

Historical Redress and the Non-Identity Problem: A Tale of Two Approaches

Abstract: This paper theorizes the non-identity problem for historical redress on an individual and a group level, forming an obstacle for individualist and group-based justifications. It is argued that while both approaches successfully confront the problem, they give rise to contrasting implications for the role and responsibility of individual citizens in redress. The paper builds up to this conclusion via the following steps, and with the case of colonial reparations figuring as an illustration. The non-identity problem is first addressed in individualistic terms. After elucidating the problem and introducing a promising solution in the form of the harm argument, a critical evaluation of this argument follows. Whereas an empirical objection and an objection from structural injustice are rebutted, a criticism pointing to the importance of the group dimension of redress is endorsed. Hereafter, analysis turns to the group level, where the non-identity problem reappears; this time as a threat to group-based claims of redress. Before defending a combination of argumentative strategies, the group-based aspect of redress is explained in more detail. The latter involves taking group wrongs as the object of redress. The paper concludes by contrasting moral implications of both approaches regarding the involvement of individual citizens in redress.

Introduction

Almost twenty years ago, Bernard Boxill presented two arguments for the view that African-Americans are owed redress for the enslavement of their ancestors: they may have inherited a claim of redress, and they may claim redress for personal harms stemming from their ancestors' enslavement (Boxill 2003).¹ Boxill was primarily interested in the political context of the United States, but his arguments can be extrapolated to historical redress in general. The strength of these arguments depends, in part, on how the key concepts of historic wrongdoing and redress are understood. Historic wrongs are usually categorized as a class of large-scale, long-past wrongs which give rise to enduring grievances despite

¹ Historical redress includes both material (e.g., return or restitution of land and property, financial compensation, affirmative action) and symbolic remedies (e.g., apology, acknowledgement, commemoration).

not leaving any survivors (Iverson 2009). Such a shared definition does not exist in the case of redress, except insofar as it has something to do with the removal of an unjust disadvantage.

This article crucially understands redress as a kind of redemptive interaction in which a wrongdoer mends his broken relationship with his victim. One immediate upshot of this is that we cannot inherit claims of redress *per se*, since they are personal claims. To see why, consider the following example. If somebody stole land from your ancestors and refused to return it, you may come to inherit a moral claim to that land. However, it is only after this inheritance when the wrongdoer's successors unjustifiably hold on to the land, committing a separate wrong to you, that you acquire a claim of redress. Generally speaking, then, without an additional premise such as the foregoing, inheritance arguments for historical redress commit a form of *non sequitur*.

This leaves Boxill's second argument, which can be labelled 'the harm argument,' as the more promising of the two.² Although summed up very briefly above, the argument's causal explanation of how individual descendants can come to be harmed as a result of wrongs done to their ancestors, and who is liable for this, is quite technical. And it becomes even more complicated when a necessary refinement is added (Cohen 2009). At a first glance, this complexity seems unnecessary, since the gist of the argument can be grasped intuitively: wrongs can have harmful effects that spill over to later generations. The reason, then, for spelling this out is the threat posed by the non-identity problem (Parfit 1982; Sher 1979; 1981). This is the problem, to put it succinctly, that those particular individuals who claim redress for historic wrongs would probably not have existed *but for* these wrongs, and thus cannot have been harmed by these wrongs, assuming that their existence is better than their non-existence.³

One aim of this article is to investigate how the harm argument circumvents this problem. In doing so, I begin by scrutinizing the problem using the concrete case of colonial reparations, before analyzing the argument and its structure in more detail.⁴ Following this, I will select and assess three important criticisms of the argument.

I first examine an empirical concern about the robustness of the causal chain. While admitting that this concern somewhat lessens the argument's effectiveness, I will argue that its force has been overstated. The second objection is rooted in a structural injustice perspective. I will rebut this objection by pointing out that it misunderstands the strictures of redress, akin to inheritance arguments, before explaining why reparative obligations should not be passed over in favour of the type of obligations that structural injustice theorists tend to promote. What is more, I will even contend that taking our reparative obligations seriously could help to address structural injustice concerns, albeit indirectly.

² Boxill originally called it 'the counterfactual argument' (2003) and, later, 'the harm argument' (2022). The argument was developed independently by George Sher (2005). It is also known as 'the subsequent wrong argument' (Cohen 2009).

³ I find this probabilistic version of the problem slightly easier to grasp than the version which uses possible worlds terminology. While they come with subtle differences, with certain cases being included by one but not by the other, these are not significant to historical redress (see Sher 2005, 183-185).

⁴ To avoid confusion, the terms 'reparations' and 'redress' are used interchangeably by most theorists. I will use 'reparations' only for a concrete case of historical redress, whilst using 'reparative' in the abstract sense.

At the same time, I will argue that there is something that the structural injustice theorist gets right, and which is better expressed by the third criticism. This is the strong intuition that the harm argument, exemplifying an individualist approach to historical redress, neglects its group dimension. While this ‘group intuition’ falls short of a refutation, it brings into view and gives dialectic support to an alternative and less theorized approach which situates the subject on an individual *and* group level.

This brings me to the second aim of this article, which is to investigate how a group-based approach is able to overcome the non-identity problem. As will be made clear, the problem takes on a distinct shape when a group dimension is added to the redress equation. Even so, the essence remains the same: just as individuals can owe their existence to historic wrongs, so can certain groups.

To show that a group-based approach can successfully overcome this problem, I will present and defend a combination of argumentative strategies. Importantly, the success of these strategies, and of the group-based approach as a whole, ultimately presupposes a fully developed theory about the nature of group-based claims and obligations of redress. While such a theory cannot be afforded in this article, I will offer a rudimentary one before turning to the non-identity problem. In particular, I will present two accounts which take group wrongs as the object of redress. These accounts both assume that, at bottom, group wrongs are harms to individuals, though they explain this assumption in different ways.

As the final and overall aim of this article, I will make a limited comparison between these two approaches. I claim that despite their similar ability to resist the non-identity problem, they give rise to diverging and even seemingly conflicting characterizations of the role and responsibility of individual citizens, adding to the practical complexity of historical redress.

II The strictures of redress

The strict understanding of redress affirmed above is often asserted rather than explicitly argued for. For example, Michael Ridge opens his discussion of historical redress by stating the following:

Paradigmatically, reparations are owed when (a) one party, the “perpetrator,” has wronged another party, the “victim,” (b) the perpetrator has thereby harmed the victim, and (c) the perpetrator now can do something to benefit the victim. (Ridge 2001; *cf.* Hill 2002)

In this section, I want to argue why, in my view, this particular understanding is the most plausible one. After all, it does not seem like linguistic confusion to say that when a wrongdoer has passed away, his descendants can redress the victim, or in the case that she has also passed away, her descendants. Additionally, while examples of redress seem rife in literature, the idea of redress here remains vague. For example, in Tolkien’s *The Lord of the Rings*, the Oathbreakers, having been cursed by Isildur for betraying him, have their curse lifted by Aragorn, Isildur’s heir, when they answer his call for help. Is this a case of redress? If so, between whom? The meaning of the characters’ actions is unclear.

A strong case for the strict understanding of redress can be found in Janna Thompson's book *Taking Responsibility for the Past* (2002). Thompson begins her discussion by marking off reparative justice from positive justice, which she explains is concerned with general rights and duties, and retributive justice, which she explains is concerned with punishing violations of said duties. Much like the latter, reparative justice fulfils a supportive function; however, its goal is to correct, not punish transgressions (Ibid., 38).

Thompson goes on to argue that a theory of redress that is "obligations-based" is superior to one that is "rights-centered" (Ibid., 39). A rights-centered theory focuses on the victim. According to this theory, any wrong — be it a violation of a right or an unjustified harm — creates, as a matter of course, a claim of redress. As an example of such a claim, Thompson mentions the Jewish people's claim to the land of Israel following the Roman conquest. By contrast, according to an obligations-dependent theory, a claim of redress requires more than that a wrong has occurred. Additionally, there needs to be present an agent who committed this wrong and who incurred a reparative obligation.

Thompson gives three arguments for preferring the obligations-dependent theory. While one of these is viciously circular, the other two are compelling. First, according to a rights-centered theory, there would be no difference between African-Americans who claim redress for the effects of slavery and those claiming redress for the harm caused by, say, being born blind. Clearly, the moral force behind these claims is not the same: one is about correcting a wrongful act or practice that is the result of human meddling, the other is about counteracting natural causes (barring exceptional cases) (Ibid., 40-41).

Second, the theory's lack of specificity with respect to who has to shoulder the burden of redress leads to counter-intuitive results. Thompson demonstrates this by the following example:

Suppose that in our village an injustice has been done by the members of one clan to those of another. The demands of the victims for reparation go unheeded until the rich man of the village, who does not belong to either clan, averts a protracted dispute by volunteering to compensate the victims for what they lost through the injustice. (Ibid., 41)

As Thompson points out, calling the rich man's offer of compensation redress is mistaken. Redress, as financial compensation, can only come out of the pockets of the responsible clan members.

In sum, Thompson shows that the rights-based theory lumps together basic remedial obligations with reparative justice. The former calls for certain well-placed but blameless third parties (often the state) to intervene in any case of unjust disadvantage. By contrast, the latter demands assistance only from those agents who caused the wrong and moreover only for the benefit of the individuals they wronged. Although Thompson does not say so explicitly, we could say that basic or impersonal remedial obligations form part of positive justice or constitute a separate category of justice entirely.

As a final remark, Thompson contends that a reparative obligation does not necessarily require culpability in the sense of moral blameworthiness. While she is right about this, it is inaccurate of her to suggest that merely a degree of causal responsibility is sufficient for incurring a reparative obligation. As David Miller has argued, the nature of the causal chain matters (2008). If someone tries to throw a

frisbee to someone but the frisbee gets stuck between the wheels of a passing cyclist, the frisbee thrower does not thereby incur a reparative obligation for the cyclist's injuries. This is because this casual activity normally does not cause dangerous situations. Indeed, something more than causal responsibility is needed. Miller invokes Tony Honore's notion of outcome responsibility. This is a causal as well as normative standard that involves questions such as whether the outcome of one's action was reasonably foreseeable (as opposed to 'fluky') or whether the action itself fell below a certain standard of care (Ibid., 89-90).

III Responding to the non-identity problem

One of the main purposes, if not the *raison d'être*, of the harm argument is to pose a solution to the non-identity problem. And yet, the relevance of the non-identity problem to historical redress may not be clear. In this section, I give an example that explains how the non-identity problem poses a threat to claims of redress, before showing how the harm argument neutralizes this threat.

Prayugo, an Indonesian man, seeks redress for the wrongs inflicted on his ancestors during the colonial period, on the basis that he too has been unjustly harmed by these wrongs. These wrongs may range from destruction and bodily harm to labour exploitation and the denial of educational and economic opportunities and political rights. There are two standard accounts of how an act X can be harmful that Prayugo can appeal to.⁵ On a *simple comparative* account, an act X causes a person's wellbeing to be lower than it was before X occurred. On a *counterfactual* account, an act X causes a person's wellbeing to be lower than it would have been if X had not occurred.

Clearly, since Prayugo was born after the colonial period ended, the simple comparative account fails.⁶ As for the counterfactual account, here we are forced to concede that Prayugo would not have existed *but for* these wrongs. Indeed, without colonial interference it is extremely likely that his ancestors' lives would have gone very differently: they would have found different partners with whom they would have had different children, grandchildren, and so forth. Therefore, given that the unique individual that is Prayugo would not have existed in this scenario, there is no telling what his wellbeing would have been: the question does not have a meaningful answer. The conclusion of the non-identity

⁵ It is important to note that non-standard notions of harm or wrongdoing have been used to overcome the non-identity problem: these involve (i) a notion of non-comparative (Harman 2004, 2009; Shiffrin 1999) or threshold harm (Rivera-Lopez 2009; Meyer 2004), (ii) a notion of wrongdoing as exploitation or rights violation (Velleman 2008), (iii) or wrongdoing in terms of an agent's deficient mental state (Kumar 2003). In my view, a non-comparative notion of harm only becomes interesting when taking a group-based approach, as is shown below.

⁶ Colonial reparations are slightly imperfect cases of historical redress because a small and dwindling number of people were alive during the wars of decolonization, allowing for a simple comparison in their cases. Incidentally, the Dutch state was ordered in the Rawagede case (2011) to pay financial compensation to a handful of surviving relatives of Indonesians who were executed by the Dutch colonial forces.

problem is that Prayugo's claim of redress on the basis of personal harm is moot.⁷

It is here that the harm argument offers a crucial foothold. The argument starts with the uncontroversial assumption that the failure to redress victims for a wrong can continue after their children are born, possibly harming them during their upbringing. What makes this a crucial step in avoiding the non-identity problem is that this failure is not a condition of the children's existence.

As Andrew Cohen has pointed out, this does not by itself entail that the children are also *wronged*. Indeed, it may just be a "windfall loss" (Cohen 2009, 85). For the harm to count as a wrong, Cohen argues, we need the further assumption that parents have certain moral duties towards their children, more precisely, a duty to use a part of their resources to give their children a decent upbringing. If children have a moral right to a part of their parents' resources, then anybody who withholds a sufficiently large amount of resources from their parents is also thereby acting wrongfully to the parents' children. This, together with the actual harm done, grounds the children's claim of redress.

The final step in the argument is to extend this line of reasoning to later generations until a chain of harms, all of which were also separate wrongs, connects the original wrong with a present disadvantage. In other words, the failure to redress the first victims harmed the second generation by depriving their parents of the means needed to secure their upbringing, the failure to redress the second generation similarly harmed the third generation, and so forth, until we reach the current generation.

These steps yield the following premises and a conclusion:

1. The failure to redress a victim of a wrong can continue after his children are born, possibly harming them during their upbringing.
 2. This harm, all else equal, constitutes an additional wrong to the children, assuming that children have a moral right to a certain amount of parental means, including outstanding claims, for securing a decent upbringing.
 3. The failure to redress this additional wrong can wrongfully harm the next generation of descendants, which, if not redressed, can wrongfully harm the next generation, creating a chain of wrongdoing and harms.
- C Current descendants can be owed redress for wrongful harms stemming from historic wrongs done to their ancestors.

The words 'all else equal' in the second premise serve to remind us that a failure of redress is not necessarily wrongful. This is because other contingent circumstances, such as, an inability to pay compensation, can excuse a harmful act. To return to the case of Prayugo, his claim of redress would

⁷ Recall the phrase "assuming that existence is better than non-existence" from the introduction. Another way to resist the non-identity problem is to deny that this assumption is met in cases of historical redress. The problem with this approach is that this seems plausible only in a small number of cases. While I am not aware of this line being taken to justify historical redress, it has been explored elsewhere (see Boonin 2008, 130-135).

be justified insofar as the failure to compensate his parents after his birth robbed them of the means which he needed and had a moral right to as a child. This redress could then take the form of full compensation for hardship and lost economic opportunities as well as an apology, but depending on what is reasonable and what Prayugo finds important, an apology and acknowledgement of wrongdoing may suffice.

So far, very little has been said about the other side of the redress equation. Indeed, the wrongdoer has remained in the background. Even so, the harm argument would fall short if it did not also identify an existing wrongdoer whom the recent failure of redress can be attributed to.

One option here is to argue that just as it is the victim's descendants who can claim redress, it is the wrongdoer's descendants who have a reparative obligation. The wrongdoer, failing to redress their victim or his descendants, passed on a material debt to his children. These children, failing to discharge this debt, thereby wrongfully harming their creditors' children, then passed it on to their own children. This is repeated until we reach the current descendants who, again, failing to discharge their debt, wrongfully harmed the victim's current descendants. To be sure, the idea is not that descendants should pay for the sins of their ancestors; they should pay for their own wrongs, in this case the accepting of an inheritance without discharging the debt that came with it.

Boxill himself curiously does not mention this option, but we can deduce what he would say about this based on his defence of his inheritance argument. There, Boxill suggests that it would be very difficult in practice to trace the wrongdoers' descendants, and that in any case there would be too few of them to shoulder a burden of redress towards the victims' descendants (2003, 75). Instead, he identifies the state, represented by the United States government, as the wrongdoer. The United States, he argues, allowed slavery to exist from its independence until roughly the civil war and, following this, committed a string of wrongs by repeatedly failing to redress the slaves' descendants (Ibid., 85-90).

IV Objections

The harm argument has been criticized from different angles. In this section, I cover three criticisms: an empirical concern, an objection rooted in a structural injustice perspective, and finally, an objection concerning the importance of group feeling and identity to historical redress. In assessing these objections, I will seek out examples from the literature.

The first criticism in fact pre-dates the harm argument, being originally intended by Jeremy Waldron as a broad skeptical challenge to historical redress (Waldron 1992). More recent iterations of it can be found in Magali Bessone (2019) and Ori J. Herstein (2008). The background of Bessone's discussion is a French civil case in which activist groups and persons claimed, and were denied, redress from the French state for its role in colonial slavery on the Caribbean island of Martinique.

Bessone observes that the judges explicitly rejected a form of the harm argument, stating their point in her own words:

(I)t is impossible to determine whether, and to what degree, their disadvantage can be traced to the crime of slavery suffered by their ancestors, to the political marginalization and economic exploitation that occurred after emancipation, or to other personal decisions made by the claimants themselves. (Bessone 2019, 12)

Although it is not quite clear from this quote, the implication here is that determining a causal link is even more vexing in legal proceedings, due to the strictures of evidence. And similar legal-epistemic complications may affect a claimant's attempt to prove their ancestry. As Bessone notes, civil servants of colonial administrations often discriminated in the way that they kept family records, sometimes omitting persons altogether.

The same purely causal concern is voiced by Ori Herstein, who states that the chain of wrongdoing and harm invoked by the harm argument is as strong as its weakest link (2008, 514-517).⁸ It helps to clarify here, how these links can occur on both sides of the redress equation. Starting with the victim's side, a single generation who collect enough resources to be able to give their offspring a decent upbringing would be enough to break the chain of harm. On the other side, a single generation or government that is incapable, due to circumstances, of providing compensation without risking their own livelihood, would interrupt the chain of wrongdoing. For instance, it is doubtful whether the U.S. government was able to compensate slaves' descendants in the years that the Great Depression was raging. Similarly, the descendants of slaveholders might have received a negative inheritance, that is, one that was insufficient to pay off the debt of slavery that came with it.

There is merit in showing the harm argument's practical limitations; after all, it is a probable argument, not a deductive one. Still, the question here is whether these limitations are severe enough to undermine its overall viability. I do not think this is the case. The first thing I would point out is that the argument itself is silent about the manner in which claims of redress should be settled. Granted, claimants often seek financial compensation, which is the main remedy awarded in tort law. But such compensation could just as well be agreed upon through extra-legal channels, and in many instances this is how it has been done. Besides, claimants sometimes put more store in symbolic forms of redress, which generally fall outside the law's ambit.

Furthermore, the legal strictures surrounding evidence should not be overstated.⁹ The standard of evidence of tort law in particular is more flexible than it appears. Most importantly, a judgment of

⁸ Herstein also objects that the harm argument is unable to account for delayed harms (2008, 517-519) He gives the example of an industrial policy which only starts causing harm a hundred years after it was launched. In this case, Herstein may be right that there is no causally connected, post-conception harm that we can base a claim of redress on to circumvent the non-identity problem. On the other hand, even if the policy cannot be undone, perhaps the failure to take adaptive and mitigating measures can be considered a post-conception wrongful harm. I leave this point aside because cases of delayed harms seem at most peripheral to historical redress.

⁹ Bessone mentions other legal strictures that supposedly lessen the effectiveness of the harm argument, e.g., a statute of limitations, a legal basis for redress, or the requirement that the historic

causation in tort law does not require evidence pointing to a (very) high likelihood. In the United States for example, criminal procedures employ the ‘beyond all reasonable doubt’ standard, whereas civil trials require only a ‘preponderance of evidence.’ Perhaps this does not apply to ancestry claims quite in the same manner, given their different function in the legal process. Even so, the problems signalled by Bessone could be, and often have been, alleviated by drawing on more sources of information, such as, family trees and histories supplied by the claimants.

This is not to deny that it remains very difficult to determine the degree of causal connectedness let alone calculate a precise amount of compensation.¹⁰ Part of the difficulty is that this involves making a counterfactual judgment or, rather, several judgments, about how much better off each generation of descendants would have been if the previous generation had been redressed. Having said that, it should be noted that judges have awarded compensation in other types of cases involving similar or even larger counterfactuals. Additionally, it would seem that a causal link is easier to establish in some cases of historical redress than in others. A good example here are the claims of redress of Haitian citizens against the French state. Unlike in the case of Martinique, which being a French territory has a more ethnically mixed population and a much higher standard of living, there is little doubt that most Haitians grew up poor and are descendants of slaves. In addition, it is more likely than not that, to some degree, they would have been less poor, had the French state provided redress to their parents for harms rooted in colonial wrongs, mainly slavery and forced indemnity payments, and subsequent failures of redress.

We now turn to a more principled criticism that is heavily indebted to Iris Marion Young’s final chapter of *Responsibility for Justice* (2011). Again, we can find an example in Bessone’s discussion. For, despite bringing to light several practical and legal impediments, these are not the grounds that ultimately lead her to repudiate the harm argument. Indeed, her deeper concern is that the argument misrepresents what is at stake in historical redress.

Following Young, Bessone puts structural injustices at the center of historical redress. These injustices are characterized by the fact that they have a “lasting affect [sic] on the social structure of whole population groups or peoples, creating enduring social (and racial) hierarchies (...)” (Bessone 2019, 9). Clearly, if these injustices are central to historical redress, then it is arbitrary to restrict redress to legitimate descendants of the original victims of historic wrongs.

More importantly, however, Bessone joins Young in casting aside the very distinction between victims, perpetrators, and their descendants on the one hand, and the rest of society on the other. This distinction is untenable, she believes, because structural injustices cannot not be traced to “isolated

wrongs in question were crimes under the law. In my view, these are less serious, since we can imagine legal procedures without these obstacles. For example, a retroactive law could be in force which criminalizes slavery, the statute of limitations could be abrogated, and there might be an unambiguous statute to act as a legal basis for redress.

¹⁰ Andrew Cohen suggests that this calculation would have to factor in three things: (1) the welfare gain that would have been enjoyed if the child had not been denied certain aspects of a decent upbringing well as opportunities associated with this (2) damages to the child for having been denied this welfare gain, and (3) damages for the time the child has been denied compensation for (1) and (2) (2009, 94).

action or policies, but rather, arise from the ‘normal, ongoing structural processes of society’” (Ibid., 21; quoting Young 2011, 181). In other words, they are caused by the cumulative, unintended actions of all members of society, making the search for victims and wrongdoers unfounded.

While Bessone thus finds the harm argument misguided, she does not think that we should give up redress. Relying on Young’s distinction between ‘social connection’ and ‘liability’ models of responsibility, she contends that citizens have a general obligation to repair structural injustices. This obligation, crucially, does not involve an admission of wrongdoing or offer of “compensating damages” (Bessone 2019, 16; Young 2011, 173). Instead, it is a call to collective action to change the background conditions by which these harms have persisted. This makes the obligation shared, political and forward-looking: it is based on participation in society and cannot be discharged alone.

In evaluating this objection, it is important that we recall the strict conception of redress defended above. Redress on this conception has an inherently backward-looking function: the wrongdoer, having wronged the victim, must make good his wrong. It follows that Bessone’s alternative has very little to do with redress, despite repeatedly using the term. In particular, the obligation she describes has more in common with a general or remedial obligation of justice.

Of course, a structural injustice theorist might accept this and argue that, in that case, historical redress is simply not desirable or even achievable, and that we ought to focus on our remedial obligations instead. I find both parts of this view unconvincing. To begin with, redress is an important moral ideal independent of other concerns of justice. Not only does wrongdoing offer a unique moral reason for action. As Kok-Chor Tan points out, the notion that one ought to set right one’s mistakes also seems psychologically more motivating than a general obligation rooted in benevolence, common humanity or civic participation (Tan 2007, 286). Bessone and Young fear that a focus on individual wrongdoing would lead to inflammatory accusations and defensive posturing, thereby distracting from the goal of making society more just and equal (2019, 15-16). However, the language of guilt and blame, if needed at all, can be used constructively or in a deflated way. As an example of the former, Tan suggests that we could interpret the fact that we have done wrong not just as a mark of shame but as an opportunity to fulfil a “a debt of honour” (2007, 286.). Further, moral responsibility skeptics would argue that the language of guilt and blame does not carry with it moral condemnation because the type of ultimate moral responsibility that this would require is incoherent or implausible (Pereboom 2006).

If this shows that redress is important, Bessone may still be right in claiming that historical redress is not achievable, given that there are no identifiable perpetrators and victims. In my view, this may be true for certain spread-out effects, like implicit societal norms and practices, but it does not apply to more concrete harms, such as, material deprivation and a lack of economic opportunities. These effects, I would argue, can be traced back to specific government policies or the individual actions and omissions of certain individuals.

Finally, redressing economic harms can as a side effect raise awareness about structural injustices, which Bessone acknowledges (2020, 24). And as another side effect, it can alter the material

conditions that feed into these injustices. For example, if the government started to redress African Americans on a large scale, it is reasonable to think that recent African immigrants would also benefit from the cumulative effect of these policies. To be clear, the same cannot be said of the type of collective action supported by structural injustice theorists, since redress concerns a bilateral relationship.

The third and final objection to the harm argument is also a principled one. This time it is Herstein who makes this his principal concern. Put simply, his charge is that the harm argument neglects the group dimension of historical redress. Herstein builds up to this point by comparing a claim of redress made by an African American to a hypothetical claim made by a Swedish American with some African American ancestry. Here, the intuition is that these claims are morally not on a par, despite what the logic of the harm argument tells us. According to Herstein, this reveals that the contingent fact that parent-child dependency relations are a vehicle of deprivation, cannot account for the crucial connection — the term he uses is “categorical” — between group membership and historical redress (2008, 525). In other words, when individuals claim redress, they tend to do so for wrongs done to their group as a whole.

To make matters worse, the harm argument threatens to drastically shorten the temporal scope of historical redress, since it takes a recent wrong as the object of claims. This is easily missed if redress is seen solely in material terms, given that compensation can still be very substantial. However, as Herstein illustrates with a caustic example, this produces a very contrived effect when one imagines what a symbolic form of redress would look like, such as, an apology made by an official:

For example, imagine them proclaiming in the name of their nations that “we apologize that after your birth we failed to rectify injustices suffered by your parents and the members of your community; furthermore, we are sorry for the harms you suffered as a consequence. However, we do not apologize for what we did to your ancestors and parents (before you were born) because it did not harm you and may even have benefited you.” (2008, 521)

Such symbolic forms of redress bring out the intuitive force of Herstein’s objection. Still, the same disconnect between group membership and redress appears when thinking of redress in material terms.

Certain types of harm seem to entail the existence of a group. Obvious examples are the loss of cultural-linguistic traditions and ancestral land, but they also extend to economic harms. Where the harm argument speaks of “lost opportunities,” this refers to the claimant’s stunted upbringing. And yet, to really appreciate what this refers to, we need to think of the larger and better set of opportunities which would have materialized in the absence of the domination of his group. After all, even if his parents had been compensated with the means to secure his upbringing, he would likely still have faced substandard professional and educational opportunities.

It may come as a surprise that Herstein concludes that the harm argument survives because its logical structure remains intact, albeit at a great intuitive cost. At the same time, it is clear that Herstein’s objection has a strong impact on the dialectic of the historical redress debate, clearing the way for a

different approach. Having demonstrated the need for a “supplementary” view, Herstein spends the final part of his essay on a “rudimentary” proposal for a group-based approach (Ibid., 507).

In next section, I will start by briefly examining Herstein’s proposal along with another proposal that differs from it in a subtle way. The point of this exercise is to give a sufficiently coherent explanation of the group-based aspect of historical redress. Having done this, I turn to the principal aim of the section, which is to show how the group-based approach can justify claims of redress without succumbing to the non-identity problem. After showing how this problem reappears, this time in a different shape, I will defend a combination of strategies to overcome it.

V Responding to the non-identity problem (again)

We saw that the harm argument cannot account for what can be called the ‘group intuition.’ In other words, it cannot account for the impression that when a claimant seeks redress for historic wrongs, he seeks redress for wrongs done to his group. To show what groups he has in mind, Herstein mentions the Maori, the Cherokee, and the Jews (Herstein 2008, 528). The reason Herstein chooses these examples is that, crucially, these are the sort of groups to which individuals can become “formatively attached,” which he explains as “absorbing certain group interests as one’s own but also that one has those interests as part of one’s identity” (Ibid., 530).

According to Herstein, this feature can explain how an individual can claim redress for wrongs done to his or her group. Essentially, some group wrongs are “*ipso facto*” harms to their individual members; in other words, some group wrongs harm group members in a way that is “incommensurable” to the benefit of existing (Ibid.). It is understandable why Herstein resorts to a threshold or non-comparative notion of harm. Importantly, he is wedded to the assumption, which seems plausible, that only individuals have “intrinsic” moral value, so that a justification of historical redress must ultimately reduce to “person-affecting reasons” (Ibid., 528-9, footnote 31). In other words, he needs to explain how group wrongs harm individual members. But he cannot do so by invoking a comparative notion of harm. After all, this would bring back the non-identity problem, given that particular group members most likely would not have existed but for the wrongs done to their group.¹¹

And yet, perhaps there is a way to explain group wrongdoing in terms of comparative harm without running afoul of the non-identity problem. Here, I would like to briefly suggest such an account. To be sure, one way to do this is to abandon Herstein’s assumption and argue that groups can be wronged or harmed over and above their individual members. Kok-Chor Tan seems to make this move when he contends that a claim of redress for a group wrong is “normatively grounded on the harm that the group has suffered, and is made by individuals on behalf of the group” (Tan, 297).

¹¹ In Herstein’s words: “[T]he mere fact that one’s group or community is harmed does not mean that on balance any specific individuals are also harmed or that the acts that wrongly harmed the group also harmed its members” (Ibid., 528-529).

Another less controversial move, I think, is to interpret group wrongs as harms to individual members in their capacity of *average member of historically wronged group X*. In doing so, a meaningful comparison can be made between an individual's current state of well-being and their state of well-being which would have obtained had their group not been wronged in the past. On this explanation, claims of redress are still normatively grounded in individual harm.

This capacity idea is not an original one: it was raised and dismissed by George Sher (Sher 1979, 389; 2005, 189). Sher thinks the capacity account struggles to explain why the fact that an average group member is worse off as result of historic wrongs, should entitle particular group members, who are individually not worse off, to redress. In response to this worry, I would affirm that it is only the group's members in their relevant capacity who are owed redress. Whether this is convincing would depend on how important this capacity is, to the individual member or to humans in general.

Admittedly, Herstein's non-comparative account has the virtue that it does not bring in the added complication of having to take another person's well-being as a baseline and explain why this is relevant. On the other hand, it has the drawback that it is difficult to estimate a non-comparative harm, in terms of financial compensation, in a non-arbitrary way. The capacity account does not face this problem.

If these accounts can show that the group-based approach is at least coherent, we can now investigate how the group-based approach would justify actual claims of redress. Here, the case of colonial reparations again serves as a good illustration.

Returning to the example of Prayugo, one important difference with the harm argument immediately stands out. On a group-based approach, Prayugo claims redress for wrongs done to his nation, in his case, the Indonesian people. This claim can be analyzed in two ways, corresponding to the two accounts discussed above. On Herstein's account, Prayugo may be formatively attached to his nation and thus harmed by the wrongs that were inflicted on it. This is despite the fact that these wrongs are a condition of his existence. On the capacity account, Prayugo may be presenting his claim in the capacity of an average Indonesian individual. If this individual would have been better-off had the Indonesian people not been colonized, it follows that Prayugo is owed redress.

To clarify, the capacity account relies on a counterfactual comparison to ground and quantify reparative claims and obligations.¹² As Daniel Butt warns, the appropriate counterfactual is the one that isolates the relevant wrong, not the one with the highest likelihood (Butt 2012, 238). Thus, the relevant question in the case of Prayugo is whether Indonesia would be better off, and by how much, had Indonesian interaction with the Dutch and other foreign powers taken place on a free and equal footing. Although it is more likely that some other power in the region would have taken possession of the Indonesian archipelago, perhaps Britain, this does not change the counterfactual.

¹² It goes without saying that a simple comparative account is implausible here, since the average Indonesian is probably better off now than he was before the start of colonization, given modern health care and other technological advances.

Concluding at this stage that the group-based approach is successful would be premature; for, the non-identity problem reappears, this time in a different shape. The best way to point this out is to first draw on a concrete example.

As soon as we raise the question of when the Indonesian nation, as a historic community (not to be confused with the Indonesian state), came into existence, the non-identity rears its head again. While such questions are generally best left to historians, it seems that whatever their answer would be, it probably comes down to “somewhere during the colonial period.” This is because the actions of the colonizer probably played a formative role in the process by which the Indonesian nation emerged. Again, historians will be better placed to describe this process, being able to point out the ways in which people reacted to the actions of the colonizer. More to the point, the implication is that Indonesia would not have existed *but for* colonialism. In particular, Prayugo’s claim of redress is undermined, since both Herstein’s account and the capacity account require that the wrongs that form the object of redress did not determine the existence of the claimant’s group.

To put this point more generally, this non-identity problem is rooted in a contingent fact about historical redress, namely, that colonizers often had an unintended unifying effect on the colonized, creating the very group whose members later go on to seek redress. Amartya Sen makes this point very clearly with respect to his own country:

One of the achievements to which British imperial theorists tended to give a good deal of emphasis was the role of the British in producing a *united* India. In this analysis, India was a collection of fragmented kingdoms until British rule made a country out of these diverse regimes. It was argued that India was previously not one country at all, but a thoroughly divided land mass. It was the British empire, so the claim goes, that welded India into a nation. Winston Churchill even remarked that before the British came, there was no Indian nation. “India is a geographical term. It is no more a united nation than the equator,” he once said (Sen 2021).

While not all cases of historical redress will involve such groups, this seems the rule and not the exception when it comes to colonial reparations cases. Accordingly, the non-identity problem threatens to severely restrict the practical application of the group-based approach.

In what follows, I want to suggest three ways to resist this conclusion. The first way is to flatly deny that the historically wronged nation owes its existence to the historical wrongs in question. This can be called the ethno-nationalist strategy. Essentially, it involves emphasizing the importance of language, religion, tradition and other cultural aspects as well as territory to locate the origin of the nation far enough back in time. While I use the label ‘ethno-nationalist’, it should be obvious that a crude version of ethno-nationalism will not be tenable from a liberal point of view. So, it will not do to define the nation in a way that takes belonging to a particular religion or ethnicity as a necessary condition for membership. In his essay, Sen speculates that, had there been no British colonization of India, it is likely that the emerging Hindu Maratha powers based in and around Bombay would have united India under its rule. Perhaps it could be argued that the Maratha kingdom already contained the

germ of the Indian nation so that, had there been no British conquest, the Maratha expansion would have led to the unification of India and its cementing as a nation. One possible objection to this line of reasoning is that this would not have resulted in the same Indian nation. Here, it may help to point to a disanalogy with the individualist non-identity problem. Clearly, human beings can only come into being by a unique combination of sperm cell and egg. But nations are not human beings. Arguably, one and the same nation could have emerged at various points removed in time, so long as it displays certain cultural and political features that are sufficiently similar to the nation that actually exists. In addition, the process by which a nation comes into existence may be much more drawn out than in the case of a human being, encompassing decades or even centuries. In this sense, one could speak of a colonized nation as already having come into being, albeit in embryonic form, before the arrival of European colonial powers.

Just like the first strategy, the second strategy seeks to deny that the non-identity problem is a problem for the group-based approach. The difference is that does so by focusing on older subnational groups within the nation to justify claims of redress, hence it can be called the subnational strategy. The following example serves to illustrate this. In 2020, Germany agreed to compensate Namibia for the genocide it committed in its former colony of German South-West Africa. Surprisingly, Namibians belonging to certain tribes were deeply upset by this. Their complaint was that the reparations negotiations had not included any representatives of the tribes that actually suffered the genocide, the Herero and Nama peoples, and that the compensation would go to the Namibian government. Coming from a group-based approach, there is another obvious ground for their complaint. Assuming that Namibia did not exist when the genocide was committed, it is impossible, for reasons of non-identity, to claim that Namibian citizens were harmed by this wrong and are now owed redress. But this does not mean that Germany has no reparative obligation at all. After all, the Herero and Nama groups existed when the genocide took place, and so its current members may claim redress for harm involving wrongs done to their groups.

The third way to resist the non-identity problem is to accept that the non-identity problem is a problem, but to seek to circumvent it by partially mirroring the structure of the harm argument. This is done by basing a claim of redress on a wrong that sufficiently post-dates the original wrong, so that it is not an existence-fixing condition of the relevant nation. Using the previous example, the Namibian government could give up its claim of redress for the genocide itself and resort to a claim of redress that is based on the subsequent failure to redress it.

Which of these strategies is the right one will depend from case to case. That is why they are best used as a combination. Having said that, the first strategy does best at harnessing the group intuition, making it the strongest dialectical alternative to the harm argument. By contrast, the third strategy does worst in this regard due to shortening of the temporal scope of historical redress, though it does this to a much lesser degree than the harm argument.

VI Diverging approaches

In this penultimate section, I want to draw attention to a notable point of divergence for individualist and group-based approaches. The claim I want to make is that they come with contrasting characterizations of the role and responsibility of individual citizens, in a way that increases the practical complexity of historical redress. The point here is not that these characterizations logically contradict each other or that the two approaches are mutually exclusive in practice. Rather, my claim is that if both can be used to justify claims of redress, then governments may be tempted to pursue seemingly conflicting policies, both domestically and in dealing with other governments. To ensure the success of these policies, governments need to be able to grasp and communicate the diverging and even contrasting pictures of redress that these policies are grounded in.

One strand of complexity arises from how each approach characterizes the victim in historical redress. At a first glance, it seems that the only marked contrast is that the group-based approach includes non-descendants, thus drawing the class of victims much wider, whereas its individualist counterpart does not. But when we examine this more closely, a more complex picture emerges. In some cases, the group-based approach categorizes victims more narrowly. For instance, a Frenchman of Haitian ancestry may be owed redress under the logic of the harm argument, if he was harmed by the failure to compensate his parents, but arguably not according to a group-based approach, assuming that his French nationality has priority. What explains this divergence is the implicit conception of nations as voluntary associations. While entry is usually involuntary, being a mixture of birth and upbringing, it is the process of cultural assimilation that determines group membership and which can be freely pursued. As one theorist puts it: “It is participation in the cultural life of a nation, broadly construed, that determines membership, not ethnicity or biological descent” (Tan 2007, 290).

Another strand of complexity arises from how each approaches characterizes the wrongdoer in historical redress. The harm argument frames wrongdoers as corporate entities, such as states, or certain private citizens, perhaps including government officials. At the same time, most individual citizens are let off the hook. Of course, they may have responsibilities connected to historical redress which do not entail wrongdoing or blame. As we saw above, they may have an obligation to join in collective action against the harmful effects of historic wrongs, insofar as these involve structural injustices. Or they may be obligated to support just and morally reliable political institutions, part of which is taking responsibility for past wrongs committed by their state (Thompson 2006).

The previous elaboration of the group-based approach focused on victims, leaving it open who the wrongdoers could be, except insofar as they are groups. Still, as an approximation, we can submit that the groups that are responsible for committing group wrongs are similarly constituted to the groups that suffer these wrongs. That is to say, they survive changes in their membership and are held together by intergenerational and cultural ties. There is, at the same time, a difference between nations that do wrong and nations that suffer wrong: the former need to have a collective decision-making process (see

Collins 2021). Without this process, we would not be able to explain how the group committed the wrong, as an actor. It is contested whether this process must involve democratic institutions and representative government as opposed to a minimal form of authority.

Of course, the claim that a particular nation owes redress for committing a wrong can mean different things and involve different characterizations of the role and responsibility of individual citizens. But depending on how the nature of group agency and collective responsibility is understood, this may be explained in at least two ways. A rough version of these explanations may help to make clear that the involvement of individual citizens in historical redress will be relatively more far-reaching and morally problematic on a group-based approach.

On the first explanation, outcome responsibility is confined to the nation and individual citizens are not in any way implicated in their nation's wrongs. Perhaps they ought to contribute to redressing these wrongs, but it is in the end their nation as a whole that is a wrongdoer. By contrast, the second way is to characterize individual citizens as not just involved in historical redress but also becoming implicated in it. In this case, they come to share what was described earlier as outcome responsibility. This responsibility can be based on several grounds: on the communitarian notion that the fact that they belong to a nation that committed a wrong is sufficient (Fabre 2007, 150-60), on their causal contribution to the wrong, or on a certain form of participation in the wrongdoing (Kutz 2000). Whether these grounds are convincing is a question that cannot be answered here. In any case, I hope to have shown that the group-based and individualist approaches come with very different and even contrasting moral implications for individual citizens and that governments should take these implications into account when designing and communicating their policies of redress.

Conclusion

The non-identity problem for historical redress is traditionally regarded as a problem which undermines individual claims for redress, thereby threatening individualist justifications of historical redress. This article has argued that this picture is too simplistic. After scrutinizing the problem and one prominent individualistic justification in the form of the harm argument, it was shown how historical redress can be justified from another direction, by adopting a group-based approach. The idea of group-based claims of redress, having been overlooked somewhat in the literature, was, by way of preliminary, fleshed out by providing two explanations of group wrongs as harms to individuals. After showing how the non-identity problem reappears as a special threat to these claims, a combination of argumentative strategies was defended to overcome it.

Having established that both individualist and group-based approaches have the theoretical depth to overcome the non-identity problem, it was shown that they come with diverging and even seemingly conflicting implications for the role and moral responsibility of individual citizens in historical redress, adding to the practical complexity of redress policies. In particular, the involvement

of ordinary individual citizens in historical redress is potentially more morally problematic when seen from a group-based approach. Whether this means that they can be morally implicated, and more importantly, on what grounds— whether individual participation, individual causal responsibility, or through a form of collective guilt or moral taint — is a question that requires further inquiry.

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