

Nature of Harm, Inheritability of Guilt, and Impact Against Injustice in Reparations for Black Americans (**Prompt 4**)

Reparations for past injustices committed against black Americans have been raised several times throughout politics. In the original counterfactual approach, there is a demand to reinstate as close as possible conditions from if the unjust event had not happened. Jeremy Waldron in “Superseding Historic Justice” objects firstly with an indeterminacy problem: it is impossible to know what choices the victim would have made (Waldron 9-10), rational choice predictions punish those who suffer their actual irrational choices (Waldron 12-13), and although we do make mathematical approximations for restitution court cases, over centuries, the sheer range of choices and output can make it impossible to calculate<sup>1</sup>. More pressingly, Waldron also shows an existence problem: if a past injustice had not occurred, then many people, including reparation claimants, might not have been born (Waldron 12). In “A Lockean Argument for Black Reparations”, Bernard Boxill seeks to avoid the indeterminacy and existence problems by introducing a revised counterfactual argument and an inheritance argument. I will start with the revised counterfactual argument and demonstrating areas where it fails. Similarly, I will further describe how the inheritance argument inadequately captures the point of reparations. However, I will subsequently build on the problems in Boxill’s arguments to highlight how reparations are still warranted while simultaneously, forward looking corrective justice should be prioritized.

It can be helpful to examine the revised counterfactual argument in the form of the following outline (Boxill 86-89) (Yguico 2):

1. If T’s unjust action harms V, T has a duty to bring V to the level of well-being V would have enjoyed had T not acted unjustly.
2. Although past and present individuals and governments are not the same entities

(Boxill 70), every government and succeeding white generation since emancipation harmed blacks by preventing them from recovering from injuries traceable to slavery.

3. Every government and succeeding white generation since emancipation, including present day whites, had a duty to bring blacks to the level of well-being they would have enjoyed had whites not prevented them and their immediate ancestors from recovering from injuries traceable to slavery. This argument therefore does not rely on the claim that present-day blacks were harmed by the original injustice of slavery, because this claim faces the “existence problem”.

4. This duty is limited if it involves putting the persons accountable “in danger of perishing” (Boxill 74) (Waldron 24-25).

There are several inconsistencies with this counterfactual restitution conclusion and premise #1. In #1, T only has a duty to bring V back to their original level of well-being if it was T’s own unjust actions that harmed V. In order to successfully avoid the indeterminacy and existence problems, each succeeding generation can only have claims for or be responsible for the injustices occurring in their lifetime which, despite possibly being legacies of, are distinct from the original Jim Crow or enslavement injustices. To illustrate this, consider an example where Feng programs two bombs to harm Gyorgi. The first bomb, representing the original harm of slavery, explodes Gyorgi’s house. Feng dies, and Haim is born after Gyorgi is homeless. If Haim knows of and does not stop the second bomb, representing present day legacy injustices, from exploding Gyorgi’s car, Haim might have a duty to help Gyorgi with his car since Haim’s conduct harmed Gyorgi. While it may be altruistic and morally respectable for Haim to help Gyorgi regain his house, Haim’s conduct is not responsible for or related to Gyorgi losing their house. To make people culpable for harmful actions they were unable to stop excessively

broadens the responsibility of restitution. Haim does not clearly have a duty to pay restitution for Gyorgi's house if we follow #1. Therefore, present day whites do not qualify as having a duty to bring black Americans to the original level of well-being prior to slavery or prior to their lifetime.

Boxill could persist that his revised counterfactual argument still holds for (although much less) counterfactual restitution by white Americans even if limited in scope by ongoing present day racial injustices (Boxill 89). Here, I want to try to make another distinction concerning the nature of reparations that Haim has to pay Gyorgi for the second bomb. Boxill could argue that most present white Americans (and governments) are not successfully and actively fighting the present racial injustices harming blacks Americans which prevents their recovery from slavery and is still an active harm that requires full restitution (Boxill 87). Not actively fighting injustice is unethical because it results in an unjust consequence. However, the harm of inaction, regardless of whether its consequences are unjust or prevent individuals from recovering as successfully from slavery, may be distinct in nature from directly perpetrated actions. Consider an example, where Ilana steals Jeff's money while Karl is present. Karl dissents against Ilana's actions, as many present day white Americans do dissent against racism and racial injustice, but does not successfully work to stop Ilana's stealing or help Jeff recuperate his money. Karl's conduct is not the most ethical possible, but I think there could exist an intuition that Karl does not have a duty to pay full restitution to Jeff in the same amount. Note that I do not mean that Karl does not owe Jeff anything, but rather that what Karl owes Jeff may not be the full restitution equivalent to what Ilana owes Jeff as would be concluded by Boxill's revised counterfactual argument. If this intuition exists, then inaction, while unethical, does not satisfactorily constitute active harm that requires full restitution by the non-acting party. Thus,

the harm of not successfully and actively working to fight racial injustice and help black Americans recover is of a different nature than instituting racial injustice and does not demand the exact counterfactual restitution as Boxill argues.

Boxill's inheritance argument is built on the transfer of reparation claims from victims to descendants (Boxill 69-79). Again, an outline is helpful (Yguico 1):

1. If T's unjust action harms V, V has a claim of reparation against T.
2. Slaveholders' actions harmed slaves.
3. Those complicit in the perpetuation of slavery also harmed slaves. Citizens are complicit only if they failed to dissent to the unjust action by the government, and they would not have been punished for dissenting.
4. Neither the slaveholders nor their abettors ever fulfilled their obligations to pay reparations, so the debt is still unpaid.
5. When people die their property rights are passed on to their heirs.
6. Slaves had claims to a portion of the estates of slaveholders and of their abettors.
7. Present day white U.S. citizens are the heirs of slaveholders and their abettors.
8. Present day black Americans are the heirs of slaves.
9. Blacks have a claim to part of the estates whites inherited from slaveholders/abettors.
10. Again, this claim is limited if it involves threatening the lives of persons accountable.

This argument is limited by its own definitions of inheritance. Principally, Boxill's strict reliance on descentance makes identification of victims and persons accountable hard to define. In response to #3, a minority, but not insignificant, percentage of white Americans did publicly and politically dissent—for example, the close Virginia Debate vote count—so it is not clear that all white American descendents can be held equally accountable. Moreover, in local, ideologically

homogeneous communities, public dissent may still result in condemnation, alienation, or punishment, as evidenced by KKK murders of white civil rights workers. The identification of claimant heirs (#8) is likewise problematic. For better or for worse, most socially black Americans are descendents of slaveholders and many present day white Americans are descendants of slaves<sup>2</sup> (Bryc 42-45), further obfuscating how individuals receiving reparations would practically be identified.

There exists another complication from inherited claims that subtly changes the point of reparations. In #6, Boxill argues that slaves have claims to a portion of the estates of both slaveholders and abettors. Although slave labor resulted in profits for slaveholders, abettors did not necessarily gain from slavery (Boxill 75) (Lyons 1384). Boxill's inheritance argument therefore argues for inheritable transfer of moral claims (Boxill 75-76). But moral claims of compensation from non-profiting white Americans, unlike stolen profits or land, may not be inheritable, since this would suggest moral guilt of ancestors is transferable to their descendants (Lyons 1379-1380). Extending this, inheritance also ignores all other immaterial injustices that occurred, including the violence, rape, human abuse, and loss of dignity and freedom from slavery. Thus, the inheritance argument misses the core of reparations and is not sufficiently applicable to all forms of injustice.

Nevertheless, the problems from Boxill's arguments help elucidate useful considerations for reparations and racial justice. The fact that the limited coverage of inheritability is a problem suggests that reparations can have a role in fulfilling critical immaterial repair. Waldron proposes the role of reparations includes communicating a commitment to remember a wrong, sustaining an identity-in-memory for those affected, and using real reparations as a way of demonstrating a sincere public apology which, while encouraging a less material nature of reparations, is immune

to counterfactual or inheritance objections and redeems reparations as a necessary policy (Waldron 5-7). The premises of the inheritance argument may also still support reparational debt from a small number of white Americans who are descendants of profiting slaveholders, if the stolen profit from slave labor is inherited, but this is significantly less than what Boxill argues for (and the profitable over moral injustice ranking doubly politically impossible). Likewise, returning to my inaction vs action example, while I'm not sure that victims have full restitution claims from non-acting parties, it is still plausible that victims deserve *something* from non-acting parties for failing to act against occurring injustice events<sup>3</sup>. In either case, however, the supported reparations are unlikely to solve racial inequality, informing a key disadvantage of reparations in that they do not rely on consequences and are distinct from future racial justice. While reparations are one factor of corrective justice, they are not and should not be the comprehensive or primary mechanism for achieving justice; existing ongoing inequalities should be fought against regardless of source.

In conclusion, Boxill's revised counterfactual argument has inconsistencies with its conclusions and ignores the distinction of the nature between inaction and action. Additionally, the inheritance argument creates pragmatically unclear definitions of victims and accountable persons, while also leading to an inadequate understanding of reparations. However, the problems revealed by Boxill's arguments inform the importance and symbolic necessity of reparations, along with its limits within the purview of achieving justice. The political attractiveness of black reparations may partially be due to skepticism over the realistic viability of any alternative corrective justice programs—which I am sympathetic to. But the foundational philosophy of racial justice movements should not be grounded upon counterfactual or inherited reparations for past injuries, but rather what world of justice we should fight to create.

<sup>1</sup> Assume we use basic expected utility theory where expected value  $= P(\text{choice A})V_{\text{value of A}} + P(\text{choice B})V_B + \dots$ . Given methodological limitations of investigating historical decisions however, this can quickly become a seemingly pattern-less infinite series making it impossible to tell what finite value it might converge towards, or even if it converges or diverges (c.f. St. Petersburg Paradox).

<sup>2</sup> The average black American has ~24% European ancestry. ~5% of Southern whites have African American descent (Bryc 42-45).

<sup>3</sup> Expanding this reasoning, most American citizens would also be harming people worldwide by not interfering in unjust events, and we should be required to make reparations for the unjust events suffered by these people that we are aware of and not actively working to stop. Due to the greater severity of many foreign injustices, these reparations would likely end up taking priority over domestic black reparation claims.

**Response to objection in my last paper: “Interesting. However, I think Pojman would push back to argue that he's not concerned with what ‘negative affirmative action’ implies about white males as such, but specifically, how such a policy impacts poor white males, who, arguably, are socially constructed as inferior or with lesser character. Curious how you might respond to this sort of reply.”**

I don't think the identity of being a poor, white male is socially constructed as inferior or with less character in American context (Charlie and the Chocolate Factory, Spiderman, George and Lennie vs Curley, Percy Jackson, Harry Potter vs Draco is British, but still extremely mainstream). But good point, there is a minority *subgroup* of that group that might

be—anecdotally, I think boys with stronger Southern/country accents do face discrimination, or at least, in my hometown of Crozet, teachers discipline them more harshly and guidance counselors underplace their reading/writing levels. So negative affirmative action, anti-selection of this group compared to all other groups, would definitely be unwarranted. However, white students currently don't have negative affirmative action since Asian Americans are still selected against more than they are, and this subgroup identity of rural, poor, white boys also isn't selected against more than other subgroups of white students. Equal selection of all white students without differentiation does not reasonably express the same prejudice against this particular or any subgroup (even poor whites).

I do actually think rural students, maybe especially those who are poor and white, deserve affirmative action as well (less opportunities in the region, bias against their accent/way they speak and write, no subgroup role models), and I think they have it, although perhaps not implemented as explicitly or directly for them: admissions consider geographical diversity.

Also, the social advantages of accepting minorities depends on how strongly society makes that identity stick; black Americans must hold their racial identity forever and therefore can contribute towards breaking stereotypes, etc., lifelong. Going to Harvard often requires presenting yourself in a specific professional way to win competitions (conscious practice of a standard accent), and then spending up to four years in Boston and going to grad school or working in another city, by which point rural identification might be diluted enough that the student can no longer serve as a genuine role model or representation for that type of rural identity. So there might even be an argument that the lack of beneficial social outcome, at least for college admissions, means affirmative action for rural, poor, white boys shouldn't be prioritized as much as black or Hispanic affirmative actions with clearer social impact.



## References:

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