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Section 5: Paper 11

National Responsibilities to Citizens: Past or Present?

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Throughout history governments have neglected, mistreated, or intentionally harmed their own citizens. In Canada this includes the denial of equal rights, the internment of Japanese Canadians during and after WWII, and the forced expulsion of the Acadians in 1755, as well as other events. In the literature on reparations, the most popular examples of harm perpetrated by a state is the capture and enslavement of Africans and the acquisition of Aboriginal lands during European exploration and colonization in North America.

These actions have often left individual people and entire cultures marginalized within society or extinct. For such grievous injustices it is important to understand who is responsible and to hold them accountable for their actions. When these actions have occurred in the past it feels no less important to determine the responsible parties, although the task itself is much more complex. Many philosophers appeal to corrective justice to defend reparations for historic injustices.¹ In these accounts the legitimacy of reparations is assumed. I am concerned that we have become blinded by the tragedy of past events and have not examined these arguments closely. To base our response to past injustices on a bad argument undermines the case for reparations, and could be considered a further injustice.

¹Some examples include Janna Thompson, "Collective Responsibility for Historic Injustices" (2006), Stephen Winter, "Uncertain Justice: History and Reparations" (2006), Bernad Boxill, "A Lockean Argument for Black Reparations" (2003), Jeremy Waldron, "Superseding Historic Injustice" (1992), and Thomas McCarthy, "Coming to Terms with Our Past, Part II: On the Morality and Politics of Reparations for Slavery" (2004).

In this paper I will examine the argument for reparative claims against nations. I will argue that when we closely examine the case for reparative justice, it becomes clear that a distributive justice account would be more effective and less problematic than appeals to corrective justice. Further, when looking at the claims of past versus present citizens upon the nation, distributive justice provides a method to determine where responsibility lies.

Reparative claims deal with harms that occurred in the past. Janna Thompson defines historic injustice as, "...wrongs committed before present members came into existence."² Stephen Winter defines historical wrongdoing as wrongdoing sufficiently ancient so that all or most of those individuals who were contemporary are now dead.³ I will use the word "historic" to refer to harms to those who are deceased. Reparations would be awarded to another in lieu of the individuals who suffered the injustice.

Thomas McCarthy (2004) claims that the moral intuition behind reparations is that when one agent has wrongfully harmed another, the perpetrator has a prima facie moral obligation to repair, so far as possible, the damage to the victim.⁴ Margaret Urban Walker says corrective justice demands a correction for what is presumed to be a deviation or departure from a standing 'moral baseline'.⁵ Under corrective justice, reparations are about a harm done and what is owed to the victims from the perpetrators. Reparations aim to correct for an injustice, and typically this is through some form of material compensation.⁶ Such compensation is usually either direct

² Thompson, "Collective Responsibility," 154

³ Winter, "Uncertain Justice," 342

⁴ McCarthy, "Coming to Terms with our Past," 752

⁵ Walker, "Restorative Justice and Reparations," 378

⁶ Another instance of corrective justice for the past is the return of items to the original owners, for example, the return of family heirlooms to Jewish families after the Holocaust. I will not be addressing these cases in this paper.

payments divided among those descended from victims, or funding for programs that target the same individuals. There are also non-monetary reparations, to which I will return later.

In this paper I am exploring the competing claims of citizens on their government. Consider the following situation: representatives from two groups meet with the Prime Minister. Group A claims that two generations ago the Canadian government overtaxed them because of their ethnicity. This group is now demanding compensation in the form of material reparations. The representative from group B claims that over the last ten years her group has become marginalised and disadvantaged. This representative argues that the government needs to take steps to alleviate this harm and work to eliminate it. An example of group A may be Aboriginal groups, and group B could be a child poverty organization. Both groups claim that the government is responsible to them. If the government only has the resources to address one of the groups, which should it choose? To which group does the government have a greater obligation? Corrective justice accounts may favour group A, while distributive justice (depending on the details of the case) may favour group B--historical mistreatment verses current disadvantage. In this paper I will examine the case for reparations in depth, and argue that this account is problematic.

In the literature on reparations for historic injustices there are two main arguments that are proposed to support and explain reparations: the Counterfactual and Inheritance arguments. To these arguments I will also consider examining historic injustices through the lens of collective responsibility, a perspective which is posed as a solution to problems in the first two arguments.

Counterfactual Argument

The Counterfactual Argument uses what we imagine would have been the case had the injustice not occurred. For example, if you were to burn down my house, then in a close possible world where my house was not burned down, I would not have had to pay for rental accommodations and would not have had to replace my possessions, make repairs, etc. By applying this counterfactual test, we can determine the extent of the damage to me, and corrective justice would require that you take on these costs. The case of historic injustice is far more complex than the house example, as often we are dealing with many individuals, and the exact causal lines from the event of injustice to today are difficult to determine. However, Jeremy Waldron (1992) claims that the counterfactual argument is integral in cases of historic injustice since the present is the way it is because these injustices have occurred in the past. We need to change the future to make it resemble the present that would have occurred in the absence of the injustice.⁷ Stephen Winter argues that it is important that the harm not be the responsibility of others, and must be reasonably foreseeable.⁸ Winter claims that, for example, current disadvantages experienced by the descendants of slaves in America were a foreseeable consequence of slavery, and thus agents can be reparatively liable.⁹

The Counterfactual Argument raises questions such as whether the current disadvantages experienced by African Americans are the result of a history of slavery, or some other factor which has occurred, either at the time of slavery, or during the 150 years or so since slavery. Beyond the inherent complexity of historical injustice, there is a further problem. The

⁷ Waldron, "Superceding Historic Injustice," 8

⁸ Winter, "Uncertain Justice," 346

⁹ *Ibid.*, 348

counterfactual argument assumes that the problem is that person or group A made person or group B worse off. The focus is on the consequence, and not the morality of the act itself. Take the following example. Perhaps A is the descendent of Africans who were brought to America as slaves. The area of Africa that these people originated from is an unstable region, plagued today by AIDS, famine, malaria, and corrupt government. Perhaps I could make an argument that A is better off living in America, with a history of slavery, than A would be living in that particular part of Africa. In America there is greater protection, equality, and opportunity. That means that in the closest possible world, A would be worse off had her ancestors not been taken as slaves. In this situation no reparations would be owed to A. In addition, it seems that the US could claim credit for saving A, her ancestors and future descendants, from a worse fate in much the same way that reparationists blame the US for the injustice. This occurs because we are determining the moral nature of an action based on consequences over the generations, as opposed to focusing on the action itself. This objection points to the limits of any counterfactual argument for reparations.

Inheritance Argument

Boxill introduces the Inheritance Argument. He relies on the idea that corrective justice is uncontroversial when applied to living agents. He argues that at the time of the abolition of slavery in the US, the American government, and those who “assisted, concurred or consented” to slavery, owed reparations to the newly freed slaves. This being the case, and since the former slaves were not given any such reparation, and supposing that we inherit rights from our parents, and grandparents, etc., it follows that the current generation of African Americans have rights to the reparations that the government owed their ancestors but never paid.¹⁰ The inheritance

¹⁰ Boxill, “A Lockean Argument,” 67

argument, notes Boxill, avoids the problems of the counterfactual argument in that it does not rely on a closed counterfactual world in which the victims were better off; in fact it does not require that the descendents of the victims be disadvantaged at all.¹¹

However, the Inheritance Argument has problems. Chandran Kukathas argues that identifying the perpetrator and the victims of historic injustice are necessary in cases of reparations.¹² When we consider injustices to racial or ethnic groups, are their descendents only those related by blood? What if they are of mixed heritage? What about adoptions? Are these children the descendents of their birth parents or their adoptive parents?¹³ Beyond questions of the identity of victim and perpetrator, or determining the counterfactuals, this approach does not claim that slavery was wrong. There is some property or rights that were supposed to be passed down through the generations and were not. When reparations are paid in that context, it sounds like the solution to a clerical error.

Collective Responsibility for Historic Injustices

Janna Thompson and Thomas McCarthy propose collective responsibility for reparations. By making a case for collective responsibility for historic injustices, we can move from tracing the causal history and exact lineage of those agents involved and move into more general terrain, thus avoiding identity issues. We can hold “whites” responsible for slavery as the descendents of slave owners, regardless of their actual causal connection. Collective responsibility can encompass the changing membership of the groups in question. McCarthy argues that the case for slavery reparations should consider the fact that that the US is a nation-state with an unbroken constitutional history and that African Americans were denied equal protection under

¹¹ Ibid., 69

¹² Kukathas, “Who? Whom?,” 330

¹³ Ibid., 335

the law for most of its history.¹⁴ The US government endures through the generations. Individual citizens now share in and benefit from an unjustly acquired and unfairly distributed national inheritance.¹⁵

Thompson argues that we have the collective responsibility to support morally reliable institutions, a collective responsibility that falls on states, corporations, churches, and other groups who can, through their decision-making and executive processes, deliberate, decide, and act. Thompson maintains that “They [these groups] ought to act responsibly, and when they do wrong they ought to make recompense. Since these collectives exist through time and, in many cases, through generations, so, it seems clear, do their responsibilities.”¹⁶ By moving to the case of collective responsibility, McCarthy and Thompson have both been able to distance themselves from issues of identifying the parties involved (the groups of importance are those that still exist) and of counterfactual claims. They do so by looking at transgenerational groups, an approach which actually changes the nature of the harm from one that occurred in the past to one that occurred to a group that exists now since the groups exist through time. This case is analogous to the one where you burn down my house. The groups still exist; thus collective responsibility makes reparations for historic injustice no longer historic.

Collective responsibility leaves certain problems to be solved. From a practical perspective, some groups will simply not exist through time. Further, identity of the group is itself complex. When identifying nations, it may be easy to claim that the Canada of today is the same as the Canada of yesterday or of fifty years ago, but claims for reparations often stretch back to a point where the identity of Canada is unclear. Looking at the example of the expulsion

¹⁴ McCarthy, “Coming to Terms with our Past,” 757

¹⁵ Ibid., 758

¹⁶ Thompson, “Collective Responsibility,” 158

of the Acadians, although perpetrated by the British, it occurred over a hundred years before Confederation (1867). In December 2003, Prime Minister Jean Chretien issued a proclamation acknowledging that the deportation of the Acadians had been wrong and unjustified.¹⁷ However, could the actions of the British before Confederation really be considered the acts of the collective that is the nation of Canada? Was this really the action of Britain or perhaps of a pre-Canada ‘nation’ that ceased to exist with Confederation, leaving no existing body as responsible?

A further problem for collective responsibility, like all the accounts which appeal to corrective justice, is that it appeals to our moral baseline under the assumption that it does not change over time. But we know this to be false.¹⁸ Thus, when we regard the past through our current moral position on slavery, human rights, or fairness, and claim that these past actions deviated from this moral baseline, we are holding people not only today responsible for the actions of others, but we are holding those in the past to a standard they did not recognize or even know about. Slavery was legal until 1865. During its abolition, people would come to realize that slavery was a moral wrong, yet it would take many more decades for the equality of all citizens to become the moral norm. Thus, we are holding people today, who are mostly unwittingly members of these groups, responsible for the actions of those in the past who were acting in accordance with their own moral baseline.

Distributive Justice and Reparations

Considering the issues with reparative justice, the case for Group B begins to look stronger. For Aristotle, distributive justice required the use of a geometrical proportion to determine what was just. The just distribution is one where the people involved get their share

¹⁷ “Ottawa Approves Proclamation on Acadians.” CTV news online. Dec 4, 2003. www.ctv.ca

¹⁸ I am not arguing for moral relativism, but that moral norms are not constant across time and location.

based on merit.¹⁹ Similarly, John Rawls' Difference Principle requires in its second premise that where there are social and economic inequalities they must be to the greatest benefit of the least advantaged members of society. Whereas corrective justice seeks to fix an unjust act, distributive justice is concerned with the just distribution of resources.

The salient details of the argument for reparations for African Americans are that this group seeks reparations in order to make up for a history that has left it in the current state of disadvantage. This disadvantage includes high rates of poverty, crime, and lack of education and other issues that are disproportionately affecting the African American population. Reparations to Aboriginal groups address a similar situation of marginalization. Both groups are suffering more than the average population in these areas, although the historical roots are different in each case.

Reparations in the form of corrective justice aim to attach a calculation to the past suffering or marginalization of such groups. The project is to determine the monetary value of this state of disadvantage that was caused by the government. However, once we determine what that compensation is, and the government pays it, the obligation to these marginalized groups is gone. Distributive justice is a constant obligation to address the needs of these marginalized members of society, until they are no longer marginalized and suffering. If our concern is the marginalization itself, then reparations, although they inform on potential causes, are ineffective.

When arguing for reparations for past injustices, we do not focus on the Spanish Inquisition. George Sher (1981) distinguishes between ancient and less ancient injustices, and concludes that the offspring of those wronged will each deserve proportionately less

¹⁹ Aristotle, *Ethics*, 5.iii

compensation, which means that over time there is little or nothing to compensate for.²⁰ It is unclear at what point injustices will disappear into the past. However, this means that there may be a time when reparations for slavery will no longer be applicable. In fact, there are those who argue that 150 years or so is already too far in the past. Instead of relying on the past and connections to the present, distributive justice focuses on what is important. We are more concerned about reparations when people are still suffering, which is one reason why reparations for the Spanish Inquisition are not being sought. The best way to simplify this issue is to rely on distributive justice. When the marginalized are no longer marginalized, our attention can go elsewhere. Until then, society, in virtue of being a liberal democracy, must focus on the injustices at hand.

Many of the theories that support reparations through corrective justice include exceptions. Boxill puts a restriction on reparations such that they cannot be exacted to the point that they harm the children of the person from whom reparations are sought.²¹ Waldron argues that the facts of the case may change over time, and when they do, the action, including acquisition of land from indigenous people, can become just.²² He says the cost of fixing these problems may have changed in the time since the injustice occurred, and that the claims about historic injustice may be, "...superseded by our determination to distribute the resources of the world in a way that is fair to all of its existing inhabitants."²³

McCarthy's case for reparations relies on the fact that African Americans were denied impartiality, which includes equal respect for each person, equal rights and liberties for all, equal

²⁰ Sher, "Ancient Wrongs," 13

²¹ Boxill, "A Lockean Argument," 173-74

²² Waldron, "Superceding Historic Justice," 24

²³ Ibid., 26

treatment under the law, and equal consideration of the interests of all.²⁴ Instead of correcting these injustices through material compensation--these injustices wherein African Americans were not granted distributive justice, it seems easier and sufficient to enact distributive justice. Reparations are problematic and require additional work. In the literature, they are overridden by claims of distributive justice, as reparations cannot threaten current projects or rights of individuals. Instead of using reparations, except in cases where they violate distributive justice, it is more effective to use distributive justice in all cases, and save historical considerations for understanding the context and cause of harms.

Objections

One objection is that, although it might be expedient to eliminate reparations and focus on distributive justice claims, is it in fact correct to do so? Does the role of reparations, which focuses on the injustice and the actors involved, serve some additional purpose that distributive justice cannot? Returning to Boxill, the purpose of reparation is to “make satisfaction” in response to the harm or damage done.²⁵ It is about facing the persons responsible for the transgression, and having them correct the injustice. As Boxill argues, even if another agent steps in and provides the victim with compensation, this is not reparation. Reparation must come from the transgressors.²⁶

Although reparation includes an acknowledgement of the harm done, a step which is important for the psychological well-being of those victimized, it does not require material compensation. Material compensation is an effort to undo the injustice, and the more remote it is in history, the more difficult it is to even understand what undoing it might look like. As I have

²⁴ McCarthy, “Coming to Terms with our Past,” 753

²⁵ Boxill, “A Lockean Argument,” 164

²⁶ *Ibid.*, 64

argued, it is difficult to calculate the amount for compensation and to identify the perpetrators and victims.

Apology, acknowledgement and memorializing are an effective means to achieve many of the goals of reparations. Waldron argues that to neglect the historic record is to do violence to the identity, and thus to the community, which it concerns. Reparations are a way for society to face its past, not to forget or deny that a certain injustice took place.²⁷ McCarthy, when looking at the creation of many reparations committees, notes that redressing past wrongs is essential to establishing conditions of justice in a society, "...scarred by the enduring and pervasive effects of those wrongs."²⁸ Monetary compensation, which will be largely symbolic due to the difficulties discussed above, however, is not necessary. To acknowledge that an injustice took place, and secure the identity of the group, apology, acknowledgement and memorializing are sufficient.

Returning to distributive justice, consider a world in which those who are the descendents of the victims of past injustice are not the ones who are currently disadvantaged in society. In this case, it is quite plausible that, while apology and acknowledgement are important for their identity and sense of community, compensation is not. Compensation seeks to correct a current problem for reasons rooted in the past. This is unnecessary and theories for reparations are far less problematic when we separate these two issues.

Conclusion

Returning to the two representatives and the Prime Minister, the resources should go to whomever is currently being harmed, regardless of the historical or non-historical cause. There are many cases where a group may have claims to both an historic injustice and is in a current

²⁷ Waldron, "Superceding Historic Injustice," 6

²⁸ McCarthy, "Coming to Terms with our Past," 751

state of harm. However, when it comes to the allocation of resources, the only relevant information is the current state of citizens.

By moving the dialogue about reparations to the realm of apology, acknowledgement, and memorializing, and current inequalities in society to the realm of distributive justice, we achieve the same end as reparations without the difficulties noted above. What we lose is the ability to be reactive to an injustice, to repay because a debt is owed, to be blamed. But blame does not disappear; it lives in the historical accounts. In those accounts, who caused the harm and to whom it was caused, can be recorded. Those who are responsible for historic wrongs will be those who were there at the time, and that burden will not be passed on to future generations whose only connection to the harm is some tenuous biological link that should never result in a failure of moral responsibility. Instead, current inequalities become the concern of current citizens. If countries fail to care for the least well off and fail to eliminate disadvantage based on characteristics such as birth, then they will be held accountable for this, not for the injustices of the past.

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