FROM THE EDITORS, STEVEN SCALET AND CHRISTOPHER GRIFFIN

ARTICLES

JEPPE VON PLATZ AND DAVID A. REIDY
“Outline of the Field of Reparative Justice”

JOAN L. MCGREGOR
“Commentary on ‘The Structural Diversity of Historical Injustices’”

RAHUL KUMAR
“Commentary on ‘The Structural Diversity of Historical Injustices’”

JEPPE VON PLATZ AND DAVID A. REIDY
“Reply to Our Critics”
Edition in Tribute to Berger Prize Recipients
Every two years, the APA Committee on Philosophy and Law selects the Berger Prize winner for an outstanding published article in philosophy of law. This prize is awarded in memory of Professor Fred Berger of the University of California at Davis. Professors Jeppe von Platz and David A. Reidy are the 2009 Berger Prize recipients for their article “The Structural Diversity of Historical Injustices,” Journal of Social Philosophy 37(3): 360-376. Their article was the subject of a panel discussion at the 2009 Pacific APA meeting, and this issue is devoted to the commentaries and responses to their writing.

The first essay offers Jeppe von Platz and David Reidy’s summary of their original essay. Next, Professors Joan McGregor and Rahul Kumar critically examine their arguments, and, finally, von Platz and Reidy respond to these criticisms. We wish to congratulate the Berger Prize recipients and the panelists for their engaging essays. We also thank Judith DeCew of Clark University for organizing the panel, and Julie Van Camp of California State University at Long Beach for encouraging this publication in her role as the chair of the Committee on Philosophy and Law.

Steven Scalet
Binghamton University

Christopher Griffin
Northern Arizona University

Articles

Outline of the Field of Reparative Justice

Jeppe von Platz
University of Pennsylvania

David A. Reidy
University of Tennessee

I. Reparations and Justice
The Janus-faced nature of reparative justice, at once looking both backward and forward, is no doubt a significant part of the best explanation of both the structure and persistence of disagreements over reparative justice claims. Some theorists take a sort of non-instrumentalist stance and privilege backward-looking considerations, working from what Iris Young dubs a “liability model.” On this model, reparative claims obligate determinate wrongdoers to repair their relationships with those they have wronged. Others take a more instrumentalist stance and privilege forward-looking considerations, working from what Young calls a “social connection model.” Young develops this model to deal with structural injustices with respect to which it is not possible to single out a determinate wrongdoer. Such injustices obligate all those who participate in the relevant social structures or practices to take responsibility for ensuring that those structures or practices become just. The focus is not on repairing a particular relationship between a determinate wrongdoer and a victim, but rather on repairing a social structure or practice in a more holistic fashion and thus securing appropriate moral relations between those participating in it.

The liability and social connection models each have their merits. Yet neither can do full justice to any particular reparative justice claim, let alone all reparative justice claims. No matter how much a particular claim lends itself to the liability model, forward-looking considerations will always carry some weight. And no matter how much a claim lends itself to the social connection model, backward-looking considerations will always carry some weight. What is needed, then, is a theoretical model able to acknowledge the important differences underwriting Young’s distinction between the liability and social connection models, yet accounting for the fact that backward- and forward-looking considerations are in play, though perhaps to different degrees, in all reparative justice claims.

II. The Structural Diversity of Historical Injustices
Every reparative justice claim presupposes a past wrong. But not all past wrongs are alike. And their differences are not simply a function of their gravity or severity. They differ structurally, and this makes a difference when it comes to understanding the reparative claims to which they give rise.

We begin by noting the difference between entitlement (or liability) and desert. Within any rule-governed social practice or institutional arrangement the rules determine to which each participant is entitled (or liable). You are entitled to your salary by virtue of the rules of contract law, the market economy, and so on. You are entitled to vote by virtue of the rules governing citizenship, suffrage, and so on. You are entitled to vote by virtue of the rules governing citizenship, suffrage, and so on.

The rules giving rise to entitlements within any social practice or institutional arrangement will typically track and express its underlying desert- or value-basis. The rules of soccer ought to make it likely that the team that plays best wins. And the rules of criminal trials ought to make it likely that the guilty are convicted and the innocent acquitted. For a variety of reasons, it is rarely possible and sometimes undesirable to design rule-based systems of entitlements so that entitlements perfectly express and track their underlying desert- or value-basis. Sometimes the team that plays best loses. And sometimes the guilty are acquitted and the innocent convicted.
As between entitlements and their desert- or value-basis, it is the latter that is analytically primary. It is for the sake of the latter that the former exists. Normatively, entitlements and their desert- or value-bases operate on different planes. You deserve a particular mode of treatment just in case you possess some property or attribute in light of which that mode of treatment is especially appropriate or fitting. Thus, the quickest or most coordinated team deserves praise. But unless it scores more goals, it is not entitled to the prize. And women or blacks deserve the right to vote. But unless they fulfill the conditions of suffrage, they are not entitled to it.

Using the distinction between systems of entitlements and their underlying desert- or value-bases, we identify four distinct kinds of injustices that underwrite four distinct kinds of claims for reparation.

1. Entitlement violations
To deprive someone of that to which they are entitled is a wrong. If someone takes your salary from you or prevents you from voting, you will have suffered an injustice. You will have been denied something to which you were entitled by virtue of the rules governing a social practice in which you were a participant. If the team that scores the most goals is denied the prize, it is done an injustice.

For reparative claims arising out of entitlement violations, backward-looking considerations are never insubstantial and are often very substantial. Indeed, they may sometimes seem to be the only relevant considerations. Forward-looking considerations, on the other hand, are never particularly weighty and are often insubstantial. Indeed, they may sometimes seem to be altogether irrelevant. Accordingly, there is a great temptation to see entitlement violations as giving rise uniformly to a single reparative claim to a strict return to the status quo ante; the wronged party should receive that to which she or it was entitled.

The debates over familiar reparations claims tied to entitlement violations—for example, claims arising out of the Nazi theft of property from Jews, the Iraqi invasion of Kuwait, various illegal political activities undertaken by Latin American governments during the 1970s, the American internment of Japanese citizens during World War II, and so on—reflect this structured relationship between backward- and forward-looking considerations. Of course, each claim is unique and the exact relationship between backward- and forward-looking considerations, and thus what reparative justice demands, will vary from case to case. But it makes no sense in any of these cases to say that the backward-looking considerations are insubstantial or negligible and that the only thing of any real importance is realizing distributive justice here and now as everyone moves forward together into the future. Nevertheless, and popular temptations notwithstanding, it also makes no sense in any of these cases to say that forward-looking considerations are completely irrelevant. In all these cases, the main challenge is to determine just what the necessarily weighty backward-looking considerations demand without neglecting the relevant forward-looking considerations.

But many contemporary reparations claims are not based on entitlement violations. They are predicated not on some historical violation of a determinate entitlement given by the rules constitutive of an established social practice or institutional arrangement, but rather on some structural moral failing of those rules taken as a whole.

There are three distinct sorts of failings of interest here. First, an otherwise acceptable system of entitlements may exclude some persons who, according to its manifest and morally acceptable desert- or value-basis, it clearly ought to include. Second, a system of entitlements may fail to track or express its manifest and morally acceptable desert- or value-basis across the full range of its application. It may simply fail to connect with that basis in an acceptable way. Third, a system of entitlements may be predicated on, may track and express, a morally corrupt or unacceptable desert- or value-basis.

Each of these three moral failings just mentioned counts as a wrong or injustice. Yet each is structurally distinct, and none have the structure of an entitlement violation. Of the three just mentioned, the second and third both involve a system of entitlements morally defective as a whole. So, while we identify four kinds of historical injustice in all (including entitlement violations), we treat the third and fourth as one kind.

2. Unjust exclusions from an otherwise morally acceptable system of entitlements
The second kind of wrong involves an exclusion from or distinction within an otherwise morally acceptable system of entitlements (or liabilities). Such exclusions or distinctions can be unjust, morally indefensible, inconsistent, or incoherent, if they fail to track, to capture and express, the manifest desert- or value-basis of the rule-governed social practice.

American slavery is one paradigm example here. The historic exclusions of women from various systems of entitlement provide yet further examples. One might also imagine claims of this second kind arising out of unjust exclusions from systems of entitlement within the international order—for example, the exclusion of certain polities from entitlements within the system of international trade.

With respect to reparative justice claims of this second kind, backward-looking considerations must be given significant weight. Determinate wrongs are done to identifiable parties, even if the wrongs are not entitlement violations. But precisely because the wrongs done are not entitlement violations, the minimal necessary weight to be assigned backward-looking considerations is less than in the case of a straightforward entitlement violation. One reason for this is that the wrong done does not include the frustration of institutionally cultivated expectations on the part of victims. Another is that without an entitlement violation, there is no straightforward entitlement basis either for assessing the compensation needed to make amends and repair the wrong done or for grounding the transfer of the reparative justice claim from one generation to the next, via a kind of inheritance, after the last generation of wrongful exclusion.

Just as the minimal necessary weight to be assigned backward-looking considerations is less in this case than in the case of a straightforward entitlement violation, so too the maximal possible weight to be assigned to forward-looking considerations is greater. Because the wrong done is structural or systemic, its correction must also be structural or systemic. This puts forward-looking considerations of distributive justice in play to a greater degree than in the case of a simple entitlement violation.

Because backward-looking considerations will sometimes yield so little determinate content in cases of this sort, while forward-looking considerations seem so unavoidably significant, there may be a temptation to deny that reparative justice claims arise in cases of this sort, or to insist that the only thing that matters is moving forward together to realize distributive justice under conditions of mutual trust and recognition, so that any reparative justice claims are lost just as soon as distributive justice is secured.

We think it would be a mistake to yield to this temptation. Injustices of this second kind give rise to valid reparative justice claims. American slaves were not entitled to citizenship prior
to the Reconstruction Amendments, but they were done an injustice, and they were done that injustice by the members of the American polity, then only "whites." The fact of this historical injustice between a determinate wrongdoer and victim, between "whites" and "blacks" as parties to an ongoing moral relationship, generates a backward-looking demand for repair. Even if blacks today were fully integrated into a distributively just United States, American blacks would still be owed an apology and at least a symbolic act of compensation as a matter of reparative justice. This is not an entitlement-based reparations claim against whites literally inherited by all and only the descendants of black slaves (for, say, the value of lost wages). It is instead a group-based claim on the polity as a whole, where the claimant is black as historically constituted through the exclusion of American slavery, and the polity is the corporate body historically controlled by whites.

The key point here is that, though forward-looking considerations may be given greater weight and backward-looking considerations need not be given as much weight (as compared with cases of straightforward entitlement violations), this kind of injustice still gives rise to valid reparations claims with a substantial backward-looking component. Of course, the exact balancing of backward- and forward-looking considerations, as well as the determination of the concrete reparative acts required to satisfy the demands of reparative justice, must be left to practical judgment on a case by case basis. Too much depends on variable facts for any further general prescriptions to be made.

3. Systemic failures, either (a) on the part of a system of entitlements to track or express a morally plausible desert- or value-basis; or (b) the systemic embodiment in a system of entitlement of a morally corrupt or unacceptable desert- or value-basis. Our third and fourth kinds of wrongs concern more complete moral failures of rule-governed social practices or systems of entitlement.

The third kind concerns a system of entitlement’s failure across some full range of its application to track and express its manifest and morally plausible desert-basis. Though this type of wrong is structurally distinct from the fourth kind, they give rise to similar requirements of reparative justice. And, since few of the claims for reparative justice currently debated in the literature are of the third kind and many are of the fourth, we’ll move straight on to the fourth kind.

The fourth kind of historical injustice arises when the manifest desert- or value-basis of a rule-governed social practice, institutional arrangement, or system of entitlements is itself morally corrupt or unacceptable. This may or may not be evident to anyone participating in or subject to the practice or institution or system of entitlements. Those participating in or subject to it may mistakenly think it grounded in a morally sound desert- or value-basis. Or they may not think critically about their social practices, institutional arrangements, or systems of entitlement, except to notice entitlement violations. Nevertheless, a practice, institutional arrangement, or system of entitlements may be morally defective because of its manifest desert- or value-basis regardless of the beliefs of those participating in or subject to it. The international order of the fifteenth and sixteenth centuries, with its permissive stance toward conquest and colonialism, was of this kind. So too was the globally ubiquitous practice of slavery in its many forms from the ancient world up to the seventeenth or eighteenth centuries.

Slavery and the slave trade were not uncommon and were legally recognized throughout most of the world during the fifteenth and sixteenth centuries, as they had been off and on since ancient times. The institutionalized national and international systems of entitlement during the early modern period simply allowed for slavery. That does not mean that slavery was then just. It was not. It was unjust. We suspect that the injustice of slavery and the slave trade worldwide during the fifteenth and sixteenth centuries is best understood as an instance of the fourth kind of historical injustice.

The same point may be made with respect to conquest and colonization within the international order during the early modern centuries. While the international order was not devoid of rules conferring entitlements (and liabilities) on peoples or states, there was no international entitlement to be free of attack, conquest, colonization, and so on. No people or state was entitled to this simply as a people or state. All were vulnerable, at least formally. It is possible that this was a systemic failure to reflect and track the manifest and morally plausible desert- or value-basis of the international order. But it seems more likely that the international order was not then predicated on a morally plausible desert- or value-basis (say one tied to the moral status of persons or peoples, or the right to collective self-determination, or some other desert- or value-basis we would today affirm as the moral foundation of the international order).

Both slavery and the slave trade, and conquest and colonization, of the fifteenth and sixteenth centuries, constitute historical injustices. Yet neither was an entitlement violation nor a wrongful partial exclusion from an otherwise morally sound system of entitlements. Instead, in these cases, the wrong or injustice done was more systemic and all-encompassing. They wronged everyone.

But they did not harm everyone, or at least did not harm everyone in the same ways or to the same degrees. Some, including much of Africa, suffered much worse than others. Some, including much of Europe, suffered less or even benefited from the absence of a morally sound system of entitlements. These harms may provoke reparative justice claims. But reparative justice claims arise, properly speaking, only out of wrongs, not merely harms. And the wrongs in question here can be understood only as systemic or structural wrongs of the most complete sort.

In these cases, the problem with the relevant social practice or institutionalized system of entitlements (or liabilities) was not that it failed to track its desert- or value-basis adequately. The problem was its desert- or value-basis. These practices wronged persons (and in the case of conquest and colonization, persons organized as "peoples") because they systematically expressed and reflected desert- or value-bases that were morally impoverished or otherwise implausible.

With respect to reparative justice claims like these, the minimal necessary weight to be assigned backward-looking considerations approaches the zero point. Everyone was wronged (albeit through no determinate act) and no one in particular was the wrongdoer. Accordingly, the maximal possible weight to be assigned to forward-looking considerations expands.

Indeed, forward-looking considerations may seem so to dominate such reparative justice claims that backward-looking considerations may be fully ignored. But we think it would be a mistake to think that backward-looking considerations may ever be fully ignored in any reparative justice claim, even where the wrong was systemic in nature. The harms African nations or peoples disproportionately suffered as a result of slavery and the slave trade and conquest and colonization in the fifteenth and sixteenth centuries were harms rooted in injustice. They were imposed not by nature or God, but by humans, albeit humans acting under conditions of systemic injustice. Responding to the historical injustices in question here cannot be merely a matter...
of moving forward to a distributively just future if these harms did not occur or were not the result of human agency. In both theory and practice, distributive justice must be secured over and against a morally neutral default condition. And this history has not left us with. So these past harms must be acknowledged. But more to the point, they must be acknowledged as harms rooted in historical injustice. Something is lost if we treat the asymmetric distribution of harms from past injustices as if they were not different from an asymmetric distribution of harms worked through the forces of nature or imposed by God. Considerations of distributive justice cannot account for this sense that something is lost here. Only considerations of reparative justice can do that.

But the reparative claim to which this history of the fifteenth- and sixteenth-century systemic injustice gives rise is not one properly lodged by African nations against those nations that managed to benefit from or at least escape from being harmed by the unjust system of entitlements. Still, it seems correct to say that the world owes African (and likely some Middle Eastern, Asian, and South American) nations a public acknowledgment of and some reparative response to the fact that Africa and its peoples were harmed more severely than others by the systemic injustices of slavery and the slave trade, conquest and colonization, during the fifteenth and sixteenth centuries. What the appropriate response is we do not here venture to say. But to insist that the world owes African (and other) nations only distributive justice seems to us to take a too cavalier or dismissive attitude toward past injustice: an attitude that fails to accord backward-looking considerations their minimal necessary weight.

III. The Field of Reparative Justice
The result of the previous sections is the outline of an analytical framework for understanding the relation between the structurally diverse kinds of historical injustices and the kinds of claims for reparative justice they support—what we call the field of reparative justice. This field can be illustrated with the following figure.

The field of reparative justice

A few remarks regarding the interpretation of this figure are in order. The upper boundary of the field indicates maximal possible and minimal necessary weights to be assigned backward- and forward-looking considerations respectively. The lower boundary indicates, conversely, the minimum necessary and maximal possible weights to be assigned backward- and forward-looking considerations, again respectively. The field of reparative justice expands or contracts based on structural features of the kind of historical injustice giving rise to the reparative claim in question. The field does not represent the exact weight of or relationship between backward- and forward-looking considerations for any particular reparations claim. It represents only a possible field of judgment. Nor does it represent any moral metric or algorithm for determining what a valid reparations claim is a claim to by way of reparative act. What a valid reparations claim requires by way of reparative act must be determined always on a case by case basis once the exact weight of and relationship between backward- and forward-looking considerations is itself determined. On these matters there is no substitute for deliberative judgment. Our point is simply that for all reparative justice claims deliberation is properly bounded by a field of reparative justice and that the boundaries of this field are given by the underlying structure of the historical injustice in question. Neither backward- nor forward-looking consideration may ever be driven fully from the field of reparative justice.

Commentary on “The Structural Diversity of Historical Injustices”
Joan L. McGregor
Arizona State University

In “The Structural Diversity of Historical Injustices” Jeppe von Platz and David Reidy make a valuable contribution to our understanding of historical injustices by explicating the different structural features of different types of injustices. Rather than treating all historical injustices as if they are a single kind of occurrence, a single type of harm, with the same features and genesis, they illustrate the variety of forms that historical injustices have taken. von Platz and Reidy go on to argue how the differences among historical injustices either support more or less backward- or forward-looking considerations in the adjudication of reparations claims. They refer to this as the “field of reparative justice,” which represents the differing “possible minimal and maximal weights that be assigned to forward and backward looking considerations” in the adjudication of reparative claims. In this short commentary, I will raise questions with their conceptualization of reparative justice, which will lead to questions about the usefulness of their notion of the “field of reparative justice.”

Before we get to the critical stuff, let’s back up and survey the landscape of justice as defined by philosophers in general and von Platz and Reidy in particular. Traditionally, political philosophers, going back to Aristotle, have distinguished distributive justice from corrective justice. Distributive justice attends to “the basic distribution of rights and responsibilities, benefits and burdens, liberties, opportunities, resources and obligations within a just society.”2 Who gets what benefits and burdens is a result of the background rules dictated by the theory of distributive justice. Those rules are thought to be constitutive of a just society. Distributive justice’s aim is to “secure a determinative social order the basic rules of which
situate and empower each person just as she or he ought to be” (von Platz, 361). Distributive justice generally involves forward-looking considerations, what distribution of goods, opportunities, powers, and rights would constitute a just society. Corrective justice, on the other hand, addresses issues of noncompliance or disturbance of the distribution of a just social order—the rules that constitute the social order. Violation of those rules harms victims and makes victims worse off relative to the baseline of the social order. Corrective justice then returns the victim to that baseline of the social order. As such corrective justice is backward-looking returning victims to status quo ante to the point before noncompliance. It corrects the imbalance or advantage that the wrongdoer has secured and the harm done to the victim. It is important to stress, however, corrective justice rectifies infractions of the rules of the social order whether or not those rules are just.

Currently, there are two general approaches for conceptualizing reparative justice; the first argues that reparative justice should be conceived of as more fully backward-looking, what Iris Young labeled the “liability model,” and the second argues that reparative justice should be more forward-looking, what Young has termed the “social connection model.” The former is modeled after compensatory justice or the tort law model and the latter, the social connection model sharing with distributive justice a focus on the future, looks to repair the relationship between individuals or groups who were damaged by past injustice and the offenders. von Platz and Reidy are interested in paving the way down the middle, arguing that because of the differences in the structure of historical injustices, the type of response required by reparative justice, whether more backward-looking and less forward-looking or more forward-looking and less backward-looking will be justified.

There are, according to von Platz and Reidy, four kinds of historical injustices. The first are entitlement violations, which are the simplest sort of reparations claims according to our authors. Entitlements arise out of any rule-governed social practice. The rules that structure the entitlement often will track an underlying desert- or value-basis but they do not have to do so. Examples of entitlement violations are those that arose from wrongs suffered by Iraq’s invasion of Kuwait in the early 1990s. The second category of historical injustice results from unjust exclusions from an otherwise morally acceptable system of entitlements. For example, under the practice of slavery in the United States, blacks were not denied that to which they were entitled, rather they were wrongly excluded from the system of entitlements. “Their exclusion was a wrong because the manifest desert or value basis of the American polity as an institutionalized system of entitlements was then as it is today,” according to the authors, “the possession by persons natively born of something like Rawls’s two fundamental moral powers” (von Platz, 365). The third type of historical injustice occurs when there are systematic failures on the part of a system of entitlements to track or express a morally plausible desert- or value-basis. The example used to illustrate this category is our practice of legal punishment through the coercive imposition of hard treatment. The fourth and final type is the systemic embodiment in a system of entitlements of a morally corrupt or unacceptable desert- or value-basis. “This may or may not be evident to anyone participating in or subject to the practice or institution or system of entitlements” (von Platz, 366). The examples used to illustrate these cases are the Aztec’s practice of human sacrifice, fifteenth- and sixteenth-century views about conquest and colonialism, globally ubiquitous practices of slavery from the ancient world up to the seventeenth and eighteenth centuries, and our present treatment of animals.

von Platz and Reidy suppose that they have exhausted the distinct kinds of historical injustices that may give rise to reparative justice claims and they believe that the differences among them give rise to differences in weights to backward- and forward-looking considerations in the adjudication of the claims. They call these differences in the amounts of backward- or forward-looking claims the “field of reparative justice.” They argue that in cases of entitlement violations backward-looking considerations must be given great weight, but forward-looking considerations should be given some weight as well. With respect to reparative justice claims of the second kind, backward-looking considerations must be given significant weight. Where there were determinate wrongs done to identifiable parties, according to our authors, even if the wrongs are not entitlement violations, they are entitled to compensation. But precisely because the wrongs done are not entitlement violations, the minimal necessary weight to be assigned backward-looking considerations is less than in the case of straightforward entitlement violations. One reason for this is that the wrong done does not include the frustration of institutionally cultivated expectations on the part of victims.

When we get to the types three and four, maximal consideration to forward-looking considerations should be given. Because the wrong done is structural or systemic, its correction must also be structural or systemic. Types 3 and 4 involve subjection to an insitutionalized system of entitlements that is indefensible either because it failed to track or reflect its manifest and morally sound desert- or value-basis or because its manifest desert- or value-basis is morally corrupt or unacceptable. In these sorts of cases, the wrong or injustice done is systemic or holistic. von Platz and Reidy claim that all are wronged. Exclusively forward-looking considerations are called for.

The widespread institution of slavery and colonization constitute these types of historical injustices. Neither was an entitlement violation given that the system of entitlements at the time did not recognize...nor a wrongful partial exclusion from an otherwise morally sound system of entitlements. The injustices done were more complete and systematic. They wronged everyone. But they did not harm everyone. (von Platz, 370)

In these cases the minimal necessary weight to be assigned backward-looking considerations approaches the zero point. Everyone was wronged and no one in particular was the wrongdoer. Maximal possible weight in these cases should be assigned to forward-looking considerations.

Corrective Justice and the Juridical Model

von Platz and Reidy’s framing their analysis with entitlement violations unfortunately distorts the picture of contemporary debates about reparations for historical injustices. Harms arising from offenses to entitlements fit neatly into the corrective justice model and are standardly addressed under tort law in an attempt to make the victim whole and the wrongdoer pay for her violation of the rules. This is a juridical model, seeing claimants adjudicating their rights under a system of entitlements in a juridical proceeding. Conceptualizing reparative justice in a juridical fashion within the framework of corrective justice, correcting for wrongs under a system of entitlements, distorts the picture of reparations for historical injustice on a number of levels. von Platz and Reidy, by conceptualizing reparations as an adjudicative process, are adopting a juridical model that precludes or at least makes it difficult to reconcile with the forward-looking considerations of reparative justice.
Why is framing the discussion with entitlement violations problematic? Considering the claims for reparations for entitlement violations under corrective justice as a kind of paradigmatic case rather than as a limited special case distorts and possibly undermines the arguments for reparations for the prominent cases of historical injustices that need addressing. The most prominent cases of historical injustices that are the focus of contemporary discussions of reparations are not cases involving violations of legal entitlements. Contemporary examples of calls for reparations for American slavery or colonization of indigenous peoples in the Americas and in Africa are not easily mapped on the model of compensating for entitlement violations (although there are many Native American injustices that were entitlement violations—broken treaties, for example, but they don’t account for the more global injustices that occurred because of colonization). Though the authors readily admit this, they miss the significance of framing the reparative response with compensatory justice. If slavery and colonization are the paradigm instances of historical injustices that call for reparations, a theory of reparative justice should model its account on them.

Under the compensatory justice model, which is the normative foundation of tort law, certain types of harms and wrongs are deemed worthy of remedy, viz., ones that are articulated under the system of entitlements, and some wrongs are not, dignitary harms to groups, destruction of culture, and even genocide. The tort law model dictates the form the remedy should take, namely, to put the victim back to the status quo ante. Tort law focuses on making the victim whole, by putting her in the position she would have been in but for the violation. The goal of compensation is to try to put the person in the position that she would be in but for the violation—returning the person to the status quo ante. In many of these paradigm reparations cases, for example, American slavery, that baseline or status quo ante is conceptually problematic or even unintelligible. What would it mean to return the descendents of slavery to the status quo ante of slavery? There are perverse claims suggesting that African American victims of slavery be returned to Africa as a form of returning them to their status quo ante. With a juridical model of reparations, there needs to be an account of compensating the victim for the wrongs done, making the person whole in relation to what would have been the case. What baseline would be appropriate in these historical cases? The baseline the victims would have been in but for the injustice that occurred (or occurred over time) in that historical period? The moral baseline of where they should have been? Many of the systems of entitlements for particular historical eras had multiple levels of exclusions and forms of degradation to various groups, making assessment of the appropriate baseline for compensation either artificial or incoherent.

The juridical conception can undermine calls for legitimate claims for reparations by attention to the absurdities of returning victims to the status quo ante as determined by some baseline. For instance, using Parfit-type arguments might undermine the claims to reparations for current descendents of slavery since they (those particular individuals) wouldn’t have been born but for the slave trade; consequently, they are owed nothing since they are “better off” because of the slave trade. Descendents of slaves are “better off” since they wouldn’t exist “otherwise.” Or, alternatively, since their current standard of living, even if it is in poverty in the United States, is better than the standard of living of the average African, they cannot claim to be “worse off” to the baseline where their ancestors were not made slaves and forced to leave Africa. This sounds somewhat farfetched but calls for compensation have to be based on what was lost, so determination of the harm, what was lost, is crucial.

Starting with examples of entitlement violations suggests that they are the norm, instructing reparations investigations to look for entitlement violations. The compensatory justice model may support, even unwittingly, those who argue that there is nothing to compensate in calls for reparations for slavery and colonization since there was no violation of entitlements. No property, for example, was taken since the alleged victims had no property to be taken, so how could the victims be owed anything? This objection to reparations may gain traction from the compensatory model focused on entitlements.

Am I making too much of the compensatory justice aspect of von Platz and Reidy’s account? They do, of course, also discuss forward-looking considerations for reparations. I don’t think I am placing too much emphasis on the compensatory aspect since it plays a critical role in their analysis. First, beyond entitlement violations, in their second type of historical injustices, where the entitlement system is not unjust, von Platz and Reidy suppose that there are compensatory claims for injustices. Their reparative field applies to all their forms of injustices. For example, with calls for reparations for slavery, they believe that in the process of adjudication for reparations compensation should play a role. How would those compensation claims be assessed? What is being compensated? This returns us to the problems I raised previously. Second, I question whether it is intelligible to have this “Janus faced” model of reparative justice; can reparative justice be seen as focused in both directions, or do these models fundamentally presuppose different conceptions of reparations?

Recent cases, such as the reparations for the U.S. internment of Japanese-Americans during World War II where each person got a set amount of $20,000 whether or not they could prove that level of harm, further illustrate how little the juridical model of reparations functions in the actual world of reparations and that the point of monetary reparations is not to compensate for discrete entitlements claims. In this case, there were bona fide entitlement violations that could have been redressed; there was no attempt to fully compensate the victims for their property and intangible losses as part of the reparations process. Even when reparations include monetary compensation its aim is not necessarily to make the person whole as it is in the tort model, the juridical model. It is not attempting to put the person in the position that he or she would be in without the violation.

Many calls for reparations are for historical injustices that were perpetrated against groups. With historical injustices against groups, the entitlement model doesn’t account for the types of group harms that were committed and what would rectify them. Group harms that have resulted from genocide or attempts to destroy the culture of the group, for example, the harms to Native American culture from the boarding schools for native children in the United States, are not neatly mapped into an entitlement violation. These were injustices done to groups, group harms, which resulted in a legacy of harm to these cultures.

Given that many entitlement violations are for entitlements that are not part of a just distribution of resources, I question whether we should be focused on de jure entitlement violations within the reparative justice framework. What role, if any, should they be seen as having in reparative justice? Slave owners had entitlement to their slaves under the system of entitlements at the time, the bourgeoisie of Cuba and Russian had entitlement to property before the socialist revolutions. Are these entitlement violations appropriate objects of reparative justice? If not, which entitlement violations do warrant reparations and which do not? When there are legal channels through which victims can pursue redress for entitlement violations, should they be
required to adjudicate their claims through those channels, rather than pursuing reparations? Since many systems of entitlements, as von Platz and Reidy’s four types of historical injustices illustrate, are not just ones, I would question whether the primary focus (maybe not the focus at all) for reparative justice should be to compensate entitlement violations that are not a result of a just distribution.

The compensatory justice or tort law model is misleading to victims as well, encouraging victims to suppose that they are going to be compensated for all the wrongs done to them when politically it is unlikely to be a realistic goal. If victims’ expectations are that reparation proceedings are meant to monetarily compensate them for all their losses, they will be sadly disappointed and frustrated by the process. On the other side, the compensatory model gives opponents of reparations ammunition against reparations since they can justify their opposition on the grounds that the country, for example, surely cannot afford to compensate for all the historically committed wrongs. It is easy to imagine American opponents to reparations for injustices to Native Americans mounting such arguments.

The types of historical injustices are varied, ranging from particular instances of abuse to systematic and generational violations for massive numbers of people that cannot be addressed within the “normal” judicial proceedings. These reparations cannot realistically be thought of as part of an adjudicative process. Demands for reparations for historically perpetrated injustices might sometimes be based on compensation for entitlement violations; nevertheless, compensation for entitlement violations is not the sine qua non of reparations. The aim or goal of reparative justice is different in kind from that of compensation in a juridical setting of entitlements. This leads me to the problems with the field of reparative justice.

Problems with the Field of Reparative Justice

The structural differences between historical injustices von Platz and Reidy point out, whether there were entitlement violations, whether the system of entitlements was just or unjust, etc., don’t address what are the most significant factors for reparations, for example, the issue of the scale and types of offenses, minor to major offenses, complete denigration of peoples versus denial of some kinds of rights, torture and murder to dignitary harms, whether the offense was a particular episode or involved multi-generational violations, whether the injustice affected a single individual or multitudes. All these considerations play into the nature, justification, and extent of the reparations. Also, von Platz and Reidy don’t function into their analysis when the injustices occurred and who perpetuated them, both of which will affect the types of reparations that might be acceptable to victims and offenders. Offenses that happened long ago may seem less compelling than ones that occurred in more recent memory, although this is where the scale of offenses may affect another dimension, time of occurrence. For example, the European colonization commenced over 500 years ago but the scale of devastation on indigenous people was tremendous. Who the offenders are is also relevant to the type and extent of reparations. When the offenders are one’s own political leaders, the calls for swift redress may be more compelling than when the offenders are foreigners. There are many context-specific considerations that are not captured by von Platz and Reidy’s structural differences in historical injustices. Many of these considerations seem more salient than the structural differences pointed out in their account.

The so-called “field of reparative justice” suggests that there is some level of standardization about appropriate reparations results. Though they are careful to point out that the field does not provide an algorithmic decision procedure, they do believe the field provides minimums and maximums for backward- and forward-looking considerations. This suggests something like the role that retributive theories of punishment play, that they justify particular kinds and amounts of punishment based on the theory of proportionality, for example. I don’t believe that they successfully made the case that their analysis of the structural difference of historical injustices helps us to determine the appropriate reparations in the field of reparative justice.

Reparations are highly contextualized and political in nature. Pablo de Grieff distinguishes the “juridical model,” which I have been suggesting that von Platz and Reidy have employed, from the “political model” of reparations. The political model of reparations is conceptualized in political terms “measuring their effectiveness in terms of social justice; reparative programs should express and create conditions for recognition, civic trust, and social solidarity between victims and others in society.” Reparations play an important symbolic function in repairing relationships between offenders and victims, and that repair often includes apologizing for past injustices. Compensation has a role to play in the symbolism, for instance, showing that the offenders take the claims seriously and that they are willing to acknowledge that there was a loss. The political nature of the reparations means that the reparative gestures have to be worked out with the victims so the reparations are not perceived as negligent by the victims but they are also politically tolerable to everyone involved. What is reparative for one group with a particular relationship to the violators may not be acceptable to another group—the details matter. But the details that matter are not necessarily captured by the four categories of historical injustices of von Platz and Reidy.

Reparative justice does look backward, like corrective justice, to an injustice but its aim is not to compensate for the wrong done. Reparations look backward like punitive justice, but unlike punitive justice, whose aim is to make the offender suffer for his wrongdoing or “pay” society for his wrongdoing, reparations are not designed to make the offender suffer or pay society for his wrongdoing. The backward-looking element of reparations is to ensure that an injustice had been committed. The forward-looking aspect and the goal of reparations is to publicly acknowledge that injustice was committed against an individual or group, most importantly, for the victim’s sake, and start the process of repairing the moral relationship between the offenders and the victims.

Endnotes

1. This paper was first given as a commentary for the Berger Prize at the Pacific Division meeting of The American Philosophical Association in 2009.
Commentary on “The Structural Diversity of Historical Injustices”

Rahul Kumar
Queen’s University

1. Here is a simple way to think about the normative basis of reparations claims: one party has wrongfully injured another in a way that has resulted in a significant setback to interests of the wronged. What the wrongdoer owes the wronged is to compensate the wronged for his or her loss, to the extent it is possible to do so. It is also incumbent on the wrongdoer to apologize to the wronged in order to acknowledge the fault and restore the relationship between himself and the wronged to one based on mutual respect.

In this respect, reparations claims are unlike the kind of compensation I might demand of another with whom I am involved in a fender bender. What matters to me in that case is that my car be restored, but bumping into my car is just an accident of the type that is of course likely to occur given the nature of the activity (people driving cars). It isn’t important that the payment of compensation also convey a particular meaning, namely, the acknowledgement of a moral mistake; payment through an insurance scheme is just fine, such a scheme being just the kind of thing that needs to be in place in order to make driving a good that is reasonably accessible to a great many people.

It seems to me that both advocates, like David and Jeppe, and critics of reparations claims for historical injustice, would consider these points to be so uncontroversial as to consider them platitudinous. Where advocates and critics split is over the application of these platitudes. That the American government owes reparations to Japanese-Americans interned in camps during World War II, or that the Canadian government owes reparations to those First Nations families whose children were taken from them and placed in residential schools in the 1950s are arguably uncontroversial, or at least not very controversial, examples of cases in which reparations are owed; there is an identifiable wrongdoer and identifiable victim, and it is easy to see why what the victims demand is both acknowledgment of the fault through an official apology and compensation to address the setback to their interests. The controversial cases are those in which the identity of the victim and the identity of the wrongdoer is less clear; many of those who will agree that reparations are owed to certain Japanese-Americans will not accept that, for instance, reparations for slavery are owed to African-Americans.

One of the thoughts that moves those skeptical of this latter type of reparations claim is that it is hard to see how living individuals can be thought of as being wronged now by what was done to particular individuals by particular individuals several generations ago. This isn’t skepticism about there being a causal connection between past wrongdoing and disadvantages faced by living individuals. But the causal connection isn’t enough to establish that anyone now is owed reparations for what was done in the relatively distant past. More needs to be said.

Many reparations advocates take this challenge seriously, arguing that the basis of African-American claims to reparations for chattel slavery are completely plausible if we think of them as, for instance, claims to compensation pressed against those who have economically benefited, or been unjustly enriched, as a result of chattel slavery. But a distinction that Iris Marion Young offers, one Jeppe and David note in their discussion, suggests a different response to the challenge. Young distinguishes between the “liability model” and the “social connection model” of the basis of reparations claims. The liability model holds that “reparative claims obligate determinate wrongdoers to repair their relationships with those they have wronged,” while the social connection model is based on the idea that structural injustices “obligate all those who participate in the relevant social structures or practices to take responsibility for ensuring that those structures or practices become just. The focus is not on repairing a particular relationship...but rather on repairing a social structure or practice in a more holistic fashion and thus securing appropriate moral relations between those participating in it” (363).

What this helpful distinction suggests is that many of the criticisms of those critical of the thought that there are valid claims to reparations for slavery and colonialism may be a result of understanding the normative basis of such claims as fitting the liability model. But if we understand their justification as a better fit with the social connection model, many of the objections lose their force. For the social connection model only requires that certain classes of individuals in the society are currently disadvantaged in ways that are causally connected to past injustice, holding that we are all obligated, as members of the society, to contribute to bringing about a more perfectly just society in the future. That is, we can see that skepticism about the validity of a certain class of reparations claims because an extant wrongdoer, victim, and clearly delineable harm cannot be identified is misplaced; the type of reparations claim in question is not one that is justified in these sorts of backward-looking considerations but are, rather, justified by appeal to forward-looking considerations having to do with what is necessary to create a civic polity built on mutual recognition and respect.

David and Jeppe reject this bifurcation of the terrain of reparative justice on the grounds that what a distinction like Young’s draws our attention to is not the existence of two types of reparations claims, but the Janus-faced nature of such claims. But there is also, it seems to me, a further, intuitive justification for resisting Young’s proposal. For what one might well ask of a view along the lines of that proposal: isn’t what it helps us see is the type of reparations claim identified by the liability model really are claims grounded in reparative justice, while those that social-connection model identifies are called, perhaps for political or rhetorical reasons, claims of reparative justice but really aren’t? Jeppe and David’s proposal, that every reparative claim is justified by both forward-looking and backward-looking considerations, whose relative justificatory importance varies depending on the character of the injustice in question, offers a plausible way of circumventing this objection while doing justice to the thought that might be thought to motivate Young’s distinction.

The general thesis here, that reparative justice claims always involve both forward-looking and backward-looking considerations, is one that strikes me as very plausible. The truth in the point seems to me this: a demand for reparations is not just a demand for compensation, but a demand for acknowledgment of fault on behalf of the wrongdoer. One reason that the acknowledgment of fault is important is that there can be no hope of mutual trust or recognition between the victim and wrongdoer if there is no shared understanding of the character of the wrongdoing and the wrongdoer does not admit his or its fault in wrongdoing the victim. This point is nicely illustrated in the case of the “comfort women,” held as sex slaves by the Japanese army during World War II. When the Japanese government offered compensation, with money provided by a private foundation, but no official apology as a response to the demands for reparations by survivors of that
brutality, the offer was refused, and it makes sense that it was refused: the offer was insulting. The offer of money without apology suggested that what was being demanded by the surviving victims was payment for services rendered, rather than an acknowledgment by the Japanese government of how it wronged, through the organ of its military, tens of thousands of women throughout South East Asia.

I'm less convinced than they are, however, that reparative claims impose demands on the victims in whose name they are made. As they put the point, “since the repair of a moral relationship is not something wrongdoers can effect on their own, reparative justice demands of victims a willingness to venture forgiveness or at least reconciliation in response to a wrongdoer’s reparative efforts at making amends” (362). I can see that it is the duty of the wrongdoer to try and make amends, but it seems to me that it’s always possible that some wrongs are so serious that, though the victims may attach great importance to the acknowledgment of the fault, and it is morally important that the fault be acknowledged and forgiveness sought, forgiveness or reconciliation are just not possible. Sometimes, the best that can be hoped for is to go forward on terms of détente.

To be fair, this is minor quibble, since what they say about the duties imposed on victims by reparative justice is not particularly central to the argument of the paper. What is central, and what I want to now focus on, is whether they actually succeed in offering a plausible alternative to the map of the terrain of reparative justice that Young provides.

For purposes of argument, I'll grant Jeppe and David's claims concerning reparations for entitlement violations, the first kind of reparative justice claim, though I'm inclined to think that they exaggerate the normative significance of the difference between entitlement violations and more structural wrongs. When the wrong in question involves an entitlement violation, the question of what is owed in order to rectify the past wrongdoing is more tractable, as the question of what it would take to return the wronged to his or her status quo ante state is one that can be intelligibly asked, which is often not the case where the wrongs are the result of structural features of the social order. But I think it's important to avoid treating reparative claims that involve a demand for compensation that will return the wronged to, roughly, the status quo ante as a demand for the return of what has been stolen, or taken. This might be true in a minority of cases, but more often than not, a reparative demand that the “debt” be repaid is really a demand for an acknowledgment of past wrongdoing in a world in which large amounts of money speak more loudly than mere words; if this is right, the difference between reparations for entitlement violations and reparations for structural wrongs proves to be less significant than perhaps Jeppe and David make it out to be.

I grant the distinction between reparations for entitlement violations and more systemic wrongs, though, because I think that Jeppe and David are right to see that reparations for systemic wrongs are often thought to be suspect because the absence of violated institutionally inculcated expectations makes it hard to say much that is determinate about the wronged having been deprived as a result of the past wrongdoing. It is, therefore, tempting to wonder whether the territory of reparative justice extends to such cases, since it is unclear what it is that the reparative act is meant to make right; by hypothesis, there is, for instance, no land to be returned, or stolen artifact to be handed back, and no determinate answer to the question of how well off the wronged would have been were it not for the wrongdoing. As they put the point, “because backward-looking considerations will sometimes yield so little determinate content in cases of this sort, while forward-looking considerations seem so unavoidably significant, there may be a temptation to deny that reparative justice claims arise in cases of this sort, or to insist that the only thing that matters is moving forward together to realize distributive justice” (369).

This is a temptation that they urge us to resist. Why it should be resisted is illustrated in part by their brief discussion of reparations for slavery. This is a good example, as one of the central objections to living African-Americans having a claim to reparations for slavery is that it is so hard to give anything like a determinate answer to the question of how much better off living African-Americans would now be were it not for slavery and its aftermath. Jeppe and David argue, however, that this is not a question that needs to be answered, as they hold that American blacks would still be owed reparations for slavery and its aftermath through to the second reconstruction of the 1960s, even if the U.S. were now fully distributively just. In particular, they claim that blacks in the U.S. would still have a group-based claim to reparations against the polity as a whole “where the claimant is black as historically constituted through the exclusion of American slavery, and the policy is the corporate body historically controlled by whites” (370). What would be owed may just be an apology and symbolic compensation; what matters, for their purposes, is that the claims of American blacks for reparations for slavery is neither superseded by the society becoming more distributively just, nor are they derailed by difficult questions concerning how well off the claimants would have been were it not for the past injustice.

My worry about what they say here is that it elides the distinction between the liability model and the social connection model. There is a history of black exclusion from the civil polity in the United States, one that goes back at least to slavery. But that doesn’t show that any living African-American has any kind of backward-looking claim against the polity for reparations for slavery. It only shows that the recent exclusion of blacks is yet another chapter in a long history, one that plausibly continues to cast a spectre over even the distributively just polity assumed for purposes of the example. If that’s the case, it makes sense that there be an apology, or some expression of “taking responsibility” and symbolic compensation for slavery and Jim Crow, but the apology and compensation would be offered in the spirit of “never again!” not the admission of fault, and the aim of the gesture would be to build bonds of mutual trust and respect against a background of mutual distrust and suspicion. No reason not to call this a response to a valid reparative claim, but the emphasis should be on repairing the rifts that divide the society, rather than on redressing past injustice.

Given the overall argument of the paper, Jeppe and David ought of course to disagree with this conclusion. Some of the things they say, though, suggest otherwise. Consider the following passage from the paper, discussing why it is that backward-looking considerations may never be fully ignored even in cases of systemic injustices like colonialism:

Responding to the historical injustices in question here cannot be merely a matter of moving forward to a distributively just future as if these harms did not occur or were not the result of human agency. In both theory and practice, distributive justice must be secured over and against a morally neutral default condition. And this history has not left us with. So these past harms must be acknowledged…as harms rooted in historical injustice. Something is lost if we treat the asymmetric distribution of harms from past injustices as if they were not different from an asymmetric distribution of harms worked through the forces of nature. (372)
This is an astute point, but when I first read it, it surprised me. It sounds like exactly what someone arguing for the social-connection model of reparations claims, as opposed to the liability model, would say. Assuming, that is, that one accepts that a distributively just society is not just one in which a particular distribution of resources holds, but is one in which the relations between individual members of the polity or global political order have a certain character. That is, we need to know why it is that anyone who rejects a very narrow understanding of the aims or desiderata of distributive justice ought not to simply agree with the above point, but take it as evidence that the normative significance of claims to reparations for slavery and colonialism has to do with drawing our attention to the importance in a distributively just society of there being both a fair distribution of resources and of individuals living together on terms of mutual respect and recognition. This requires acknowledgment of the past, but the acknowledgment is a matter of preparing the civic soil in the hope that a distributively just society may emerge with sufficient time and attention (to paraphrase something Leif Wenar says).

Am I misinterpreting what they have in mind here? Maybe. But their general remarks about colonialism suggest that I’m not. What they say is that it was a feature of colonialism at the time colonial conquest was considered an acceptable feature of the international order that no state or people was immune to the possibility of such conquest. For this reason, they suggest that the international order’s acceptance of colonial conquest wronged everyone, though there was no particular wrongdoer; all were wronged, that is, simply in virtue of a feature of the international order, though some suffered under this order and others didn’t. But if we accept that everyone was wronged and no one in particular was the wrongdoer, I think we really have given up on the possibility of anyone being owed reparations for colonialism. For the very idea of reparations suggests what is owed by the wrongdoer to the wronged in virtue of past wrongdoing or injustice, but David and Jeppe deny that the necessary categories of wronged and wrongdoer hold in the case of colonialism. There seems to be no alternative than to understand demands for reparations for colonialism along the lines suggested by Young’s social connection model of reparative claims.

I’ve been critical of Jeppe and David’s claim to have unified the field of reparative justice. They aim to show that all legitimate reparative claims appeal to both forward- and backward-looking considerations, but I don’t think they’ve yet succeeded in making the case for this position, and have not, therefore, really shown that Young’s distinction between two types of reparative claim is not wholly plausible. I do think, though, that further work to make the case is worth doing. For the concern I mentioned at the beginning of this comment, that the social-connection model of reparations claims identifies an important type of justice claim, but that it isn’t really a type of reparative justice claim, is one that I share. But I also share Jeppe and David’s view that reparations really are owed to African-Americans for slavery, and that some nations really are owed reparations for colonialism, and I am attracted to the general direction they go in to show that these thoughts can be vindicated as having a sound normative basis. To do so, however, we need to hear more about the nature of “backwards-looking” considerations, as they understand the term, and their relevance for the justification of reparations claims for slavery and colonialism.

Reply to Our Critics

Jeppe von Platz
University of Pennsylvania

David A. Reidy
University of Tennessee

We want, first, to thank Professors McGregor and Kumar for their insightful and helpful comments.

Professor McGregor takes us to be offering the entitlement violation as, morally speaking, the paradigm reparative justice claim. This is a misunderstanding. We offer the entitlement violation as, conceptually speaking, the simplest and most straightforward sort of historical injustice that might ground a valid reparations claim. And so we begin with it for purposes of presentation. But, we do not offer it, conceptually speaking or morally speaking, as a paradigm of all such claims. We intended, and tried, in our essay, to avoid privileging, conceptually or morally, any of the four types of historical injustices we discussed as the type which uniquely or especially grounds paradigmatic reparations claims. And thus we’d be disinclined to agree with Professor McGregor that it is claims arising out of slavery or European colonization that are the paradigmatic reparations claims. Why should they be taken as paradigmatic over and against the claims, all rooted in entitlement violations, of Japanese-Americans forced into internment camps, or European Jews who had property confiscated during World War II, or of Kuwait after the invasion by Iraq that led to the war known as Desert Storm?

In our essay, we started with the evident fact of a diverse range of reparations claims (moral, political, legal) and then noticed that they arose out of historical injustices that structurally differed one from another in interesting ways, ways that, we think, make a difference to how we think, or ought to think, through the claims themselves. We did not intend, morally or conceptually, to privilege any particular reparations claim as paradigmatic and then offer a conceptual analysis of the general idea of reparations claims via the analysis of a single paradigm. Rather, we tried to gather together a noncontroversial, diverse, and fairly inclusive set of reparations claims—we make no claim to have covered all possible types of reparations claims—and then, first, to point out an important way in which the underlying injustices structurally vary across these claims, and, second, to suggest what seems to us to be one of the important implications of this structural diversity of the underlying injustices for the structure of moral and political deliberation over the reparative claims to which they naturally give rise. Roughly, having noticed what seemed to us an obvious way to classify reparative claims based on structural features of the underlying injustices from which they arise, we sought to suggest a patterned relationship between the structural classification of a reparative claim and the appropriate weighting of backward- and forward-looking considerations in the moral, political, and/or legal adjudication or resolution of it.

This brings us to a second misunderstanding. Professor McGregor takes us to be explicitly or implicitly adopting a juridical model for the adjudication, presumably legal, of reparations claims. But this was not our intent. We intended simply to shed light on the ways in which in any moral or political or legal deliberation or reasoning over a reparations claim the weights assigned forward- and backward-looking reasons seem constrained by limits that derive from or track structural features of the underlying injustices. In no way did we intend to adopt or privilege a juridical, adjudicative model.
for such deliberation. Indeed, we take our analysis to provide a perspective from which one might critique familiar juridical approaches to the adjudication of reparations claims, at least insofar as they focus in an overly legalistic way solely on undoing particular harms associated with past wrongdoing and ignore the political and moral task of repairing the political and moral relationships violated or undermined by that wrongdoing. Our analysis provides a perspective from which one might push for so-called restorative justice reforms in the legal adjudication of both criminal and civil wrongdoing. For our analysis shows that even in the simple case of the violation of a legal entitlement, forward-looking considerations, regarding a whole network of moral, social, and legal relationships, including the relationships of wrongdoing to victim and wrongdoing to others, must be given some weight. They're never irrelevant, even if backward-looking considerations must be given much greater weight.

We suspect that Professor McGregor attributes to us a juridical model of reparations claims because out of the four sorts of historical injustices we discussed we introduced the entitlement violation first. But, as we've already noted, this is a matter of presentation. We started with the entitlement violation because it is the easiest sort of historical injustice to understand and because by starting with it we were able to introduce key notions essential to the understanding of our other three sorts of historical injustices. In particular, by starting with entitlement violations we were able to introduce in a natural way the idea of the rule-governed institutions or practices such violations presuppose, an idea one must have in order to understand the other sorts of historical injustices we discuss. Each of the other sorts of historical injustices we discuss involves an injustice at the level of such an institution or practice, rather than solely at the level of one's entitlements within it. Thus, the order of presentation facilitates economy in exposition.

It is true, of course, that reparations claims arising out of entitlement violations bear a resemblance to legal claims registering in tort, for the most common tort claim is one that arises out of harms proximately caused by conduct that one has a legal duty to avoid, that a reasonable person would not have engaged in. Insofar as there is a legal duty to avoid driving negligently, then each of us is legally entitled, we have a legal right, to others not driving negligently. When others violate that entitlement, that legal right of ours, and thereby proximately cause us harm, it's perfectly natural that we legally demand compensation that returns us to our status quo ante. But compensation through law isn't all we may validly claim in response to wrongdoing. The asymmetric distribution of harms often casts a long shadow; traces of it persist into the present. But this is beside the point. Professor Kumar suggests, insofar as we're concerned with a reparative response to wrongdoing. The asymmetric distribution of harms from fully systemic injustices of our third or fourth type is relevant, of course, insofar as we are collectively concerned to move forward from where history, whether recent or long past, has left us toward a future of distributive justice and mutual trust. But because the asymmetric distribution of harms arising out of our third and fourth sorts of historical injustices does not track a comparable asymmetry in wrongdoing—for in those cases all, both those who suffered the harms and those who did not, were wrongdoers in some sense—the harms don't figure into any valid reparations claim, for a valid reparations claim has always, on both Professor Kumar's and our view, underwritten. It's true that we did not try to capture or map any relationship between the size, severity, or particular nature of the underlying injustice, the significance of the victims' interests that were set back, and so on. All this is surely relevant. It's possible that there may be a way to map some of these features of historical injustices as giving rise to constraints on our moral, political, and legal deliberations over reparations claims.

Professor Kumar suggests that injustices of our third and fourth types do not give rise to reparations claims at all. In cases of our third and fourth types of historical injustice, everyone is a wrongdoer, and everyone is wronged, a circumstance ill-suited to the idea of reparations between particular persons or groups for wrongs done by one to another. Professor Kumar acknowledges, as do we, that the harms associated with such injustices are typically not quite so evenly and universally distributed. Instead, typically some are harmed a great deal, others perhaps not much, if at all. And this asymmetric distribution of harms often casts a long shadow; traces of it persist into the present. But this is beside the point. Professor Kumar suggests, insofar as we're concerned with a reparative response to wrongdoing. The asymmetric distribution of harms from fully systemic injustices of our third or fourth type is relevant, of course, insofar as we are collectively concerned to move forward from where history, whether recent or long past, has left us toward a future of distributive justice and mutual trust. But because the asymmetric distribution of harms arising out of our third and fourth sorts of historical injustices does not track a comparable asymmetry in wrongdoing—for in those cases all, both those who suffered the harms and those who did not, were wrongdoers in some sense—the harms don't figure into any valid reparations claim, for a valid reparations claim has always, on both Professor Kumar's and our view, a genuinely backward-looking component. In cases of our third and fourth sorts of historical injustice, he claims, there is no work to be done by backward-looking considerations simply as backward-looking considerations and thus, properly speaking, no valid reparations claim. The past matters, but only instrumentally and insofar as we care about the future or about distributive justice.
This is an important and powerful point. Indeed, it is one we wrestled with in writing our original essay. We were driven by the nagging sense that in cases of historical injustices of our third and fourth types backward-looking considerations often matter, that history often matters, on its own and apart from any instrumental connection to a forward-looking concern for the future. They or it may not matter a great deal, forward-looking considerations no doubt will dominate. Indeed, this is a point we emphasized. But backward-looking considerations matter nonetheless, even if only to some small degree. When the historical injustice is of our third or fourth sort, the task we face is not simply that of bringing about distributive justice for the future. We have reparative work to do. But why? And what could be the nature of that reparative work? That is the challenge Professor Kumar puts to us. To put it bluntly, what work are backward-looking considerations, simply qua backward-looking considerations, doing in reparations claims predicated on instances of our third and fourth types of historical injustices? This is a very good and hard question. Another way to put it is this: Assuming that reparations claims necessarily involve assigning weight to backward-looking considerations simply as backward-looking considerations, why extend the idea of reparations to historical injustices of our third and fourth sort?

Now, it follows from Professor Kumar’s suggestion that in cases of historical injustices of our third and fourth types, once distributive justice is realized, backward-looking considerations become altogether irrelevant and without any weight at all—for they were only instrumentally relevant, given our forward-looking concern to realize distributive justice, in these cases in the first instance.

One way to put some pressure on Professor Kumar’s suggestion, then, is to try to indicate through a hypothetical or imagined case that backward-looking considerations arising out of historical injustices of our third and fourth types do not become altogether irrelevant or without any weight at all once distributive justice has been secured. Here is a thought experiment meant to do just that.

Suppose that sometime not long after the injustices of sixteenth-century colonialism and slave trading God intervened in the world to bring about distributive justice. We then find ourselves in the eighteenth century living under conditions of distributive justice. We know that there was an historical injustice of a systemic (our third or our fourth) sort and that while everyone was in some sense a wrongdoer, not everyone was harmed or harmed equally. But, from our current point of view, all that is history now. Now, on the view Professor Kumar suggests, the historical injustice in this example gives rise to no backward-looking reparative claim, indeed, assuming we find ourselves living under conditions of distributive justice, it gives rise to no reparative claim at all. On his view, as a fully systemic injustice it gives rise to only forward-looking reparative claims and the realization of distributive justice now (in our imagined eighteenth century) fulfills these claims, thus extinguishing any and all reparative claim arising out of the historical injustice. Now, we confess there’s something attractive and no doubt correct about Professor Kumar’s view here. But it seems something is still missing, too. For wouldn’t we, living now in the distributively just eighteenth century, have a collective or corporate political obligation to remind ourselves and to hold ourselves responsible for our common past, for the harms we collectively and asymmetrically visited on one another? It’s true that we cannot identify from our ranks any particular wrongdoer, whether an individual or group, to be set in a determinate relationship to the person or persons wronged and harmed. The injustice was deeply systemic and we were all thereby implicated as wrongdoers. And it’s true that there is no longer any forward-looking instrumental reason, assuming we’ve secured distributive justice, to concern ourselves with this past injustice or the asymmetric distribution of harms that flowed from it. Still, it seems that insofar as we collectively take ourselves continuously over time to be morally responsible for the shape of the social, political, and legal world we inhabit, we have a moral obligation to acknowledge, to take ownership of, and at least publicly to express regret over our past in this case. And it seems that, in some sense, the fact that the distribution of harms was asymmetric is at least part of what explains this sense of moral obligation. Indeed, that it does so is suggested, we suspect, by the fact that we are likely to think that our moral responsibility in this case to take ownership of, and at least publicly to express regret over our past, is something we owe especially to or because of those who suffered so disproportionately.

To be sure, even if we’re correct about the moral feel of this case, it shows only that backward-looking considerations pull us in the direction of a moral duty to feel and express regret over the past. And regret is not apology. And so perhaps we are in fact beyond the domain of reparative justice. The case may be akin to that of my non-culpably harming you. I cannot be morally blamed and there is no cause for a moral apology. Assuming you’re made whole and forward-looking distributive justice is re-secured, backward-looking considerations and reparative claims may gain no toe-hold. Still, I would be a bad person if I did not feel regret for having played a causal role in the harm you suffered. And I may be a bad person if I fail to communicate to you that I am sorry to have been causally, even if non-culpably, implicated in the harm you suffered. Indeed, here the past may make moral claims on me simply as my past. Whether these are properly thought of as reparative claims remains an open question. We wonder how Professor Kumar would characterize the work being done by backward-looking considerations of this sort. In any event, if they’re characterized in non-reparative terms, it would seem that historical injustices of our third and fourth sorts do still give rise to morally non-trivial backward-looking considerations, even after forward-looking distributive justice has been secured. And, of course, even if Professor Kumar is right that in cases of our third and fourth sort the ex post realization of distributive justice (or elimination of the underlying structural injustice) renders irrelevant any and all backward-looking considerations tied to the underlying injustice itself, we will still have shown at least that there is a significant structural difference between our first and second type of historical injustice and that this structural difference is linked to distinct ranges of permissible weighting of backward- and forward-looking considerations in the moral, political, and legal adjudication or resolution of the reparative claims to which those injustices give rise.