript{46} I suspect many that ascribe to limited separation view talk of reconciliation with suspicion.

Part of the liberal cleanup of Black Nationalism is the erasing of its most essential principle—power. In addition to an emphasis on identity and solidarity, every black nationalist has insisted on power as necessary to secure black lives and ensure flourishing. \textit{Limited separation} is born of this tradition. It does not endorse full exit, but neither did Booker T. Washington nor Black Power. \textit{Critical race theory} is hardly the only view concerned with the relationship between race and power—white hegemony. Professor Derrick Bell, himself, took his cue from Black Nationalism. And with all due respect to Justice Thomas’s invocation of Black Nationalism, he is no Malcolm X. That \textit{limited separation} has its conservative side should not distract us from the fact that it cares deeply about power. I suspect if you asked a \textit{limited separatist} what she thinks of post-Holocaust atonement model, she will say it is a nuclear-armed Israel that allows members of the Jewish diaspora to sleep well at night, not the apologies or restitutions of German Chancellors.

Still, we might contrast the \textit{critical race theorist} with the \textit{limited separatist}. I believe both would seek reparations along the following two dimensions: remedying (R2) capital deficiencies and (R3) correcting epistemic injustice. Both would endorse the \textit{atonement fund} as an attractive means for correcting capital deficiencies. But the \textit{limited separatist} would attach more stringent conditions such as restricting flight from a black school to a wealthy white school. She would also insist that the funds be used only for purchases from or investments in black institutions. To correct epistemic injustice she would likely embrace the state financing slavery museums but also insist on more than setting the historical record straight; she would likely demand studying

\textsuperscript{46} Tommie Shelby, “Integration, Inequality, and Imperatives of Justice,” 272.
the classics of African American thought, publicly funding African and African American art studios and performance centers, and insisting on a more racially just social science and humanities education. And, after living some time under conditions that render black communities equal in resources to white communities, she might agree that “sufficient reparations” have been made and she may even reconsider her view of the state. It might be argued she embraced limited separation as merely a strategic response to racial injustice. And, given the social transformations, she should seek reconciliation. Yet, I doubt it. She might say it is hard to imagine reconciliation when there has never been conciliation. She might ask when were our civic bonds ever unbroken?

### Appendix

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47 Possible only after “sufficient reparation” condition (1b) is met: meaning significant progress toward redressing capital deficits and hermeneutical injustice.