

Reparations for Historical Social Injustice

Benjamin Thompson, Department of Political Science,

McGill University, Montreal

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Abstract

This thesis concerns the justifiability of claims for reparations for historical injustice as claims based on reparative justice. The first component of the thesis aims to bring clarity to this broad topic by, firstly, describing five necessary conditions for a claim to be compelling as a claim of reparative justice and by, secondly, noting some important difficulties that claims for reparations for historical injustice tend to face in meeting these five conditions. The second component concerns the specific case of reparations to African-Americans for slavery and other past legal injustices. The thesis argues that a case for reparations based on reparative justice can meet the five relevant necessary conditions. An important aspect of this argument is the emphasis that it places on how past legal injustice put in place unjust social processes which have perpetuated to the present-day leading to contemporary African-Americans being wronged and harmed.

La présente thèse concerne le degré de justification des demandes de réparations ayant trait à des injustices historiques comme des demandes basées sur la justice réparatrice. La première partie de cette thèse vise à clarifier le sujet général en commençant par décrire cinq conditions nécessaires à une demande afin d'être crédible en tant que demande de justice réparatrice et, ensuite, en s'attardant sur quelques difficultés importantes rencontrées que les demandes de réparation pour des injustices historiques tendent à rencontrer au moment de se conformer aux dites cinq conditions. La seconde partie concerne spécifiquement le cas des réparations attribuées aux Africains-Américains en compensation de l'esclavage et autres injustices légales du passé. La présente thèse soutient qu'un cas de réparations basé sur la justice réparatrice peut rencontrer adéquatement les cinq critères susmentionnés. Un aspect important de cet argument reste dans l'emphasis mise sur comment les injustices du passé ont contribué à mettre en place des procédés sociaux injustes qui ayant été perpétrés jusqu'à ce jour, menant à une situation dans laquelle certains Africains-Américains contemporains se sont vus être heurtés.

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Chapter One: Introduction

A. Analyzing Reparations for Historical Injustice

In our name, unspeakable crimes have been committed and [they] demand compensation and restitution, both moral and material, for the persons and properties of the Jews who have been so seriously harmed.” – Konrad Adenauer, September 27, 1951¹

A year after the Chancellor of the Federal Republic of Germany (FRG) spoke these words, the FRG began its commitment to provide some redress to Jewish victims of Nazi persecution. It signed separate agreements with Israel and the Conference on Jewish Material Claims against Germany, which together required the FRG to provide resources to Israel and to provide compensation and funds for “relief, rehabilitation and resettlement” to Jewish victims of Nazi persecution.² Since these initial agreements, Germany has paid billions of dollars to hundreds of thousands of persons who suffered under Nazi persecution.³ Through such compensation, Germany has taken some responsibility for its past.⁴ And, it has done so not only through compensation, but also through demonstrably renouncing and rejecting Nazism and the policies associated with it, with this latter commitment dramatically demonstrated in 2000 when German President Johannes Rau asked for forgiveness for the Holocaust in an address before Israel’s parliament.⁵

The horrors of the Holocaust have helped produce a global “consciousness of catastrophe” or a recognition of the suffering produced at the hands of human beings. Not only

¹ This statement of Konrad Adenauer is quoted in the United States Department of Justice Foreign Claims Settlement Commission’s document, “German Compensation for National Socialist Crimes” (excerpt), p. 61.

² United States Department of Justice Foreign Claims Settlement Commission, “German Compensation for National Socialist Crimes” (excerpt), p. 62.

³ United States Department of Justice Foreign Claims Settlement Commission, “German Compensation for National Socialist Crimes” (excerpt), p. 61. These figures include compensation to non-Jewish victims of Nazi persecution. Still, Jewish victims have received the bulk of compensation.

⁴ It should be noted that Germany has been criticized both for not providing compensation to all victims of Nazi persecution and for not providing enough compensation to those victims who were given some compensation. Hubert Kim critiques German reparations along both of these lines (and others), in “German Reparations: Institutionalized Insufficiency.”

⁵ BBC News, “German President addresses Israeli parliament,” accessed at http://news.bbc.co.uk/2/hi/middle_east/645071.stm.

has the post-WWII world come increasingly to recognize human-produced suffering, but it has also come increasingly to evaluate such suffering as unjust and inexcusable by appeal to progress or some utopian future.⁶ So, the systematic harms done to ethnic and racial groups, political dissidents and others over the last few hundred years have come to be seen as grave injustices. As a result, there have been more and more demands for contemporary states and citizens to take responsibility for them through the payment of reparations and the provision of apologies, just as Germany did for its role in the Holocaust. Some prominent claims for reparations for historical injustice⁷ include, *inter alia*, those made by formerly colonized nations for colonialism and abuses stemming from it, African-Americans for slavery and/or subsequent legal discrimination, Chinese immigrants to Canada for the payment of a discriminatory immigration tax, Native peoples for a variety of past injustices, victims of Communism in Eastern Europe for the forced appropriation of their land and property, and the victims of political persecution and their descendants in Pinochet's Chile for human rights violations.⁸

The topic of this essay is the justifiability of claims for reparations for historical injustice as claims based on a notion of reparative justice. Before jumping into that specific discussion, it is helpful to provide some context for it by describing the typical common features of claims for reparations for historical injustice. Describing what is distinctive about such claims will help to illuminate some of the important differences between a claim for reparations for an historical injustice and a claim for the remediation of an injustice that occurs in our day-to-day affairs (as when Smith wrongly punches Jones or when Steve recklessly crashes his car into Jim's).

⁶ I take the phrase "consciousness of catastrophe" from John Torpey. For a concise and insightful discussion of the history of claims for reparations since the Holocaust and the intellectual and moral climate in which they have been made, see his "Making Whole What Has Been Smashed: Reflections on Reparations."

⁷ By an historical injustice, I mean an injustice that occurred in the fairly distant past. I do not delineate how long it takes for an injustice to be in the fairly distant past, but the basic idea is that justice should have been done regarding it many years ago.

⁸ For a brief, yet informative, overview of some proposed and some actualized reparative programs, see Eric A. Posner and Adrian Vermeule, "Reparations for Slavery and other Injustices," pp. 694-698.

As has already been mentioned, typical of claims for reparations for historical injustice are the demands for an apology and for some form of payment.⁹ Eric Posner and Adrian Vermeule descriptively list four other typical features of reparations claims.¹⁰ First of all, they note that (1) such payment is generally “to a large group of claimants”; claims for reparations are for fairly large-scale injustices with many victims, such as slavery or a discriminatory immigration tax. Such claims are generally (2) “on the basis of wrongs that were substantively permissible under the prevailing law when committed.” Typically, reparations are claimed for injustices that were legal at the time or were permitted by the government(s) in whose jurisdiction they took place even if technically illegal. Hence, government was complicit in such injustices. Partly as a result of this, (3) “current law bars a compulsory remedy for the past wrong.” So, reparations programs are generally a matter for legislatures rather than courts to implement.¹¹ Finally, Posner and Vermeule find that typically (4) “the payment is justified on backwards-looking grounds of corrective justice, rather than forward-looking grounds such as the deterrence of future wrongdoing.” Reparations claims are grounded on the demand that a past injustice be remedied (and the justifiability of doing so is the topic of this essay).¹² In addition to this list, claims for reparations are often based on injustices in which members of specific social groups were targeted. Slavery targeted those of African ancestry; internment during World War

⁹ According to Jeppe von Platz and David A. Reidy, claims for reparations for historical injustice “never demand only compensation” and “an apology or some further reparative act is always required,” in “The Structural Diversity of Historical Injustices,” p. 362.

¹⁰ Eric A. Posner and Adrian Vermeule, “Reparations for Slavery and other Injustices,” p. 691. N.B. the authors emphasize that these are not necessary and sufficient criteria for a claim to be that of “reparations.” Rather, they are features that claims typically referred to as reparations *often* (although not always) contain. All of the commonalities listed in this paragraph should be read as describing typical features of claims for reparations for historical injustice and not necessary conditions.

¹¹ Some of the prominent hurdles that reparations claims must overcome in court are sovereign immunity, statutes of limitations and justiciability. For a detailed account of how these factors, among others, have precluded claims for reparations from finding success in court in the United States, see Roy Brooks, *Atonement and Forgiveness: A New Model for Black Reparations*, pp. 98-140.

¹² N.B. the term corrective justice is often used in discussions of tort law. In order to avoid any connotations the term might carry from that literature, I use the term reparative justice instead.

II targeted those of Japanese ancestry; Nazi policies targeted those of many groups including Jewish persons, homosexuals and Roma; *etc.*

This last common feature is significant because it is likely not a coincidence that claims for reparations are often based on injustices that targeted specific social groups. Rather, because an injustice of the past targeted individuals based on their membership in a social group, it might remain salient many years later both to those individuals and to other members of the targeted social group. For one thing, such an injustice implied that members of a targeted social group were the appropriate objects of unjust treatment and that they were not due full moral consideration. A function of demanding reparations from the perpetrator(s) might be to help affirm the moral worth of the victims and all relevant members of that targeted social group. In addition, it might be the case that such an injustice was an important cause of the present disadvantage of a targeted social group. In which case, reparations might be significant not only to affirm the moral worth of the victims and other members of their social group, but also as a justification for ending that present disadvantage. Overall, social group membership helps to link a past injustice to the present.

Although claims for reparations for historical injustice typically share these common features, it should be pointed out that there is also much dissimilarity between different claims. Some claims are for injustices committed several generations ago while in some cases claims are made within a lifetime from when the injustice occurred; some are for injustices that spanned generations while some are for those that only spanned a few years or less; some are for gross human rights violations while some are for relatively mild injustices; *etc.* Moreover, those who claim redress differ from case-to-case. In some cases, claims are made by the individuals who directly suffered from an injustice, sometimes along with their immediate descendants; in others,

claims are made by the distant descendants of those who suffered from the injustice or future individuals who share social group membership with the original victims; and, in others, claims are made by groups as groups, especially by corporate entities (e.g. tribes). What is demanded in redress differs as well. An apology is a consistent demand and monetary compensation to individual victims is frequently demanded, but sometimes there are other demands instead of or in conjunction with monetary compensation. Other demands sometimes made include those for the return of land and property (especially of culturally significant land, cultural artifacts and family heirlooms), for some form of historical accounting (e.g. a truth commission), for the creation of a scholarship fund for certain individuals, and for the erection of memorials, museums and monuments to memorialize the injustice.

These differences not only complicate any analysis of reparations for historical injustice as a group, but they affect the justifiability of some claims compared to others. For instance, it is generally harder to justify a reparations program in which substantial resources are provided to victims than one where fewer resources are transferred; this will be particularly harder to justify the less severe the injustice and perhaps the farther in the past it occurred since victims have had many years to “move on”. As will be seen, reparative claims made by those born subsequent to an injustice are particularly difficult to justify.

All in all, regardless of the dissimilarities listed above, a *typical* claim for reparations is made *in response to* a large-scale, legally permitted injustice of the past that targeted some specific social group *for* some direct victims of that injustice, some targeted social group, and/or different members of that social group, and it *demand*s an apology and monetary compensation or some other material good(s) *from* the perpetrator(s) of the injustice (or any who were at fault) which is *justified through* the demand of reparative justice that a past injustice be remedied. Now

that we have a sense of some of the distinctive features of a typical claim for reparations for historical injustice, we can turn to the focus of this essay which is on the justifiability of such demands as claims grounded on reparative justice.

At a very abstract level, reparative justice concerns the remediation of past injustice. Hence, reparative justice is backwards-looking in the sense that it is tripped by a past wrongful action rather than by some present demand of justice (e.g. wealth redistribution).¹³ More specifically, reparative justice is concerned with remedying the harm faced by the victim(s) of a wrongful action on the part of some other person(s) or some other moral agent(s) (such as perhaps a corporation). So, reparative justice does not concern compensating for harms that stem from actions that were not wrongful; e.g. reparative justice does not concern compensating those who fail when competing in an economic system (at least, when the fact that they fail does not stem from an injustice). Moreover, reparative justice does not concern remedying the harm that stems from a misfortune or an “act of God”; e.g. reparative justice does not concern providing relief to the victims of a hurricane.¹⁴ Reparative justice is putatively regarded as holding that if y is harmed by a wrongful act (i.e. an injustice) for which x is at fault, then y gains a right to have this harm remedied and x takes on an obligation to remedy it. Note that this formulation of reparative justice does not concern punishment; in other words, in this formulation, reparative justice is distinct from retributive justice.¹⁵

¹³ Sometimes a past injustice can produce a situation that also trips other demands of justice. For instance, if I push someone who cannot swim into a deep pool, it seems that I have both an obligation to save this person out of reparative justice and out of the present demand of justice to rescue someone in danger.

¹⁴ However, reparative justice may be applicable to at least some of the harms that the victims of a natural disaster or other misfortune face. For instance, the U.S. Government might be at least somewhat at fault for the harms faced by those living in New Orleans after Hurricane Katrina struck, as it failed to build a system of levies capable of withstanding a storm of Katrina’s magnitude.

¹⁵ This abstract formulation of reparative justice is similar to Janna Thompson’s in *Taking Responsibility for the Past: Reparation and Historical Injustice*, pp. 38-39.

Reparative justice, particularly when applied to a simple case such as when person x wrongs person y , is intuitively forceful even without appeal to any meta-ethical theory. For one thing, at least in this simple form, it is a widely adopted method used by those in Western society regarding how to respond to injustice which has been embodied in tort law. Moreover, it gives substance to the attitudes, what P.F. Strawson calls our *participant reactive attitudes*, which follow upon manifestations of ill-will in the attitudes and intentions of others.¹⁶ When an individual manifests ill-will towards one in her attitudes and intentions, one naturally feels *resentment* towards her; when her ill-will is directed at others, one, as a third party, feels *indignation* at her; and, she, the perpetrator of such ill-will, naturally feels *guilt* when (and if) she recognizes that her behavior was improper. These natural feelings or attitudes reflect “the demand for the manifestation of a reasonable degree of good will or regard, on the part of others, not simply towards oneself, but towards all those on whose behalf moral indignation may be felt.”¹⁷ Having these natural attitudes or feelings *is* to hold others or one’s self responsible.¹⁸ As such they are basic to our moral life (and to our social life in general).¹⁹ And, as natural feelings, they are beyond “external ‘rational’ justification.”²⁰ This does not mean that we cannot and should not guide these attitudes through rational reflection, but as Strawson points out questions of rational justification of our moral demands “are internal to the structure” of our basic reactive attitudes.²¹ So it is with reparative justice: y ’s demand that x take responsibility for x ’s

¹⁶ Cf. P.F. Strawson, “Freedom and Resentment.”

¹⁷ P.F. Strawson, “Freedom and Resentment,” p. 16.

¹⁸ Gary Watson’s discussion of Strawsonian theory is helpful here: “It is not that we hold people responsible because they *are* responsible; rather, the idea (*our* idea) that we are responsible is to be understood by the practice which itself is not a matter of holding some propositions to be true, but of expressing our concerns and demands about our treatment of one another” in “Responsibility and the Limits of Evil,” p. 258, emphasis in original.

¹⁹ Cf. “...in the absence of *any* forms of these attitudes it is doubtful whether we should find anything that *we* could find intelligible as a system of human relationships, as human society,” in P.F. Strawson, “Freedom and Resentment,” p. 26, emphasis in original.

²⁰ P.F. Strawson, “Freedom and Resentment,” p. 25.

²¹ P.F. Strawson, “Freedom and Resentment,” p. 25.

wrongdoing is morally basic and beyond external justification through some meta-ethical theory; that this means that x has an obligation to remedy the harm done to y might not be entailed by our attitudes of holding responsible, but it is an intuitive component of responsibility and as such is perhaps beyond meta-ethical justification as well.²²

The intuitiveness of reparative justice makes it a potentially powerful basis for claims for reparations for historical injustice. Kok-Chor Tan, for instance, argues that the “duty to make good the wrong one does” grounds an argument for reparations to formerly colonized nations from former colonial nations;²³ similarly, J. Angelo Corlett argues that, since “to the extent that it is humanly possible to rectify substantial wrongs for which a wrongdoer is responsible, the wrongdoer ought to rectify the wrongdoing,” the U.S. government should provide reparations to Native Americans.²⁴ Since reparative justice is so intuitive, *prima facie* these arguments are intuitively appealing. Yet, for a claim for the remediation of harm stemming from an injustice to be compelling as a claim of reparative justice it must meet certain necessary conditions. For reasons that will be discussed later in this essay, claims for reparations for historical injustice tend to have some difficulty meeting the five conditions that will be laid out below.

The first condition is that those claiming remediation for harms stemming from a past wrong must be entitled to receive it (*Condition One*). Typically this is through being harmed by the past injustice, i.e. being a victim of it. Moreover, to fall under the scope of reparative justice, one must be an entity capable of being wronged. A table cannot be the victim of past injustice because it cannot be wronged; less trivially, some might argue that an animal, although it can be

²² Note that this only means that the practice of holding that a moral agent at fault has a reparative obligation to remedy any harms stemming from his or her fault is close to morally basic and so perhaps beyond meta-ethical justification. It does not mean that this obligation cannot be superseded by other factors in specific cases (such as by other demands of morality).

²³ Kok-Chor Tan, “Colonialism, Reparations, and Global Justice.”

²⁴ J. Angelo Corlett. “Wrongdoing, Reparations and Native Americans,” see especially pp. 149-150.

harmed, cannot be wronged as it has no moral rights, or that a collectivity of persons (such as a nation-state) cannot itself be wronged although each of its separate members is capable of being wronged. If one has not been harmed by an injustice then one needs to establish some account of why he or she is entitled to receive compensation for the remediation of it (such as perhaps by inheriting the claims for remediation from someone else). Secondly, there must be some individual or other entity obligated to provide remediation as a result of the demands of reparative justice (*Condition Two*). If no individuals or entities have obligations of remediation arising out of reparative justice, it is not obvious that any third parties take them on. Again, putatively it is held that those at fault take on reparative obligations. Moreover, for an individual or entity to take on a reparative obligation, it must be capable of having responsibility; a dog does not take on a reparative obligation when it bites someone; less trivially, some argue that a corporate agent (such as a corporation) does not itself have any responsibilities although its individual members do. Thirdly, an injustice can have negative effects for years and years. A victim cannot claim remedy for any harm that stems from a past injustice. If one's wrongdoing causes another not to attend university, for what harms can that victim demand remediation? Can that victim demand remediation for his or her inability to find quality employment throughout his or her adult life owing to not having an undergraduate degree? Our intuitions suggest that he or she cannot. The harm for which remediation is being claimed must follow in a relevant way from the past injustice (*Condition Three*).²⁵

Even if these three requirements are met, there are potentially defeating conditions which make the obligation to remedy an injustice (or at least to fully remedy it) inappropriate. The demands of reparative justice can be (at least partially) superseded by other considerations of

²⁵ I realize that this is vague. It will be spelled out more clearly what harms an agent can have a reparative obligation to rectify as a result of his or her past wrongful action as the essay unfolds (although there are no certain answers regarding this question).

justice and other social goals. For instance, if a malefactor has greatly damaged one's material interests, most would hold that one cannot demand remedy from this individual to the point where he or she becomes destitute and certainly not to the point where it causes his or her dependents to become destitute. As will be seen, sometimes the social costs of reparative justice when applied to historical injustice are high. Overall, the fulfillment of a reparative obligation must not conflict with other moral ends or societal goals without sufficient justification for any conflict (*Condition Four*). Finally, for a claim for the remedy of unjust harms to be compelling, it must be possible to attenuate meaningfully the harms that require rectification (*Condition Five*). If one murders someone, one cannot attenuate the harm done to this person and so cannot have reparative obligations to him or her (although one might have reparative obligations to that person's family and loved ones); when one's reckless driving puts another in a vegetative state, it is difficult to see how one can meaningfully attenuate this harm and so it is unclear what reparative obligations one would have to the harmed person. If the harms faced by a victim cannot be meaningfully attenuated, it makes it harder to justify providing remedy to a victim if doing so leads to conflict with other moral ends or societal goals.²⁶ As we will see, these last two conditions are particularly relevant in claims for the reparation of historical injustice.

Thus far the discussion of reparative justice as that type of justice concerning the remediation of wrongs has been quite general and abstract. In Chapter Two, I analyze in more detail what reparative justice requires in a paradigmatic case of interactional injustice between two individuals. Next in Chapter Two, I highlight two important differences between a claim for the repair of paradigmatic injustice and a typical claim for reparations for historical injustice. Firstly, I point out that the former is typically in response to a discrete injustice committed within

²⁶ It does not seem obvious that the person at fault in the case of the reckless driver would have an obligation to keep his or her victim on life-support especially considering the high costs involved to the perpetrator.

a putative system of positive justice while the latter is typically in response to a social or political injustice. As we will see, this tends to make it harder for the latter type of claim to meet *Conditions Two, Four and Five* than for the former type of claim. Secondly, in many cases, claims for reparations for historical injustice are made by those born subsequent to it. I explain how this makes satisfying *Condition One* problematic in such cases. It is beyond the scope of this paper to evaluate each and every claim for reparations for historical injustice in light of *Conditions One through Five*. Still, by laying out some important necessary conditions for a claim for reparations for historical injustice to be compelling as a demand of reparative justice and by pointing to some particular difficulties that often make it difficult for a claim for reparations for historical injustice to meet these five conditions, this paper provides a framework to those who wish to analyze specific claims in more depth.

In Chapter Three, I analyze whether the case of reparations to African-Americans for slavery and other past legal injustices, in which both of the differences that I highlight in Chapter Two are relevant, can meet *Condition One* through *Condition Five*. I make an argument for reparations to African-Americans that meets these five conditions. Because the question of how contemporary African-Americans born subsequent to past legal injustices are entitled to reparations for them is a particularly contentious topic within the philosophical literature, much of this argument concerns this question. It is premature to precisely delineate this argument. But, in brief, it demonstrates that past legal social injustices put in place or strengthened unjust social processes that then became entrenched, perpetuating through the generations –ultimately leading to those of later generations being wronged and harmed by them. One reason that this argument is philosophically interesting is because it is in contrast to the tendency of commentators to ignore how a past injustice affects broad social processes (or social structures) when evaluating

claims for reparations for historical injustice made by those of a later generation. Moreover, by making this argument in detail and in conjunction with a broader argument that meets *Conditions Two* through *Five*, I think that it is more comprehensive than the arguments of other commentators who are more attentive to the effects, extending to the present-day, of past injustice on broad social processes or social structures.²⁷ Hence, the argument made for reparations to African-Americans for past legal injustice could potentially provide insight into how to think about the demands of reparative justice in other cases of past injustice.

²⁷ There are few of these commentators, but they would include, e.g., Rahul Kumar and David Silver in “The Legacy of Injustice. Wronging the Future, Responsibility for the Past” and Jeff Spinner-Halev in “From Historical to Enduring Injustice.”

Chapter Two: Conceptualizing Reparative Justice

A. Reparative Justice in the Paradigmatic Case of Interactional Injustice

Recall that reparative justice concerns the remediation of past injustice. But, how does one know if an action was unjust? Once something is held to have been unjust, what does it substantively mean to remedy it, “to set unjust situations right,”²⁸ “to repair the rift and set things right,”²⁹ or similar conceptions? And, who or what takes on the obligation to remedy the injustice? The answers to these questions will depend on the specific characteristics of specific cases, but when a category of cases are structurally similar one can answer these questions using the same tools for all the cases that fall under that category. So, it is with *interactional injustice* between individuals in a paradigmatic case. I take a case of interactional injustice to be paradigmatic when y is harmed by an action A for which x is at fault, where A is putatively recognized as an injustice in the society in question, and so y gains a right to have the injustice remedied and x takes on an obligation to remedy it.³⁰

In a paradigmatic case, the harm that y faces is clearly the result of an injustice according to the putative system of *positive justice* utilized in that society. In brief, positive justice concerns how social institutions distribute rights and duties along with the advantages and disadvantages that arise from this distribution. Hence, in a paradigmatic case where the harm to y stems from a clear violation of positive justice, reparative justice functions to maintain that system of positive

²⁸ Rodney C. Roberts, “Justice and Rectification: A Taxonomy of Justice,” p. 15.

²⁹ Renée A. Hill, “Compensatory Justice: Over Time and Between Groups,” p. 393.

³⁰ For the sake of simplicity let us take x and y as referring to individual persons rather than groups (such as corporate entities). Many philosophers argue that while corporate entities that comprise agents can have moral responsibilities, they do not have moral rights, but only conventional (i.e. socially created) rights; this seems to be the predominant view among commentators. However, of course, some philosophers reject the argument that corporate entities have either moral rights or responsibilities and some argue that they have both. See Geoff Moore, “Corporate Moral Agency: Review and Implications,” for a useful review of the philosophical literature on this topic.

justice by remedying injustices that occur within it.³¹ So, if Smith punches Jones in the jaw simply because of an argument over baseball (say that Smith is a Baltimore Orioles fan while Jones roots for the New York Yankees), this would constitute an unjust harm to Jones as it is a clear violation of Jones's right to bodily integrity according to the putative system of positive justice found in the United States.

Now, what does it substantively mean for Smith to remedy the unjust harm done to Jones? There are two ways that Smith has harmed Jones through his wrongful action: Smith has tangibly *damaged* Jones and Smith has *disrespected* Jones.³² We will first focus on how Jones has been damaged and what is required of Smith to remedy the damage done to Jones. Say that Smith's wrongful action results in Jones having a broken jaw, and that this leads to medical bills and to Jones missing time at work. Jones has been harmed because his or her legitimate material and physical interests –in having a functioning pain-free jaw, not having to pay medical bills and being able to earn money at work –have been set back or damaged.³³ Since Jones's interests have been set back, commentators often hold that the ideal of reparative justice is to return the victim to the *status quo ante* or to his or her state before the injustice occurred. More abstractly, commentators often hold that the ideal of reparative justice is to bring the victim to a state as if the unjust action never occurred.³⁴ So, for Smith to bring Jones to a state as though the injustice never occurred (concerning the tangible damage done to him or her), it seems that Smith must

³¹ Cf. "*Distributive Justice* is the creation of a system of rights....and *Corrective Justice* is the effort to *maintain* this system" in W.D. Lamont, "Justice: Distributive and Corrective," p. 3, emphasis in original.

³² I take this specific distinction between the damage and the disrespect that an injustice causes from Richard Vernon, "Against Restitution." Other commentators also point out that an injustice disrespects a victim as well as harming that victim in more tangible ways, see for instance Gerald Gaus, "Does Compensation Restore Equality," pp. 99-101 and Bernard Boxill, "The Morality of Reparations," p. 119.

³³ Cf. "When someone is adversely affected by an injustice, we can say that the adverse effect has been upon that person's interest(s)," in Rodney C. Roberts, "Justice and Rectification: A Taxonomy of Justice," p. 10.

³⁴ Cf. "It is...widely believed that to compensate someone for a wrong is to make him as well off as he would be if it had not been done" in George Sher, "Transgenerational Compensation," p. 181.

provide Jones with compensation to make up for the medical bills, the lost work time that stemmed from his or her injury, and the pain and suffering that stemmed from his or her injury.

The straightforward case of Smith and Jones is so intuitive that it precludes the need to delineate more precisely the extent of compensation that Jones can demand as a result of Smith's wrongful action. But, not all cases of paradigmatic interactional injustice are so simple. What if Candace is the victim of an auto accident, which was the result of another's reckless driving, and as a result permanently loses the ability to use her legs? It is less clear what it means to bring the victim to a state as if the unjust action never occurred. Yet, implicit in the notion of bringing a victim to a state as if an injustice never occurred is the use of a *counterfactual*,³⁵ and reasoning over counterfactuals is a tool to assess the extent of the harm that a victim suffers as a result of an injustice. This is done by comparing the well-being of the individual in the actual world to that individual's well-being in a possible world in which the unjust action does not occur. The compensation that is owed to the individual is that which is required to place that individual in the actual world "in qualitatively the same position she would have been had she lived in the possible world."³⁶ So, all things being equal, it seems that Candace can at least claim compensation sufficient to make up for the loss of her legs. Although there are epistemological difficulties in discerning this amount, we at least have some notion as to what this would entail (perhaps compensating for the costs of a wheelchair, of physical therapy, of retrofitting the victim's domicile, *etc.*)

Now, say that prior to the auto accident, Candace was a promising high school basketball player and had earned an athletic scholarship to university; after the accident, she loses her scholarship and decides not to attend university and, as a result of not having a college education,

³⁵ Since the injustice did occur, it is counter-to-the-fact to conceptualize that it did not.

³⁶ Stephen Kershnar, "The Inheritance-Based Claim to Reparations," pp. 244-245.

she struggles to find quality employment in her adult life (let's refer to the actual world as W_a). In a possible world where the accident never occurred, she keeps the scholarship, successfully attends university and, as a result, finds quality employment (let's refer to this possible world as W_p). Is the reckless driver obligated to provide Candace with compensation sufficient to put her in qualitatively the same position she occupies in this possible world?

There are three important principles that limit the harms for which a victim can claim reparations. First, as George Sher points out, it seems that one cannot claim compensation for what one never does in the actual world. In world W_p , Candace works hard at university, finds employment and earns money working –actions she never does in the actual world. To say that she can claim compensation for the entitlements that these activities produce “would be to hold that what a person should have may be determined by certain actions which neither [she] nor anyone else has actually performed.”³⁷ And, this result would be counterintuitive.³⁸ Candace at most might be able to claim compensation for the loss of her scholarship, and her actual *opportunity* to attend university.³⁹ Second, it seems that one cannot claim compensation for any harm insofar as one's own actions produced it; conversely, the perpetrator of the original injustice is not obligated to repair harms stemming from that injustice insofar as such harms are produced by the victim or by others.⁴⁰ So, say that Candace decides not to attend university not because of financial considerations arising out of her lost scholarship (say that she or her parents could easily afford the tuition), but rather because her main incentive to attend university was to play competitive basketball. Then, that she did not attend university is ultimately the result of her

³⁷ George Sher, “Ancient Wrongs and Modern Rights,” p. 11.

³⁸ Beyond being counterintuitive, it would likely lead to undesirable outcomes in other contexts. For instance, we would not say that someone should be punished because in a possible world where some event did or did not occur he or she would have committed a crime when he or she is innocent of it in the actual world. George Sher suggests an argument along these lines in “Ancient Wrongs and Modern Rights,” p. 11.

³⁹ Cf. George Sher, “Ancient Wrongs and Modern Rights,” p. 12.

⁴⁰ See George Sher, “Ancient Wrongs and Modern Rights,” p. 11; Stephen Winter, “Uncertain Justice: History and Reparations,” pp. 346-347.

own actions and decisions, and she should bear the responsibility for them. So, in this scenario, she might not even be able to claim compensation for the opportunity to attend university.

Thirdly, it seems that the perpetrator of an injustice cannot have obligations to repair harms that are not foreseeable at the time of the injustice. To determine what harms are foreseeable, commentators often invoke the notion that a perpetrator is liable for those harms that are *reasonably foreseeable*, with the benefit of the doubt going to the victim.⁴¹ In the case of the reckless driver, it seems reasonable to foresee that when one drives recklessly, one could cause permanent physical damage to others and thus to their interests that rely on physical ability (such as playing basketball), and so one could be held liable for that physical damage and for the harms to the victim's (or victims') interests that directly stem from that damage. If as a result of the accident, Candace is unable to drive her invalid sister to the hospital, greatly worsening her sister's condition, her sister cannot claim compensation from the perpetrator; it is not reasonably foreseeable that one's reckless driving will lead to this contingency. In Chapter One, five necessary conditions were laid out for a claim for reparations to be compelling. These limits give substance to *Condition Three*, namely that the harm must be tied to the injustice in a relevant way. Although they do not provide certain answers in every case as to what harms a victim can claim reparations for, they help to define boundaries.

Thus far, it has been assumed that the perpetrator of an injustice takes on an obligation of repair. Yet, this intuitive view has been questioned. Specifically, some have argued that what is most relevant in satisfying the requirements of reparative justice is simply abrogating the damage done to the victim while the question of who does this is of little importance.⁴² One way to base the obligation of the perpetrator to rectify her unjust action is by appeal to the moral principle

⁴¹ Cf. Stephen Winter, "Uncertain Justice: History and Reparations," p. 348.

⁴² This argument has been made by Jules Coleman. Gerald Gaus discusses Coleman's argument in "Does Compensation Restore Equality," especially pp. 91-93.

that one should not gain from one's crime. Hence, the perpetrator is obligated to rectify the injustice because the burden of rectification presumably annuls any gain that the perpetrator amasses from her crime. However, even if this moral principle is sound, there are cases where the perpetrator does not seem to gain from her crime. Does she then have no obligation to rectify the injustice that she has brought about? Gerald Gaus points out that fairness dictates that the costs of rectification should come from those responsible; "resources to pay victims have to come from somewhere, and simply to transfer them from the innocent is not, *prima facie*, just."⁴³ This seems capable of grounding the obligation of the perpetrator to remedy the injustice done to her victim in most cases, but there are examples in which it does not seem unfair for a party different from the perpetrator to rectify the damage done to that perpetrator's victim. For instance, suppose that perpetrator one (P1) pushes victim one (V1) and perpetrator two (P2) pushes victim two (V2) into a pool. If P1 rescues V2 and P2 rescues V1, both victims have been restored to their positions prior to being pushed into the pool while no innocent bystanders pay the cost of rectification.⁴⁴ Justice seems to have been achieved without there having been any obligation on the perpetrator's part to rescue her victim.

Even in a case like that above, however, many philosophers would argue that there is a special obligation on the part of the perpetrator to rectify the injustice done to her victim because an injustice, as mentioned above, not only damages the victim it also *disrespects* that victim. As one commentator succinctly puts it, "the perpetrator has illegitimately assumed and exercised power over the victim through committing the injustice."⁴⁵ Doing so implies that the victim is not of equal worth with the perpetrator. This then prompts an obligation on the part of the perpetrator to affirm to the victim and to society at large that the victim is of equal moral worth.

⁴³ Gerald Gaus, "Does Compensation Restore Equality," p. 93.

⁴⁴ I take this example from Richard Vernon's "Against Restitution," pp. 546-548.

⁴⁵ H.P.P. Lötter, "Compensating for Impoverishing Injustices of the Distant Past," p. 84.

How does the perpetrator fulfill this obligation? At the very least, the perpetrator must apologize to the victim for the wrongful action. Part of what a perpetrator expresses when apologizing is the acknowledgement that the wrong done to the victim was inappropriate and that the victim has a right, or is of the moral worth, not to be treated in that way.⁴⁶ But, an apology may not be sufficient to affirm the moral worth of the victim. Acts that help to rectify harms done to a victim by an injustice, or those that at least provide the victim with some other good, give meaning to an apology.⁴⁷ An apology unaccompanied by any material or more tangible compensation is likely to be interpreted by the victim, as well as by many third parties, as an empty gesture which does not affirm the moral worth of the victim. In contrast, an apology accompanied by full rectification of the damage produced by an injustice (or at least some equivalent compensation when this is not possible) demonstrates to the victim and to others that the perpetrator recognizes that the injustice was wrong and that the victim should not have been treated in that way; the perpetrator disavows that injustice in words and in actions.⁴⁸ Hence, the perpetrator of an injustice has an obligation to the victim to rectify both the disrespect *and* the damage it causes, as, among other reasons, abrogating the disrespect done to the victim cannot be neatly separated from abrogating the damage done to the victim.

So, in the paradigmatic case of reparative justice, when Smith wrongs Jones, Smith takes on the obligation to bring Jones to a state as if the injustice never occurred. This means that Smith must abrogate the disrespect and the damage done to Jones through both apologizing and providing sufficient material remedy (at least with all things being equal). I am not attempting to

⁴⁶ Cf. Louis F. Kort's analysis of the gesture of apology. He holds that a necessary condition for X to perform an apology to Y is for "X [to make] a gesture of respect for Y as a person having a right not to be treated as X is acknowledging having treated him," in "What is an Apology?," p. 110.

⁴⁷ As Jeremy Waldron puts it, payments that accompany an acknowledgement of wrongdoing "give an earnest of good faith and sincerity to that acknowledgement," in "Superseding Historic Injustice," p. 7.

⁴⁸ It is more ambiguous as to whether partial rectification of the wrongs or token compensation effectively communicates that the perpetrator affirms the moral worth of the victim. Hence, in general, when full rectification is possible and justifiable, the perpetrator should make it.

ground this paradigmatic account on any meta-ethical theory; I only make the more modest claim that it generally accords with our intuitions, at least in Western society, regarding how to respond to the harms produced by an interactional injustice between individuals.

B. Reparative Justice and Claims to Reparations for Historical Injustice

As described in Chapter One, at an abstract level, reparative justice is putatively regarded as holding that if y is harmed by a wrongful act for which x is at fault, then y gains a right to have this harm remedied and x takes on an obligation to remedy it. So, since an individual of Japanese ancestry was harmed by his or her unjust internment by the U.S. government, the U.S. government has an obligation to remedy this harm. The paradigmatic account of reparative justice in the case of interactional injustice helps to flesh out this example: the U.S. government both damaged and disrespected this individual and so is *prima facie* obligated to abrogate this damage and disrespect through apologizing and providing material redress. The seeming integration of the paradigmatic case of reparative justice to a case of historical injustice, however, can obfuscate some salient differences that frequently obtain between a demand for reparative justice in a paradigmatic case and a demand for reparative justice in a case of historical injustice. These differences tend to make it more difficult for a claim for reparations for historical injustice to satisfy *Condition One* through *Condition Five* than for a claim for reparative justice under the paradigmatic model.

For one thing, the paradigmatic model generally concerns a situation in which an x directly wrongs a y through an action A , where A is putatively recognized as an injustice; a typical claim for reparations for historical injustice, however, does not concern this situation. First of all, such claims are often for *institutional* injustices, with (borrowing Ann Cudd's definition) a social institution being a social entity that "sets constraints that specify behavior in

specific recurrent situations”⁴⁹ (e.g. the American slave system, a discriminatory immigration tax). So, reparations do not generally concern situations in which one individual directly wrongs another individual through some discrete action (as with Smith and Jones), but one in which a social institution harms many individuals and/or corporate entities, often over the course of years, and this social institution is perpetuated by the actions of many individuals and/or corporate entities.⁵⁰ Secondly, recall that claims for reparations are typically for institutional injustices that were legal or were generally permissible at the time that they were committed. Thus, these injustices were not clear violations of positive justice at that time and place. For instance, the internment of many individuals of Japanese ancestry was a legally sanctioned program put in place by the United States Government and rationalized through wartime concerns over public safety in conjunction with the subordinate position of those of Japanese ancestry in the United States at that time. Internment was not an injustice towards these individuals in the sense that they had no legal or generally socially recognized right to protection from the seizure of their life, liberty or property without due process of the law during a wartime emergency.⁵¹ Hence, claims for reparations generally concern situations in which several *x*’s harmed several *y*’s through engaging in a social institution SI, where SI was not generally recognized as being unjust when it was existent. In other words, *reparations for historical injustice are responses to past political or social injustices* –not to discrete injustices within a system of positive justice. As will be seen, this tends to have implications for: who or what

⁴⁹ Ann E. Cudd, *Analyzing Oppression*, p. 51. The full definition of a social institution is a social entity that “sets constraints that specify behavior in specific recurrent situations that are tacitly known by some nontrivial subset of society, and that are either self-policed or policed by some external authority.” Most social institutions involved in perpetuating the injustices for which reparations are claimed fit into this full definition.

⁵⁰ This assumes that a corporate entity can be harmed and can act in a way that can perpetuate an injustice that is not analyzable to the separate harms its members face and to the separate actions of its members.

⁵¹ Today, when one says that Japanese internment was an injustice, what one means is that it was unjust according to some schema of positive justice that one adheres to (at least in thought); e.g. that all persons have the right to life, liberty, and property without due process of the law regardless of the circumstances.

should provide reparations, how victims were harmed, and whether reparations are justifiable and in what form.

Because the historical injustices for which reparations are sought were typically political or social injustices, it is often inappropriate to hold any individual person materially liable for any specific harm that resulted from that injustice.⁵² For one thing, a social injustice is perpetuated by many individual persons and it is not generally clear to what extent any one individual is responsible for any specific harm that results from it. For instance, before holding a Southern employer, who discriminated against African-Americans in hiring, promotions and pay during the Jim Crow era, materially liable for such unjust actions, it is imperative to recognize that the incentive structure in that society strongly encouraged such behavior; many individuals were complicit in perpetuating this incentive structure; so, at least in this example, it seems impossible to discern the degree of responsibility of each individual (including the employer) complicit in the unjust actions in question (and to even identify many of those who were complicit).⁵³ Moreover, recall that the institutional injustices for which reparations are claimed were typically legal. When an individual perpetrator is responsible for unjust harm when acting in a legally allowed way, it might not be fair to hold him or her materially liable for such harm⁵⁴ (a point which could be made regarding the employer in the example above). The potential

⁵² N.B. this discussion only concerns the appropriateness of holding individual persons, who were complicit in perpetuating a past institutional injustice, obligated to make material reparations and says nothing about whether or not punishment or apology are appropriate.

⁵³ Similarly, Iris Marion Young argues that the global incentive structure which encourages the abuse of laborers working in sweatshops in the developing world might (depending on the circumstances) mitigate the responsibility of sweatshop owners and operators for any such abuse, see "Responsibility and Global Justice: A Social Connection Model," pp. 116-117.

⁵⁴ Of course, one might argue that there are moral standards that should be abided by regardless of the particular legal standards in one's society. The strength of this argument might depend on the circumstances in specific cases. When an individual acts egregiously immorally in a legally allowed way, it *prima facie* seems appropriate to hold that the legality of the immoral action does not shield him or her from material liability to his or her victims. In contrast, when an individual acts less immorally, legally and also typically of many others in his or her society, it *prima facie* seems more unfair to hold that that individual is materially liable for such immoral action (at least without holding many others in that society materially liable).

unfairness of holding individual persons materially liable for harms that were legally allowed and/or in which many others were complicit in is not only morally problematic; moreover, if doing so is perceived as unfair by much of society-at-large, it could lead to unhealthy tension within society. Hence, holding individual perpetrators materially liable for their legally allowed wrongful actions could make it harder for a reparations program to satisfy *Condition Four* (that is, not conflict with other demands of justice or with important social goals without sufficient justification). Although there might be cases in which some individual persons should be held materially liable for some harms that stemmed from a social or political injustice, these considerations suggest that for the most part it makes more sense to hold corporations (e.g. governments) that had a large role in perpetuating a social injustice materially liable or to appeal to some version of collective responsibility to find materially liable agents (e.g. that the beneficiaries of an injustice have a responsibility to provide reparations to its victims).

There are also strategic reasons to hold corporations or collectivities of people materially liable for past social injustices rather than individual persons. As we saw, such injustices have many victims and, as will be seen, they often faced particularly damaging harms. Corporations and collectivities of people are in a better position to provide meaningful reparations to the victims of social injustice than individual persons. Also, reparations are often demanded for past injustices in which all or most of the perpetrators (or most of the actual individual agents who contributed to a social or political injustice) are dead. Obviously, in such cases, it makes more strategic sense to hold intergenerational groups, such as corporations or beneficiaries, materially liable. All in all, then, it tends to make more sense to satisfy *Condition Two* by holding corporations or other collectivities responsible for providing material reparations for historical injustice than by holding individual persons responsible for doing so. Of course, then, this means

that a proponent of reparations needs to be able to establish a sound argument for the validity of corporate responsibility or of some form of collective responsibility, neither of which is as uncontroversial as the validity of individual personal responsibility for an action for which one is at fault (as in the paradigmatic case).

The harms for which the victims of historical injustice seek reparations tend to be particularly pernicious and this is partly a function of them being produced through social institutions. Many grievous losses are not endemic to institutionalized injustice; a victim can lose body parts, the lives of family members or friends and psychological well-being, as well as suffer other irreplaceable losses, under the paradigmatic model. But, a more unique aspect of institutionalized injustice is that its victims often face a litany of abuses over the course of years. Japanese-American internees faced *inter alia* the loss of time as free individuals, physical deprivations resulting from the poor living conditions in the internment camps, and demeaning treatment at the hands of their own government for about two years (depending on the specific case). The damage done by these harms cannot be easily abrogated (e.g. how can a victim be fully compensated for the years lost in an internment camp?); moreover, the disrespect shown to these victims by their own government might not be easily undone; together these make *Condition Five* (that it must be possible to meaningfully attenuate the harms that require rectification) salient. Some past institutional injustices produced even worse abuses that make this condition even more relevant. For instance, can the substantial damage and disrespect done to an African-American, who spent his or her formidable years facing *inter alia* demeaning treatment and education and employment discrimination in the Jim Crow South, be meaningfully attenuated today? If the harms stemming from a past injustice cannot be meaningfully attenuated,

it makes providing reparations harder to justify if reparations will likely lead to conflicts with other demands of justice or with important social goals.

That the historical injustices for which reparations are claimed were typically social or political injustices also makes it more likely that reparations will conflict with other demands of justice and/or important social goals. One reason for this is that such injustices tended to have many victims who faced serious harms. If a reparations program provides compensation in cash or in kind to the victims of a historical injustice in proportion to the damage done to those victims, or even if it only provides enough to meaningfully attenuate the damage or disrespect⁵⁵ done to them, this will require a fairly substantial amount of resources. The resources required to meet such demands must come from somewhere, potentially leading to conflicts. When any resources come from those who are impoverished, this might conflict with distributive justice; sometimes reparations might be unjustified simply because the resources are needed to fund some services or programs of high social priority; when substantial resources come from those who were not complicit in an injustice, this could be unfair.⁵⁶

Moreover, if a reparations program for historical social injustice comes from a government, (and the discussion above suggests that this tends to be the most appropriate source),⁵⁷ then it is an act of public policy and this has consequences which can make it difficult to meet *Condition Four*. Firstly, it sets a precedent that a particular government will provide

⁵⁵ Recall that compensation helps to give meaning to an apology. Some reparations programs provide token cash payments to do just that rather than to provide any serious compensation for the damage done to the victims of an injustice. This is true, for instance, of the payments made to the victims of internment during World War II; “The monetary payments governments [i.e. the United States and Canada] offered to the survivors of the internment were intended to substitute symbolically for the loss of time, freedom, dignity, privacy, and equality arising from the internment experience,” in John Torpey, *Making Whole What Has Been Smashed: On Reparative Politics*, p. 92.

⁵⁶ For instance, the claims made by Aboriginals to much of the land that was unjustly appropriated from them may be unjustified because in present circumstances many people (who are not personally responsible for that injustice) live and work on such land, cf. Jeremy Waldron, “Superseding Historic Injustice.”

⁵⁷ Even if one appeals to a notion of collective responsibility for historical injustice that does not rely on corporate entities, such as that the beneficiaries of an injustice should provide reparations, it is hard to see how a disorganized collectivity can actually put in place a reparations program without the use of government.

material reparations for past injustices which can produce problematic consequences. As Catherine Lu notes in commenting on the payment of symbolic reparations to those who had to pay the Chinese Head Tax upon immigrating to Canada, “using monetary restitution to confer symbolic value on historical injustices can create a hierarchy of victims, whose place in the hierarchy will be evident by the amount of monetary compensation they are entitled to receive.”⁵⁸ This can breed acrimonious competitions for greater compensation between victim groups. If symbolic compensation does little to restore victims’ self-respect, then such competitions seem unjustified in light of their unhealthful consequences for society-at-large. Secondly, a successful reparations program put in place by a government could potentially lead to resentment from those citizens who find this program unjustifiable. A concern expressed by some commentators regarding reparations to African-Americans is that reparations could lead to bitterness from white Americans towards African-Americans or at least push African-Americans further to the margins of society.⁵⁹

Regardless of the difficulties attendant on responding to a social or political injustice, some claims for reparations still clearly follow the logic of the paradigmatic model of reparative justice. Namely, the logic where *y* has an interest (or has interests) which is (or are) setback by the injustice in question and so *y* can demand reparations so as to make up for that setback to *y*’s interest (or interests), and this is done by returning *y* to the *status quo ante* or more abstractly by bringing *y* to qualitatively the same position that *y* would be in if the injustice never occurred (within the limits defined above). This logic can clearly apply to claims for reparations made by the direct human victims of an injustice, and so conceptually it makes sense to apply that logic to such claims. For instance, those of Japanese ancestry who were interned in the United States

⁵⁸ Catherine Lu, “Delivering the Goods and the Good: Repairing Moral Wrong,” p. 157.

⁵⁹ Glenn Loury, for one, makes this argument, see “Transgenerational Justice—Compensatory versus Interpretive Approaches,” pp. 107-109.

during World War II had various moral and material interests setback by their internment; so, reparative justice as making up for those setbacks is conceptually coherent. Whether or not such logic can apply to demands for reparations made by corporate entities that claim to have been directly harmed by an injustice depends on whether or not corporate entities have the ontological standing necessary to be harmed and also wronged.

So, when the direct victims of a historical injustice claim reparations, the logic of the paradigmatic model of reparative justice is generally applicable. This logic does not translate as smoothly to claims for reparations made by generations subsequent to the injustice that are claiming reparations as individuals rather than as a group (such as a corporate entity). This is the second salient difference that sometimes obtains between a demand for reparative justice in a paradigmatic case and a claim for reparative justice in a case of historical injustice. The most obvious difficulty is that those born subsequent to an injustice have not been harmed by that injustice in the same way as a direct victim of an injustice has been harmed in the paradigmatic model. Namely, those born subsequent to an injustice did not have any of their interests, existing prior to the injustice, setback by it.⁶⁰ Yet, injustices clearly have negative effects on later generations; slavery and other forms of institutionalized racism of the past no doubt have negative effects on many African-Americans (as well as perhaps others) today. This vague statement of fact, however, does not tell us much regarding how individuals in subsequent generations are harmed by a past injustice or what reparative justice demands in the way of remediation of such harm.

⁶⁰ Leif Wenar, in "Reparations for the Future," emphasizes this point, arguing that what he calls the limited principle of reparations ("that a person or corporate entity that has been unjustly harmed should be restored as close as possible to the pre-harm baseline") only applies "to those whom injustice has made worse than they actually were" (p. 397). As a result of this principle, he further argues that reparations that take into account those born subsequent to an injustice cannot easily be justified using backward-looking justifications (in which reparative obligations arise out of the injustice itself as with reparative justice).

A popular approach is to conceptualize reparative justice for intergenerational victims of injustice in the same way that reparative justice is conceptualized in the paradigmatic case. That is, since the intergenerational victims of an injustice are worse-off as a result of it than they would be if it had not occurred, “we owe it to the current descendants of victims of wrongs done more than a generation ago to (try to) make them as well off as they would now be if those wrongs had not been done.”⁶¹ This commonly used approach, then, conceptualizes the harms done to intergenerational victims of injustice through a counterfactual.⁶² Attendant on this, however, are two widely recognized difficulties: the non-identity problem⁶³ and George Sher’s argument concerning the fading of injustice over generations.⁶⁴

According to the non-identity problem, individuals born subsequent to an injustice cannot be owed reparations for that injustice if they owe their *existence* to it (assuming that one’s genetic material is an essential component of one’s identity). For, as the argument goes, if one owes his or her existence to an injustice, he or she cannot have been harmed by it. The non-identity problem is potentially applicable to many intergenerational claims for reparations for past injustice. This is because its force rests on the contingency of existing with a specific set of genetic material. Not only does one’s genetic material depend on who one’s ancestors are, but on the timing of the act of conception, as different sperm and different ova (in the same individuals) contain different genetic material. So, any fairly substantial wrong committed against either or both of one’s parents before one’s birth almost certainly affected the timing of procreation (if not

⁶¹ George Sher, “Transgenerational Compensation,” p. 181.

⁶² Discussions concerning reparations to intergenerational victims of injustice conceptualized through counterfactuals can be found in, e.g., George Sher, “Transgenerational Compensation”; Stephen Kershnar, “The Inheritance-Based Claim to Reparations”; for an argument against conceptualizing the demands of reparative justice through counterfactuals in any case (not just those involving intergenerational victims), see Rodney C. Roberts, “The Counterfactual Conception of Compensation.”

⁶³ See, e.g., Stephen Kershnar, “The Inheritance-Based Claim to Reparations,” pp. 244-251; Leif Wenar, “Reparations for the Future,” pp. 399-401.

⁶⁴ George Sher, “Ancient Wrongs and Modern Rights,” especially pp. 10-13. Sher’s argument is quite abstract. Janna Thompson’s more vivid interpretation of it is helpful, in “Historical Injustice and Reparation,” pp. 117-118.

the relationship between that individual's parents). So, if some fairly substantial wrong had not been committed against one's parents before one's birth, then one would almost certainly not exist. Hence, any such wrong cannot have harmed that individual.

In some cases, an intergenerational victim of historical injustice might be able to avoid the non-identity problem by basing his or her claim to compensation on a possible world in which both he or she exists and the injustice never occurred. All that is necessary for such a world to be possible is for it to be logically possible in that possible world for the same parents to procreate with the same ova and sperm. However, in some cases of claims for reparations made by intergenerational victims of a past injustice, even if such a world is logically possible, it is not credible or in other words it is so far removed from the actual world that it makes it useless for determining any sort of compensation.⁶⁵ For example, a possible world where present-day descendants of slaves exist and slavery never occurred is not credible, as a possible world where such individuals exist (recall that one's genetic material is an essential component of one's identity) is far removed from the actual world.⁶⁶

George Sher's argument tells against the temptation to compensate an intergenerational victim of a past injustice by simply calculating the difference between that victim's well-being in a possible world where the injustice did not occur (W_p) and that victim's well-being in this world (W_a). Rather, the compensation that an intergenerational victim of a past injustice can claim is subject to the same principles that limit what the direct victim of an injustice can claim. Sher, in particular, emphasizes the first two limits discussed above. That is, a victim cannot claim compensation for the results of actions never done in the actual world and cannot claim compensation for any harms that result from his or her own failings in the actual world. These

⁶⁵ For a discussion of the credibility requirement in measuring harm over possible worlds, see Stephen Winter, "Uncertain Justice: History and Reparations," pp. 348-351.

⁶⁶ Cf. Stephen Winter, "Uncertain Justice: History and Reparations," p. 350.

two principles cause the injustice to fade over time in the sense that the amount of compensatory harm it causes diminishes over generations. To see this, consider, firstly, that much of the entitlements an intergenerational victim has in W_p would stem from actions that either that person did in that world or others (e.g. parents) before him did in that world (and that neither did in the actual world). Secondly, consider that the compensation that an intergenerational victim is entitled to would not only be diminished by his or her own failures to take advantage of opportunities in the actual world, but also by the failures of others (e.g. parents) to take advantage of the opportunities available to them (subsequent to the injustice) in the actual world, failures that have contributed to that intergenerational victim's low well-being in W_a (relative to W_p); in other words, the intergenerational victim of a past injustice cannot claim compensation for harms stemming from the acts and omissions of intervening agents (at least as harms stemming from that past injustice).

What Sher concludes from this is that “compensation is warranted only for disparities in entitlements [between W_p and W_a] which *are* the automatic effect of the initial wrong act.”⁶⁷ As Janna Thompson points out, it is not exactly clear as to what are the automatic effects of a wrong act.⁶⁸ But, they seem to be the direct effects of a wrong act not subject to the limits described above. An example focusing on the automatic effects of an injustice helps to demonstrate how dramatically an injustice fades according to Sher's argument. Recall the example of Candace who lost her ability to walk and her athletic scholarship to university from the wrongful act of the reckless driver. Say that Candace later has a son; it is likely that he is in a worse position than he would be if the injustice never occurred (leaving aside the non-identity problem). What is the automatic effect of the injustice relative to the well-being of the son? It seems that this is having

⁶⁷ George Sher, “Ancient Wrongs and Modern Rights,” p. 13, emphasis in the original.

⁶⁸ Janna Thompson, “Historical Injustice and Reparation,” pp. 118.

a mother who did not have the opportunity to attend university on an athletic scholarship and who is burdened by the inability to use her legs. Hence, the son can claim compensation only for the harm of not having the opportunity to have a mother who is able to use her legs and who did have the opportunity to attend university on scholarship (and this compensation is diminished by the son's failures to take advantage of his opportunities in the actual world). The automatic effect of the injustice on that son's son seems to be having a father who had a mother who did not have the opportunity to attend university on an athletic scholarship and who is burdened by the inability to use her legs. Not having the opportunity to have a father who had the opportunity to have a mother who could use her legs and who had the opportunity to attend university on a scholarship is the basis for this grandson's claim for compensation as a result of the past injustice (and this claim is diminished by the grandson's failures to take advantage of his opportunities in the actual world). From this it should be clear as to how an injustice tends to fade fairly quickly over time.

Sher's argument responds to the objection that intergenerational compensation for past injustice entails that anyone would be entitled "to recover for any disadvantage with which one were born (or condition into which one were born) resulting from another's wrongdoing."⁶⁹ If intergenerational compensation indeed entails that, then, considering the number and scope of past injustices which negatively affect many individuals today, it leads to a *reductio ad absurdum* in which many (or most?) people would be entitled to seek some amount of reparations. Since an intergenerational victim can only seek compensation for the automatic effects of a past injustice, it limits the number of intergenerational claimants to a particular

⁶⁹ George Schedler, *Racist Symbols and Reparations: Philosophical Reflections on Vestiges of the American Civil War*, p. 112.

injustice. Likewise, the non-identity problem might be a way to avoid this *reductio* by excluding those who owe their existence to a wrongdoing from having standing to claim reparations for it.⁷⁰

Overall, then, a typical claim for the reparation of historical injustice –which was typically a social injustice –is harder to justify according to the necessary conditions for a claim for reparative justice to be compelling (which were laid out in Chapter One). Regardless, claims made by the direct victims of historical injustices fit into the logic of the paradigmatic case of interactional injustice. Hence, it conceptually makes sense to apply the same tools and intuitions used in the paradigmatic case to such claims. When it comes to intergenerational claims for the reparation of historical injustice, however, conceptualizing the harm done to such victims and what is required to remedy it in the same way as in the paradigmatic case leads to the non-identity problem and the possibility that the compensatory harm produced by an injustice fades fairly rapidly –both of which threaten to undermine the justifiability of many intergenerational claims. Even if a theory of intergenerational reparations can get around these two arguments, it must provide some account of how intergenerational claims to reparations can be limited only to certain intergenerational victims in order to avoid the *reductio ad absurdum* in which perhaps most people can claim some amount of reparations for various past injustices that presently negatively affect them. Those individuals of a later generation that claim reparations for historical injustice (as claims of reparative justice) face a double burden of both justifying how such victims are entitled to receive compensation for that past injustice and responding to the problems that tend to attach to the remediation of social injustice. The next section takes up this double burden by analyzing the case of reparations to African-Americans for slavery and other past legal discrimination.

⁷⁰ This is the approach taken by George Schedler in *Racist Symbols and Reparations: Philosophical Reflections on Vestiges of the American Civil War*, p. 112.

Chapter Three: **Intergenerational Claims to Reparations for Historical Injustice: The Case of African-Americans**

A. Introduction

*“If only ten or twenty Negroes had been put into slavery, we could call it injustice, but there were hundreds of thousands of them throughout the country. If this state of affairs had lasted for two or three years, we could state that it was unjust; but it lasted for more than two hundred years. Injustice which lasts for three long centuries and which exists among millions of people over thousands of square miles of territory, is injustice no longer; it is an accomplished fact of life.”*⁷¹

Slavery was not a discrete injustice in which only one person or a few people wronged one other person or a few other people; slavery was a social injustice that wronged millions from the inception of the United States until the passage of the Thirteenth Amendment to the Constitution in 1865. Slavery, as well as legal discrimination directed at free African-Americans in the antebellum period, worked to put African-Americans in a subordinate place within American society. In the wake of slavery, other legal social injustices⁷² targeting African-Americans remained in place or were commenced including, *inter alia*, Jim Crow laws, housing discrimination and various forms of voting discrimination. Discriminatory laws and formal and informal social practices worked to ensure that African-Americans stayed in a subordinate place in American society. In our contemporary circumstances, although most forms of racial discrimination are illegal (but laws barring racial discrimination are not always proactively enforced), many African-Americans remain in a subordinate position in society as a result of unjust social processes that have their roots in this legacy of legal discrimination. As Richard Wright puts it, racial injustice has become “an accomplished fact of life.”

⁷¹ Richard Wright, *Native Son*, p. 360.

⁷² By legal social injustices, I mean both discrimination that was Federal or state government policy (e.g. Jim Crow laws) and common forms of discrimination committed by private individuals that was legally allowed (e.g. the refusal to rent or sell property based on race before it was outlawed by the Fair Housing Act of 1968) or was tacitly allowed even if technically illegal (e.g. lynching until after the Civil Rights Movement).

It will be argued that the United States Government has a reparative obligation to address and redress certain injustices suffered by African-Americans in contemporary society. Of course, for a reparative claim to be compelling it must meet the five conditions laid out in Chapter One. Recall that establishing *Condition One* (that those claiming remediation for harms stemming from a past wrong are entitled to receive it) is a unique difficulty facing those of a later generation making claims for reparations for past injustice. Not surprisingly, then, much of the philosophical literature on reparations for slavery and other forms of past racial injustice in the United States is focused on whether or not *Condition One* can be met. Hence, much of this Chapter will be concerned with establishing *Condition One*. To do so, an account will be given of how past wrongs, for which the U.S. Government was complicit, connect to present wrongs and so can be said to wrong many African-Americans in the present; this also requires a solution to the non-identity problem or an answer to how present African-Americans can be wronged by past social injustices to which they owe their existence. Regarding *Condition Three*, it will be argued that the U.S. Government's reparative obligation should take the form primarily of ending present wrongs that stem from past injustices in which the state was complicit and only secondarily of compensating for the harms that resulted from historical wrongs. It will then be argued that *Condition Four* and *Condition Five* do not defeat a reparations program based on the argument that will have been put forth. The Chapter will close by responding to an objection that present wrongs ground obligations (on the part of some parties) to address and redress them and that appealing to reparative justice is superfluous. Before turning to the argument, however, this paper will delineate and critique two fairly recent arguments to ground reparations for slavery to African-Americans that attempt to circumvent the non-identity problem. The difficulties that these arguments face make the argument that will be presented more salient.

B. Previous Arguments for Reparations to African-Americans for Historical Injustice

Arguments for reparations to African-Americans based on the backwards-looking demand of reparative justice fall into two broad categories: *counterfactual arguments* and *inheritance arguments*.⁷³ Although counterfactuals are a prominent way to conceive of reparations, the non-identity problem and Sher's argument concerning the fading of injustice have led many commentators to conclude that reparations to African-Americans cannot (or at least likely cannot) be justified through counterfactuals.⁷⁴ In reaction to the non-identity problem, a fairly new argument that attempts to ground reparations to African-Americans for slavery based on counterfactuals has been put forth which we will refer to as *the subsequent-wrong solution*.⁷⁵

The subsequent wrong solution has fairly recently been independently advanced by George Sher and Bernard Boxill.⁷⁶ It starts from the uncontroversial premise that the original victim of an injustice (V1) is owed compensation for the harms suffered from that injustice and that the failure to provide this compensation constitutes a further injustice to V1. After V1's child is conceived (V2), if the compensation owed to V1 has not been provided, then this is a continuing wrong to V1. Since the failure to compensate V1 after the conception of V2 is unjust, V2 is entitled to compensation for any harm that stems from it.⁷⁷ Notice that this avoids the non-

⁷³ I take this distinction from Bernard Boxill in "A Lockean Argument for Black Reparations."

⁷⁴ Cf. Stephen Kershnar, "The Inheritance-Based Claim to Reparations"; Leif Wenar, "Reparations for the Future"; Janna Thompson, "Historical Injustice and Reparation."

⁷⁵ I owe this term to Ori Herstein, see his "Historic Justice and the Non-Identity Problem: The Limitations of the Subsequent-Wrong Solution and Towards a New Solution."

⁷⁶ See George Sher, "Transgenerational Compensation," pp. 190-195 and Bernard Boxill, "A Lockean Argument for Black Reparations," pp. 85-91.

⁷⁷ For, if reparations had been provided to V1 after V2's conception then V2 would be better off than V2 is in the actual world. Of course, it could be disputed that the failure to compensate V1 after V2's conception does not necessarily lead to V2 being worse-off in the actual world. However, it is plausible that in many cases the failure to compensate V1 does lead to V2 being worse-off. After all, it seems likely that in many cases reparations to V1 would have qualitatively contributed to V2's overall well-being (because, for instance, it puts V1 in a better position to provide for V2).

identity problem because the harm done to V2 is from a failure to compensate V1 *after* V2 is conceived. The failure to compensate V2 for this harm is an ongoing injustice to V2. If the compensation owed to V2 has not been provided after the conception of V2's child (V3) and this harms V3, then V3 is owed compensation for this unjust harm. From this, it is easy to see how this argument can be extended from generation to generation. Hence, the original injustice is connected to some current harm "via a chain of injustices."⁷⁸ This argument could be applied to the descendants of slaves and of those who suffered race based discrimination.

It should be noted that this argument *potentially* circumvents the fading of an original injustice. If the failure to provide reparations to V1 (after V2's conception) qualitatively limits the opportunities available to V2, then this injustice is a fairly substantial harm to V2 and thus demands fairly substantial compensation;⁷⁹ hence, it is not unlikely that the failure to compensate V2 after V3's conception qualitatively limits the opportunities available to V3, and so this injustice is a fairly substantial harm to V3 which demands fairly substantial compensation; this means that the failure to compensate V3 after V4's conception would not unlikely qualitatively limit the opportunities available to V4 –and so on through the generations. So, the original injustice does not necessarily fade, as the wrongful failure to provide compensation to one generation could consistently be a substantial harm to the next.

That being said, it is likely that the compensatory harm would decline over the generations (as Sher himself points out)⁸⁰ and so the amount owed to many African-Americans

⁷⁸ Ori Herstein, "Historic Justice and the Non-Identity Problem: The Limitations of the Subsequent-Wrong Solution and Towards a New Solution." p. 520.

⁷⁹ Recall that V2 cannot claim compensation for entitlements he or she enjoys in a possible world (in which V1 is compensated after V2's conception) that result from actions that nobody does in the actual world. At most, V2 can claim compensation for the lost opportunities (resulting from the failure to compensate V1 after V2's conception) to pursue those entitlements. However, it is conceivable that those lost opportunities could be a substantial harm to V2 and thus demand substantial compensation – e.g., when the failure to compensate V1 (after V2's conception) means that V2 does not have the opportunity to grow up without being in dire poverty.

⁸⁰ See George Sher, "Transgenerational Compensation," p. 194.

through the subsequent wrong solution would be fairly low and in some cases perhaps nothing. To see this, consider that in some cases compensation to V1 (coming after V2's conception) would not qualitatively improve the opportunities available to V2; when this is the case, then, V2 has likely not been greatly harmed by the failure to provide compensation to V1 and so is not entitled to much in the way of compensation;⁸¹ thus, the unjust failure to provide V2 with compensation for this fairly minor harm would likely not greatly harm V3; hence, the "chain of injustices" extending to the present day become injustices that do not produce much harm.⁸² Moreover, sometimes reparations coming to a victim after the conception of his or her child would do nothing to improve the opportunities available to that child, such as perhaps when the amount of compensation is quite low as a result of the argument above or when the parent does not use the reparations in a way to advance the opportunities of the child (after all, borrowing Jeremy Waldron's example, the parent could lose it in a poker game).⁸³ In such cases, the child is not harmed by the failure to compensate his or her parents and so is entitled to no compensation for this failure. So, since it is no injustice to this child that his or her parent was never compensated, the chain of injustice is broken and does not extend to the present-day.⁸⁴

The chain of injustices in the subsequent wrong solution is a chain of hypothetical situations; it is all conjectural and thus there is no way to discern how much a present-day

⁸¹ For instance, perhaps the only tangible effect of providing reparations to V1 on V2 is that instead of growing up in poverty V2 grows up in slightly less poverty. Hence, the compensation that should be given to V2 would only be whatever is sufficient to compensate for the lost opportunity to not grow up in slightly less poverty.

⁸² N.B. a case where compensation to a victim's parent (coming after that victim's conception) would not qualitatively improve the opportunities available to that victim can occur generations after the original injustice; but, once this has happened, since the compensation owed to that victim becomes for a minor harm, the failure to provide it will likely only mildly harm that victim's child; and, the failure to provide compensation to this child will likely only mildly harm this child's child, *etc.* –and so, after extending this chain of injustices to the present-day, the harm to a present day descendant will likely be mild. *The point is that once there is a case in which compensation to a victim's parent (coming after that victim's conception) would not qualitatively improve the opportunities available to that victim it greatly lowers the amount of compensation due to this victim and likely to all the succeeding generations of descendants.*

⁸³ Cf. Jeremy Waldron, "Superseding Historic Injustice," p. 9.

⁸⁴ Ori Herstein also points to the potential for the chain of injustices to be severed in "Historic Justice and the Non-Identity Problem: The Limitations of the Subsequent-Wrong Solution and Towards a New Solution," 516-517.

descendant at the end of this chain is actually owed in the way of reparations. In Sher's defense, he sets forth the subsequent wrong solution only to explain our intuition that the descendants of those who suffered from a substantial injustice are owed *some* compensation while getting around the non-identity problem –not to discern how much compensation.⁸⁵ Yet, the epistemic uncertainty inherent to the subsequent wrong solution, and the likelihood that in many cases the amount owed to descendants of those who suffered from the original injustice (and from the subsequent failure to pay reparations) is fairly little or nothing at all, make the subsequent wrong solution a shaky foundation to base a large-scale reparations program to the descendants of slaves and of other victims of racial injustice, especially when the burden of providing reparations comes largely from innocent third parties (e.g. contemporary taxpayers). This is not the only problem with using the subsequent wrong solution to base reparations to African-Americans for slavery and other past racial injustice,⁸⁶ but it seems to be a sufficiently serious problem that a proponent of reparations to African-Americans should search for a different argument to do so. A common argument to do so is through the *inheritance argument*.

A streamlined version of a common inheritance-based argument runs as follows: slaves were entitled to compensation for the wages that they did not receive and also for the harms that they suffered as a result of slavery; since the slaves never received this compensation, their heirs inherited their entitlements to this compensation; since this compensation has never been given

⁸⁵ Cf. "...for because there is no truth to the matter about how much better off the child would have been in the absence of the original injustice, there is also no definite amount that the child appears, on reflection, to be owed as compensation for it. Because the only definite intuition is that the child is owed *something*, my proposal captures this intuition whenever compensating the parent would have made the child at least somewhat better off" in George Sher, "Transgenerational Compensation," pp. 193-194, emphasis in original.

⁸⁶ For some additional arguments that tell against the subsequent-wrong solution as a viable approach regarding reparations to later generations for past injustice, see Ori Herstein, "Historic Justice and the Non-Identity Problem: The Limitations of the Subsequent-Wrong Solution and Towards a New Solution," pp. 519-527.

to any of the slaves' descendants, current African-Americans now hold these entitlements.⁸⁷ The inheritance argument is based on reparative justice: since a slave was wronged by others through slavery, that slave is owed reparations for that wrong. It avoids, however, Sher's argument for the fading of compensatory harm over generations and the non-identity problem as it is not based on any current harm faced by the descendants of that slave, but only on them inheriting their ancestor's claim to reparations. So, as Bernard Boxill puts it, this seems like "an elegant and streamlined argument for the conclusion that African Americans have claims...based on the enslavement of their ancestors."⁸⁸

Moreover, since the unpaid reparations due to one's slave ancestors have been unpaid and so have been collecting generation after generation, this *prima facie* suggests that the amount owed to the present generation of descendants of slaves could be substantial. For, say that some slave S_1 is owed x amount for unpaid labor and the harms done to him through slavery. Considering that even the well-treated slave would have been entitled to compensation for the loss of liberty and for unpaid labor (and the vast majority of slaves would have been entitled to reparations for many more, often times egregious, harms), x could a considerable sum. Moreover, say that this slave has a son with another slave S_2 who is owed y amount in reparations; the son inherits both claims (x and y) to compensation; say that the son himself is a slave S_3 and so in addition to being owed x and y through inheritance he is owed z amount of reparations for the harms that he has faced through slavery; say that this slave has a son with another slave S_4 who is owed a amount of reparations (say that she was captured in Africa and so has not inherited any claims from slave ancestors); this son inherits the claims to x , y , z and a

⁸⁷ See Bernard Boxill, "A Lockean Argument for Black Reparations," pp. 69-85 and Stephen Kershnar, "The Inheritance-Based Claim to Reparations," pp. 251-257 for two more detailed presentations of this basic argument. Still, in essence, both commentators present the argument described here.

⁸⁸ Bernard Boxill, "A Lockean Argument for Black Reparations," p. 69.

amounts of compensation and, if he is a slave as well, he would be owed reparations for the harms that he has faced. Hence, an African-American today with slave ancestry has typically inherited claims to reparations not just from one slave ancestor but from several, with each separate claim accumulating interest. This seems to be a potentially large sum. Moreover, it seems that one could modify the argument to include the (uncollected) compensation due to those who suffered wrongs under Jim Crow and other forms of legal racial discrimination (e.g. housing discrimination), which increases the total amount owed to current African-Americans.⁸⁹

The inheritance argument, however, is unsatisfactory for several reasons. First of all, perhaps the amount which descendants are owed is actually fairly low or below what a proponent of reparations would find desirable. For one thing, the amount that an individual inherits is split among siblings. Through successive generation, the inheritance would likely continue to be subdivided in this way. Hence, by the time the inheritance reaches the present generation of descendants, it could be quite a bit less.⁹⁰ E.g., if we adopt the principle that an inheritance should be split equally among siblings, then the son of S_1 (i.e. S_3) in the example above likely does not inherit x , but a portion of x (say that S_1 has five children who would inherit claims⁹¹ and so S_3 is owed $x/5$); moreover, S_3 likely does not inherit all of S_2 's claim for reparations (i.e. y) (say that S_2 has seven children who would inherit claims and so S_3 is owed $y/7$). As for the son of S_3 and S_4 in the example above, he would only inherit a portion of a , z , $x/5$ and $y/7$; if S_3 has three children who would inherit claims, and S_4 has three as well, this son inherits $x/15$, $y/21$, $z/3$ and $a/3$. Say that this son was born into freedom; any harm he has suffered as a result of legal

⁸⁹ Note that the party obligated to provide reparations might be different depending on the specific inherited claim. For instance, perhaps the U.S. Government has the main obligation to pay reparations for the harms suffered by slaves; however, perhaps it is mainly the obligation of state governments to pay reparations for harms suffered by individuals as a result of Jim Crow laws.

⁹⁰ Cf. Stephen Kershnar, "The Inheritance-Based Claim to Reparations," p. 258.

⁹¹ Those children who would inherit claims for reparations would seem to be those who would have received any inheritance had the slave been able to provide inheritance.

discrimination deserves compensation (amount b), but any such harm would likely lead to less in the way compensation than the average harm associated with slavery (i.e. amount b would likely be much less than any of amounts x , y , z and a). He has five children who would inherit his claims; hence, each inherits $x/5$, $y/5$, $z/5$, $a/5$, and $b/5$ (as well as any claims from their mother). As should be apparent, as the generations continue, this subdivision would likely continue with the inherited claims from slavery (which would likely be for more than those inherited claims stemming from other forms of racial discrimination) being the furthest in the past and so the most subdivided. Moreover, some commentators argue that there are offsets to the amount that can be claimed in inheritance. For instance, some argue that the transfer in wealth from whites to African-Americans through social welfare programs should be subtracted from any compensation due to African-Americans through inheritance.^{92 93}

So, perhaps the claims for reparations that current descendants of slaves have inherited are actually for far less than is desirable to them –the question of how much any particular descendant has inherited, moreover, is wrought with epistemic difficulties. It requires, firstly, a substantial amount of knowledge about one’s family history (e.g., how many slave ancestors does one have? Did they suffer any particular harm over and above loss of liberty and forced labor? Does one have any ancestors that suffered from some other form of legal discrimination (e.g. Jim Crow) which deserves compensation?). It also requires a way to determine what is

⁹² Stephen Kershnar, “The Inheritance-Based Claim to Reparations,” p. 262. The conservative polemicist David Horowitz makes a similar argument: “Since the passage of the Civil Rights Acts and the advent of the Great Society in 1965, trillions of dollars in transfer payments have been made to African-Americans in the form of welfare benefits and racial preferences” in “Ten Reasons Why Reparations for Blacks is a Bad Idea for Blacks –and Racist, Too,” p. 129.

⁹³ The social welfare benefits argument is not the only argument that seeks to establish that there are offsets to the amount owed to African-Americans, see Stephen Kershnar, “The Inheritance-Based Claim to Reparations,” pp. 261-262.

owed to slaves from their unpaid labor, which is a contested question in the literature,⁹⁴ and a way to quantify physical and psychological abuse.⁹⁵

Jeremy Waldron's indeterminacy argument could also tell against the inheritance argument. Free choice is such that it is impossible to predict how one would use his or her money and also how one would choose to bequeath his or her estate.⁹⁶ Hence, if compensation had been given to slaves (or to those who suffered harms under Jim Crow or other past legal injustices), it is unclear how much of it would remain in the family and reach individual descendants today (as, after all, it might have been "lost...in a poker game").⁹⁷ After many years, (and so as it becomes more and more uncertain as to what amount of compensation would reach current descendants if reparations had been made), it becomes more difficult to justify the inheritance of claims to reparations when those claims come against the interests of innocent third parties.⁹⁸ So, as a result of the uncertainty as to whether any share of reparations (had they been made in the past) would reach a present-day descendent, even if say the U.S. Government has an obligation to pay the inherited reparations to present-day descendants, this could be superseded by the burden it places on innocent third parties (i.e. current tax-payers).

Another difficulty with the inheritance argument is that it rests on the justifiability of inheritance. However, not all accept that inheritance is justified,⁹⁹ and even if one accepts that some forms of inheritance are justified, one may not accept the type of inheritance argued for in

⁹⁴ For two brief discussions of this question, see Bernard Boxill, "A Lockean Argument for Black Reparations," pp. 69-70 and George Schedler, *Racist Symbols and Reparations: Philosophical Reflections on Vestiges of the American Civil War*, pp. 101-104.

⁹⁵ The difficulty of quantifying physical and psychological abuse is common among claims for the reparation of historical injustice. This difficulty does not necessarily defeat a claim for reparations. Yet, it must be addressed if any substantial material resources are to be provided in reparations.

⁹⁶ Jeremy Waldron, "Superseding Historic Injustice," pp. 9-11.

⁹⁷ Jeremy Waldron, "Superseding Historic Injustice," p. 9.

⁹⁸ Cf. Janna Thompson's interpretation of Waldron's argument in "Historical Injustice and Reparation: Justifying Claims of Descendants," p. 122.

⁹⁹ E.g. D.W. Haslett., "Is Inheritance Justified?"

the inheritance argument. René Hill, for instance, argues that “compensation is the method by which injuries are made better, and if the injury is no longer extant then the compensation is no longer needed.” Hence, the claim to compensation for personal injury dies with the injured party.

¹⁰⁰ If Hill is correct, claims to compensation for unpaid labour could perhaps still be inheritable, as this compensation is not to make good an injury done to a person. Rather, this is the compensation that one should have received for one’s work and thus be able to bequeath with one’s other wealth. Thus, Hill’s argument has the virtue of perhaps allowing that the descendants of slaves inherit claims to compensation for unpaid labor while preventing the inheritance argument from leading to a *reductio ad absurdum* in which many persons inherit claims to reparations as a result of uncompensated injustices done to their forebears. If the descendants of slaves inherit uncollected claims for reparations from those slaves (for the harms done to them beyond not being paid for their labour), do the descendants of Chinese laborers who were abused while working to build the railroads in the 19th century inherit unpaid claims to reparations? Do the descendants of women who have been unjustly discriminated against in employment or education inherit unpaid claims to reparations for such harms? This *reductio* suggests that proponents of the fuller version of the inheritance argument (in which descendants inherit claims to reparations for harms in addition to unpaid labour) need to establish some account of why the descendants of slaves are entitled to inherit this type of claim to reparations and not *all* those other people who are descended from those who suffered from injustices and never received reparations for their harms.

Yet, the attenuated version of the inheritance argument (in which the descendants of slaves inherit only claims to reparations for the unpaid labour of those slaves) faces two additional problems. Firstly, it is questionable whether one can “own” compensation that one has

¹⁰⁰ René Hill, “Compensatory Justice: Over Time and Between Groups,” p. 404.

not received and is not legally entitled to (which would be the position of slaves) and so as to whether one can bequeath it.¹⁰¹ Hence, even if one accepts inheritance, perhaps this version of the inheritance argument is unjustifiable. Secondly, the slaves' "greatest harms stemmed from the loss of their liberty and they deserved reparation for those harms;"¹⁰² remedying the wrong done to the slaves by slavery primarily concerns the wrong done to them from their involuntary servitude and from being treated as things or as tools rather than as people. The attenuated inheritance argument only concerns remedying the relatively unimportant harm done to the slaves from not compensating them for their labor, and as such might not do much justice to the slaves.¹⁰³ If one of the purposes of reparative obligations for slavery is to express condemnation of slavery as a wrong, the attenuated inheritance argument for reparations seems to miss the main point of what was wrong with slavery. All in all, the points made in this essay do not constitute a knock-down case against the inheritance argument. Yet, if the inheritance argument is the strongest basis for reparative obligations to African-Americans for historical injustices including slavery and Jim Crow, it is not likely to lead to an endorsement of any large-scale reparations.

C. An Argument for How Present Day African-Americans are Entitled to Receive Reparations for Past Legal Discrimination

As we have seen, a popular way to conceive of intergenerational harm is through the notion that an individual (of a later generation) is harmed by a past injustice if he or she is worse-off overall as a result of it. Generally, a corollary of this account of intergenerational harm is the notion that if one is not harmed in this way by a past injustice then he or she has not been

¹⁰¹ George Sher makes this point in "Transgenerational Compensation," p. 195, f. 21.

¹⁰² Bernard Boxill, "A Lockean Argument for Black Reparations," p. 70

¹⁰³ George Schedler stresses a similar point in *Racist Symbols and Reparations: Philosophical Reflections on Vestiges of the American Civil War*, pp. 109-110.

wronged by it.¹⁰⁴ As Rahul Kumar points out, this account of wrong is consequentialist.¹⁰⁵ I will not explicitly argue against this approach, but it leads to counterintuitive results that tell against it and suggest the importance of deontological factors in evaluating whether or not an action is wrong. For instance, consider the case of a racist cabbie that does not stop for an African-American man trying to flag the cabbie down. If the cabbie had stopped, the man would have arrived at the airport in time to make his flight, but as a result of waiting several more minutes before another cab appears the man ends up missing his flight. Ultimately, it turns out that the plane he would have taken if not for the cabbie's discrimination crashes, tragically killing all onboard. Although the cabbie's discrimination has not made this African-American man worse-off (in fact it has benefitted him), it seems that the cabbie has wronged him.¹⁰⁶ Perhaps this example does not seriously challenge the argument that one can be wronged only if harmed in the aggregate because it is a fluke. The cabbie had no interest in the welfare of the African-American man and got morally lucky in this instance; our intuitions (incorrectly in this case) suggest that the cabbie wronged the African-American man because generally the cabbie's discrimination is harmful to those African-Americans who encounter it. Yet, consider the case of a domineering husband who makes all the decisions regarding his wife's affairs outside the household: where she may go out to, with whom, at what times, *etc.* Say that he is domineering because he genuinely cares about her and thinks that this is what is best for her, and say that in general his decisions really are more beneficial for her than if she had discretion over her outside affairs. Many would say that the husband consistently wrongs her by not allowing her discretion

¹⁰⁴ This is why the non-identity problem is salient. If one has not been made worse-off overall by a past injustice (because one owes one's existence to it), then one cannot have been wronged by it.

¹⁰⁵ See Rahul Kumar, "Who Can Be Wronged?," pp. 101-102.

¹⁰⁶ This example is similar to those found in James Woodward's "The Non-Identity Problem," pp. 810-811 and in Rodney C. Roberts' "The Counterfactual Conception of Compensation," pp. 417-418. Both authors stress the counterintuitive results of the notion that if one is not harmed in the aggregate by an action then he or she has not been wronged by it.

in how she leads her life outside the household. In this example, it is harder to dismiss an instance in which a paternalistic decision of the husband regarding his wife benefits her as a fluke, as this is the case more often than not. Both of these examples suggest that consequences alone do not determine if an action is wrong, and that a deontological approach is more satisfactory.

Rather than focusing on the consequences for a victim of a wrong, a deontological approach holds that “how the wrongdoer has related to the wronged” is what is of moral significance.¹⁰⁷ Specifically, the wrongdoer wrongs the victim by failing “to respect the status of the wronged as a being worthy of respect.”¹⁰⁸ This is vague, but what Kumar has in mind is that the wrongdoer infringes on the “legitimate expectations” of the wronged which that wronged person has in virtue of being a rational being or a person; one way to interpret this is that the wrongdoer violates a moral right the wronged has based on some moral principle (as this would be a legitimate expectation).¹⁰⁹ So, the cabbie violates the African-American man’s right not to be arbitrarily discriminated against while the domineering husband violates his wife’s right to be treated as a morally mature and self-directing agent.

Regarding claims for reparations for past injustice made by generations born subsequent to the injustice, when these individuals have their legitimate expectations or their moral rights violated as a result of past injustice, then they are wronged by this past injustice. To help see this, consider the following case: say that over many years Acme Corporation adopts a policy of dumping carcinogens into the local environment at a local factory (while being fully aware of the potential harmful effects) in order to remain profitable; as a result of this policy’s profitability A

¹⁰⁷ Rahul Kumar, “Who Can Be Wronged?,” p. 105.

¹⁰⁸ Rahul Kumar, “Who Can Be Wronged?,” p. 105.

¹⁰⁹ Rahul Kumar, “Who Can Be Wronged?,” p. 106. This account accords with the discussion in Chapter Two. Recall that Smith wronged Jones because Smith violated Jones’s right to bodily integrity by punching Jones in the jaw.

and B are each hired by Acme Corporation to come to work at this factory, where they meet and have a child C; C has a normal, happy life until at age seven C develops cancer as a direct result of the carcinogens dumped by Acme.¹¹⁰ From a deontological perspective, it is clear that Acme Corporation has violated a right of C's (such as not to be poisoned) by acting recklessly when adopting its pollution policy and so has wronged C. From this perspective, it is irrelevant that the policy of dumping carcinogens has not left C any worse-off than if it had not adopted this policy (as if it had not adopted this policy then C would not have existed). For, since the wrongness of an action does not turn on whether it harms an individual in the aggregate, an action still wrongs someone when it causes him or her to come into being and then violates his or her rights. As a result of this wrong, Acme Corporation owes compensation to C for the harms that stem from it.

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So, how are all African-Americans specifically wronged by slavery and past legalized discrimination? First of all, racial stigmatization originating in slavery leads to African-Americans being wronged today.^{112 113} In a hierarchical society, such as the antebellum United

¹¹⁰ This example is similar to one made by James Woodward in "The Non-Identity Problem," p. 813.

¹¹¹ Cf. "In my view, all that is required to justify the claim that C has been wronged and is due compensation is what, commonsensically, we would think is required: a showing that the Acme corporation did in fact knowingly violate some right or obligation owed to C (protecting, e.g., a specific interest in not being killed or injured). Whether the corporation's policy happens to have, on balance, consequences such that it leaves C no worse-off than he would be under any alternative policy is simply irrelevant. The objection to Acme's policy would be exactly the same if Acme's policies had no effect at all on C's conception," in James Woodward, "The Non-Identity Problem," p. 814.

¹¹² Rahul Kumar and David Silver make a similar argument for how racial stigmatization originating in slavery leads to African-Americans being wronged today in "The Legacy of Injustice. Wronging the Future, Responsibility for the Past," pp. 149-152.

¹¹³ I base this discussion of racial stigmatization on Glenn Loury's "Transgenerational Justice—Compensatory versus Interpretive Approaches." It should be noted that Glenn Loury, in his discussion of racial stigmatization, heavily uses Orlando Patterson's *Slavery and Social Death: A Comparative Study*. The idea that there is a negative stigma attached to being of black skin color is quite likely, see, for instance, Douglas S. Massey's brief discussion of racist attitudes held by whites towards African-Americans (and the references therein) in *Categorically Unequal: The American Stratification System*, pp. 69-70; based on national-level data from 1990, one study "found that 47 percent of whites rated blacks as lazy, and 54 percent said they were prone to violence" while another study using this data "estimated that at least one-fifth of white Americans hold *uniformly* negative views of African-Americans across all dimensions—intelligence, motivation to work, proclivity toward violence, drug use, and criminality" (p. 69, emphasis in original). Although Massey does not provide any other information about these studies, it is doubtful

States, “a correspondence may develop between a person’s social position and the physical marks taken in that society to signify race.”¹¹⁴ Since in all cultures and periods of history slaves are considered to be dishonorable and since American slavery was racially based, blackness became associated with dishonor.¹¹⁵ Moreover, the established meanings invested in race concerning “identity, capability, and worthiness” became “taken for granted, enduring unchallenged for generations.”¹¹⁶ Thus, even with the end of slavery, a racial stigma “of inferiority, of moral inadequacy, of unfitness for intimacy, of intellectual incapacity” remained attached to African-Americans.¹¹⁷ This racial stigma, “enduring unchallenged” to Americans today, is not so much an overt racial attitude as a prejudice that operates at a subconscious level shaping how one gives meaning to one’s experiences in the world.¹¹⁸ Unfortunately, a vicious cycle exists which entrenches this racial stigmatization. After the end of *de jure* discrimination, African-Americans were generally at a lower socio-economic status than the average population. This lower socio-economic status, interpreted by those in society holding a subconscious belief in the racial stigma attached to African-Americans, only reinforces this social stigma.¹¹⁹ In turn, this social stigma reinforces racial inequality. For example, a creditor takes the fact that commercial loans to African-Americans have a greater risk of default than average and, assuming that this says something about the trustworthiness of African-Americans, declines to offer credit to them, but this only makes it harder for African-Americans not to default on their

that whites rated other whites so negatively (or other races besides African-Americans for that matter see *infra* f. 121).

¹¹⁴ Glenn Loury, “Transgenerational Justice—Compensatory versus Interpretive Approaches,” p. 92.

¹¹⁵ Glenn Loury, “Transgenerational Justice—Compensatory versus Interpretive Approaches,” pp. 92-93.

¹¹⁶ Glenn Loury, “Transgenerational Justice—Compensatory versus Interpretive Approaches,” p. 92.

¹¹⁷ Glenn Loury, “Transgenerational Justice—Compensatory versus Interpretive Approaches,” p. 93.

¹¹⁸ Glenn Loury, “Transgenerational Justice—Compensatory versus Interpretive Approaches,” pp. 93-94.

¹¹⁹ “Given the facts of racially disparate achievement, the racially disproportionate transgression of legal strictures, and racially unequal development of productive potential, observers will have difficulty identifying with the plight of a group of people whom they (mistakenly) think are simply reaping what they have sown” in Glenn Loury, “Transgenerational Justice—Compensatory versus Interpretive Approaches,” p. 98.

loans because they cannot get credit. So, this only reinforces their lower socio-economic standing and their appearance of untrustworthiness.¹²⁰ The central points of this are (1) that present-day African-Americans are frequently wronged through having their moral right not to be arbitrarily discriminated against violated and (2) that the present social environment in which many individuals harbor a racial stigma towards African-Americans is largely the result of past social policy (especially slavery) that worked to demean and stigmatize having black skin and it continues to the present-day because of the vicious cycle described above.¹²¹

I opened this Chapter by describing how slavery was a social injustice, which significantly affected many individuals over the many years in which it was practiced and not an injustice where x (or a few x 's) wronged y (or a few y 's) through some discrete action or actions. As such, it put in place or strengthened social processes which then perpetuated over generations. As we saw above, racial stigmatization is one social process emanating out of slavery continuing to the present day. Racial stigmatization is, in Jeff Spinner-Halev's words, an *enduring injustice* which "has roots in the past, and continues to the present day."¹²² So, *contra* Sher, it is not as though slavery was a past injustice from which all the compensatory harm fades over generations. For, at least through racial stigmatization, slavery is causally linked to later generations being wronged and such wrongs demand address and redress for any harm that they bring. This essay will now describe another way in which past (as well as ongoing) legal racial injustice contributes to present wrong through the endurance of poor racial ghettos.

¹²⁰ Glenn Loury, "Transgenerational Justice—Compensatory versus Interpretive Approaches," p. 97.

¹²¹ It might be objected that racism existed prior to slavery and so racial stigmatization would exist today regardless of slavery. It is no doubt true that racism did exist prior to slavery and it is plausible that there would be racism towards those of African ancestry in the United States if slavery never occurred. But, it is also plausible that African-Americans would not face any more racism if slavery never occurred than other (non-white) ethnic group. Yet, it seems that they do (for instance, a study on white attitudes found that "African-Americans were always perceived more negatively than other groups," see Douglas S. Massey, *Categorically Unequal: The American Stratification System*, p. 69). Hence, it seems plausible that a stigma surrounding black skin originated in slavery and has remained entrenched through the vicious cycle described above.

¹²² Jeff Spinner-Halev, "From Historical to Enduring Injustice," p. 575.

Just as past injustice contributed to the prevalence of racial stigmatization today, past legal injustices have greatly contributed to the existence of poor racial ghettos in the present. For the purposes of this essay, rather than present a full account of how past legal discrimination has helped to create poor racial ghettos, it is only necessary to highlight a few past legal injustices that have had a particularly important role.¹²³ Racial ghettos were largely created in the early-to-mid-20th Century. Probably the most important factor in the creation of racial ghettos was the prevalence of various forms of legal housing discrimination, such as, *inter alia*, discrimination in the sale or rental of housing, racial steering by real estate agents,¹²⁴ and the (often violent) persecution of African-Americans who attempted to move into white neighborhoods; most forms of housing discrimination were legal¹²⁵ until the passage of the Fair Housing Act in 1968 (i.e. Title VIII of the Civil Rights Act of 1968).¹²⁶ Additionally, various levels of government were actively involved in creating and maintaining racial ghettos. Some Southern cities adopted residential segregation laws (until such laws were deemed unconstitutional by the Supreme Court in 1917),¹²⁷ and various subsequent policies in both Southern and Northern cities worked toward a similar outcome.¹²⁸ Of course, racial ghettos are not necessarily poor, but rather the poverty of

¹²³ This brief discussion is based on Douglas S. Massey's and Nancy A. Denton's, *American Apartheid: Segregation and the Making of the Underclass*, especially pp. 17-59, and Jonathan Kaplan's and Andrew Valls' more succinct discussion in "Housing Discrimination as a Basis for Black Reparations."

¹²⁴ Racial steering is the practice where real estate agents direct African-Americans away from predominantly white neighborhoods and whites towards predominantly white neighborhoods.

¹²⁵ The violent persecution of African-Americans attempting to move into white neighborhoods was, at least in many cases, not technically legal. But, since such violence was not generally condemned or prosecuted it fits the definition of legal injustice used in this paper, see *intra*, f. 72.

¹²⁶ The Fair Housing Act prohibited many forms of housing discrimination; e.g. The Fair Housing Act "made it unlawful to refuse to rent or sell a home to any person because of race; it prohibited racial discrimination in the terms and conditions of any sale; it barred any and all discrimination in real estate advertising;" *etc.*, in Douglas S. Massey and Nancy A. Denton, *American Apartheid: Segregation and the Making of the Underclass*, p. 195.

¹²⁷ See Douglas S. Massey and Nancy A. Denton, *American Apartheid: Segregation and the Making of the Underclass*, pp. 41-42

¹²⁸ Urban renewal programs that have been undertaken in many cities at various times (particularly from the 1950's through the 1960's) are an important example of this. Many such programs (generally with Federal support) razed for redevelopment increasingly African-American neighborhoods that encroached upon or "threatened" white business districts and other valued property. High-density project buildings were then built next to or in that city's racial ghetto to accommodate displaced residents and to in general provide as much additional housing as possible

many racial ghettos is the result of past injustice. Most obviously, slavery and other pervasive forms of legal discrimination, such as in employment and education (e.g. segregation laws), directly worked to impoverish many African-Americans (and thus racial ghettos). In addition to these types of widely recognized legal discrimination, this essay also highlights lending discrimination perpetuated by the Federal Government. The Federal Housing Authority adopted the practice of redlining whereby it rarely insured lending agency loans for those looking to buy in urban and mixed-race or African-American neighborhoods from its creation in 1934 through the 1950's (while doing so fairly readily for those looking to buy homes in white and suburban neighborhoods).¹²⁹ Since African-Americans generally could not move into white neighborhoods African-Americans generally were not able to take advantage of FHA-insured loans. Hence, African-Americans "did not have access to mortgage loan instruments that permitted increasing numbers of White Americans to purchase homes after the mid-1930's."¹³⁰ Moreover, those African-Americans that did secure credit or FHA-insured loans to purchase homes did so primarily in African-American or mixed-race neighborhoods where home values do not tend to substantially rise (due in part to discrimination which deflates demand).¹³¹ The discrimination perpetuated by the FHA also influenced the practice of private lending agencies which adopted the FHA's practice of redlining.¹³² Lending discrimination has denied many African-Americans the opportunity to build wealth through home ownership which also directly led to disinvestment in racial ghettos.

for African-Americans within (or next to) the ghetto, see *American Apartheid: Segregation and the Making of the Underclass*, pp. 55-57.

¹²⁹ See Douglas S. Massey and Nancy A. Denton, *American Apartheid: Segregation and the Making of the Underclass*, pp. 51-52.

¹³⁰ Jonathan Kaplan and Andrew Valls, "Housing Discrimination as a Basis for Black Reparations," p. 263.

¹³¹ Cf. Jonathan Kaplan and Andrew Valls, "Housing Discrimination as a Basis for Black Reparations," p. 265.

¹³² On the practice of redlining by private lending agencies, see Douglas S. Massey and Nancy A. Denton, *American Apartheid: Segregation and the Making of the Underclass*, p. 52.

The concentration of poverty in racial ghettos,¹³³ in cities such as Baltimore, Chicago, Cleveland, Detroit, Newark and Philadelphia, entails “the spatial concentration of anything correlated with poverty.”¹³⁴ A few of the negative correlates for those living in neighborhoods with concentrated poverty will be highlighted here; these negative correlates work to severely limit the opportunities available to those who live in such neighborhoods and thus to perpetuate poverty over generations.¹³⁵ Firstly, the spatial concentration of poverty has led to the drawing of administrative lines such that the more affluent tend to live in districts separated from the poor.¹³⁶ In such a situation, the districts where the poor are concentrated have few resources to draw upon and hence poor public services for its residents (such as poor public schools). Secondly, racial ghettos in which poverty is concentrated and the segregation of the relatively affluent from them mean that the social networks of those who live in such neighborhoods are with other poor or relatively poor people. Hence, these individuals lack access to social networks from which one can find access to employment and other opportunities.¹³⁷ This general inability of individuals in racial ghettos to utilize social networks to find employment is compounded by the relative dearth of employment and the poor schools found within such neighborhoods (as well as racially based employment discrimination). Thirdly, the spatial concentration of poverty leads to neighborhoods in which crime and violence is common because criminal behavior is strongly associated with (low) income, which increases the likelihood that a resident of such a

¹³³ For an account of how racial ghettos concentrate poverty, see Douglas S. Massey and Nancy A. Denton, *American Apartheid: Segregation and the Making of the Underclass*, particularly pp. 115-147.

¹³⁴ Douglas S. Massey, *Categorically Unequal: The American Stratification System*, p. 111.

¹³⁵ This discussion draws upon Douglas S. Massey’s *Categorically Unequal: The American Stratification System*. Still, the notion that concentrated poverty brings with it many negative effects for those living in such neighborhoods is common in the social science literature; according to William Julius Wilson, “in general, the research reveals that concentrated poverty adversely affects one’s chances in life, beginning in early childhood and adolescence,” in *More Than Just Race: Being Black and Poor in the Inner City*, p. 46.

¹³⁶ For more on the administrative separation of the relatively affluent from the poor, see Douglas S. Massey, *Categorically Unequal: The American Stratification System*, p. 196.

¹³⁷ See Douglas S. Massey, *Categorically Unequal: The American Stratification System*, pp. 202-204.

neighborhood will be the victim of crime.¹³⁸ Fourthly, a culture of poverty develops in such racial ghettos that tends to further entrench poverty. For, where violence is endemic, it makes sense to adopt violent attitudes and behavior in order to dissuade others from using violence against one's self;¹³⁹ where violence is endemic and where neighborhoods are gripped by seemingly inevitable poverty, individuals tend to lack the trust to help others and the will to work for the common good;¹⁴⁰ and, where success in mainstream society is very unlikely, individuals are likely to adopt an "oppositional identity" which values what mainstream society regards as deviant—for instance, "success in school is devalued, hard work is seen as a sellout, and any display of learning is viewed as distinctly uncool."¹⁴¹

That poor racial ghettos endure is partly a function of the social processes described above which perpetuate poverty over generations both contributing to the poverty of racial ghettos and making it harder for its residents to move into suburban neighborhoods. That being said, it is not as though African-Americans generally want to be segregated from other races,¹⁴² but rather this phenomenon also endures through racial stigmatization. Several studies have shown that whites generally express a reluctance to live in neighborhoods where many African-Americans reside.¹⁴³ Hence, the probability of "white flight" from an increasingly African-

¹³⁸ See Douglas S. Massey, *Categorically Unequal: The American Stratification System*, pp. 205-206.

¹³⁹ Cf. Douglas S. Massey, *Categorically Unequal: The American Stratification System*, p. 206.

¹⁴⁰ Cf. Douglas S. Massey, *Categorically Unequal: The American Stratification System*, p. 207.

¹⁴¹ Douglas S. Massey, *Categorically Unequal: The American Stratification System*, p. 208.

¹⁴² According to Douglas S. Massey, based on data from the 2000 General Social Survey, African-Americans on average expressed a preference to live in neighborhoods where they were not the majority, in *Categorically Unequal: The American Stratification System*, pp. 71-72. More detailed survey data on the preferences of African-Americans regarding the racial composition of their neighborhoods can be found in Douglas S. Massey and Nancy A. Denton, *American Apartheid: Segregation and the Making of the Underclass*, pp. 88-96. Although the data is relatively old (generally from the late-1970's), it supports the notion that African-Americans generally prefer to live in integrated neighborhoods.

¹⁴³ This is the conclusion of an overview of several studies concerning white attitudes on neighborhood preferences regarding the presence of African-Americans, in *Categorically Unequal: The American Stratification System*, pp. 71-74. For instance, one experiment (from 2001) found that whites, in a hypothetical situation, were very unlikely to buy a home in any hypothetical neighborhood—regardless of crime, school quality or property values—that was more than 15 percent African-American. Moreover, this study found that this preference is likely based on negative

American neighborhood and the general disinclination of whites to move into neighborhoods where many African-Americans reside contribute to racial segregation. Moreover, housing and lending discrimination, which perpetuates residential segregation and makes it harder for African-Americans to gain wealth through home ownership, continues despite being illegal.¹⁴⁴

¹⁴⁵ Massey concludes from evaluating the literature that “in short, black home-seekers continue to experience significant racial discrimination at virtually all phases of a housing market transaction: when they contact agents by phone, when they meet with agents in person, when they are shown units in different neighborhoods, when they apply for loans, when they are evaluated for credit, when they receive private mortgage insurance, and when their interest rates and repayment periods are set.”¹⁴⁶ Overall, stigmatization helps to maintain poor racial ghettos, which in turn concentrate poverty and perpetuate it, and this in turn only reinforces racial stigmatization¹⁴⁷ and with it the maintenance of poor racial ghettos. Thus, the poverty of racial ghettos (which is linked to past injustice) is self-perpetuating similarly to what we saw with racial stigmatization previously in this essay.

I mention poor racial ghettos because many African-Americans who reside within them likely face structural injustice. By structural injustice, I am referring to Iris Marion Young’s notion whereby “social processes¹⁴⁸ put large categories of persons *under a systematic threat of*

attitudes towards African-Americans rather than on a preference for living around other whites (as the presence of Hispanics or Asians in a hypothetical neighborhood did not have a significant effect on whether whites would generally hypothetically purchase a home there).

¹⁴⁴ For an overview of studies showing the continuation of housing and lending discrimination (although such discrimination has perhaps attenuated in some respects), see *Categorically Unequal: The American Stratification System*, pp. 76-84.

¹⁴⁵ Considering that the Federal Government has not proactively prosecuted such discrimination, it may be complicit in it.

¹⁴⁶ Douglas S. Massey, *Categorically Unequal: The American Stratification System*, pp. 82-83.

¹⁴⁷ Recall that the lower socio-economic status of African-Americans, interpreted by those in society holding a subconscious belief in racial stigma, only reinforces this racial stigma.

¹⁴⁸ N.B. according to Young, in brief, social processes are the lived results, in that they exist “in the action and interaction of persons,” of the constraints placed on individuals by social structures. Social structures constrain or shape individual action through dictating the formal and informal rules and expectations that persons in society face

domination or deprivation of the means to develop and exercise their capacities, at the same time as these processes enable others to dominate or have a wide range of opportunities for developing or exercising their capacities.”¹⁴⁹ This might occur because “institutional rules, resources, and practices through which people act do not constitute...fair terms of cooperation,” that is because they constrain some and correspondingly enable others, which “expand or contract individuals’ opportunities.”¹⁵⁰ As we have seen, social processes that deny or limit many African-Americans’ access to resources (e.g. quality education), and set discriminatory and stereotypical expectations regarding African-Americans (resulting from racial stigmatization), greatly constrain the opportunities available to many African-Americans (particularly in poor racial ghettos) in comparison to others. Hence, it is likely that many such African-Americans are under a systematic threat of domination or deprivation of the means to develop and exercise their capacities (while enabling others to dominate or have a wide range of opportunities for developing or exercising their capacities).¹⁵¹

A brief overview of some statistics suggest that many African-Americans living in racial ghettos where poverty is concentrated (who both face the negative correlates mentioned previously and frequently face direct racial discrimination such as in employment) are indeed under a systematic threat of domination or deprivation of the means to develop and exercise their capacities. For instance, consider the situation of many young, non-college educated African-American males. Using data from 2000, Bruce Western found that this group has a jobless rate of

depending on their social positions and through distributing access to resources to persons in society depending on their social positions, see Iris Marion Young, “Responsibility and Global Justice: A Social Connection Model,” pp. 112-113.

¹⁴⁹ Iris Marion Young, “Responsibility and Global Justice: A Social Connection Model,” p. 114, emphasis added.

¹⁵⁰ Iris Marion Young, “Responsibility and Global Justice: A Social Connection Model,” p. 114.

¹⁵¹ That many people benefit from racial stigmatization and poor racial ghettos will not be examined in depth, but it seems plausible. Just consider that by being segregated from many of the poor, the more affluent are also segregated from many of the social costs of living around the poor.

65 percent¹⁵² (which according to Douglas S. Massey means that they are roughly three times more likely to be jobless than comparable whites),¹⁵³ and has an incarceration rate fifty times the national average.¹⁵⁴ All in all, African-American males are now more likely to go to prison than to enter college.¹⁵⁵ It is likely that young, African-American males living in poor racial ghettos are responsible for much of these high rates of joblessness and incarceration; for example, in a study based on a few neighborhoods in Chicago's traditional Black Belt (in 1990), William Julius Wilson found that only 37 percent of all males 16 or older worked in a typical week.¹⁵⁶ Likewise, it is likely that African-American women in poor racial ghettos are not immune to the negative effects of living there. Moreover, considering the prevailing gender-gap in income for working women and the generally poor economic situation of women without a college-education,¹⁵⁷ high rates of joblessness and incarceration among young African-American males likely tends to further hurt the economic situation of poor African-American women (as it makes it less likely that such women can draw on the support of a male breadwinner to supplement their incomes). High rates of incarceration and joblessness among young African-American males have also likely contributed to the rise in African-American families headed by single-mothers (in 2006, 45 percent of all African-American families were headed by a single woman).¹⁵⁸ Since in general families headed by single-mothers tend to be poor,¹⁵⁹ it is likely that African-American families headed by single-mothers also tend to be poor (particularly in poor racial

¹⁵² Bruce Western. *Punishment and Inequality in America*, p. 92.

¹⁵³ Douglas S. Massey, *Categorically Unequal: The American Stratification System*, p. 101.

¹⁵⁴ Bruce Western. *Punishment and Inequality in America*, p. 18.

¹⁵⁵ Bruce Western. *Punishment and Inequality in America*, p. 18.

¹⁵⁶ William Julius Wilson, *More Than Just Race: Being Black and Poor in the Inner City*, p. 64.

¹⁵⁷ For an account of gender inequality in the United States, which particularly hurts poorer women, see Douglas S. Massey, *Categorically Unequal: The American Stratification System*, pp. 211-241.

¹⁵⁸ This statistic is taken from William Julius Wilson, *More Than Just Race: Being Black and Poor in the Inner City*, pp. 100-101.

¹⁵⁹ Cf. In 2006, "nearly one-quarter of those living with divorced mothers and over half of those living with mothers who had never been married were classified as poor" in William Julius Wilson, *More Than Just Race: Being Black and Poor in the Inner City*, p. 102.

ghettos).¹⁶⁰ Hence, there seems to be evidence that racial discrimination and the concentration of poverty have made it so that many African-Americans have a poor chance to be able to develop and exercise their capacities; if there is a right to a reasonably fair opportunity to be able to develop and to exercise one's capacities (which is of course important in order to compete for economic and social goods important for one's well-being) then this right has been denied to many African-Americans.

To summarize the argument so far, past injustices have led to present injustice by putting in place or maintaining social processes that perpetuate injustice through the generations. As we have seen, slavery worked to stigmatize African-Americans. The poverty of many African-Americans, which is a result of past injustices that directly impoverished many African-Americans and social processes that perpetuate poverty through the generations, reinforces this stigmatization. Racial stigmatization, which leads to pernicious forms of discrimination such as in housing, lending and employment, reinforces this poverty. And so the vicious cycle continues. Racial stigmatization wrongs (and often harms) any African-American who is discriminated against as a result. Additionally, past injustices and racial stigmatization have worked together to create and maintain poor racial ghettos that severely limit the opportunity of many African-Americans who reside within them to develop and exercise their capacities. Those African-Americans who face this situation are thus wronged (and also harmed) by past racial injustice. Therefore, many African-Americans are entitled to receive reparations for present wrongs stemming from past injustice (fulfilling *Condition One*).¹⁶¹

¹⁶⁰ A 1984 study found that 31 percent of all persistently poor households in the U.S. were headed by nonelderly African-American women (which was extremely high considering that African-Americans made up about 12 percent of the population), cited in William Julius Wilson, *More Than Just Race: Being Black and Poor in the Inner City*, p. 101.

¹⁶¹ Note, then, that this includes African-Americans who are not descended from slaves, such as recent immigrants, as all with African ancestry face stigmatization. In theory, those non-African-Americans who live in poor racial ghettos might be denied the right to a reasonably fair chance to be able to attain economic and social goods

Moreover, regarding *Condition Two*, the U.S. Government has a reparative obligation to provide remedy for the harms stemming from present wrongs which are the result of past (unjust) social policy in which the U.S. Government was complicit (just as Acme Corporation has an obligation to provide remedy for the present wrongs it does to those who become ill from its policy of releasing carcinogens into the environment). This requires a little elucidation. First of all, the past injustices that the Federal Government was complicit in and can take on a reparative obligation as a result of are what I referred to previously as legal injustices. That is, those injustices that were either direct Federal policy (e.g. the redlining practices of the FHA) or else were legally or tacitly allowed by the Federal Government to take place (e.g. housing discrimination at least until 1968, segregation laws enacted by various states). Secondly, although there is epistemic uncertainty as to the degree to which these injustices have caused the relevant present wrongs, it is plausible that at least they are a significant factor in the severity and frequency of such wrongs.

Thirdly, through its complicity in legal injustices that targeted African-Americans, the U.S. Government put itself in a moral relationship with future African-Americans who would be wronged by such policies. For, since these past legal racial injustices were large-scale programs affecting many individuals through many years in significant ways, it was reasonably foreseeable that they would put in place social processes that would tend to have significant negative effects on African-Americans and which would perpetuate through the generations (even after the end of such legal injustices). A potential objection to this point is that the U.S. Government should not bear responsibility for present wrongs that it no longer actively produces, but which are the

important for some putative minimum quality of life. In practice, there will be few of these individuals (considering the high levels of segregation in most poor racial ghettos). Moreover, these individuals will not be racially stigmatized and hence in general will have more opportunities.

product of others.¹⁶² But, although this objection has force when applied to interactional injustices of the paradigmatic type which concern only a few individuals and one or a few actions, it misses the point when it comes to social or political injustice. The U.S. Government was complicit in past legal racial injustices –which were social injustices –which put in place social processes that shape how individuals act. That is, the U.S. Government is in a sense responsible for the actions of individuals that work to maintain racial injustice.

Fourthly, corporations (such as the U.S.) can be held morally responsible for their actions and so take on moral obligations. The brief argument below for this fourth point is not novel and so will not likely convince the thoroughgoing moral individualist (i.e. one who holds that only individual human beings can have moral responsibilities), but an argument for corporate moral responsibility is an essay unto itself.¹⁶³ That corporations have moral responsibility is the view of some legal systems, including those in the U.S. and the U.K., as well as simply a commonly held view.¹⁶⁴ Conceptually, this view is based on the recognition that a corporation is an entity distinct from its individual members; the U.S. in 1900 is the same entity as the U.S. in 1950 and as the U.S. in 2009, although the members in 1900 are almost completely different from those in 2009. It is a common project that exists over and above its particular members at any one time with goals or purposes distinct from those of its individual members.¹⁶⁵ Through a recognized decision-making procedure, a corporation can act with its own distinct will or intentionality to

¹⁶² Recall from the discussion of the paradigmatic case of interactional injustice discussed in Chapter Two that in a case of interactional injustice the perpetrator of an injustice is not obligated to repair harms stemming from that injustice insofar as such harms are produced by the victim or by others.

¹⁶³ I base much of this brief discussion of corporate moral responsibility on Geoff Moore's "Corporate Moral Agency: Review and Implications," particularly pp. 331-333, and on Kok-Chor Tan's "Colonialism, Reparations, and Global Justice," pp. 296-300.

¹⁶⁴ Just consider how frequently business corporations are blamed for perpetrating moral wrongs in pursuit of profits (some common targets include Monsanto, Nike and Wal-Mart) –and generally it is *the corporation* that is blamed and not simply some CEO or some members of the board of directors (although they might also be blamed).

¹⁶⁵ For example, the goal of a business corporation might be to maximize profit while providing some good or service. This would not be the end goal of its members; e.g. some individual member *x*'s primary goal might be to have some quality of life for which working for that business corporation (and helping it pursue its end goal) is a means.

pursue its goals in an authoritative way on behalf of its members. This allows for a corporation to be a moral agent. For, we can morally evaluate a corporation's action based on its corporate will or intention¹⁶⁶ (and we know to evaluate only an action reached authoritatively). In addition, a corporation is a moral agent because it contains individual members who reach decisions through some deliberative process. Hence, a corporation is capable of reflecting and acting on reasons, including moral reasons, and so it is something that can be held morally responsible.¹⁶⁷ Moreover, all things being equal, it is legitimate that members of a corporation will assume costs as a result of their membership (such as through the moral obligations of that corporation) through no fault of their own because they also assume benefits through membership.

Assuming that the argument made so far is sound, in what way is the U.S. Government obligated to remedy past wrongs for which it was complicit that lead to individuals being harmed in the present through having their rights violated (through racial stigmatization and/or through living in a poor racial ghetto) (i.e. *Condition Three*)? Since these past wrongs produced the *ongoing* social process of racial stigmatization and produced those *ongoing* social processes that maintain poor racial ghettos, the primary obligation of the U.S. Government is to end or attenuate these pernicious social processes. Specifically, since the U.S. Government bears responsibility for the virulence and prevalence of racial stigmatization, it is obligated to try to end or attenuate the prevalence of this social process; likewise, since the U.S. Government bears

¹⁶⁶ Intentionality is necessary for moral evaluation. E.g. if *x* intentionally pushes *y* in order to hurt *y*, one would hold *x* responsible and blameworthy; if *x* intentionally pushes *y* in order to protect *y* from an incoming car, one would hold *x* responsible but not blameworthy; if *x* is pushed into *y* then one would not hold *x* responsible at all assuming that it was completely accidental.

¹⁶⁷ If something cannot reflect on and then act on moral reasons, then we cannot hold it morally responsible. Hence, we do not legitimately hold animals morally responsible or hold certain people with mental disorders morally responsible. It simply does not make sense to hold animals or some people with mental disorders to moral demands that they cannot recognize or understand.

responsibility for the creation and maintenance of poor racial ghettos, it is obligated to try to end or attenuate the social processes that maintain them.^{168 169}

Is the U.S. Government also obligated to provide compensation for the direct harm individuals suffer as a result of discrimination or of living in a poor racial ghetto? There is a danger that justifying reparations to individuals born subsequent to an injustice for rights violations they suffer as a result of it could potentially lead to a *reductio ad absurdum* in which any trivial rights violation that results from a past wrong could be grounds for compensation.¹⁷⁰ Moreover, there is the possibility that the argument made in this essay could lead to the conclusion that the U.S. Government is obligated to provide some amount of compensation for every act of discrimination faced by African-Americans, which is an untenable position considering the burden it would place on taxpayers. But, I do not think that these concerns are applicable to the argument made here. Regarding the second concern, the argument made in this essay does not imply that the U.S. Government should provide compensation to make up for the harm done to individuals for specific acts of discrimination. E.g. an individual who is discriminated against in employment by a private company is not entitled to compensation for this from the U.S. Government as a result of its role in producing and maintaining a racial stigma towards African-Americans. For, specific acts of discrimination are done by specific individual

¹⁶⁸ Iris Marion Young makes a similar argument regarding the social processes that lead to labor abuses in sweatshops, i.e. that the focus of complicit actors in these social processes should be to change them such that these labor abuses end, in "Responsibility and Global Justice: A Social Connection Model," p. 122.

¹⁶⁹ Note that reparations aimed to end or attenuate current unjust social processes (e.g. racial stigmatization) require the use of resources for the presumed benefit of some class of individuals (by ending or attenuating injustices that negatively affect them). If the use of resources for the benefit of this class of individuals is justified through reparative justice, *Condition One* must be established.

¹⁷⁰ Joel Feinberg and David Heyd raise objections similar to this one to rights-based solutions to the non-identity problem. Doran Smolkin discusses their objections in "Toward a Rights-Based Solution to the Non-Identity Problem," particularly pp. 199-200.

persons or corporations and they should bear responsibility for them.¹⁷¹ In the example, the private company should bear the costs of this wrong which it has directly perpetrated. So, there is no need for the state to remedy the harm done to this individual which places a burden on individuals (i.e. taxpayers) who were not complicit in this specific injustice. What about those African-Americans who by living (and/or having lived) in a poor racial ghetto are (and/or have been) denied the right to a reasonable opportunity to develop and exercise their capacities and so attain important economic and social goods? Unlike with discrimination, the denial of this opportunity cannot be blamed on some one (or few) individual(s) or non-state corporation(s). Hence, the U.S. Government has an obligation to make up for harm stemming from the denial of this opportunity. The first concern mentioned above, however, is not applicable because the denial of this opportunity is not a trivial rights violation, as it potentially has (and often does have) substantial negative effects on the quality of life of those who are denied it. Since the primary obligation of the U.S. Government is to end the ongoing social processes that cause this right to be denied, the way that African-Americans who have been denied this right (e.g. those in poor racial ghettos) should be compensated for it is through access to opportunities through reparations programs designed to end such social processes.

On a similar theme, there are many reasons that tell against providing some amount of monetary compensation to individual African-Americans. First of all, the right that is (and has been) violated concerns an *opportunity* to be able to reasonably compete for social and economic goods important for one's well-being –not necessarily to reach it. So, compensation designed to provide opportunities speaks directly to this. Secondly, monetary compensation may or may not work to end the social processes in question, while the opportunities available through

¹⁷¹ Of course, if a specific act of discrimination is done by the U.S. Government then it should provide compensation for this.

reparations programs would be designed to specifically do this. Thirdly, monetary compensation entails the difficult question of how much compensation and to whom most of it should go. Providing opportunities to those who have been denied much in the way of opportunity obviates much of this difficulty. Fourthly, concerning *Condition Four*, there is a danger that monetary compensation would reinforce negative stereotypes of African-Americans as lazy or “looking for a handout,” while providing access to opportunities entails that one actually has to use such opportunities (and so potentially does not reinforce such stereotypes). In general, providing monetary compensation could produce hostility from others and inflame racial tensions, which is relatively hard to justify if monetary compensation is unlikely to work to significantly attenuate the social processes that perpetuate poor racial ghettos.

Do the defeating conditions, *Conditions Four* and/or *Five*, apply to this argument? We will first look at *Condition Five*. First, can the U.S. Government actually do something about racial stigmatization through reparations? A reparations program in conjunction with an apology for a legacy of past legal injustice that leads to present wrongs would likely have a useful symbolic function. It publicly renounces this past legacy as unjust and thus helps to affirm the moral worth of African-Americans (as people not worthy of unjust treatment). If it is made clear that the connection between present wrongs and past injustice is the justification for a reparations program, this also serves an important pedagogical purpose. For, white Americans tend to underestimate or be ignorant of the causal background to African-American inequality and how it relates to past and present discrimination.¹⁷² In the absence of an understanding of this history and of the social processes it has produced, it is not surprising that white Americans would tend

¹⁷² For a brief overview of white perceptions of racial inequality, see Douglas S. Massey, *Categorically Unequal: The American Stratification System*, pp. 66-67; e.g. “by the 1990’s, only 34 percent of white Americans said that the lower economic standing of African Americans could be contributed to continued discrimination. In contrast, 52 percent blamed the lack of racial progress on the absence of motivation among blacks, with 65 percent saying that African Americans just needed to ‘try harder’.”

to hold racial stigmas towards African-Americans. Hence, a central component of any reparations program aimed at ending stigmatization would be to further this pedagogical purpose.¹⁷³ Ideally this would include teaching African-American history in public schools and in an accurate and full way.¹⁷⁴ (What better way to try to educate future generations about the African-American experience?) But, as Thomas McCarthy points out, there are many ways to influence public memory of the past, e.g. museums, holidays, historical sites, *etc.*¹⁷⁵ Regardless of the specific measures, what is of importance is that the connection between present inequality and past injustice is emphasized.

Second, can the U.S. Government end (or largely end) the phenomena of poor racial ghettos? The public education campaign described above would hopefully serve some purpose to this end by attenuating discrimination. And, in light of the obligation to try to end the phenomena of poor racial ghettos, this public education campaign should also emphasize past housing discrimination and the history of how racial ghettos were created and have been maintained. Beyond symbolic measures, the Federal government should proactively enforce and prosecute housing and lending discrimination. This would provide a disincentive to practice discrimination and plausibly reduce it in housing and lending markets. Moreover, there should be programs designed to bring wealth creation into poor racial ghettos, such as through having funds for venture capital for those who want to invest in such areas, and through policies designed to attract businesses to such areas, e.g. those that attempt to reduce crime and invest in infrastructure. Another way to create wealth in poor racial ghettos is by providing opportunities

¹⁷³ Similarly, Thomas McCarthy argues for the need for a “politics of memory” that truthfully promulgates African-American history, see “Vergangenheitsbewältigung in the U.S.A.: On the Politics of the Memory of Slavery,” p. 642.

¹⁷⁴ Cf. Thomas McCarthy on school politics and African-American history in “Vergangenheitsbewältigung in the U.S.A.: On the Politics of the Memory of Slavery,” pp. 641-642.

¹⁷⁵ Cf. Thomas McCarthy, “Vergangenheitsbewältigung in the U.S.A.: On the Politics of the Memory of Slavery,” p. 642. Roy Brooks proposes the building of museums of slavery not only in Washington, D.C., but throughout the U.S., in *Atonement and Forgiveness: A New Model for Black Reparations*, p. 157.

for its residents (and this is owed to at least some of them for the violation of their right to have a reasonable opportunity to be able to develop and exercise their capacities): e.g. access to scholarship funds for higher education and/or for private schools, to job training programs, to programs for those with special needs (e.g. drug addicts, those with psychiatric disorders), *etc.* I realize that this is vague, but my purpose is to provide basic suggestions; actual policy should be designed by experts on urban poverty. Whether or not a reparations program would actually work to end (or largely end) the phenomena of poor racial ghettos is partly a question of its design and the amount of resources invested into it, but there is no *a priori* reason to suggest that it would be futile. Hence, since poor racial ghettos lead to injustice, it is imperative to attempt to implement good-faith programs.

Before moving onto the discussion of *Condition Four*, it is important to note that there are limitations to the efficacy with which the U.S. Government can end or attenuate racial stigmatization and the social processes that maintain poor racial ghettos. It is simply hard to change many social processes through enforcing laws and creating public policy; e.g. it is difficult to significantly lessen stereotypical beliefs through these means. But, this does not mean that formal policies do not have an effect on informal social processes. Indeed, one of the points stressed in the argument made in this essay is that legal injustice (e.g. slavery) does often have significant effects on informal social processes (e.g. racial stigmatization). Hence, although it is difficult for the U.S. Government to significantly attenuate racial stigmatization and the social processes that work to maintain poor racial ghettos, it seems possible for it to do much in the way of lessening their prevalence and virulence. Considering that these social processes lead to injustice, it is imperative for the U.S. Government to take its obligation to attenuate them seriously. In addition, regardless of the efficacy with which the U.S. Government can attenuate

the social processes that maintain poor racial ghettos, it has an obligation to provide opportunities to many African-Americans that live (or have lived) in them for the harms that have resulted in the denial of their right to a reasonable opportunity to develop and exercise their capacities.

What about *Condition Four*? Would a reparations program conflict with other demands of justice or social goals in an unjustifiable way? I will respond to two potential conflicts. First, the most important societal goal that a reparations program would likely conflict with is racial reconciliation. Specifically, there is a worry that demands for reparations would move the African-American community farther to the margins of American society.¹⁷⁶ Yet, the argument for reparations put forth here is based on trying to end racial stigmatization and the injustices associated with racial ghettos, both of which have essentially unifying goals. Demands for reparations based on the argument made here should emphasize that it concerns present injustice and that it will hopefully help to lead to a more racially united tomorrow, so that it is not misinterpreted as African-Americans “playing the race card” to secure undeserved advantages from past injustices. Moreover, if African-Americans contribute to a reparations program through their tax-dollars, then they are participating in a common project and sharing the burdens of it. This could reinforce the common citizenship of African-Americans with other Americans and help to prevent reparations as being interpreted as some unjustified handout given to African-Americans.¹⁷⁷

Second, perhaps it is unjust to burden those in the present (i.e. taxpayers) with reparative obligations stemming from wrongs in the past. However, it does not seem that this burden is unjust considering that it is to end presently existing injustices (stigmatization and poor racial

¹⁷⁶ Cf. Glenn Loury, “Transgenerational Justice—Compensatory versus Interpretive Approaches,” pp. 107-109.

¹⁷⁷ Robert K. Fullinwider makes a similar point in “The Case for Reparations,” p. 145.

ghettos) existing within the present generation's political community and so which it might have obligations to end anyway. Moreover, the present generation of Americans is largely *complicit* in such injustices. Just consider that to reinforce racial stigmatization requires only that one hold and act on racial stigmas such as through stereotyping and more overt forms of discrimination. Since racial stigmatization helps to maintain racial ghettos, such individuals could be said to be complicit in their maintenance albeit in a weak sense. Those non-African-Americans, however, who live in metropolitan areas where there are racial ghettos (and do not live in a racial ghetto) seem to be complicit in their maintenance in a more direct way by physically maintaining racial segregation (which leads to the concentration of poverty). If those who are complicit in an injustice take on some responsibility for it, then many people have obligations to end the injustices of racial stigmatization and poor racial ghettos. Hence, the U.S. Government's obligation to end such injustices is no additional burden to these individuals.

This last point brings us back to an objection suggested earlier in this Chapter, namely that it seems superfluous to ground reparations for past injustice on present injustice. For, present injustice is sufficient to ground obligations to end it and for liable parties to provide reparations for it to its victims. More specifically, regarding racial stigmatization, assuming that most Americans are complicit in maintaining it, then these individuals take on responsibility for it. Based upon what I suggested earlier regarding *Condition Three*, this responsibility seems to entail ending or significantly attenuating the prevalence and virulence of racial stigmatization, such as through taking political action through the U.S. Government. Hence, the reparative obligation of the U.S. Government to try to end racial stigmatization seems superfluous. A similar argument might be made regarding the reparative obligation of the U.S. Government to end or attenuate the social processes that produce poor racial ghettos and to compensate those

individuals that have been denied their right to have a reasonable opportunity to develop and exercise their capacities. For, again, assuming that many individuals are complicit in this injustice, then they take on responsibility for it. Again this responsibility seems to entail ending or significantly attenuating the social processes that maintain poor racial ghettos such as through taking political action through the U.S. Government. Also, perhaps these individuals are also liable to provide compensation to the individuals who suffer harm from having been denied their right to the opportunity described above.¹⁷⁸

Yet there are two important reasons to emphasize the reparative obligation of the U.S. Government to remedy the present wrongs that result from past legal injustices. Firstly, there are positive consequences that follow upon the U.S. Government trying to fulfill this reparative obligation. As discussed previously in this essay, trying to fulfill it has symbolic value. For, in doing so, the U.S. Government publicly disavows past legal injustice as unjust; this (particularly in conjunction with an apology) works to affirm the moral worth of African-Americans as people not worthy of unjust treatment. Moreover, by admitting wrongdoing, the U.S. Government might foster some reconciliation between it and African-Americans. Finally, as discussed previously, trying to fulfill a reparative obligation based on present wrongs that are connected to past legal injustice has an important pedagogical function; it helps make it more widely understood how

¹⁷⁸ I think that it is doubtful that these individuals (i.e. those complicit in the maintenance of poor racial ghettos) are actually liable to provide compensation to those African-Americans who suffer harm from having been denied their right to a reasonable opportunity to exercise and develop their capacities. For, in general, these complicit individuals are pursuing their disparate goals and interests according to accepted norms and rules without intending the wrong done to many African-Americans in poor racial ghettos. Hence, they are generally not acting in ways to which one can attach blame and so do not seem to take on reparative obligations to provide compensation for the harms that stem from the injustice in question (but this does not preclude a forward-looking obligation to end the injustice in which they are complicit). Iris Marion Young makes this point regarding the individuals and corporations complicit in labor abuses perpetrated in sweatshops, see "Responsibility and Global Justice: A Social Connection Model," particularly, pp. 114-118. I won't pursue this point further, as in the argument that I make above, compensation for the harms that stem from the rights violation in question collapses into access to opportunities designed to help end the social processes that maintain poor racial ghettos. (Hence, it might be unnecessary to justify access to such opportunities through the harm that individuals face from their rights violations).

present inequality is a legacy of the past rather than the result of some intrinsic quality of African-Americans.

Secondly, the reparative obligation of the U.S. Government to remedy present wrongs stemming from past legal injustice derives intuitive strength from our participant reactive attitudes (described in Chapter One). For, assume that one recognizes that past legal injustices were in fact unjust, that the U.S. Government was complicit in them and that this recklessly put the rights of later generations of African-Americans at risk leading to rights violations in the present. If this individual sees himself or herself as a third party,¹⁷⁹ he or she would tend to naturally feel *indignation* at the ill-will that the U.S. Government manifested towards African-Americans of later generations by pursuing or allowing reckless past social injustices; if this individual sees himself or herself as a member of the U.S., he or she might tend to naturally feel *guilt*; if this individual is a present-day African-American, he or she would tend to naturally feel *resentment*. Recall that having one of these natural feeling is to hold responsible. Hence, an argument for reparations that emphasizes the role of the U.S. Government in present wrongs through past injustice (and so brings with it recognition of the U.S. Government's role in this) would seem to potentially have a lot of intuitive force behind it for the U.S. Government to take responsibility for its past. Those individuals holding these natural feelings would seem to be likely to push for or at least support a reparations program based on it.

In contrast, it is questionable whether individuals complicit in present racial stigmatization and the social processes that lead to poor racial ghettos would feel responsible for their role. For, most individuals complicit in these social processes have a small role in them and many are pursuing their disparate goals and interests according to accepted norms and rules without wanting to wrong African-Americans through discrimination or through poor racial

¹⁷⁹ This could include individual Americans who see themselves more as third parties than as members of the U.S.

ghettos. As such, there is less in the way of clear manifestations of ill-will towards these victims and it is relatively easy to rationalize one's role in producing injustice. E.g. the creditor who tends to deny credit to African-Americans might say that, all things being equal, he or she does not want to discriminate against African-Americans and might rationalize this discrimination as something done in order to minimize risk in a competitive environment. Hence, it is questionable whether this individual would feel any guilt over his or her actions and with it any need to take responsibility to end unjust social processes. One can apply this argument *a fortiori* to individuals with smaller roles in perpetuating injustice or who act less wrongly in doing so.¹⁸⁰ In essence, these last two paragraphs give substance to Kok-Chor Tan's observation that the notion "that one should make amends for the wrongs that one has committed is intuitively more obvious than the idea that one has a positive duty to assist strangers in need."¹⁸¹

¹⁸⁰ Consider, e.g., the white family that moves from an increasingly African-Americans neighborhood to a white one because of legitimate concern over declining property values. The members of this family are not likely to feel that they have much responsibility in the maintenance of poor racial ghettos.

¹⁸¹ Kok-Chor Tan, "Colonialism, Reparations, and Global Justice," p. 288.

Chapter Four

A. Conclusion

In Chapter One, we abstractly defined reparative justice as the species of justice concerned with the remediation of past injustice. Then, we saw that for a claim for the remediation of harm stemming from an injustice to be compelling as a claim of reparative justice it must meet five necessary conditions: those claiming remediation for harms stemming from a past wrong must be entitled to receive it (*Condition One*); there must be some individual or other entity obligated to provide remediation as a result of the demands of reparative justice (*Condition Two*); the harm for which remediation is being claimed must follow in a relevant way from the past injustice; the fulfillment of a reparative obligation must not conflict with other moral ends or societal goals without sufficient justification for any conflict (*Condition Four*); and, it must be possible to attenuate meaningfully the harms that require rectification (*Condition Five*).

In Chapter Two, we saw how reparative justice applied to a paradigmatic case of interactional injustice in which y is harmed by an action A for which x is at fault, where A is putatively recognized as an injustice in the society in question, and so y gains a right to have the injustice remedied and x takes on an obligation to remedy it. In this case, at least with all things being equal, when Smith wrongs Jones, Smith takes on the obligation to bring Jones to a state as if the injustice never occurred; this means that Smith must abrogate the disrespect and the damage done to Jones through both apologizing and providing sufficient material remedy. In Chapter Two, we also saw that there are two salient difficulties that claims for reparations for historical injustice often run into which tend to make it difficult for them to meet *Condition One* through *Condition Five*. First, based on the empirical finding (from Chapter One) that claims for reparations are typically made in response to a large-scale, legally permitted injustice of the past,

we saw that claims for reparations for historical injustice are generally in response to *past political or social injustices* and not to some discrete injustice within a system of positive justice.¹⁸² In general, we saw that this makes it harder for a claim for the remediation of harms based on reparative justice to meet *Conditions Two, Four and Five* in a case of historical injustice than in a paradigmatic case of interactional injustice. Secondly, we saw that, in many cases, claims for reparations for historical injustice are made by those born subsequent to it. This makes satisfying *Condition One* problematic in such cases.

This summarizes one of the important components of this essay, namely, to provide a framework, of the five necessary conditions, with which to evaluate claims for reparations for historical injustice as claims of reparative justice, and to note some of the particular difficulties frequently faced by claims for reparations for historical injustice.

Chapter Three, through specifically evaluating the case of reparations to African-Americans, focused on another important component of this essay: whether, at least in this case, claims for reparations made by those of a later generation are justifiable. I will not summarize the entire argument, but just emphasize one particularly important part of it. That is, a primary point of the argument was to demonstrate how past social injustices sometimes put in place or strengthened unjust social processes that then become entrenched; as a result, these social processes perpetuated through the generations, leading to those of later generations being wronged and harmed. In the case of African-Americans, we saw how slavery and other forms of past legal injustice worked to produce a racial stigma towards those with black skin which, through a vicious cycle, has been perpetuated through the generations to the present day.

Moreover, we saw that many past (and perhaps ongoing) legal injustices created and maintained

¹⁸² I.e. claims for reparations for historical injustice generally concern situations in which several x 's harmed several y 's through engaging in a social institution SI, where SI was not generally recognized as being unjust when it was existent.

poor racial ghettos and put in place or strengthened social processes that work to maintain them. Hence, past wrongs have greatly contributed to present wrongs. It is for the harm stemming from these present wrongs that ground reparations to African-Americans for past wrongs.¹⁸³ Since the social processes that lead to present wrongs are ongoing, the primary reparative obligation of the U.S. Government is to end or to significantly attenuate them. Moreover, the U.S. Government has a reparative obligation to compensate for the harm done to those African-Americans in poor racial ghettos who have been denied their right to have a reasonable opportunity to develop and exercise their capacities. Still, it seems that the best way to provide reparation is through access to opportunities and resources through social programs designed to end the phenomena of poor racial ghettos.

To end this essay, I want to suggest that the approach taken in Chapter Three, which justified reparations for past legal injustice through the present wrongs that it has brought about, can likely be taken in some other cases where intergenerational claimants demand reparations for historical injustice. E.g. it is plausible that Natives who demand reparations, in countries such as Australia, Canada, New Zealand and the U.S., can make a case that past social injustices (e.g. treaty violations, forced settlements on reservations) put in place social processes that have extended to the present-day and have led to many Native persons having some non-trivial rights violated (although any demand for reparations based on reparative justice would also have to meet *Condition Two* through *Condition Five*). Moreover, this approach might be more interesting to theorists than one that attempts to justify reparations to some Native tribe(s) for past injustice(s). For one thing, it does not have to establish that tribes have moral rights or that they had conventional rights which were violated. Additionally, it speaks to those Native persons who

¹⁸³ Recall that by taking a more deontological approach to how one can be wronged, the non-identity problem is avoided.

argue that they are entitled to reparations for past injustices as individuals. Overall, a rights-based approach to intergenerational claims for reparations for historical injustice seems potentially applicable to other situations and worthy of further scrutiny.

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