

REPARATIONS FOR U.S. SLAVERY AND JUSTICE OVER TIME¹

Many philosophers treat the reparations question as another occasion on which the non-identity problem has bite. They worry about the temporal distance between the crimes and wrongs committed and the proposed moments of reckoning with them, taking it to be a serious issue that –to put it starkly – the original victims of slavery are dead, and the original perpetrators are no longer alive either.² Whereas, I worry that there are no genuine philosophical problems here and that even refuting them may do little but to perpetuate interest in detours and red herrings. This is a real hazard, but nonetheless reflecting on the persistent cultural anxiety about reparations and the past may help to clarify the point of reparations and to reveal aspects of the intimate connection between our self-conception and group-identification.

The fact that the institution of U.S. slavery officially ended long ago might initially be thought to be philosophically relevant for four reasons: First, it might be thought that repair is not possible because the injured are no longer alive. Second, it might be thought that repair is not possible because the perpetrators are not alive: since ‘we’ did not participate in the crimes ourselves, we cannot sincerely make reparations for that which we did not do. Third, issues of possibility aside, some complain that it is unfair for contemporary agents - who, with respect to slavery, are non-involved innocents - to have to bear burdens for the morally criminal behavior of others who acted in the past.³ Fourth, the individual identities of the descendants of slaves depends upon slavery; were it not for the institution of slavery and the social conditions it produced,

people would not have met and conceived when they did and different children would have been born than in fact were. Some suggest that this poses a problem for reparations claims: even if the descendants of slaves are worse off than others and their condition is attributable to the lasting effects of slavery, no particular individuals may claim that they are worse off than they otherwise would be *because* of slavery, because they would not even exist but for slavery.⁴

With respect to this last concern: Although similar arguments about identity in a variety of contexts have given thinkers as esteemed and various as Derek Parfit and Frederick Hayek pause, I do not regard them as serious obstructions.⁵ As I have argued elsewhere, in the context of future generations, the so-called non-identity problem trades on an implausible, economically-influenced, caricature of what constitutes a harm or a wrong.⁶ On this view, a claim that one has been harmed or wronged is undercut by a demonstration that the overall position of the person or the overall outcome of the episode in question is beneficial; the benefits outweigh the costs and so there is no harm or no wrong. If existence isn't a nightmare, then the conditions productive of the overall good of a human life cannot be considered an overall harm.

Such a view is, I believe, deeply mistaken. I submit that it is more plausible to think that harms and wrongs may occur when certain conditions of a sufficiently bad sort are inflicted or when boundaries of respect are transgressed; salutary outcomes of other sorts cannot nullify or negate these transgressions. An insult to one's self-respect does not disappear if it accidentally results in a financial windfall. One may be harmed or wronged even if in some large accounting book, one is made no worse off overall. So, slavery may be the condition of a person's existence, the life is overall a good, and still,

its effects can harm and deliver the sort of disrespect about which a person may legitimately complain.

The second weakness of this position is that it is not only the descendants of slaves whose identities depend on these past crimes. It is probably fair to say of each of us -- the descendants of slaves, the descendants of slave-owners, the descendants of beneficiaries of slavery, descendants of abolitionists, immigrants, and the descendants of immigrants -- that we each owe our existence to conditions produced by slavery and to events stemming from slavery's morally criminal nature. The descendants of slave-owners and other beneficiaries of slavery may not have participated in slavery directly, but inheriting the benefits of slavery as well as a debt - a moral liability to apologize and to make repair - is arguably the condition of their/our existence; so on this argument, they could not claim to be made worse off for it. If these considerations jeopardize the individualistic claims of individual descendants to repair, they seem also to jeopardize the claims of individuals to resist reparations. One might object: we are worse off financially than we would otherwise be if we must pay reparations as compared to if we are not so obliged; but so too the descendants of slaves are worse off if reparations are not made as compared to if they are. I do not doubt that we could play this game all afternoon but I doubt we would learn much because the exchange is beside the point. What is central to any case for reparations is not the idea that some particular individual, considered in isolation from a social group but merely considered as a descendant of someone involved in the institution of slavery, either owes or is owed reparations. Rather, reparations arguments are more centrally concerned with the relations between, and histories of, important social collectives and how this affects individuals.⁷ Reparations arguments

regarding slavery seek reparations from a collective social group and direct them at another collective social group (although there may be overlap in membership); they do not seek to blame or to hold particular individuals responsible.

So let us return to what I take to be the more serious, although also misbegotten, objection that the institution of slavery ended before our lives began. If the harmful effects of slavery lay entirely in the past and our society were fully egalitarian, I might agree that reparations efforts were unnecessary. But the notion that there are no contemporary victims of slavery is laughable. African Americans suffer in palpable, material ways that have strong genealogical connections to the institution of slavery, the past material deprivation it involved, and the forms of racist hatred and insidious indifference that both were its fuel and are its heavy residue.⁸ In fact, I suspect that it is part of the lingering, damaging effect of slavery that serious reparations efforts (or some reasonable facsimile) have not been undertaken. For much of the impetus of reparations is an understandable demand that it be made explicit to this and to future generations that there is a sincere, ironclad commitment to repudiating the wrong of the past, its animating rationale, its residual effects, and its repetition.⁹

This characterization makes the point of reparations to be primarily expressive and communicative. For some, this may make it seem mysterious why apologies and abolition do not suffice -- why demands for resources form part of the movement. From the other side, reparations activists may think there is a risk that such characterizations gloss over the central notion of repair.

Tangible actions and not only words are central to the idea of reparations. But I believe this is because, and here I softpedal the problem, the break with slavery and its

ideological underpinnings has never been decisive. At this point, to achieve the expressive aim that animates reparations claims requires greater measures. To be sure, official apologies and symbolic changes (such as rebaptizing university halls and monuments named to honor slaveholders) should not be under-rated: official acknowledgment of wrongdoing, especially when it follows heavy resistance to do so, has hard-won meaning. But in light of a shameful and long history of an ambiguous separation from slavery, declarations seem to be a cheap and insufficient means to communicate sincere regret. Making real sacrifices and engaging in significant action may be necessary to communicate genuine compunction and commitment.¹⁰

As to the complaint that these crimes were committed in the past by other people: this assumes that there is no ongoing complicity with these past crimes, an assumption immediately belied by minor practices such as honoring slavery defenders and slave owners through monuments and other named structures, by much larger patterns of structural and cultural racism, and by the more general economic advantages passed on to some and not others because substantial reparations were never paid in the first place.¹¹

But, even on this assumption, the complaint assumes a sort of misplaced individualism, that somehow our collective obligation is undermined by a demonstration that no one of us is personally responsible for what occurred and that the important events happened long ago on others' watch. This objection must strike at least the lawyers among us as a little rich. Lawyers, through appeals to precedent and the like, are in the general business of directing that and how activity should be governed according to the directions of people long dead. If precedent and legislation undertaken long ago have some, albeit defeasible, hold on us, then why shouldn't we also bear responsibility for the

criminal activity of people in the past whose actions characterized and represented the ongoing institutions in which we participate? The idea that it is relevant that these are *past* crimes may result from a confusion of reparations with recriminations – as though particular individuals or present generations are to be blamed for the actions of our ancestors. This misinterprets what I take to be the impetus for reparations: a desire to address the needs of those who suffer the vestiges of past wrongs; to repudiate in a sincere and convincing way the crimes of the past as evidence of a commitment to end their continuing influence; and to forestall their repetition. To be asked to make such a commitment does not imply recrimination or any sort of individualized blame, but rather an acknowledgment of the past of a group with which we are affiliate and identify.

For the most part, reparations claims are addressed to social institutions – such as the state, universities, and companies. This is significant because these are collective endeavors meant to endure and to build on themselves over time. Our aims in these collective enterprises are to form groups that together not only achieve individualistically-understood goals more efficiently but that generate a variety of human goods and opportunities that could not be produced alone even with more time and resources. Joint collaborative efforts allow for mutual sharing, enrichment, and other goods that essentially must involve the collaboration, interdependence, and mutual vulnerability of distinct, separate minds. The achievement conditions of these goods depend upon our adopting attitudes of collective identity and pride, by taking it for granted that we together are joint authors of the product of our contributions; by recognizing that this joint product is ours to continue to build upon (not separably the product of the individual contributors). If we took the attitude (and the actions that would

follow from it) that every generation or each person starts anew (as opposed to the attitude that each generation must make its own contribution and be willing to steer us in a starkly new direction), these achievements could not occur. Universities in particular are dedicated to this view. We together, by trusting, relying upon and integrating ourselves with others' work, are building and adding to a joint pool of knowledge. The progress we make has to presuppose the work of others in the past. Through time and through collaboration with the past, we together produce insights, knowledge, and understanding of subjects at a level that could never be done individually and that even could never been done if we attempted to account strictly for each person's contribution. Similarly, we together over generations build an infrastructure, a legal, economic and social system – a state. Feelings of pride and identification substantially contribute to and reflect what is presupposed by these forms of focused joint collaboration. But if this rough and quick sketch gestures at anything like the correct model, then it should also follow that we must take on as part of our identification and acknowledge responsibility - as a group- for our bad actions in the past as well -- even if no one of us is responsible for these actions and even if we all now would forswear such actions as antithetical to our identity and commitments.¹² Thus, I believe it is not only possible for 'us' to make reparations, but also perfectly fair for us to make sacrifices to do so.

Thus, I do not think we should be troubled by the standard objections to reparations that revolve around concerns about the connections and ruptures between past and future generations. I am more bothered by a distinct concern raised by those planks of some reparations platforms that call for economic redistribution and institutional social reform as a form of reparation. I have been assuming that the African American

population suffers from economic inequality and that the suffering at least partly has its explanations in the history of slavery. But the suffering of this population, and others, deserves attention as such. It should not be a requisite for economic and social reform that the serious obstacles faced by African Americans be traced to slavery. There are other independent duties of justice to redistribute and not to leave groups behind.

It might be thought, though, that the implicit message of the reparations movement is that the reparations arguments provide an independent reason for economic redistribution, stronger than the general reasons to do economic justice that have thus far been predominately ignored. Of course, the reparations arguments may represent a political gambit – where the general obligation to share our social product has failed to motivate the country, perhaps we must turn to those reasons that appeal to the tendency to respond to blame. I hesitate about this strategy. The notion that a culpable cause is a requisite for social attention has fed a certain righteous neglect on the grounds that either the suffering part of the population is to blame or the comfortable part of the population is not. While I am loathe to indulge this impulse, I recognize that such reluctance may reflect unwarranted optimism about the future of progressive politics. Blame games may never disappear and it may be better to play them successfully than to wait indefinitely for others' epiphanies of conscience. So I do not want to challenge the pragmatics of reparations arguments although we should keep their hazards clearly in view.

From a philosophical point of view, I am more curious about whether the appeal to reparations *must* be seen as a second best move by liberals. Given that we all should engage in substantial redistribution whether the inequalities arise inadvertently from arbitrary operations of the market, geography, bad luck or from past crimes, should

history matter here? Is there an independent reason for social and economic reform that appeals to the fact that these conditions have an especially heinous history?

Although the question is philosophical, it may have practical import: if reparations arguments do not merely overlap general arguments for social justice, then questions may arise about what compensation is due and to whom. Redistributing from a motive of repair may require a greater level of compensation or a sort different in kind than redistributive motives would. Of course, reparations programs need not necessarily serve different populations than more general redistributive programs. We might start from a motive of reparation but expand the pool of beneficiaries; for example, we might announce a reparations motive for establishing a tuition-free university in an area without many higher education institutions and where many under-served African-Americans live, but allow anyone to enroll. Or, if we were concerned that African-Americans have a harder time purchasing homes than white Americans because they, on average, have a harder time qualifying for low-interest loans or have smaller nest eggs for deposits, we might establish state run low-interest loan programs with lower down payment expectations; we might establish such programs from a primary motive of reparation, but make their benefits available to all buyers below a certain income level. Although programs might be structured in this way, we should, nonetheless acknowledge that in an imperfect world of limited resources and limited political will, reparations efforts might come into conflict with other redistributive aims. If so, we need an account of whether reparations arguments have independent traction and run on an independent track or whether they just point us more vividly to our general redistributive obligations.

I start from uncertainty about this question: some of us have the sense that if real economic and social equality were in place now (which it is not), there would be little reason to pursue reparations, especially if they conflicted with redistributive obligations. On the other hand, although both failures are significant, I believe the appalling wrong of slavery is of a magnitude worse than the shamefulness involved in our failure to rectify serious economic need and stratification. In the end, I think something like the following argument has weight: the wrongs of slavery are so severe, and understandably have such deep effects across generations, that we can only recover and move forward productively by facing it squarely, by acknowledging its past horror through public measures of repudiation of some large significance, even if this involves some sacrifices to furthering other compulsory ends. And, as I suggested before, I do not think that it is an accident that we do not actually confront the hypothetical problem of asking whether reparations could be required in a context of equality. I suspect we could never have this dream problem because given our past and its partial perpetuation through denial and through ongoing racism, something significant like building a public consensus around reparations and making a large gesture, symbolic and substantive, may be required to establish the sort of mutual trust and respect necessary to sustain real equality.

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NOTES

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² See, for example, Sher (1980), Sher (2005), Simon (1974), and Thompson (2001).

³ Simon (1974), pp. 317-18. Simon argues that present-day Americans are in many ways “innocent bystanders” in the injustice their ancestors perpetrated against African Americans. Fletcher argues that holding someone responsible for a past injustice because of her ancestry violates the principle of equality of persons. See Fletcher (2002), p. 1548.

⁴ Thompson (2001), p. 117.

⁵ Parfit (1984), pp. 358-60.

⁶ Shiffrin (1999), pp. 122-23.

⁷ See also Taylor (1973), pp. 178-80. Taylor argues that the obligation to compensate for past injustices perpetrated against an entire group “does not fall upon any particular individual but upon the society as a whole.”

⁸ See e.g., Jaynes & Williams (1989).

⁹ See also Weyeneth (2001), pp. 15-16. According to Weyeneth, a central purpose of issuing “historical apologies” is to declare one’s accountability to the victimized group and commitment to change the relationship.

¹⁰ Charles J. Ogletree, Jr. argues that a central motivation behind of the reparations movement is to ensure that “all of American history be fully acknowledged, accounted for, and valued” and that such full acknowledgement connotes “something more than token acknowledgment of the centuries of suffering.” Ogletree (2003), pp. 282, 318.

¹¹ For examples of cultural honors bestowed upon past slaveholders, see Zernike (2001) and Rappleye (2006). A short discussion of alternative ways to gauge the estimated impact on current economic stratification between whites and blacks of slavery (and the failure to make sufficient reparations after the Civil War) appears in Conley (2003).

¹² See also Dworkin (1986), pp. 167-75.

REFERENCES

- Conley, D. 2003. The Cost of Slavery. *New York Times*, February 15, 2003.
- Dworkin, R. 1986. *Law's Empire*. Cambridge, MA: Belknap Press.
- Fletcher, G. 2002. The Storrs lectures: liberals and romantics at war: the problem of collective guilt, *Yale Law Journal* 111(7): 1499-1573.
- Jaynes, G.D. & R. Williams, Jr., eds. 1989. *A common destiny: blacks and the American society*. Washington, D.C.: National Academy Press.
- McConnell, M. 1992. Religious freedom at a crossroads. *University of Chicago Law Review* 59(1): 115-194.
- Ogletree, Jr., Charles 2003. Repairing the Past: New Efforts in the Reparations Debate in America, 38 *Harvard Civil Rights-Civil Liberties Law Review* 279-320.
- Parfit, D. 1984. *Reasons and Persons*. Oxford: Clarendon Press.
- Rappleye, C. 2006. *Sons of Providence: the Brown brothers, the slave trade, and the American Revolution*. New York: Simon & Schuster.
- Sher, G. 1980. Ancient wrongs and modern rights, *Philosophy and Public Affairs* 10(1): 3-17.
- Sher, G. 2005. Transgenerational compensation, *Philosophy and Public Affairs*, 33 (2): 181-200.
- Shiffrin, S. 1999. Wrongful life, procreative responsibility, and the significance of harm. *Legal Theory* 5: 117-48.
- Simon, R. 1974. Preferential hiring: a reply to Judith Jarvis Thomson. *Philosophy and Public Affairs* 3(3): 312-20
- Taylor, P. 1973. Reverse discrimination and compensatory justice. *Analysis* 33(6): 177-82.
- Thompson, J. 2001. Historical injustice and reparations: justifying claims of descendants. *Ethics* 112(1): 114-35.

Weyeneth, R. 2001. The power of apology and the process of historical reconciliation. *The Public Historian* 23(3): 9-38.

Zernike, K. 2001. Slave traders in Yale's past fuel debate on restitution. *New York Times* (August 13, 2001): B1.