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**Reparatory justice reconsidered. On its lack of substance and its epistemic function**

**Abstract**

Unlike other kinds of theories of justice, reparatory justice can only be negatively defined, in non-ideal contexts in which initial wrongs had already been committed. For one, what counts and what does not count as wrongdoing or as an unjust state of affairs resulted from that wrongdoing depends on the normative framework upon which a theorist relies. Furthermore, the measures undertaken for alleviating historical injustices can be assessed only from the vantage point of other, independent normative considerations. In the present paper I argue that this lack of substance is a feature that, far from being problematic, is what makes reparatory justice attractive. The specific example that I put forward is that of a reparatory justice account which seeks to instantiate the desiderata of a sufficientarian theory of justice. At first, distributive justice fills the content of reparatory justice, specifying up to what level reparations in-kind or compensatory measure should go. Afterwards, reparatory justice clarifies and provides epistemic inputs for distributive justice. Reparatory justice thus becomes an epistemic source for distributive justice, in that it provides the means for assessing whether someone’s level of well-being can be traced to her choice or to a wider, historically-sensitive operationalization of her “circumstances”.

**Keywords**

sufficientarianism; reparatory justice; responsibility; wrongdoing.

**Introduction**

According to Rawls, a conception of ideal justice such as justice as fairness can set up “an Archimedean point for assessing the social system without invoking a priori considerations” (1971, p. 261). The principles stemming from ideal theory can be employed to the appraisal of “existing institutions as well as the desires and aspirations which they generate” (p. 520). However, we can only talk of reparatory justice in non-ideal contexts, in which initial wrongs had already been committed and are recognized as such. Therefore, the vantage point from which we analyze such policies has to be given by independent normative considerations.

Thus, reparatory justice can only be negatively defined, by pointing to a reference point in which past injustices had not occurred, or by trying to ascertain the state of affairs that would have prevailed in the absence of the initial wrongful acts. This means that, in itself, reparatory justice lacks substance (see also Vernon: 2003). Under ideal circumstances, in which everyone complied with principles of justice, reparatory justice would not be necessary. In our non-ideal world, reparatory justice could be operationalized in a plethora of ways. Given our epistemic limitations, we must resort to counterfactual thinking and imagine a state of affairs that would have prevailed in the absence of the wrong. In a way, reparatory justice is similar in nature to what Rawls refers to as a “freestanding view”, a “module”, which can fit into a wide array of theories of justice (Rawls: 1996, p. 12). However, it is more limited than a Rawlsian political conception since the latter is made up of principles which would be selected in an original position. Political liberalism’s claims, for instance, can be endorsed by many reasonable comprehensive doctrines, but this does not mean that the nature of it changes depending on that comprehensive doctrine. By contrast, reparatory justice can be reduced to a bare minimum of conceptual emptiness, and upon this skeleton could be built several bodies. This means that the content of reparatory justice is going to be very different depending on the theory of rights it is integrated into or on the theory of distributive justice it is a part of. One of the implications of this paper is that, short of an ideal separate theory of distributive justice, we cannot argue for or against reparatory justice and we cannot evaluate public policies that deal with matters of historical injustice[[1]](#footnote-1).

Far from being problematic, the lack of substance of reparatory justice is what makes it attractive. In the present paper I present one of the many forms that a reparatory justice approach can take. I put forward an account of reparatory justice which seeks to instantiate the desiderata of a sufficientarian theory of justice. At first, distributive justice fills the content of reparatory justice, specifying up to what level reparations in-kind or compensatory measure should go. Afterwards, reparatory justice clarifies and provides epistemic inputs for distributive justice. I show this by resorting to a multilevel version of sufficientarianism, whose inferior threshold neglects the problem of responsibility, while the superior threshold accounts for choice, but in a novel way, that incorporates the influence of the past and acknowledges the fact that historical injustices cast a very long shadow. Reparatory justice thus becomes an epistemic source for distributive justice, in that it provides the means for assessing whether someone’s level of well-being can be traced to her choice or to a wider, historically-sensitive operationalization of her “circumstances”.

The structure of the paper is as follows. In the first section I clarify the terminology used and I show why reparatory justice lacks substance. In the second section I present the relation between distributive justice and reparatory justice. The third section is dedicated to presenting the epistemic function of reparatory justice. In the fourth section I try to answer to 2 of the main questions that, according to Caney (2006, p. 465), are core aspects of any attempt to alleviate historical injustice: what form should the compensation take? how much is owed to victims of injustice? Section 5 clarifies how we should operationalize the duty-bearers. Section 6 concludes the paper and sets up a research agenda inspired by the approach to reparatory justice defended here.

**1. The normative significance of reparatory justice's lack of substance**

When it comes to the problem of historical injustice, one can see that the domain is still inchoate, *resembling* a state of preparadigmatic theorizing, with a lack of shared understandings (Kuhn: 1962). A quick glance at the literature reveals that terms such as reparation, rectification, compensation, are not used in a systematic way. One explanation is that reparatory justice lacks substance and each author, consciously or not, added the tenets of their preferred theory of rights or of justice. In the same vein, as Posner and Vermeule put it, “the word *reparations* does not pick out a natural kind; there are no clear conceptual boundaries that demarcate reparations from ordinary legal remedies, on the one hand, and other large-scale governmental transfer programs, on the other” (2003, p. 691).

For instance, Wyman (2008) or Simmons (1995) use all of these terms interchangeably, whereas Boxill (1972, p. 116) argues that the fundamental distinction between compensation and reparation is that “the latter is due only after injustice, while the former may be due when no one has acted unjustly to anyone else”. Lomasky (1987, pp. 142-3) considers that compensation means to provide an equivalent to what has been lost, while rectification involves a restoration of the status quo. In Lomasky’s case, this leads to a distinct treatment of the two reparatory solutions. He favors rectification, considering compensation a “second-best response to rights violations”, and a problematic one since some values could be incommensurable (p. 143). This proves to a certain extent my previous claim, that reparatory justice accounts are inseparable from other substantial normative theories. In order to consider value incommensurability a problem for compensation, you need an account that states that certain values or goods are incommensurable and which bestows upon this claim normative power (such an account could be given by Radin's [1987] market-inalienability thesis or by Arrow's [1997] invaluable goods concept).

Since reparatory justice lacks substance, it is a strange epistemic animal[[2]](#footnote-2). *Inter alia,* it can either be integrated in a transitional justice framework or in an intergenerational justice one[[3]](#footnote-3). Teitel (2000) or Damşa (2016) only focus on reparatory justice as a sub-case of transitional justice (though the latter holds that, at least in the case of post-communist restitution, we can talk only of an “imperfect denomination of the proximate transitional justice genre to which it belongs”, p. 157). In both cases, reparations act as a liaison between a past marked by harmful acts and a future that should at least partially make up for those acts. However, depending on the framework in which we integrate reparatory justice, new and peculiar problems can emerge. In the latter case, we must be careful what theory of rights we embrace (for instance, an interest-based one or a choice-based one; for the distinction see [Wenar: 2015](https://plato.stanford.edu/entries/rights/)). As Steiner and Vallentyne convincingly argue, traditional theories of rights preclude future people from having the status of rights-holding entities (choice theory) or open the way for paternalism (interest theory). They uphold a novel, choice-prioritizing theory, which holds that in the case of autonomous beings, "their valid consent and dissent trump all countervailing concerns for their interest[[4]](#footnote-4), but it also allows that non-autonomous beings with interest can have rights" (2009, p. 56). The conception implies that, if a Rights-holder has a right against someone who would perform a certain action, and the Rights-holder has not expressed consent or dissent towards that action, then the Right-holder's interests are relevant for assessing whether her rights are respected by that action (2009, p. 56). This basically means that persons lacking consciousness (comatose people for instance), would still have their rights protected, but it also allows future people to be considered rights-holder entities. Therefore, depending on how the reparatory justice module is integrated into different frameworks, it can be concerned with very different aspects of reality (lack of substance should not be confused with inconsistency).

According to Socaciu, by reparatory procedures we can understand any kind of measures that aim at righting past wrongs (Socaciu: 2014, p. 27). These can be symbolical or rectificatory, where rectificatory refers to “any kind of non-symbolical reparations, that aim at creating a state of affairs more adequate to an objective moral standard” (Socaciu: 2014, p. 30). In turn, these rectificatory procedures can be non-restitutive (lustration, positive discrimination) or restitutive, with the latter being either compensatory or in-kind (Socaciu: 2014, pp. 31-34). Socaciu argues that restitution in-kind is of a more backward-looking nature, whereas compensation is typically characteristic of forward-looking accounts. I do not consider compensation or restitution in-kind to be necessarily and deterministically related to forward, respectively backward-looking accounts of justice. We can put forward an account of reparatory justice in which even measures such as restitution in-kind can serve a forward-looking purpose. Thus, unlike authors such as Boxill (1972, pp. 116-8), I do not embrace the equivalence between compensatory programs and forward-looking attitudes and that between reparatory measures and backward-looking attitudes.

In the present paper I shall refer to reparatory justice as a conception that seeks to instantiate distributions that would be considered just under a sufficientarian theory of distributive justice. Given the modular nature of reparatory justice mentioned beforehand, this represents an attempt to give substance to reparatory justice by linking it to a certain theory of justice. That instantiation can be achieved either by symbolic gestures, by compensatory measures (*i.e.* that involve money as a means of compensating for past wrongs) or by restitution in-kind. Of course, in reality we will rarely find pure cases, most of reparatory justice processes involving a combination of such instruments. This typology resembles De Greiff’s comprehensive list of forms that reparations can take under international law: “restitution (measures seeking to reestablish the victim’s status quo ante); compensation (measures that seek to make up for the harms suffered through the quantification of harms); rehabilitation (social, medical, psychological care); satisfaction and guarantees of non-recurrence (official apologies, institutional reform)” (2006, p. 452). I also follow De Greiff in that I also consider that “reparations should not be seen under the language of proportional compensation. Rather, they should be interpreted as making a contribution to the quality of life of survivors. We should think about reparations in terms of recognition and of the promotion of civic trust and social solidarity” (2006, p.467). Where I go further than De Greiff is in placing this conceptualization of reparations under an account of distributive justice and in using the language of capabilities to measure the alleviation of historical wrongs. Nonetheless, given the modular nature of reparatory justice, this is not a definitive statement of what it represents, but only a particular form that it can take.

On the other hand, there are authors such as Vernon (2003) who argue that the lack of substance of reparatory justice means that it should not be a distinct theoretical field. He argues that placing the measures usually associated with restitutive justice under that umbrella "opens the acts in question to insoluble puzzles and unanswerable criticisms" (2003, p. 544). Although he considers that apologies for past wrongs is unobjectionable, he disregards the intimate connection between public acknowledgment/ public regret and restitutive justice: "unlike restitution, which makes up a loss even if it happens to be followed by further losses, an apology followed by a repetition of insult is worse than meaningless" (2003, p. 545). As it should become clear by the end of the paper, my account holds that apologies are lexically prior to any monetary or in-kind reparations (both temporarily and as a matter of importance). This position is similar to Kukathas', who holds that "while indigenous peoples want attention to their material welfare, they also desire a form of acknowledgment which gives weight to their history" (2003,p. 173). This makes reparatory justice a very different species from the simple corrective justice model usually associated with Aristotle, in which an unjust gain is subsequently returned to the loser (Vernon: 2003, p. 550; see also Aristotle: 1953, pp. 148-9).

Vernon goes to great lengths to show that all the measures usually associated with restitutive justice can find a justification in a different normative field. He argues that, albeit apologies may be called restitutive, "their distinctive point is non-restitutive"; while "the return of a thing by the taker to the loser is obviously restitutive", real world cases are affected by too much factors that diverge from this simple practice; lastly, compensation should be seen as the material proof of the sincerity of an apology. He concludes that "obligations termed restitutive should be seen rather as local instances of universal requirements of justice, such as the requirement to respond to deprivation and unjustified inequality*"* (Vernon: 2003, p. 554).

Contrary to Vernon, I think that renouncing at reparatory justice as a separate analytical category would result in an epistemic loss. As I show in the subsequent sections, reparatory justice provides an invaluable epistemic support to accounts of distributive justice. That being said, I think all of the challenges raised by Vernon can be responded to: apologies are restitutive since they make reference to a past event; their nature is indeed forward-looking, but this does not prevent them from being instruments of reparatory justice; furthermore, even compensation understood as a response to distributive justice needs sometimes to be done by resorting to past wrongs; in the absence of that reference point, the arbitrarily-caused well-being of a person might seem a choice. While I formally agree with Vernon that reparatory justice lacks substance, I do not think that this is problematic or that it should result in the abandonment of an attempt to forge a cohesive reparatory justice account. Instead, I think that this lack of substance presents us with the opportunity to build an account that is well integrated into theories of justice, and which would lead to the least counterintuitive results when applied in the real world.

**2. The relation between distributive and reparatory justice**

According to Elizabeth Anderson (2010: pp. 81-2), we can have 3 different types of distributive rules: unconstrained procedural rules (such as Nozick’s pattern-insensitive justice as entitlement: 1974), constrained procedural rules (Rawls: 1971) and distributive pattern rules (prioritarian and sufficientarian rules). The latter “fix distributions of actual goods independently of what anyone else does”, in contrast with constrained procedural rules, which specify solely opportunities for accessing goods. Unconstrained procedural rules are pattern-insensitive and only take into account the history of the transactions between individuals. If these have respected certain procedural standards (given by a specific theory), then the current state of affairs is just. In the case of distributive pattern rules, actual distributions emerge as an interplay of initial opportunities and individual actions. In this paper I advocate a pattern-sensitive sufficientarian rule, but which takes into account responsibility in regard to the superior threshold. That is, the superior threshold accommodates the problem of responsibility, but in a novel way, that is also sensitive to past wrongs. To use a Freudian expression, this is some sort of a “return of the repressed”, where the historical-sensitivity of unconstrained procedural rules is brought back to the fore.

Alongside a distributive rule, all theories of justice have to specify a currency (metric), *i.e.* “the thing the distribution of which we ought to care about in order to realise justice” (Gheaus: 2016, p. 2). Frequent candidates for the metric of justice are resources, welfare, capabilities or primary goods. At the most basic level, we can divide metrics according to a subjective/objective criterion (Anderson: 2010, p. 82). Gheaus further makes a distinction between the metric and the *distribuenda,* the latter being “the particular goods that are to be distributed” (Gheaus: 2016, p.2). For instance, Brighouse (2007, p. 156) has recently endorsed an objective metric known as “flourishing life” in the field of educational justice, but the means towards achieving an equal distribution of that currency of justice are the *distribuenda* of “effective educational resources” (Brighouse: 2003, pp. 138-140)[[5]](#footnote-5). I argue for a capabilities metric, which I consider to be the most appropriate for accomplishing the requirements of reparatory justice.

One important objective of this section is to clarify the relation between distributive and reparatory justice, which is a matter of incessant debate in the literature on historic justice. Is or should reparatory justice be distinct from distributive justice? What is the relation between them? Do we lose at an analytical level anything if we do away with the conceptual distinction? These are some questions that I will attempt to shed a light on in this section. As I have shown in Section 1, Vernon (2003) argues that we should renounce at reparatory justice as a separate field and merge it with distributive justice. I argued there that we would suffer an epistemic loss were we to follow his indications. In what follows I will explain this statement. Let me first take a detour in the literature in order to see how other authors conceptualized this relationship.

The relation between reparatory and distributive justice has been questioned since the earliest writings on the subject. Sher (1979) set out to criticize the “official view of compensation”, a conception of compensation that consists of restoring a good or a level of well-being which a person X would have benefited from in the absence of a harmful act committed by a person Y. This is the view upheld, among others, by Nozick, in his classic *Anarchy, state and utopia* (1974). There, Nozick argues that justice as entitlement is not exhausted by the principle of justice in acquisition and the principle of justice in transfer. In those cases in which historical injustices have occurred, we must resort to a (loosely specified) principle of rectification. Basically, what we ought to do in such cases is to “make use of its best estimate of subjunctive information about what would have occurred, or a probability distribution over what might have occurred, if the injustice had not taken place. If the actual description of holdings turns out not to be one of the descriptions yielded by the principle, then one of the descriptions yielded must be realized” (1974, pp. 152-3). As Simmons contends, however, it is not an easy task to specify the present rights in the light of the past rights (1995, p. 155). Leaving aside a stipulated epistemic modesty of the decision-maker who has to decide which counterfactual state of affairs would have been reached in the absence of the harm, Sher identifies a more fundamental issue with this official view of compensation. For him, such a comparison of potential states of affairs makes sense under this view only if the person harmed exists in both worlds. This would be feasible only if we embrace an approach to transworld personal identity that he labels the branching account. What this holds is that we must have in mind when we make the comparison an alternative world *w* which coincides with the actual world prior to the harmful event (*A*) at the moment *m*0, and afterwards is distinct in all subsequent moments *m1,m2…mn* (1979, pp. 382-3). To sum up, the official view holds that X deserves compensation only if X would have been better off in the world in which *A* was not performed. One of the problems with this official view of compensation and with its associated branching account of transworld personal identity is proved by those cases in which *A* is performed before X comes into existence. In such cases, according to Sher, “the X who subsequently begins to exist in the actual world will be unable to stand in the branching relation to any inhabitant of the relevant *A-*less world. Since X’s standing in the branching relation to a better-off inhabitant of the relevant *A-*less world is *ex hypothesi* necessary for her deserving compensation, it follows that X will be unable to deserve compensation for any harm that is done to her by *A*” (p. 384).

In order to show why our intuition departs from the official view’s conclusion, Sher provides the example of a corporation who hides the fact that it has been dumping nuclear waste on a field in which years later a family builds a house. The residual radiation takes its toll on the family members, and by the time of the 4th generation a deformed child is born. Even if the corporation still exists at the time of the child’s birth, the official view of compensation would only compensate her if she was identical to a better-off person from the alternative world in which the original harm was not committed. Since this would not be the case, the view would be “unable to account for the intuition that compensation is deserved” (p. 388) and thus would be morally faulty. At this point in his argumentation Sher raises the problem that what really should influence the child’s compensation would have to be “the simple fact that the wrong caused her to exist at a level of well-being that falls below some crucial minimum” (p. 389). In order to be more convincing, we could add the supplement that the child has what Kavka calls "a restricted life". This means that it is a life "that is significantly deficient in one or more of the major respects that generally make human lives valuable and worth living" (Kavka: 1981, p. 105)[[6]](#footnote-6). The notion of a restricted life could thus represent a proxy for Broome's concept of a life not worth living (2004). Take the case of John. He suffers from a bizarre condition that makes him feel physically bad whenever he thinks about something. Being a very private person, John never tells this to anyone. He continues to live in pain until he reaches maturity, when he decides to the doctor in order to see what he has. During the medical investigations, John passes out and he does not wake up. He is connected to a machine and he continues to live in a physically vegetative state. Nonetheless, his condition aggravates: he cannot fall asleep anymore, so he is constantly thinking about something and constantly suffering. If John is the child from Sher's example, it can be easily seen why the "official view" errs.

Nonetheless, the introduction of a level of well-being as in Sher's account is problematic for theoreticians such as Morris, since it would represent a dilution of rectificatory justice and a concession made to distributive concerns. For Morris, falling below a certain minimum should not be relevant toward determining desert of compensation. The focus of rectificatory justice is on backtracking past wrongs (1984, pp. 178-9). Enter thus the distributive-reparatory conflict that has been mentioned above. Similarly, for Hill, compensation ought to be connected to clear *injury* and does not represent a method of distributive justice (2002, p. 403). Posner and Vermeule are adamant that reparation schemes are forged on a skeleton of backward-looking reasons and ignore forward-looking reasons such as “increasing utility, deterring future wrongdoing, promoting distributive justice” (2003, p. 692). Kukathas insists that justice in restitution is preoccupied with determining “who is obliged to restore whom”, with the identification of “those who are to be held liable or entitled to compensation” and that this particular focuses differentiates it from distributive justice (2006, p. 332). Kutz (2004) argues for the priority of distributive justice and thus conceptually separates the domain of the two kinds of justice theories.

Wenar (2006) is one of the few theorists who identify a deeper connection between reparatory and distributive justice. Although he acknowledges the analytical distinction between them, his claim is that it is not erroneous to lend the intuitions from one to the other. For instance, in cases of injustices that span across several generations, "simple" restitution-in-kind will probably not be feasible. The loss of inalienable goods renders compensatory measures sometimes inappropriate. Thus, we might need to resort to an external standard that could apply uniformly and that could be applied as a matter of policy. That no one is voluntarily under a certain threshold of well-being might be the first step in such an account. In the rare cases in which some individuals are better off today because of an egregious injustice committed against their ancestors than they would have been in the absence of the harm, distributive measures might seem unwarranted[[7]](#footnote-7). However, apologies and other symbolic reparations are still required by an account of reparatory justice. The distributive turn is important in circumstances in which it might seem that a person is doing badly due to her own actions. However, past wrongs cast a long shadow. In such cases, reparatory justice becomes an epistemic source for distributive justice, in that it provides the means for assessing whether someone's level of well-being can be traced to her real choice or to a historically-sensitive operationalization of her circumstances. Wenar goes even further and argues that, in situations where mutual trust is absent between citizens, distributive projects might be endangered. As such, "apologies or monetary payments can be an official recognition of the existence and the status of a formerly unrecognized group. This kind of recognition is clearly a necessary condition for a polity in which any kind of distributive justice is possible" (Wenar: 2006, p. 403).

The few authors who wrote on reparatory justice and also endorsed distributive standards usually preferred either a form of egalitarianism or of (implicit) sufficientarianism[[8]](#footnote-8). Andrew Cohen set out to “complete” Sher’s subsequent wrong solution (2009; I use here Herstein’s [2008] label for Sher’s account). As he does that, he indirectly upholds sufficientarianism. Cohen argues that parents have a natural duty to provide to their children. Withholding due compensation from the transgressors to the parents “might account to a separate harm against the children”, as a result of that natural duty, which would be unfulfilled under those circumstances (Cohen: 2009, p. 86). The harm is directly inflicted upon the children as “the parents are merely custodians of some of the commodities they command”, as they belong *de facto* to the children (2009, p. 87). How far should the parents’ support go? Cohen believes that it should cover at least “some of the material conditions required for the acquisition and development of a certain range of functionings” (2009, p.90). His purpose in the cited paper is not to specify a threshold, but only to show that children’s material deprivation as a consequence to wrongs committed against their parents have to be addressed. As I will also argue, compensating descendants for past wrongs has to weighted against other values: “the extent of the child’s claim may depend upon many other factors, including the magnitude of the original injustice, the amount of damage the child suffered because of the continued injustice of failing to compensate the parent, and rival potentially mitigating moral considerations” (Cohen: 2009, pp.98-9). Cohen’s argument does not discuss whether children can have claims for compensation against the transgressors’ descendants. It seems in the spirit of his approach that he would endorse this; nonetheless, I will base my arguments for this on the immorality of benefiting from injustice.

**3. The epistemic function of reparatory justice**

Caney notes that we can hold either a positive or a negative view on historical processes. For instance, Nozick’s justice as entitlement theory perceives historical processes positively, as indicators of what people should currently possess (Caney: 2006, p. 478). By contrast, a negative view “calls into question the legitimacy of the current distribution and hence some wealthy people’s entitlements to their current holdings. Claims about historical injustices rule out one kind of argument for resisting claims to distribute aid to the needy” (2006, p. 477). On the other hand, Caney does not consider that reparatory theories can do all the work, as they “need supplementation with other principles of distributive justice” (2006, p. 478). I have argued so far that reparatory justice lacks substance and that a potential way we could fill its content would be by resorting to sufficientarianism. Now it is time to show that there is in fact a bilateral relation between distributive and reparatory justice. As Caney’s position shows, there are ways in which the current distribution of goods can in fact be illegitimate, if we take the past into consideration. As Thompson puts it, “the long period of time between the injustice and the effects does not disqualify [reparations]…for it is the meaning of the injustice to descendants, not the immediacy of the causal relationship, which is crucial” (2001, p. 134). This is what I call the epistemic function of reparatory justice.

Leaving aside for the moment the sufficientarian view, let’s take a look at the so-called choice-circumstance cut, one of the tenets of modern-day luck egalitarianism (but not reduced to it). For Dworkin, distribution of resources should be ambition-sensitive, but endowment-insensitive. Natural contingencies such as talents must not typically determine one’s life prospects. The distribution of resources must at all times [[9]](#footnote-9) reflect people’s choices and the cost of their choices instead (Dworkin: 2002b, p. 120). Knight labels this as the choice/circumstance distinction (2009), while Cohen differentiates between the preferences aspect of a person and the resources aspect (1989, p. 921). Basically, they all amount to the same thing, which is that individuals must bear the cost of their choices. However, choices/circumstances are defined as pertaining to an individual’s life, notwithstanding the fact that she is a descendant of a family line which might have suffered from historical injustice. Nonetheless, until we get there we have to fill a gap in the argument - in order to see which choices are conscious and which are not, we need a conception of responsibility (Volacu: 2017 argues that preferences should be the site of responsibility, not choices). In order to see whether the most evolved conception on responsibility developed by luck egalitarians can incorporate concern for the past and whether it needs supplementation with a separate account of reparatory justice, I will briefly discuss the capacity control view of responsibility upheld by Dworkin in *Justice for hedgehogs* (2011)[[10]](#footnote-10).

Dworkin identifies two main conceptions on responsibility. The first of these, the causal control view, assumes that there must be a causal link between our will and our actions. Dworkin finds it "an interpretive orphan", since "we can find or construct no good reason why it should be part of our ethics" (2011, p. 229)[[11]](#footnote-11). The reason Dworkin dismisses this variant of responsibility is that it conceives mind as being separated from the body, illustrating the mind pulling the strings and then inquiring whether the individual's actions stem from the mind (2011, p. 233). His preferred conception, the capacity control view, on the other hand, holds that "an agent is in control when he is conscious of facing and making a decision, when no one else is making that decision through and for him, and when he has the capacities to form true beliefs about the world and to match his decisions to his normative personality - his settled desires, ambitions and convictions" (2011, p. 228). Dworkin's preference for the capacity control view stems from his account of a good life, the challenge model, which equates a good life with a "skillful performance" (2002a, p. 253). Under the challenge model, our convictions matter in a constitutive way: "no component [of a life] may even so much as contribute to the value of a person's life without his endorsement" (2002a, p. 248). Similarly, under the capacity control view of responsibility someone is in control if she has sufficient capacity "to form true and pertinent beliefs about the world in which she acts, or to match her decisions to her normative personality" (2011, p. 244). For Dworkin, only the capacity control view can explain why someone "born in a ghetto of poverty" is not fully responsible for any "antisocial behavior". This is a consequence of the fact that "the authors of injustice cheat their victims of opportunities or resources that would very likely have led to different decisions" (2011, pp. 251-2). Albeit Dworkin does not explicitly mentions this, we could add to the list of such factors that reduce responsibility past injustices, which would have most probably led individuals to very different life choices. Nonetheless, I believe that we still need to develop a separate account of reparatory justice in order to show that these past wrongs are to blame for some of the individuals' current decisions.

Thus we arrive at what I call the *epistemic input role* of reparatory justice, which provides the means for evaluating to what extent someone's level of well-being (irrespective of how it is measured) can be traced to her choices or to a historically-sensitive operationalization of one's circumstances[[12]](#footnote-12). I use the word "epistemic" in a very limited sense, in order to design the function reparatory justice has to clarify why distributions which would seem apparently just under a conventional theory of justice are in fact unjust. Let me give an example. In the movie *Wonder Woman* we encounter a Native American (Chief) who is a smuggler on the Western Front during World War I. When inquired why he has not taken sides in the war (up to that moment), he replies that his people have lost everything. Based on the capacity control view of responsibility and on a historically-sensitive operationalization of circumstances, we can see that Chief's actions are not as blameworthy as they would be had they been done by someone else. If we resort to positional objectivity, we can see that anyone under those particular circumstances would have fared in a similar way (positional objectivity refers to the fact that some cases are position-relative but authorship-invariant, see Sen: 1985, Lecture 1). Now that we have seen what the epistemic role of reparatory justice is, I shall present and advocate for a satisficing pattern and for a capabilities metric.

**4. The distributive proposal**

Any reasonable conception of reparatory justice must be concerned with symbolic reparations. Such gestures are required for recreating social capital, reinforcing the bonds between people and re-instilling a sense of belonging to the same political community. As De Greiff puts it, reparations - especially symbolic reparations - can be seen as a means for achieving inclusiveness, the property of a regime in which "all citizens are equal participants in a common political project" (2006, p. 464). This is the crux of the relational egalitarianism programme, and it can be achieved by public acts of atonement, changing of street names, commemorative days, establishment of publicly funded museums in order to commemmorate the victims, etc. (De Greiff: 2006, p. 468). Since Anderson's (1999) version of democratic equality has a built-in sufficientarian distributive rule, I shall assume for the remainder of this paper that the distributive step is pursuant to a symbolic reparations step and that both can be motivated by relational egalitarianism.

In cases in which historical injustice is superseded (Waldron 1992; 2002; 2004), symbolic reparations suffice. When past wrongs are not superseded, we must rely on a second, distributive step. Sher argues that the claims for reparations are grounded in i) the empirical observation that “unrectified wrongs of previous generations are systematically correlated with certain wrongs done within the current generation” and ii) reparations for purportedly past wrongs are in fact reparations for present wrongs, which are freed from the non-identity problem (2005, p. 191). The wrong to be rectified is not the occurrence of the injustice in the past, but “the subsequent wrong of failing to rectify it” (2005, p. 192). Injustice becomes, as it were, “enduring” (Spinner-Halev: 2007). Spinner-Halev proposes the concept of enduring injustice in order to correct what he perceives as a flaw of liberal accounts of distributive justice, the fact that they more or less ignore the past and focus on a narrow, inadequate period of time. The very definition of enduring injustice shows the fact that what matters, as in Sher’s account, is the repeated failure to rectify a past injustice, something which qualitatively transforms the past wrong into a current wrong: “an enduring injustice […] has roots in the past, and continues to the present day” (2007, p. 575). Furthermore, rectifying the past wrong cannot be accomplished without “taking collective memory into account” (2007, p. 580). Summing up, Sher and Spinner-Halev draw attention to the fact that are two types of wrongs: those which occurred in the past and the wrong of failing to rectify past injustices. The first kind of wrong could be alleviated through symbolic reparations; the second kind of wrong needs something more. It is the conceptualization of this second kind of wrong that represents the epistemic input of reparatory justice for distributive justice, as Spinner-Halev shows. Furthermore, it shows that does not matter that a person would not have been born in the absence of the wrong. What matters is that she was born, and that the subsequent wrong of failing to rectify a past wrong has not been dealt with yet (and this precludes the non-identity problem (Parfit: 1984; Woodward: 1986).

The sufficiency view holds that justice obtains when people have enough, that is, when they have reached a certain level of well-being that is postulated as adequate. For sufficientarians what has moral relevance is not the fact that there are inequalities among people, but that some people are absolutely badly off. If every individual had enough, the relative differences between people would not matter (Frankfurt: 1987, p. 21). That is, the sufficientarian view posits the existence of an identifiable threshold over which our moral concern dwindles, or even disappears. Crisp's *Beverly Hills* case is telling in this regard. He gives the example of a fictional *Beverly Hills* community, inhabited by 10 Rich people and 10,000 Super-rich people. Each Rich has a level of well-being of 80 utils, and each Super-rich a level of well-being of 90 utils. By offering them fine wine we could either bring the Rich from 80 to 82 utils or the Super-rich from 90 to 92 utils. Crisp argues that, once a certain level of well-being has been reached, it does not matter anymore if there are inequalities among individuals. Furthermore, any prioritarian concerns are also rendered morally impotent: "this implies that any version of the priority view must fail: when people reach a certain level, even if they are worse off than others, benefiting them does not, in itself, matter more" (Crisp: 2003, p. 755)[[13]](#footnote-13).

In general, all sufficientarian views comprise a positive thesis, stating the moral importance of people living above a certain threshold, and various forms of a negative thesis. In its strong form, the negative thesis denies the relevance of additional distributive requirements (Casal: 2007, pp. 297-8). In a weaker form, the negative thesis can be changed with the shift thesis, which holds that "once people have secured enough there is a discontinuity in the rate of change of the marginal weight of our reasons to benefit them further" (Shields: 2012, p. 108). In fact, it is a change in the nature of our reasons for treating individuals in a certain way, according to which side of the threshold they are at the moment, "not merely a diminution in the weight of our reasons, once enough is secured" (Shields: 2012, p. 107).

How to determine where a threshold should be set? Crisp uses the device of the impartial spectator in order to rank outcomes that would result from our distributive choices. The impartial spectator is taken to be compassionate, with this emotion purportedly running out after a threshold is reached. This stems from his definition of compassion as "the attachment of special weight to the interests of those who are badly off"; supposedly, once everyone is above the threshold, other considerations give in, such as benevolence (Crisp: 2003, pp. 756-8). Crisp considers compassion to be a function of the identification of a *lack* of the potential beneficiaries. Nonetheless, Crisp's account does not allow him to put forward a less arbitrarily threshold than "eighty years of high-quality life on this planet" (2003, p. 762)*.* For Freiman, we have to raise individuals up to the level at which they are content with the bundle of goods at their disposal, and afterwards "relax" priority given to those under the threshold (thus, Freiman arguably upholds a combination of Casal's positive thesis and Shields' shift thesis) (Freiman: 2012, p.33).

The most plausible versions of sufficientarianism, however, are those that employ multiple thresholds. The point is that this strategy is better suited to avoid what Shields calls the indifference objection to sufficientarianism: "sufficiency principles are implausible because they are objectionably indifferent to inequalities once everyone has secured enough" (2012, pp. 104-5). Closely related to the indifference objection is the well-being discontinuity thesis implied by versions of strong sufficientarianism[[14]](#footnote-14): small changes in the level of well-being sometimes are morally important while big differences are somewhat irrelevant (that is, small benefits that can bring a person over the threshold bear moral significance, while big benefits for person already above the threshold do not matter) (Benbaji: 2006, p. 338).

Along these lines, Huseby proposes two thresholds, one taking the form of a "minimal threshold of welfare" (including basic means to subsistence, which in turn have to fulfill basic human needs: clothing, shelter, food) and the other of a "maximal sufficiency threshold" (corresponding to the level of welfare at which a person is content) (Huseby: 2010, p.181). On the other hand, Benbaji employs 3 different thresholds in order to show why well-being discontinuity is morally valuable: the personhood threshold, the pain threshold and the luxury threshold (Benbaji: 2006, p. 338). The viability of the first threshold hinges on what he calls "person-making capacities"; if someone is around that minimal level of well-being, even a small loss of well-being would lead to her losing the status of a person. The pain and the luxury thresholds are time-indexed, *i.e.* they are taken into account at the moment of the evaluation. The pain threshold is loosely based on "the poverty line that is sought by welfare states...a person is below this threshold if it is predictable that his life would be filled with pain and frustration as a result of a lack of material resources" (Benbaji: 2006, p. 342). To this he adds a third, luxury threshold, which highlights the last level at which priority should be assigned to benefiting a person: "once a person is above the threshold, priority considerations are irrelevant" (Benbaji: 2006, p. 342).

There are several reasons why the sufficiency view is an attractive one. First of all, it incorporates what Benbaji refers to as the *Basic Intuition,* the consideration that at least some priority should be given to benefiting people who are absolutely badly off (Benbaji: 2005, p. 311). Secondly, it is a subject-centered conception of justice (Buchanan: 1990). Such conceptions "focus on the needs and nonstrategic capacities of the person and upon our collective ability to satisfy those needs and develop those capacities, not upon the bargaining power of the individual", unlike reciprocity-based conceptions of justice (Buchanan: 1990, p. 233).

One of the biggest problems the sufficiency view is the accommodation of well-being discontinuity. In order to accomplish this, Shields resorts to the concept of "satiable reasons":

*„One way of accounting for the discontinuity in the rate of change of the marginal weight of our reasons to benefit people is by appealing to satiable reasons that cease to apply to benefits once people have secured enough. If some weighty non-instrumental reasons for benefiting people only apply up to a certain point then the overall profile of reasons we have to benefit people will change at that point. Those who have not secured enough can call on the weight of more and different reasons than those who have secured enough. To account for the shift, then, we must have some reasons that are satiable"* (Shields: 2012, p.112).

One distinct advantage of Anderson's democratic equality is that the demands of equal standing are seen as satiable and thus could endorse a reason for shifting our moral considerations. As Shields gives an example in the field of education, "once someone has enough self-realization for Rawlsian autonomy [...] we have a change in the nature of our reasons, a point beyond which an individual cannot claim for more assistance on the grounds of Rawlsian autonomy" (Shields: 2015, p. 56). Similarly, once someone has been brought to a level of well-being adequate for standing as an equal in society, our moral reasons for benefiting that persons would indeed become weaker, according to the Shift thesis.

In order to see whether someone has reached that level of well-being, Anderson resorts to the metric of capabilities (1999). For the purposes of the paper I need not provide a defense of the capabilities approach, and I will simply take for granted Anderson's proposal (see Dumitru: 2018 for a defense of the capabilities approach against welfarist, resourcist and objective list metrics). What I intend to do next is to show how reparatory justice can constitute an epistemic source for distributive justice. I argued in the previous sections that reparatory justice can provide the means for assessing whether someone's level of well-being can be traced to her choice or to a wider, historically-sensitive operationalization of her "circumstances". The specific form of sufficientarianism that I have in mind is one with two thresholds, the first neglecting the problem of responsibility and the second accounting for it in a novel way, that incorporates the epistemic input of reparatory justice. Whether a person has reached the first or the second threshold is established by resorting to the capability approach, though we discuss about different types of capabilities. Robeyns distinguishes between *capabilities* in general, *basic capabilities* and *fundamental capabilities.* Basic capabilities refer to the freedom to do "some basic things". These are "crucial for poverty analysis; while in rich countries well-being analysis would rather also include capabilities which are less necessary for physical survival" (Robeyns: 2000, p.8). Fundamental capabilities are "the deeper, foundational, more abstract, capabilities", that are made up of a set of less foundational capabilities, depending on circumstances and on the capability in discussion (Robeyns: 2000, p. 9). The example that Robeyns puts forward is the following: the fundamental capability of health and physiological well-being consists of a number of different less foundational capabilities, some of which are basic (avoiding premature death, having access to food and water), and others non-basic (having access to a gym, having the means to avoid stomach pain or head aches, etc.) (Robeyns: 2000, p.10). Nussbaum's list of capabilities is for example made of fundamental capabilities (life, bodily health, emotions, etc.), which are detailed as consisting of the capabilities to "live to the end of a human life of human length", "not dying prematurely" (these make up the fundamental capability of life for instance) (Nussbaum: 2003, pp. 41-2).

The lower threshold consists of basic capabilities, while the superior threshold of not-basic capabilities. For instance, the capability of having a shelter is for all intents and purposes a basic capability. The capability of living in the house in which you grew up is a not-basic capability. Thus we arrive at the following version of sufficientarianism (Dumitru: 2017)

*Benefiting people below a minimal threshold is to be given absolute priority. Between thresholds, strong responsibility-catering prioritarian considerations apply: if there are sufficiently numerous people, benefiting them is more important than raising an inferior number of people over the superior threshold. This holds only if there is reasonable expectation that they can in the future be raised over the superior threshold. Furthermore, this holds only if the persons have not incurred well-being losses due to their own action. Above the threshold, utilitarian considerations apply[[15]](#footnote-15). Throughout, Pareto optimality considerations apply, with two exceptions: the absolute priority given to those below the threshold, which trumps trivial losses of those betwen thresholds and considerable losses of those above the maximal threshold; second, a sufficiently large number of people with the prospect of being raised over the maximal threshold trumps a trivial loss of those above the maximal threshold, and, if the number is sufficiently high, considerable losses. I understand the Pareto principle here in a weak sense: a distribution is weakly Pareto superior to another if there is at least one individual better and no individual worse off in the former than in the latter. Since good and bad off are given by individuals’ positioning in respect to the thresholds, this prevents at all times the possibility of one individual falling below a sufficiency threshold.*

What the proposal implies is a focus on giving priority to improving the state of those who are badly off and "are not substantially responsible for their condition in virtue of their prior conduct" (Arneson: 2000, p. 340). Similarly to Arneson's proposal, my account sets out to "improve people's life prospects, tilting in favor of those who are worse off, and in favor of those who have done as well as could reasonably be expected with the cards that fate has dealt them" (2000, p. 349). Unlike Arneson, I separate the moments when we should account for responsibility. Thus, the *abandonment of negligent victims objections* raised by Anderson against luck egalitarianism (1999, p. 295) does not apply to my proposal. If an accident occurs where a negligent driver has been injured, we need not inquire into the causes of the accident prior to helping individuals. Even if the non-responsible person hit by the negligent driver needs minor medical care, the moral obligation is to help the driver, in order to raise him over the minimal threshold. Furthermore, even if there were 10 or 100 non-responsible persons, we would still have to take care of the driver first. Secondly, my proposal is sensitive to numbers over the minimal threshold and, moreover, it is concerned with attaining good enough levels, unlike non-aggregative prioritarianism or a lexicographical reading of the difference principle[[16]](#footnote-16), which would be insensitive to whether a level of threshold is reached or not pursuant to the intervention. Moreover, my proposal eschews successfully the *tyranny of aggregation* objection raised against other sufficientarian proposals or against non-aggregative prioritarianism. Tungodden and Fleuerbaey provide the example of Jones, who is trapped under an electrical equipment in the transmitter room of a World Cup watched by hundreds of thousands of people. Rescuing him would interrupt the transmission, which would bring discomfort to a sufficiently large number of people so that Jones' major discomfort (even the risk of death) would be outweighted (Tungodden and Fleuerbaey: 2007, p. 2). Under my account, the Pareto-optimality considerations preclude losses or gains that would bring individuals under either of the two thresholds.

Responsibility considerations kick in at the evaluation of the maximal threshold. Given the epistemic input of reparatory justice, responsibility is operationalized as a wider version of Dworkinian capacity control view. Past injustices matter, and they invite us to reconsider whether someone's well-being can really be traced back to his decisions or to his circumstances. Someone's apparently bad choices might be a factor of a persistent (Sher: 2005) or enduring (Spinner-Halev: 2007) injustice. As mentioned beforehand, Sher and Spinner-Halev show that there are two types of wrongs: those occurring in the past and those that translate into the failure to rectify past injustices. This second kind of wrong is that which affects the well-being of many descendants of past injustices, and this is the epistemic input of reparatory justice that I am concerned with in this paper.

**5. Who are the duty-bearers?**

The nature of obligations and the issue of how these arise have been much debated in the literature (see Miller: 2001 for an illuminating discussion). One novel view on the origins of obligations had to do with the fact that we incur these whenever we benefit from injustice (even if we are not the ones who have originally caused it) (Pogge: 2005; Butt: 2007; Knight: 2013). For Pogge, the fact that through our global institutions we "foreseeably reproduce misery and death" means that as citizens of developed countries we violate the negative rights of citizens of underdeveloped or developing countries (2005, pp. 55-6). Butt argues that receipt of benefits pursuant to an injustice can "confer remedial obligations upon a moral agent" (Butt: 2007, p. 135). As Miller defines the concept, to be remedially responsible "for a bad situation means to have a special obligation to put the bad situation right, in other words to be picked out, either individually or along with others, as having a responsibility towards the deprived or suffering party that is not shared equally among all agents" (2001, p. 454). Injustice creates a "distortion" in the scheme of distribution which has to be remedied (Butt: 2007, p. 135). Butt's argument is that the beneficiaries of injustice should pay compensation up to the level until which they no longer can be considered beneficiaries of that injustice (2007, p. 142). While Thompson argued those born due to past wrongs should regret the fact that their existence is a result of unjust rather than just actions (2000), Butt's position is that we should do more than that: "we are right to feel guilty at benefiting from others' misfortunes, precisely because this suggest that we have not fulfilled our compensatory obligations" (2007, p. 145). Similarly to Sher's or Spinner-Halev's positions, Butt suggest that the moral disvalue of benefiting from injustice should lead to a reevaluation of what historical injustice is. Historical injustice, in this new light, is "a gigantic perpetuation of the injustice itself, locking successive generations into compensatory obligations which, in their turn, are not met" (Butt: 2007, p. 151).

Benefiting from injustice represents thus a way in which someone acquires obligations to other individuals. If several generations have passed since the initial wrong and the injustice has not been alleviated yet, an argument inspired by Butt would probably endorse measures that place the weight of compensatory measures on those individuals who have historically benefited from others' misfortune: "if no one is willing or able to make up for the distortions within the scheme of distribution, then the duty falls to those who are benefiting from the distortions in question" (Butt: 2007, p. 143). What I take this to mean is that, but for a few clear-cut cases in which you can easily identify the victim and the aggressor (and which would usually be intragenerational and fall back onto other principles, such as legal liability), it will usually be a matter of counterfactual assessment in order to see who should pay for the compensations. Thompson argues that, although an injustice committed against a family line does not entitle those disadvantaged to a larger share of the societal pie than members of any other group of currently disadvantaged people, "it creates a special obligation that should be fulfilled a society that aims to be just" (2001, p. 135). For instance, fiscal measures could be designed so that the upper tail of the distribution would pay very high taxes, as those belonging to it have been advantaged by past institutional frameworks and past injustices.

Ultimately, it is through our institutions that we must instantiate the principles of reparatory justice, both in regard to the first step of the account and in regard to the distributive step. The institutional turn, in the symbolic reparations case, shows that no citizen will have to go in public and take responsibility for what his ancestors have done. Instead, the society as a whole will design institutions that make apologies for past wrong, thus bringing both descendants of victims and descendants of aggressors on positions of equal standing. Furthermore, compensatory reparations are to be accomplished through (re)distributive measures that target those individuals who have been beneficiaries of injustices, though it will not nominalize them.

We thus seem to have both prudential and principled reasons for favoring an institutional conception of reparatory justice, in opposition to an interactional one (for the distinction see Pogge: 1992[[17]](#footnote-17)). Prudentially, people might be reluctant to stand out as descendants of aggressors. From a principled standpoint, this might actually preclude them from reconciling their psychic with the fact that they have been born because of an injustice. Institutional apologies should soothe their conscience while avoiding this. Another pragmatic reason is that, although people are the ultimate bearers of moral duties, we have justifications such as the potential emergence of collective action problems or shirking from one's responsibility for favoring an institutional route to justice (Nussbaum: 2005, p. 213). In the special field of historical injustice, several authors have argued that institutions should represent the site of justice given the fact that they have greater longevity that individuals; Fishkin mentions for instance governments (1991, p. 95).

**6. Applying the account and setting the research agenda**

Suppose a 2000-year old world. In the year 1600 Howard and several other co-nationals, in their rush to accumulate wealth, left their home country and arrived in the beautiful island of Myriakos. At that time, Myriakos had been inhabited for hundreds of years by several culturally related tribes. Noivis and his family are Myriakos people whose whole village is destroyed by Howard. Fast forward 100 years and Noivis' descendants are living in abject poverty, while Howards' family line continues to thrive. The new rulers of the country decide to change its name in Toweria. It is in this year that Natasha, Howard's grand-grand-niece, and Bruce, Noivis' grand-grand-nephew, get married. Fast forward to year 2000. The cultural identity of the Myriakos has been almost completely decimated. Most citizens of Toweria are of mixed descendancy. Few Myriakos continue to live in an isolated part of the capital. Although Toweria is a liberal democracy by all accounts, the Myriakos are perceived with fear and contempt by the rest of the population. Their rights are ensured, but few measures are taken to improve their situation, as the leaders and the rest of the citizens believe that they are not as hard-working as they are, and not as willing to get better life prospects. Jarvis is the descendant of Bruce and Wanda. He has a good life, a successful career and lives in one of the richest parts of the capital. One day, as he wanders on his way home, he is interpellated by a Myriakos who asks him for money. Having been told all his life that the Myriakos have no one else to blame than themselves for their plight, Jarvis continues his way. At home, however, he starts to reevaluate the situation. There have been mentions in the history books on how the country has been colonized. These are scarce, and given that the Myriakos culture has not survived to the present day, it must not have been that important so that it would be recollected. Nonetheless, he knows that he is a descendant of a colonist and a Myriakos. He realizes that he could not have been born in the absence of the initial injustice. Although he enjoys his life, he cannot help but wonder if it is right that he owns his existence to injustice. Fast forward once again to year 2010. Jarvis has become a successful politician, and his programme, of remembering the Myriakos culture, has been successful. Apologies for the past wrongs have been advanced by Toweria's government. In year 2011, the state changes its name once again to Myriakos, the ultimate recognition of past wrongs.

Nonetheless, Myriakos people continue to have low levels of well-being. Consider now Harold, a Myriakos man who been living on the streets after losing on bets lots of money. According to my conception of reparatory justice and to a capacity-control view of responsibility, Harold, who does not identify himself as a gambler, but was urged to do this as he lacked education and could not secure a job, shoudl perhaps be helped. If Harold had not been a Myriakos, the principles of reparatory justice would not have kicked in. Perhaps there are other moral considerations for helping Harold, but these do not interest us here. In order to complicate the example, suppose that Jarvis comes up with two potential policies, which could help either 100 non-Myriakos citizens or 10 Myriakos citizens. The non-Myriakos are at a level of well-being of 75 units, and could be raised to 90 if policy A is adopted. Otherwise, they might suffer losses of 24 units. 50 is the minimal threshold and 90 is the maximal threshold. The Myriakos are at 51 units, with policy B having the potential of exponentially increasing their well-being up to 90 and policy A bringing them down 1 unit. If the view were silent on the exercise of responsibility, policy A would be favored. But if they had made the same life choices (they are all like Harold), only that the non-Myriakos could have had some low-paid jobs that they felt demeaning, while the Myriakos could not secure even those positions, then policy B would be favored. Under circumstances in which injustice is not superseded, the view recommends that we make distributive movements that sometimes favor less people, if this could repair some past wrongs. If we take responsibility exercise into account, adopting policy A would mean to perpetuate the injustice and thus commit a new wrong against the Myriakos. On the other hand, though unfortunate, leaving the non-Myriakos at that level would not constitute an injustice (on the other hand, it would have been an injustice had the non-Myriakos fallen under the minimal threshold, according to my account). Furthermore, my account specifies who should be the duty-bearers for distributing to the Myriakos. Although they might have other distributive duties, citizens who have just obtained the citizenship, for instance, should be exempted from paying the taxes needed in order to finance the transfers to the Myriakos, as they had neither been responsible in committing the initial wrong, nor have they contributed to perpetuating the plight of the Myriakos (this is in line with Haydar and Overland's argument that "those who have a strong requirement to alleviate harm are supposed to take on a bigger part of the burden of such alleviation as compared with those who do not have such a requirement" (2014, p. 350)).

The example shows the bilateral epistemic relation between distributive and reparatory justice mentioned above. A conception on distributive justice (sufficientarianism) specified what distributions are just and which are not. A conception of reparatory justice motivated the claim that distributions should look one way and not another. Reparatory justice brought an epistemic support to a distributive pattern and showed why a seemingly less just distribution would have to be preferred to a seemingly more just distribution. Of course, motivating all these was a particular conception on responsibility, the Dworkinian capacity control view. Furthermore, the account clarifies who should bear the bulk of the burden; according to this view, the duty-bearers are those who have benefited from injustice, which is in general "morally relevant for generating a moral requirement to alleviate the harm caused by the injustice in question" (Haydar and Overland: 2014, p. 352)[[18]](#footnote-18).

The account that I propose could be employed in a variety of real-world cases. I believe it would lead to desirable and intuitive conclusions in most of the cases, especially in those regarding post-communist transitions (elsewhere I apply the account on the case of nationalized Romanian houses). Nonetheless, one does not have to agree with my specific proposal. Given the modular nature of reparatory justice, it can be constituted in a plethora of novel ways, that would provide significant insights into how we usually think about justice. There are 3 main ways in which my arguments in this paper could be developed: 1) showing that reparatory justice has substance, contrary to my claims; 2) accepting the lack of substance thesis, but refusing the sufficientarian view endorsed in this paper; 3) accepting the lack of substance thesis and the sufficientarian view and applying the account in real-world cases.

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1. It is in this light that I interpret Damșa's argument that "the justification of measures adopted during the transitional period by post-communist regimes cannot be solely based on a declaration by these regimes that such measures represented transitional justice. After all, in order to avoid the arbitrariness of classifying any measure taken as transitional, the post-communist governments have to justify the measures they adopt *on the basis of other theories of justice than transitional justice***"** (2016, p.55, my emphasis). Reparatory justice can be integrated both in intergenerational theories of justice and in theories of transitional justice, given its modular nature mentioned beforehand. [↑](#footnote-ref-1)
2. This observation is not necessarily novel. Brophy (2003, p. 74, *apud* Damşa: 2016, p. 148) notes that “on the issue of definition, reparations advocates have been remarkably silent. There has been little systematic effort to define them”. [↑](#footnote-ref-2)
3. Carranza argues that there is “an existing paradigm of reparative justice”, and that this is a component of the transitional justice process (2009, p.2). [↑](#footnote-ref-3)
4. On a sidenote, this might be compatible with the "rights as trumps" view upheld by Dworkin (1984). [↑](#footnote-ref-4)
5. This particular example is taken from Dumitru (2018). [↑](#footnote-ref-5)
6. One could give the following counterexample: perhaps it would be better if a child (even a child suffering from a handicap) were born, than if she were not born at all. The comparison would then become one between 0 well-being and very low levels of well-being. However, I follow here Broome’s conception of two neutral levels of existence. One refers to already existing persons and has the purpose to determine whether “an extra period at a higher level than this is better for the person than not living it, and an extra period at a lower level is worse for her than not living it” (2004, p. 234). The other tries to see whether as a whole a life is worth living: “call a life neutral at a time if it is just on the borderline between being worth living and not worth living at that time. Call a life constantly neutral if it is neutral at every time. We might say that a life as a whole is worth living if and only if it is better than a constantly neutral life” (2004, p. 69). If that child were to have a life worse than a constantly neutral life, then it might have been better if she had not been born in the first place. Here Broome refers to the personal value of a life and not to its general one (2004, p. 67). That is, we bracket aspects such as the state of the parents' well-being pursuant to that child’s being born (see Broome: 2004, p. 66 for the personal-general value distinction). It is worth mentioning that one of the reasons I have for avoiding a prioritarian approach is that it overstates the importance of the general value at the detriment of the personal value. [↑](#footnote-ref-6)
7. We might go even further. Let's take the case of a country which underwent a soft house nationalization process, in which everybody could keep 2 houses. Would those persons be entitled to monetary compensation or to reparations in-kind? Under a simple Aristotelian corrective justice conception, perhaps the answer would be a positive one. According to the account put forward here, material reparations have to be balanced with distributive concerns. Those persons may be entitled to symbolic reparations, but not to monetary or in-kind reparations. [↑](#footnote-ref-7)
8. Vallentyne (1988) argued from a rule-utilitarian position that there is a class of teleological theories that are sensitive to past wrongs in evaluating well-being. [↑](#footnote-ref-8)
9. I added this qualifier as Dworkin mentions that equality of resources does not belong to the class of “starting-gate” theories, which mix equality of initial resources with a *laissez-faire* attitude pursuant to that moment (Dworkin: 2002a, pp. 87-90) [↑](#footnote-ref-9)
10. Although, as an aside, Dworkin did not consider himself to be a luck egalitarian: 2003, p.190. [↑](#footnote-ref-10)
11. For Dworkin, interpretive arguments are those that "can find support only in other moral and ethical principles" (2011, p. 240). This is similar to the prior-principle strategy of argumentation against moral principles put forward by Sen (1979, p. 198). [↑](#footnote-ref-11)
12. Butt argues that we should reconsider the origins of today's advantages "and to consider at what expense to others they were procured" (2007, p. 151). [↑](#footnote-ref-12)
13. The priority view holds that a benefit is more valuable the worse off the recipient is (Segall: 2014, p. 2). Slightly rephrased, "it is morally more important to benefit hte people who are worse off" (Parfit: 1991, p. 22). [↑](#footnote-ref-13)
14. Benbaji makes a distinction between weak and strong sufficientarianism. Weak sufficientarianism has 4 claims: benefiting people below the threshold matters more the worse off those people are; above the threshold, no priority is to be given; as the threshold is approached, the prioritarian considerations decrease to zero (the well-being continuity thesis) and both above and below the threshold benefiting people matters more the more of those people are and the greater the benefits in question are (Benbaji: 2006, pp. 329-330). On the other hand, strong sufficientarianism rejects the well-being continuity thesis as well as the utilitarian proviso. [↑](#footnote-ref-14)
15. For an argument, see Hirose (2014, p. 12). [↑](#footnote-ref-15)
16. Leximin is vulnerable to the tyranny-of-non-aggregation objection, which states that considerable sacrifices for those in middle or high ranks are acceptable as long as the lowest-ranked individuals gain even trifle benefits (Tungodden and Fleuerbaey: 2007, p. 1). [↑](#footnote-ref-16)
17. Briefly, institutional conceptions target institutional schemes, while interactional ones "postulate certain principles of ethics, first-order principles in that they apply directly to the conduct of persons" (Pogge: 1992, pp. 48-50). [↑](#footnote-ref-17)
18. Haydar and Overland believe that disgorging significant part of the benefits is a moral necessity only in cases in which not only someone has contributed from injustice, but also other "boosting conditions" hold (2014, p. 350). Some examples of boosting conditions are that the original perpetrator of the wrong cannot make the compensation to the victim, that disgorging the benefits "would not put the beneficiary in a worse position than she was before the acquisition of the benefits in question" and that the beneficiary is not guilty of having brought about the unjust state of affairs (2014, p. 353). I believe that what I have called Pareto optimality responds partially to the 2nd boosting condition identified by Haydar and Overland. [↑](#footnote-ref-18)