

Reparative justice: the debate over inherited inequities

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Introduction

Questions of historic injustice are of political significance in many countries throughout the world. The contemporary Commonwealth encompasses both states historically responsible for and subject to various forms of past subjugation and oppression, most notably in the colonial period from the sixteenth century onwards. In the Gacaca Courts of Rwanda, in the Truth and Reconciliation Commission in South Africa, in the Saville Inquiry into the Bloody Sunday shootings in the UK, and in the struggles of indigenous peoples in a wide range of different states, for example, we see the same difficulties and tensions: how should we best combine backward-looking demands for truth and justice with forward-looking hopes for peace and reconciliation? Such issues are at the heart of the contemporary debate over reparations for past injustice. Within a Commonwealth context, of course, the biggest question concerns the United Kingdom: should the UK apologise and pay reparations for its colonial past? This question has achieved political prominence at various points in the past, most notably following the 2001 UN Conference against Racism in Durban, and has resurfaced following the UK Government's agreement to compensate surviving Kenyan victims of torture during the Mau Mau uprising in the 1950s, and the recent decision of 14

Caribbean countries to pursue a legal case against Britain, France, and the Netherlands for reparations for colonial wrongdoing, including “native genocide, the transatlantic slave trade and a racialized system of chattel slavery” (CARICOM Reparations Commission, 2013). This article looks at the ethical principles underlying this debate. It is specifically concerned with international claims for material reparations: should some modern day states pay others as a result of their morally problematic historic interaction? Such questions are far from the only issues at stake here: in some contexts, for example, claims for apology and symbolic reparation are more important than those involving monetary payments. The two cannot be readily separated, however, since it is often worries about exposure to material liability which undermine political campaigns for state recognition of past wrongdoing. Whether there is a legal case for reparations is a separate issue left to one side: the critical issue here is how the lasting effects of past actions can give rise to moral obligations in the present day.

Why Look Back?

When societies seek to react to and move on from instances of serious wrongdoing, they inevitably confront dilemmas of transitional justice. Responding appropriately often seems to involve two conflicting goals: the retributive aim of pursuing truth and justice whilst holding those responsible to account, and the irenic aim of seeking to restore community relations and enabling people to get back to their everyday lives (Teitel, 2000). Such questions are most both pressing and painful, perhaps, when perpetrators and victims live side by side. Advocates of restorative justice stress the importance of repentance and forgiveness, sometimes bringing survivors face to face with those directly responsible for

their suffering. Though many on both sides of the table have undoubtedly benefited from such initiatives, their implementation provokes desperately difficult questions, particularly if it appears that the motivation for the attempted repair of the relationship is the future well-being of the community as a whole rather than the interest of the victims themselves. An attitude of “letting bygones be bygones” can seem inappropriate when those responsible for, or directly affected by, grievous wrongdoing are still alive. As time passes, however, and neither direct perpetrators nor victims persist, is it not more appropriate to draw a line and focus on forward-looking goals of cooperation and reconciliation?

There are undoubtedly occasions where this is the appropriate response to historic wrongdoing. When geographically contiguous countries share long and involved histories, trying to unpick the past will often prove fruitless. When communities are intermingled, there are wrongs on both sides, and there seems no good reason to say that either party has particularly been harmed or benefited by their past interaction, there can be good reason to focus on future relations rather than worrying unduly about who was wronged at which point by whom (Vernon, 2012). Not all relationships between different peoples, however, have this character. Western colonialism, in particular, characteristically involved communities with little or no prior interaction. Colonial exploitation entailed industrial revolution for the colonisers; invasion, subjugation, enslavement, the denial of self-determination, and the misappropriation of resources for the colonised, but both, in different ways, experienced profound transformations. Whilst much of colonial history is deeply contested, thinking about reparations in the present day does not require us to get involved in the messy business of judging the moral probity of the colonisers. It is clear that they were responsible for actions which we would readily condemn as deeply wrong if

perpetrated in the modern day, and even those who would, most controversially, claim that the British Empire was on balance a “Good Thing” typically accept that there is much in the history of colonialism which was straightforwardly morally reprehensible (Ferguson, 2002).

To what extent does this give rise to contemporary obligations of redress?

Compensation and Restitution for Historic Injustice

The idea of compensation is at the heart of many contemporary reparation claims. Suppose we believe that some communities have benefited, and others have suffered, as a result of historic wrongdoing: does it not follow that those who have been unjustly enriched at the expense of others should pay compensation to the victims? This approach is, on the face of it, well equipped to deal with the complexities of the past, since it need not maintain that anyone presently alive was responsible. The point is simply that those who have benefited through, for example, being born into a wealthy country should be prepared to consider the price that was paid by others for their present day advantage, and be willing to give up at least some of this advantage if others are still suffering as a result. (Butt, 2007)

The principle challenge which this approach faces turns on its use of counterfactual reasoning. In order to say that a given group has been advantaged and another group has been harmed by historic wrongdoing, we need to make some kind of claim as to how they would have fared in the absence of the injustice in question. This, of course, is a keenly disputed question to which there can be no definitive answer: who can say with certainty how a country like India would have fared in the absence of British colonialism? If we consider the complex legacy of European imperialism in Africa, it is clear that the particular

set of states which exists in the present day is itself, in part, a consequence of historic colonialism. Indeed some philosophers have observed that the very existence of both putative victims and beneficiaries in the present depends upon the events of the past. Our personal identity is contingent upon a highly particular sequence of events leading up to our conception: change the world's past in a significant way, and a different set of persons ends up being born. Can someone be owed reparations for something that caused them to come into existence? (Parfit, 1984)

These problems are serious, but they can be over-stated. We need not think of a world without colonialism as being a world where there was no interaction between colonisers and the colonised. Instead, we can seek to imagine how things would be had this interaction been voluntary in character. Rather than constructing fanciful and elaborate counter-histories of the world, we can look more concretely at particular instances of historic exploitation: slavery and involuntary servitude, enforced and indentured labour, land grabs and the misappropriation of natural resources, amongst many other examples, and ask ourselves what action is needed in the present to correct the effects of past wrongdoing. Some such reparative action, indeed, need not appeal to counterfactual reasoning at all. When what is at stake is entitlement to property - land which was seized, cultural property which was stolen, wages which should have been paid – claims can be advanced not in the name of compensation but of restitution. The idea here is not of providing compensating benefits to make up for a loss, but much more straightforwardly of returning property to which others have inherited entitlements. Of course, such claims also face philosophical challenges. Some writers claim that rights to some forms of property – and to territory in particular – lapse or fade in the absence of sustained possession (Waldron, 1992). Others

are dubious as to the very justifiability of inheritance, arguing that grounds as seemingly diverse as equality, desert and efficiency converge in favour of forward-looking principles of redistribution. (Thompson, 2002) There is a need here, however, for consistency. We live in a world where backward-looking principles of justice are generally thought to be of primary importance in determining who should have what, and where the institutions promoting international redistribution are few and far between. It may be that in domestic contexts characterised by low social mobility, historic injustice is of relatively little significance. The more distinct the identity of a group, however, and the more that patterns of advantage and disadvantage persist across generations, the greater the case for backward-looking principles of restitution. (Butt, 2009)

Responsibility: Past and Present

For the most part, those directly responsible for the wrongs of the colonial period are no longer with us. This does not mean, however, that their present day descendants can pronounce themselves free from the taint of guilt by association. The truth is that there has never been an honest reckoning for the colonial period. Decolonisation was not accompanied by apology and by reparation, but, at best, by a forward-looking approach which looked to move on from the colonial past to a future of equality and cooperation, embodied in the principles of the Charter of the Commonwealth. The obligation to look back, however, has not lapsed, and indeed there is a sense in which it has intensified, as subsequent generations have failed to act upon it: justice delayed, in this sense, is not just justice denied, but itself a further instance of injustice. As previously noted, various Commonwealth member states have engaged domestically in internal processes of truth

and reconciliation, which have led to full-blooded apologies to the historically wronged and extensive reparative action. Such a process has not been launched, however, in relation to the British Empire as a whole, and it is hard to resist the conclusion that the United Kingdom has shown more interest in some parts of its history than others. The Saville Inquiry into the Bloody Sunday shootings, for example, took twelve years and cost some £400 million, leading to a formal apology and reparative payments from the British government. One need not accept all the arguments outlined above to believe that there is at least a case to be answered, and that the same seriousness of purpose should be demonstrated with regard to British colonial history more generally. It is striking how little debate there is on these issues in contemporary British culture. If the proposed CARICOM court case gains serious traction, either legally or (as is perhaps more likely) politically, the UK may find that this is a conversation that it can no longer avoid. It would surely be better were it to enter the process of historical reflection and reconciliation voluntarily.

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