

The Structural Diversity of Historical Injustices

Jeppe von Platz and David A. Reidy

I. Introduction

Recent years have seen an increase in the number and boldness of calls for reparations, both internationally and intranationally. On the international front, the United Nations' "World Conference against Racism, Racial Discrimination, Xenophobia and Related Intolerance" in 2001 in Durban, South Africa, generated a reparations demand by African states against European and North American states for the "crimes against humanity" of African colonialism and the slave trade. On the intranational front, reparations claims have been pressed in the United States by African Americans, native Hawaiians, Native Americans, and others. And reparations have been made to Japanese Americans for forced internment during World War II. In this essay, we develop and defend a general theoretical framework for the analysis of reparations claims, whether international or intranational.

We proceed as follows. We first discuss the nature of reparative justice generally and the mix of backward- and forward-looking considerations relevant to the adjudication of any reparative justice claim. We then develop a principled basis for a tripartite taxonomy of reparative justice claims. This taxonomy sorts reparative justice claims according to key structural features of the historical injustices from which they arise. By attending to the different structural features of different kinds of historical injustices, we then generate what we call the "field of reparative justice." This field represents the differing possible minimal and maximal weights that might be assigned to forward- and backward-looking considerations in the adjudication of different sorts of reparative claims. It does not represent anything like an algorithmic decision procedure. Nor does it represent a patterned distribution of appropriate outcomes or remedies for different sorts of reparative claims. Instead, what it represents is that as we move from reparations claims arising out of simple entitlement violations to reparations claims arising out of morally defective systems of entitlement, the minimal weight that must necessarily be given backward-looking considerations decreases, while the maximal weight that may be given to forward-looking considerations increases. This shifting range of minimal necessary and maximal possible weights to be assigned backward- and forward-looking considerations respectively marks the field of reparative justice. This, we hope, will be made clear enough in due course.

II. Reparations and Justice

Political philosophers traditionally distinguish between distributive and corrective justice. Distributive justice concerns the basic distribution of rights and responsibilities, benefits and burdens, resources and obligations within a just society. Since this distribution will be effected through the rules constituting basic social institutions, the political philosopher's task is to identify the substantive principles constraining the choice of such rules, not to determine literally who gets what, for that will be determined by what individuals do, what moves they make and so on, under the rules. The general aim of distributive justice is to secure a determinate social order the basic rules of which situate and empower each person just as she or he ought to be. Distributive justice is therefore generally if not exclusively forward-looking.

Corrective justice concerns the problem of noncompliance with the rules constituting a distributively just social order. Thus, if a rule securing persons in personal private property is among the rules of a distributively just social order, then corrective justice concerns the problem of theft. The general aim of corrective justice is to return to the status quo prior to the instance of noncompliance. Corrective justice is therefore generally if not exclusively backward-looking.

Like corrective justice, reparative justice is unavoidably backward-looking, at least to some degree. It presupposes and is responsive to a past wrong or injustice. But like distributive justice, reparative justice is also unavoidably forward-looking, at least to some degree. It seeks the repair of moral relationships ingredient in and necessary to a shared and just future.

To the extent that reparative justice necessarily looks backward to a wrong or injustice done and demands a public accounting, it is like punitive justice.¹ But reparative justice is not punitive justice. While reparations claims are responsive to past wrongdoing or injustice, they are not claims for punishment. The African nations that called on European and North American nations to make reparations for colonialism and the slave trade at the U.N. Conference in Durban were not calling for punishment. They were calling on European and North American nations to take responsibility for those injustices and to undertake to repair their relationship to African nations. Further, punitive claims are made in the name of the community and for the sake of communal goods. Reparative claims, on the other hand, are made in the name of victims and for the sake of their moral relationship to wrongdoers. While the community might facilitate reparations, the aim is to repair the moral and material damage to the relationship between victim and wrongdoer inflicted by the particular wrong or injustice done.

Since reparative claims are not punitive, it is tempting to think that they are purely compensatory in nature, asserting only a claim to compensation for damage inflicted or harm suffered. But while reparations claims often include a compensatory element, they are not predicated simply on the suffering of some harm or loss. They are predicated on wrongdoing or injustice. They give rise to compensatory demands to the extent that the wrongdoing itself imposed a harm or loss and

compensation is necessary or conducive to making amends and repairing moral relations between the parties. But it is the wrong that is fundamental. This makes reparative claims different from compensatory claims. Consider a compensatory claim made against a collective insurance scheme for losses incurred as a result of a hurricane, or against a driver who nonnegligently caused harm to others under a no-fault liability regime. Here the claims are predicated simply on the harms or losses suffered. And while they are backward-looking vis-à-vis the harm or loss, their normative force is a function of whether the insurance scheme or no-fault liability regime is distributively just as an institutional distribution of harms or losses suffered regardless of wrongdoing. Unlike purely compensatory claims of this sort, the normative force of reparative claims is always a function of backward-looking considerations tied to the underlying wrong. Harms or losses without wrongs do not generate reparative claims. The distribution of liability for them is fundamentally a matter of forward-looking considerations of distributive justice.²

Even when reparative claims demand compensation, as they often do, they never demand only compensation. An apology or some further reparative act is always required. Reparative justice aims not at a just distribution of the costs of various harms or losses. It aims rather at the repair of moral relationships broken by wrongdoing or injustice. Indeed, as a response to a reparative justice claim, mere compensation can be offensive, an assertion that while the victim might have been harmed, she was not wronged.³

Though reparative claims are not punitive in nature, they do share with punitive justice an emphasis on the public recognition of past wrongdoing or injustice. Though they are not purely compensatory in nature, being triggered by wrongs or injustice and not harms alone, they do typically demand compensation. Reparative claims are distinctive in another regard. They impose demands on the victims in whose name they are made. Since the repair of a moral relationship is not something wrongdoers can effect on their own, reparative justice demands of victims a willingness to venture forgiveness or at least reconciliation in response to a wrongdoer's reparative efforts at making amends.

The Janus-faced nature of reparative justice, at once looking both backward and forward, is no doubt a significant part of the best explanation of both the structure and persistence of disagreements over reparative justice claims. Some theorists take a sort of noninstrumentalist stance and privilege backward-looking considerations, working from what Iris Young dubs a "liability model." On this model, reparative claims obligate determinate wrongdoers to repair their relationships with those they have wronged. Others take a more instrumentalist stance and privilege forward-looking considerations, working from what Young calls a "social connection model."⁴ Young develops this model to deal with past structural injustices with respect to which it is not possible to single out a determinate wrongdoer. Such injustices obligate all those who participate in the relevant social structures or practices to take responsibility for ensuring that those structures or practices become just. The focus is not on repairing a particular relationship

between a determinate wrongdoer and a victim, but rather on repairing a social structure or practice in a more holistic fashion and thus securing appropriate moral relations between those participating in it.

The liability and social connection models each have their merits. Yet given the Janus-faced nature of reparative justice claims, neither can do full justice to any particular reparative justice claim, let alone all reparative justice claims.⁵ No matter how much a particular claim lends itself to the liability model, forward-looking considerations will always carry some weight. And no matter how much a claim lends itself to the social connection model, backward-looking considerations will always carry some weight. What is needed, then, is a theoretical model able to acknowledge the important differences underwriting Young's distinction between the liability and social connection models, yet accounting for the fact that backward- and forward-looking considerations are in play, though perhaps to different degrees, in all reparative justice claims.

III. The Structural Diversity of Historical Injustices

Every reparative justice claim presupposes a past wrong. But not all past wrongs are alike. And their differences are not simply a function of their gravity or severity. They differ structurally, and this makes a difference when it comes to understanding the reparative claims to which they give rise.

We begin by noting the difference between entitlement (or liability) and desert.⁶ Within any rule-governed social practice or institutional arrangement, whether a game, a domestic polity, or contemporary international relations, the rules determine that to which each participant is entitled (or liable). You are entitled to your salary by virtue of the rules of contract law, the market economy, and so on. You are entitled to vote by virtue of the rules governing citizenship, suffrage, and so on. Your other entitlements will similarly depend on the rules of the social practices in which you participate.

The rules giving rise to entitlements within any social practice or institutional arrangement will typically track and express its underlying desert- or value-basis. The rules of soccer ought to make it likely that the team that plays best wins. And the rules of criminal trials ought to make it likely that the guilty are convicted and the innocent acquitted. For a variety of reasons, it is rarely possible and sometimes undesirable to design rule-based systems of entitlements so that entitlements perfectly express and track their underlying desert- or value-basis. Sometimes the team that plays best loses. And sometimes the guilty are acquitted and the innocent convicted.

As between entitlements and their desert- or value-basis, it is the latter that is analytically primary. It is for the sake of the latter that the former exists. Normatively, entitlements and their desert- or value-bases operate on different planes. You deserve something, say a particular mode of treatment, just in case you possess some property or attribute in light of which that mode of treatment is, naturally and apart from any system of entitlements, especially appropriate or

fitting. Thus, the quickest or most coordinated team deserves praise. But unless it scores more goals, it is not entitled to the prize. And women or blacks deserve the right to vote. But unless they fulfill the conditions of suffrage, they are not entitled to it.

To deprive someone of that to which they are entitled is a wrong. If someone takes your salary from you or prevents you from voting, you will have suffered an injustice. You will have been denied something to which you were entitled by virtue of the rules governing a social practice in which you were a participant. If the team that scores the most goals is denied the prize, it is done an injustice. Many reparative justice claims arise out of just such entitlement violations. Kuwait's claims against Iraq for its 1990 invasion arise out of such an entitlement violation. The rules constitutive of the international order as a shared social practice entitled Kuwait to immunity from such an invasive act of external aggression. Kuwait was wronged and Iraq owes Kuwait not just compensation for harms done or losses suffered, but an apology and whatever else is necessary to make amends and repair the torn relationship as a moral relationship of mutual recognition and trust within a rule-governed international order. This is the simplest and most straightforward sort of reparations claim: the entitlement violation.

But many contemporary reparations claims are not based on entitlement violations. They are predicated not on some historical violation of a determinate entitlement given by the rules constitutive of an established social practice or institutional arrangement, but rather on some structural moral failing of those rules taken as a whole and as the basis for a system of entitlements. There are three distinct sorts of failings of interest here. First, an otherwise acceptable system of entitlements may exclude some persons who, according to its manifest and morally acceptable desert- or value-basis, it clearly ought to include. Second, a system of entitlements may fail to track or express its manifest and morally acceptable desert- or value-basis across the full range of its application. It may simply fail to connect with that basis in an acceptable way. Third, a system of entitlements may be predicated on, may track and express, a morally corrupt or unacceptable desert- or value-basis.

Each of these three moral failings just mentioned counts as a wrong or injustice. Yet each is structurally distinct, and none have the structure of an entitlement violation. Of the three just mentioned, the second and third share some common ground. Each involves a system of entitlements morally defective as a whole (either because it fails across the board to track and express its manifest and morally acceptable desert- or value-basis or because its manifest desert- or value-basis is morally corrupt or unacceptable). So, while we identify four kinds of historical injustice in all (including entitlement violations), the third and fourth may be grouped together because they involve social contexts that are in some sense completely or pervasively unjust. Thus, we have three divisions, the third of which subdivides in two, yielding four structurally distinct kinds of historical injustice: (1) entitlement violations; (2) unjust exclusions from an otherwise morally acceptable system of entitlements; (3) systemic failures on the part of a

system of entitlements to track or express a morally plausible desert- or value-basis; and (4) the systemic embodiment in a system of entitlement of a morally corrupt or unacceptable desert- or value-basis. Since we have already discussed entitlement violations, we must turn now to the remaining three kinds of historical injustice.

The second kind of wrong involves an exclusion from or distinction within a system of entitlements (or liabilities). Such exclusions or distinctions can be unjust, morally indefensible, inconsistent or incoherent, if they fail to track, to capture and express, the manifest desert or value basis of the rule-governed social practice. Consider the case of American slavery.⁷ In 1810, slaves were denied nothing to which they were entitled by the rules, constitutional, legal or otherwise, constitutive of the American polity. They were treated unjustly of course. But they were not denied that to which they were entitled within the American polity. Rather, they were wrongly excluded from the system of entitlements given by the rules constitutive of the American polity. Their exclusion was a wrong because the manifest desert- or value-basis of the American polity as an institutionalized system of entitlements was then as it is today: the possession by persons natively born of something like Rawls's two fundamental moral powers. It is by virtue of our possessing these two powers—to form, revise, and pursue a determinate conception of one's own good, and to propose and subordinate the pursuit of one's own good to fair terms of social cooperation with others—that we think it appropriate to treat one another as free equals when it comes to the cooperative undertaking that is our body politic. The rules constitutive of our institutionalized polity, and thus the system of entitlements they underwrite, should reflect and express this desert- or value-basis. And this they have done, though only partially, imperfectly and with uneven progress to be sure, from the start. But slaves were excluded from this system of entitlements. The moral arbitrariness of their exclusion is and has long been evident. Given the desert- or value-basis of the system of entitlements realized by the American polity, blacks should have been included from the start. As early as 1810 there were many free blacks effectively exercising their legal rights as citizens in the Northern states and elsewhere. "Race" was a morally implausible basis for exclusion from the beginning. That is the meaning of the compromise of the Constitution, according to which slaves were to be counted as three-fifths of a person for the purposes of determining populations, and thus representation in Congress, and Congressional authority to regulate the slave trade was withheld until 1808.

We can say of the antebellum United States, then, that it wrongly or unjustly excluded slaves (and as the Civil War approached eventually almost all blacks) from its institutionalized system of political and legal entitlements (and liabilities). It did not violate the entitlements of slaves or blacks. Rather, the system of political and legal entitlements failed adequately to express and reflect its manifest desert or value basis. It did not fail completely, however. The exclusion of blacks was indefensible. But apart from this exclusion (and similar exclusions, e.g., the exclusion of women from much of political and economic life), the system of

entitlements reflected and expressed (imperfectly to be sure) a manifest and morally plausible desert- or value-basis. After entitlement violations, unjust exclusions of this sort constitute our second kind of historical injustice. Our third and fourth kinds concern more complete moral failures of rule-governed social practices or systems of entitlement.

The third kind concerns a system of entitlement's failure across some full range of its application to track and express its manifest and morally plausible desert basis. Consider the case of legal punishment. Morally culpable persons naturally deserve blame. This is the desert- or value- basis of the practice we call criminal law, of which legal punishment is a central, even defining, feature. We have this practice so as, *inter alia*, collectively to be able to express public condemnation. Whether any person is liable (or "entitled") to be punished under this practice is just a matter of whether they have been found legally guilty according to the rules constitutive of it. But whether the practice is itself morally defensible or sound is another matter. That depends on whether we have good reason, first, to affirm the manifest desert- or value-basis of the practice and, second, to think the practice justifiable in light of that desert- or value-basis.

Let us suppose we have good reason to affirm the desert- or value-basis of our practice of legal punishment. People sometimes deserve blame and social condemnation. Do we have good reason to think the practice, which includes centrally legal punishment, justifiable in light of that basis? Perhaps not. Legal punishment is more than just the public expression of collective condemnation. It is also the coercive imposition of hard treatment. This is perhaps one way to express condemnation, but it is not the only way. So it must be justified. If it turns out that we have morally insufficient reasons for this central feature of our practice of legal punishment, then the practice, or at least a core feature of it, would be unjustified across the full range of its application, even though its desert- or value-basis is sound. Then, even if we punished only those judged legally guilty according to the rules, so that we violated no liabilities or entitlements, we would still work an injustice by punishing persons, by imposing hard treatment on them as a condition of legal guilt. We would still wrong them. And we would still wrong them even if they were morally culpable and deserving of public condemnation. We would wrong them by subjecting them to a system of punishment that leaves them liable to more than just public condemnation, that leaves them liable to hard treatment as well, without sufficient reason. Worries of a similar sort might be raised about other rule-governed social practices. For upon critical inquiry any rule-governed social practice may turn out, or its central features may turn out, to be unjustified, notwithstanding its manifest and morally plausible desert- or value-basis.⁸

A fourth kind of historical injustice arises when the manifest desert- or value-basis of a rule-governed social practice, institutional arrangement, or system of entitlements is itself morally corrupt or unacceptable. This may or may not be evident to anyone participating in or subject to the practice or institution or system of entitlements. Those participating in or subject to it may mistakenly think it grounded in a morally sound desert- or value-basis. Or they may not think

critically about their social practices, institutional arrangements, or systems of entitlement, except to notice entitlement violations. Nevertheless, a practice, institutional arrangement, or system of entitlements may be morally defective because of its manifest desert- or value-basis regardless of the beliefs of those participating in or subject to it. The Aztec practice of human sacrifice was morally defective in this way. So too was the international order of the fifteenth and sixteenth centuries, with its permissive stance toward conquest and colonialism. So too was the globally ubiquitous practice of slavery in its many forms from the ancient world up to the seventeenth or eighteenth centuries. In these cases, the problem with the relevant social practice or institutionalized system of entitlements (or liabilities) was not that it failed to track its desert- or value-basis adequately. The problem *was* its desert- or value-basis. These practices wronged persons (and in the case of conquest and colonization, persons organized as “peoples”) because they systematically expressed and reflected desert- or value-bases that were morally impoverished or otherwise implausible. Our present treatment of animals, institutionalized in various ways as a system of entitlements expressing and reflecting only the use and exchange value of animals, may likewise rest on a morally corrupt or inadequate desert- or value-basis.

We have then at least four structurally distinct kinds of historical wrongs or injustices. Instances of each kind may give rise to a reparative justice claim. Now, if these structural differences did not make a difference, then our analysis to this point would be of little interest. But we think they do make a difference. In particular, we think that for any given reparations claim, the range of possible weights to be assigned backward- and forward-looking considerations will be determined by the structure of the underlying injustice.

IV. The Field of Reparative Justice

With respect to reparative claims arising out of simple entitlement violations, backward-looking considerations must be given great weight. Exactly how much weight will vary from case to case. But in no case of an entitlement violation will it be insignificant. This will often lead to a judgment to the effect that a more or less exclusively backward-looking reparative act is what is required in the case at hand. The reparative act appropriate to typical thefts within a system of entitlements not itself distributively unjust to any significant degree will be simply a return of stolen property coupled with an apology or some other reparative act undertaken to restore the moral trust and recognition between the parties as participants in the system of entitlement. This is what the liability model described by Young gets right.

But it does not follow that all entitlement violations will underwrite a demand for a reparative act of this “return to the status quo ante” sort. And the reason why is that it does not follow from the fact that backward-looking considerations must be given very great weight in entitlement violation cases that forward-looking considerations are to be given no weight. No matter how weighty the backward-

looking considerations, forward-looking considerations will always have some weight. They are never completely irrelevant, not even in the sort of typical theft case just suggested. And it is always possible that in some case the salient forward-looking considerations will prove sufficient to justify demanding a reparative act aimed at something other than a strict return to the status quo ante. Stolen property may be acquired on good faith many years later by a *bona fide* purchaser and subsequently held for a length of time sufficient to make reasonable a strong expectation of continued possession on the part not only of the purchaser but of the community at large. Or it may be put to a use which if disrupted would adversely impact economic efficiency or distributive justice to some significant degree. These forward-looking considerations—the utility of protecting expectations or considerations of economic efficiency or distributive justice—may be weighty enough in any particular case to justify demanding by way of a reparative act something other than a strict return to the status quo ante. As with backward-looking considerations, we cannot say in advance exactly how weighty the forward-looking considerations will be with respect to any particular reparative claim arising out of an entitlement violation. The exact weights will depend on the facts of the case. What we can say is that the maximum possible weight of forward-looking considerations will be limited by the minimum necessary weight given to backward-looking considerations.

With respect to reparative claims arising out of straightforward entitlement violations, then, there is a range of, sometimes competing, reasons or considerations over which judgment must be exercised. The boundaries of this range are defined by the minimum necessary and maximum possible weights to be assigned to both backward- and forward-looking considerations respectively. For reparative claims arising out of entitlement violations, backward-looking considerations are never insubstantial and are often very substantial. Indeed, they may sometimes seem to be the only relevant considerations. Forward-looking considerations, on the other hand, are never particularly weighty and are often insubstantial. Indeed, they may sometimes seem to be altogether irrelevant. Accordingly, there is a great temptation to see entitlement violations as giving rise uniformly to a single reparative claim to a strict return to the status quo ante; the wronged party should receive (one is almost tempted to say “is entitled to”) that to which she or it was entitled.

The debates over familiar reparations claims tied to entitlement violations—for example, claims arising out of the Nazi theft of property from Jews, the Iraqi invasion of Kuwait, various illegal political activities undertaken by Latin American governments during the 1970s, the American internment of Japanese citizens during World War II, and so on—reflect this structured relationship between backward- and forward-looking considerations. Of course, each claim is unique and the exact relationship between backward- and forward-looking considerations, and thus what reparative justice demands, will vary from case to case. But it makes no sense in any of these cases to say that the backward-looking considerations are insubstantial or negligible and that the only thing of any real impor-

tance is realizing distributive justice here and now as everyone moves forward together into the future. Nevertheless, and popular temptations notwithstanding, it also makes no sense in any of these cases to say that forward-looking considerations are completely irrelevant. In all these cases, the main challenge is to determine just what the necessarily weighty backward-looking considerations demand without neglecting the relevant forward-looking considerations.

Consider now a reparative justice claim of the second kind, one arising out of a partial or asymmetric exclusion from a system of entitlement indefensible in light of that system's manifest and morally plausible desert- or value-basis. American slavery is one paradigm example here. But there are plenty of others. A recent case in Atlanta concerning the systematic exclusion of only black police and fire officers from a special municipal pension fund is another.⁹ The historic exclusion of women from various systems of entitlement provides yet further examples. One might also imagine claims of this second kind arising out of unjust exclusions from systems of entitlement within the international order—for example, the exclusion of certain polities from entitlements within the system of international trade.

With respect to reparative justice claims of this second kind, backward-looking considerations must be given significant weight. Determinate wrongs are done to identifiable parties, even if the wrongs are not entitlement violations. But precisely because the wrongs done are not entitlement violations, the minimal necessary weight to be assigned backward-looking considerations is less than in the case of a straightforward entitlement violation. One reason for this is that the wrong done does not include the frustration of institutionally cultivated expectations on the part of victims. Another is that without an entitlement violation, there is no straightforward entitlement basis either for assessing the compensation needed to make amends and repair the wrong done or for grounding the transfer of the reparative justice claim from one generation to the next, via a kind of inheritance, after the last generation of wrongful exclusion.

Just as the minimal necessary weight to be assigned backward-looking considerations is less in this case than in the case of a straightforward entitlement violation, so too the maximal possible weight to be assigned to forward-looking considerations is greater. Because the wrong done is structural or systemic, its correction must also be structural or systemic, as rightly suggested by Young's social connection model. This puts forward-looking considerations of distributive justice in play to a greater degree than in the case of a simple entitlement violation.

Because backward-looking considerations will sometimes yield so little determinate content in cases of this sort, while forward-looking considerations seem so unavoidably significant, there may be a temptation to deny that reparative justice claims arise in cases of this sort, or to insist that the only thing that matters is moving forward together to realize distributive justice under conditions of mutual trust and recognition, so that any reparative justice claims are lost just as soon as distributive justice is secured.

We think it would be a mistake to yield to this temptation. Injustices of this second kind give rise to valid reparative justice claims. American slaves were not entitled to citizenship prior to the Reconstruction Amendments. But from 1776 forward, they deserved it in light of the manifest and morally plausible desert- or value-basis of the American system of entitlements from which they were arbitrarily and inconsistently (though constitutionally and legally) excluded until the Reconstruction Amendments (and legally and illegally excluded in many quarters until the end of Jim Crow). They were done an injustice, and they were done that injustice by the members of the American polity, then only “whites.” The fact of this historical injustice between a determinate wrongdoer and victim, between “whites” and “blacks” as parties to an ongoing moral relationship, generates a backward-looking demand for repair. Even if blacks today were fully integrated into a distributively just United States, American blacks would still be owed an apology and at least a symbolic act of compensation as a matter of reparative justice. This is not an entitlement-based reparations claim against whites literally inherited by all and only the descendants of black slaves (for, say, the value of lost wages). It is instead a group-based claim on the polity as a whole, where the claimant is black as historically constituted through the exclusion of American slavery, and the polity is the corporate body historically controlled by whites. The key point here is that while in cases of this sort forward-looking considerations may be given greater weight, and backward-looking considerations need not be given as much weight (as compared with cases of straightforward entitlement violations), cases of this sort still give rise to valid reparations claims with a substantial backward-looking component. Of course, the exact balancing of backward- and forward-looking considerations, as well as the determination of the concrete reparative acts required to satisfy the demands of reparative justice, must be left to practical judgment on a case by case basis. Too much depends on variable facts for any further general prescriptions to be made.

Consider now reparative justice claims arising out of either our third or fourth kind of historical injustice, subjection to an institutionalized system of entitlement indefensible either because it fails to track or reflect its manifest and morally sound desert- or value-basis or because its manifest desert- or value-basis is morally corrupt or unacceptable. In these sorts of cases, the wrong or injustice done is systemic or holistic—all are wronged. Accordingly, these sorts of cases seem to invite analysis within an exclusively forward-looking approach along the lines of the social connection model described by Young.

There are many examples of these sorts of historical injustice. Our current practice of legal punishment (as hard treatment) in the United States may fail as a system of entitlement (or liability) to track or reflect adequately its own morally sound desert- or value-basis. And many of our current institutionalized practices regarding the treatment of animals may presuppose a morally corrupt or unacceptable desert- or value-basis. These examples we have already introduced. The institutionalized practices of slavery and the slave trade as well as colonialism and conquest worldwide during the fifteenth and sixteenth centuries constitute yet

further examples. These were grave historical injustices. But they were neither entitlement violations, nor exclusions from an existing system of entitlements indefensible in light of that system's manifest and morally plausible desert- or value-basis. Instead, in these cases, the wrong or injustice done was more systematic and all-encompassing.

While entitlements varied from polity to polity, slavery and the slave trade were not uncommon and were legally recognized throughout most of the world during the fifteenth and sixteenth centuries, as they had been off and on since ancient times. Those vulnerable to slavery included debtors, criminal offenders, prisoners of war, members of nondominant religious or ethnic groups, women, children, the disabled, and so on. While slavery was less common in Europe by the sixteenth century, European pagans and Muslims were still vulnerable. Many Irish Catholics were enslaved by the conquering British during the seventeenth century. Slavery was not uncommon in Africa through these centuries, with Africans often holding Africans as slaves. And there was a substantial slave trade from Africa eastward to the Middle East and beyond. Slavery was and had long been practiced in Japan, India, China, and pre-Columbian South America. The slow but steady worldwide abolition of slavery began in the seventeenth century and reached a peak in the nineteenth. But slavery persisted in Egypt until the latter years of the nineteenth century and in Saudi Arabia and Mauritania well into the twentieth century.¹⁰

The institutionalized national and international systems of entitlement during the early modern period simply allowed for slavery. That does not mean that slavery was then just. It was not. It was unjust. But when it comes to the structure of this historical injustice, there are two possibilities. On the first possibility (our third sort of historical injustice), the relevant national and international systems of entitlement would simply fail across the board to track or reflect their manifest and morally plausible desert- or value-bases (say, the dignity of persons). On the second possibility (our fourth sort of historical injustice), the manifest desert- or value-bases of these systems of entitlement would themselves be morally defective (say because they lacked a conception of the dignity of moral personality). We suspect that the injustice of slavery and the slave trade worldwide during the fifteenth and sixteenth centuries is better understood as an instance of the latter (our fourth) sort of historical injustice.

The same point may be made with respect to conquest and colonization within the international order during the early modern centuries. While the international order was not devoid of rules conferring entitlements (and liabilities) on peoples or states, there was no international entitlement to be free of attack, conquest, colonization, and so on. No people or state was entitled to this simply as a people or state. All were vulnerable, at least formally. It is possible that this was a systemic failure to reflect and track the manifest and morally plausible desert- or value-basis of the international order. But it seems more likely that the international order was not then predicated on a morally plausible desert- or value-basis (say one tied to the moral status of persons or peoples, or the right to collective

self-determination, or some other desert- or value-basis we would today affirm as the moral foundation of the international order).

Both slavery and the slave trade, and conquest and colonization, of the fifteenth and sixteenth centuries, constitute historical injustices. Yet neither was an entitlement violation nor a wrongful partial exclusion from an otherwise morally sound system of entitlements. The injustices done were more complete and systemic. They wronged everyone.

But they did not harm everyone, or at least did not harm everyone in the same ways or to the same degrees. Some, including much of Africa, suffered much worse than others. Some, including much of Europe, suffered less or even benefited from the absence of a morally sound system of entitlements. These harms may provoke reparative justice claims. But reparative justice claims arise, properly speaking, only out of wrongs, not merely harms. And the wrongs in question here can be understood only as systemic or structural wrongs of the most complete sort.

With respect to reparative justice claims like these, the minimal necessary weight to be assigned backward-looking considerations approaches the zero point. Everyone was wronged (albeit through no determinate act) and no one in particular was the wrongdoer. Accordingly, the maximal possible weight to be assigned to forward-looking considerations expands. Indeed, forward-looking considerations may seem so to dominate such reparative justice claims that backward-looking considerations may be fully ignored. But we think it would be a mistake to think that backward-looking considerations may ever be fully ignored in any reparative justice claim, even where the wrong was systemic in nature.

The harms African nations or peoples disproportionately suffered as a result of slavery and the slave trade and conquest and colonization in the fifteenth and sixteenth centuries were harms rooted in injustice. They were imposed not by nature or God, but by humans, albeit humans acting under conditions of systemic injustice. Responding to the historical injustices in question here cannot be merely a matter of moving forward to a distributively just future as if these harms did not occur or were not the result of human agency. In both theory and practice, distributive justice must be secured over and against a morally neutral default condition. And this history has not left us with. So these past harms must be acknowledged. But more to the point, they must be acknowledged as harms rooted in historical injustice. Something is lost if we treat the asymmetric distribution of harms from past injustices as if they were not different from an asymmetric distribution of harms worked through the forces of nature or imposed by God. Considerations of distributive justice cannot account for this sense that something is lost here. Only considerations of reparative justice can do that.

But the reparative claim to which this history of the fifteenth- and sixteenth-century systemic injustice gives rise is not one properly lodged by African nations against those nations that managed to benefit from or at least escape from being harmed by the unjust system of entitlements. Still, it seems correct to say that the world owes African (and likely some Middle Eastern, Asian, and South American)

nations a public acknowledgment of and some reparative response to the fact that Africa and its peoples were harmed more severely than others by the systemic injustices of slavery and the slave trade, conquest and colonization, during the fifteenth and sixteenth centuries. What the appropriate response is we do not here venture to say. But to insist that the world owes African (and other) nations only distributive justice seems to us to take a too cavalier or dismissive an attitude toward past injustice: an attitude that fails to accord backward-looking considerations their minimal necessary weight.

Figure 1 represents the analytic framework we have presented above. It represents what we call the field of reparative justice. A few remarks regarding its interpretation are in order. The upper boundary of the field indicates maximal possible and minimal necessary weights to be assigned backward- and forward-looking considerations respectively. The lower boundary indicates, conversely, the minimum necessary and maximal possible weights to be assigned backward- and forward-looking considerations, again respectively. The field of reparative justice expands or contracts based on structural features of the kind of historical injustice giving rise to the reparative claim in question. The field does not represent the exact weight of or relationship between backward- and forward-looking considerations for any particular reparations claim. It represents only a possible field of judgment. Nor does it represent any moral metric or algorithm for determining what a valid reparations claim is a claim to by way of compensation or reparative act.¹¹ What a valid reparations claim requires by way of reparative act must be

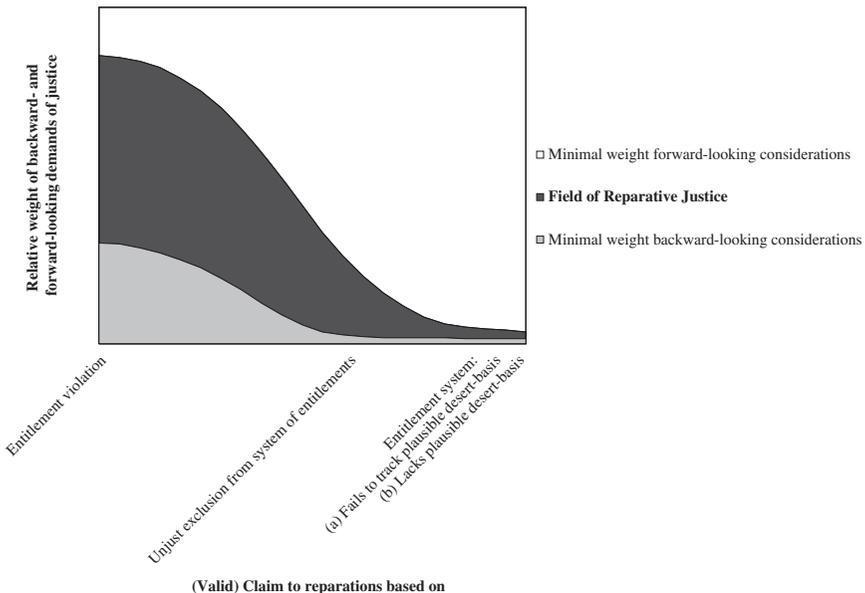


Figure 1. Field of reparative justice.

determined always on a case by case basis once the exact weight of and relationship between backward- and forward-looking considerations is itself determined. On these matters there is no substitute for deliberative judgment. Our point is simply that for all reparative justice claims that deliberation is properly bounded by a field of reparative justice and that the boundaries of this field are given by the underlying structure of the historical injustice in question. Neither backward- nor forward-looking consideration may ever be driven fully from the field of reparative justice.

V. Conclusion

If we are correct about the field of reparative justice, then attending to the underlying structure of historical injustices is the first step in the moral adjudication of any reparative justice claim. This is the most obvious conclusion to draw from the foregoing.

A less obvious conclusion concerns the construction and philosophical evaluation of theories of domestic and international justice. Our analysis suggests that the relationship between reparative and distributive justice is complex and varied, and the latter cannot easily be fully isolated from the former in the real world, a world always given to us by and with a history. Thus, it is not just reparative justice that is more complex than it may at first appear, it is also distributive justice.

In his recent *The Law of Peoples*, John Rawls offers principles of justice to ground and guide the development of an international law worthy of our fidelity. Yet he nowhere discusses reparative justice, even though he devotes a third of the book to issues in nonideal or partial compliance theory. This has caused some consternation and protest. Some have suggested, by way of defense, that this alleged defect may be corrected by simply inserting into the law of peoples a principle of reparative justice. While we are sympathetic to Rawls's international vision and thus inclined to come to its defense, and while we agree that the law of peoples remains incomplete in the absence of a principle or principles of reparative justice, we suspect that the task of integrating a morally sound theory of reparative justice into the law of peoples is a daunting task. This is in large part because the field of reparative justice is richer and more varied than has heretofore been acknowledged.

Notes

¹Punitive justice concerns both the public condemnation of past wrongdoing as well as the collective imposition of hard treatment on wrongdoers in response to their past wrongdoings. Interestingly, it seems likely that neither backward- nor forward-looking considerations can be fully excluded from any adequate account of punitive justice. And thus punitive and reparative justice are alike not only in that they both necessarily look back to past wrongdoings, but also in that they both necessarily look forward to distributive justice as well. For the necessity of taking full account of

both backward- and forward-looking considerations in punitive justice, see Anthony Duff, *Punishment, Communication and Community* (Oxford: Oxford University Press, 2001).

- ²For discussion of the difference between harms and wrongs, see Rahul Kumar, "Who Can Be Wronged?" *Philosophy and Public Affairs* 31, no. 2 (2003): 98–118.
- ³When Japan offered monetary compensation without apology for the abuse of Korean "comfort" women in World War II, this offer was turned down by the victims on the grounds that it was itself offensive. For discussion, see part 3 of Roy L. Brooks, ed., *When Sorry Isn't Enough: The Controversy over Apologies and Reparations for Injustice* (New York: NYU Press, 1999). On the shortcomings of the "compensation paradigm" generally, see Gerald Gaus, "Does Compensation Restore Equality?" in *Injustice and Rectification*, ed. Rodney Roberts (New York: Peter Lang Publishing, 2002), 83–104; T. L. Zutlevics, "Reconciliation, Responsibility, and Apology," *Public Affairs Quarterly* 16, no. 1 (2002): 63–75; Debra Satz, "Reparations and International Injustices: On the Limits of the Compensation Paradigm," in *Reparations*, eds. Rahul Kumar and Jon Miller (Oxford: Oxford University Press, forthcoming) (this volume collects essays originally presented at a conference on reparations at Queen's University, Canada, in 2004; all references to essays from this volume are to the essays as originally presented at the conference).
- ⁴For Young's distinction between "liability" and "social connection" models, see Iris Young, "Responsibility and Global Justice: A Social Connection Model," *Social Philosophy and Policy* 23, no. 1 (2006): 102–30. For examples of those who give priority to the liability model, see, e.g., Janna Thompson, *Taking Responsibility for the Past: Reparation and Historical Injustice* (Cambridge: Polity Press, 2002); David Miller, "Inheriting Responsibilities," in *Reparations*, ed. Rahul Kumar and Jon Miller (Oxford: Oxford University Press, forthcoming); and Elazar Barkan, "Restitution and Amending Historical Injustices in International Morality," in *Politics and the Past: On Repairing Historical Injustices*, ed. John Torpey (Lanham, MD: Rowman and Littlefield Publishers, 2003), 91–102. For those more inclined toward a social connection model, see, e.g., Jeremy Waldron, "Redressing Historic Injustice," *University of Toronto Law Journal* 52, no. 1 (2002): 135–60; Christopher Kutz, "Justice in Reparations: The Cost of Memory and the Value of Talk," *Philosophy and Public Affairs* 32, no. 3 (2004): 277–312; and Leif Wenar, "Reparations for the Future," in this volume.
- ⁵Most writers on reparations eventually acknowledge the implausibility of both purely backward-looking "liability" and purely forward-looking "social connection" approaches. Attempts to unite backward-looking, noninstrumentalist and forward-looking, instrumentalist reasoning within a single, unified approach to reparations can be found in Kok-Chor Tan, "Colonialism, Reparations and Historical Injustice," and Pablo de Grieff, "Justice and Reparations," both in *Reparations*, eds. Rahul Kumar and Jon Miller (Oxford: Oxford University Press, forthcoming); and in Chandran Kukathas, "Responsibility for Past Injustice: How to Shift the Burden," *Politics, Philosophy, Economics* 2, no. 2 (2003): 165–90.
- ⁶For a fuller discussion of the distinction, see Joel Feinberg, "Justice and Personal Desert," *Doing and Deserving* (Princeton, NJ: Princeton University Press, 1970), 55–94.
- ⁷The academic literature devoted to theorizing and critically assessing reparations claims arising out of American slavery is substantial. See, e.g., Bernard Boxill, *Blacks and Social Justice* (Totowa, NJ: Rowman and Allenheld, 1984); Angelo J. Corlett, *Race, Racism and Reparations* (Ithaca, NY: Cornell University Press, 2003); Randall Robinson, *The Debt: What America Owes Blacks* (New York: Dutton Publishing, 2000); Roy L. Brooks, *Atonement and Forgiveness: A New Model for Black Reparations* (Berkeley: University of California Press, 2005); and Thomas McCarthy's recent essays: "Vergangenheitsbewältigung in the USA: On the Politics and Memory of Slavery," *Political Theory* 30, no. 5 (2002): 623–48, and "Coming to Terms with Our Past, Part II: On the Morality and Politics of Reparations for Slavery," *Political Theory* 32, no. 6 (2004): 750–72.
- ⁸We can highlight the difference between unjust exclusions and this more complete or systemic form of injustice in the following way. Suppose our current practice of punishment, of imposing hard treatment on the legally guilty, is itself justified by reference to the moral culpability of criminal offenders. And then suppose that we mistakenly excluded women from the class of the potentially

morally culpable; we make a moral mistake with respect to whether they satisfy the desert- or value-basis of our system of punishment. We would then unjustly exclude women from an otherwise morally sound system of institutional entitlements, or in this case, liabilities. This is a structurally different case than the more systemic injustice done by making all the legally guilty liable to hard treatment that cannot itself be justified in light of the manifest desert- or value-basis of the criminal law.

⁹The story was widely reported. For the National Public Radio account, go to: <http://www.npr.org/templates/story/story.php?storyId=5199194>.

¹⁰And, of course, slavery exists even today. But today it is always an entitlement violation, since slavery is globally illegal, prohibited by all national systems of law as well as established international law.

¹¹Also, we do not claim that the types of injustice we have identified exhaust the range of structural differences between historical injustices. There may be other or more fine-grained differences of import.

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