

An Egalitarian Resolution to the Non-Identity Problem of Ancestral Injustice

Jerod Coker

Abstract

In this paper, I argue that individuals are only owed reparation if they are harmed by an injustice that occurs during their lifetime. I argue ancestral injustices do not demand reparation due to a problem I call the ‘Non-Identity Problem of Ancestral Injustice.’ I present a potential solution to this problem, put forth by George Sher, and then present a problem with the solution. I then show this second problem is not as worrisome as it may first seem, and tentatively argue that a sufficiently egalitarian notion of justice leaves our intuitions satisfied.

Definition of Terms

I will use the following terms as defined:

- *Harm*: To harm X is to make X worse off than X otherwise would have been.
- *Compensation*:¹ C fully compensates X for Y only if C makes X no worse off than X would have been had Y not occurred.

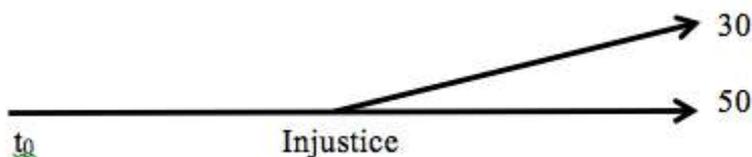
¹ I draw upon Nozick’s *Anarchy, State, and Utopia* here, but change his ‘iff’ condition to an ‘only if’ condition to avoid problems not addressed in this essay.

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- *Reparation*²: Compensation for an injustice.
- *Principle of Reparation (PoR)*: X is due full reparation iff: i) X is harmed and ii) the harm is unjust.

A Straightforward Case

I will begin with a ‘pure’ example invoking the PoR. Alan robs Bob at knife-point and takes his wallet. Bob is clearly harmed and Alan has clearly committed an injustice against Bob, thus invoking the PoR. Alan must compensate Bob by making him no worse off than he would have been had Alan not robbed him. For my purposes, I will use ‘no worse off’ to mean ‘at the same or higher utility level.’ Let us say Bob would have been at a utility level of 50, but the robbery lowers him to 30. If the PoR is true, Alan must return Bob to 50 utils, probably by returning his wallet and paying other compensatory damages. It is clear that Alan owes Bob reparation, and the PoR correctly captures this intuition. To use as comparison later, this case can be illustrated as follows:



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I will now show how applying the previous reasoning to ancestral harms is problematic due to a problem I will call the ‘Non-Identity Problem of Ancestral Injustice’ (NIPAI). Let us consider the case of African slavery in the United States. The slaves themselves were clearly due reparation according to the PoR. However, no such compensation was paid and there is a question as to whether

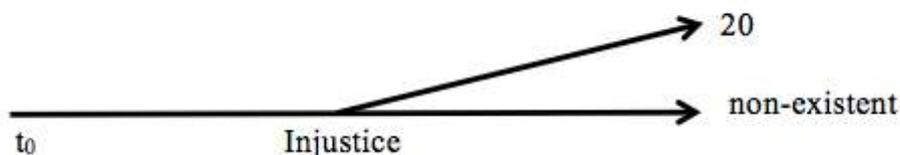
² I follow Boxill, *Black Reparations*, in distinguishing between compensation and reparation.

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the *descendants* of these slaves are due compensation. Intuitively it may seem so, but there is a problem to overcome, namely that the descendants would not exist but for said injustice—this is the NIPAI. George Sher³ gives two lines of reasoning why this must be true: i) an appeal to probabilities and ii) the branching of possible worlds. Without argument (for lack of space) I will use the latter, stronger, line of reasoning, which I in fact find more persuasive.

The Branching Argument says that for a certain person to be brought into being, at a minimum, her parents must unite the exact same sperm and ovum; however, even relatively small deviations in circumstances will cause this condition to fail to obtain, thus branching off a separate ‘possible world’ with a different child. That is, even very minor things, like a phone ringing, *will* change the identity of a child simply by changing which sperm and ovum are united. Of course, major injustices like slavery drastically change the conditions and spawn very different worlds. Therefore, as Sher⁴ writes, ‘We must indeed acknowledge that no current descendant of any victim of a wrong done more than a generation ago could possibly have existed in the wrong’s absence.’

The problem, then, is that the descendants of slaves *cannot* be owed reparations for the enslavement of their ancestors. This is because the harm condition of the PoR is not met, as the descendants are not harmed; they are not harmed because they are not made worse off than they otherwise would have been, as otherwise they would not exist. Diagrammatically:

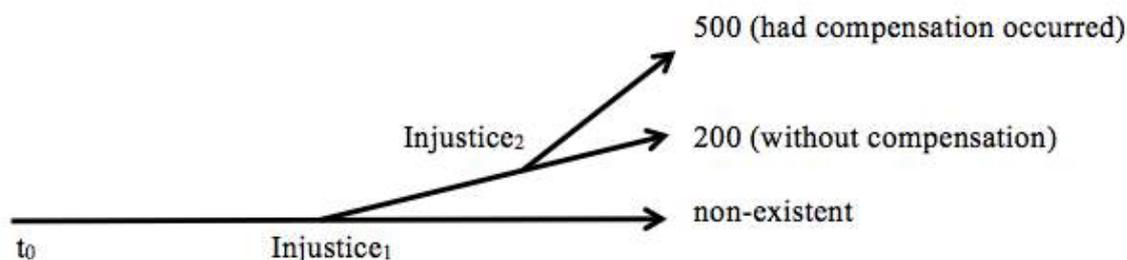


³ Sher, *Transgenerational Compensation*.

⁴ Sher, *Transgenerational Compensation* 185.

A Potential Solution

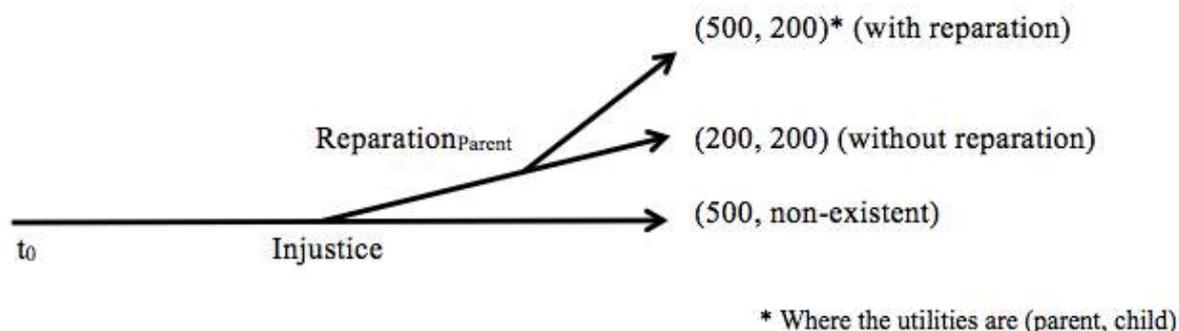
If the reasoning so far is correct, someone cannot be owed reparation for an injustice committed against her ancestor(s), as she would not exist but for that injustice. Unfortunately, this conclusion does not coincide with many people's intuition that the descendants of slaves are indeed due reparation for the injustices committed against their ancestors. Fortunately, Sher has provided a potential solution by arguing that the injustice for which the descendants are due reparation is *not* the original sin of slavery, but rather the *lack* of subsequent reparation to their ancestors. That is, the ancestors were owed reparation at every moment of their life after their enslavement began, including after their children were born. This lack of reparation *itself* is an injustice that harmed the children — and, importantly, occurred *during their lifetime*, making it immune to the NIPAI —, and therefore, per the PoR, they are due reparation. Once again, a diagram to help the juxtaposition (Injustice₁ is the original enslavement and Injustice₂ is the failure to compensate for Injustice₁):



This line of reasoning is very powerful, although it does have problems I will address soon. What is important to note here, however, is that Sher is no longer compensating for an injustice committed against an ancestor (Injustice_1); rather, he is now compensating for an injustice committed directly to the individual, or at least within her lifetime (Injustice_2). This coincides with my original thesis that individuals cannot be owed reparation for injustices committed against their ancestors (before they were conceived, at least) in light of the NIPAI.

A Problem with the Solution: The Too Late Case

Sher himself brings up a problem with his solution that I will call the Too Late Case. In this case, compensating the ancestor for the original injustice fails to make the descendant any better off. We can imagine a scenario in which Alex is enslaved, permanently negatively altering his character such that he raises his son, Bill, in a ‘demoralised, defeatist’⁵ household, which makes Bill’s life go worse (say 200 utils) than if the household had been optimistic and empowering (say 500 utils). Let us assume that, but for being enslaved, Alex’s son, Charles (for Bill would not exist) would have lived a life at 500 utils. In this case, Bill has not been harmed (per the NIPAI) and the original injustice has been compensated for; therefore, the PoR is not invoked and Bill is not owed reparation. Diagrammatically:



This conclusion is unsatisfactory; it seems Bill is owed compensation for being raised in such a defeatist household as the result of his father’s enslavement. Indeed, there seems to be an impasse; as Sher⁶ summarises: ‘To reconcile... this... type of case, [one] must either offer a reason to discount any intuition that the original victim’s child is here owed compensation or else argue that despite appearances, there is some recent wrongful failure to compensate for the original injustice in whose absence he would be better off.’ I will argue

⁵ Sher, *Transgenerational Compensation* 199.

⁶ Sher, *Transgenerational Compensation* 199.

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that we ought to opt for the first option, albeit slightly modified; that is, we must discount the intuition that the original victim's child is here owed compensation *for the original injustice*. We can, and must, however, maintain that the child is owed compensation for suffering from injustice during her lifetime.

The Necessity of Specifying a Conception of Justice

Up to this point I have left justice unspecified. However, it is now imperative that we specify it in order to satisfy our intuition that Bill deserves compensation in the Too Late Case. If our conception of justice is sufficiently egalitarian,⁷ we must indeed compensate Bill for being raised in a defeatist, demoralised household. Importantly, we are not compensating for his father's enslavement, but rather for its effects on Bill's upbringing. Specifically, if Bill is raised in a demoralised household while other children are raised in optimistic households, then, *ceteris paribus*, he clearly does not have equal opportunity for welfare (or, we can safely assume, equal welfare) compared to these other children. Therefore, sufficiently egalitarian justice demands we provide Bill with equal opportunity for welfare — perhaps special counselling, extra help in school, etc. —, if not equal welfare itself.

This invocation of egalitarian justice is crucial in resolving the apparent problem of not being required to compensate descendants for ancestral injustices. Since they are not owed compensation for the original injustice, but our intuitions demand they be compensated for its bad effects, we need something to pick up the slack. Fortunately, egalitarian justice does this work for us, and indeed the NIPAI is only really a problem if we have an insufficiently egalitarian conception of justice (e.g. Nozickian libertarianism). We must therefore concede that the descendants of those against whom injustices were committed

⁷ I say 'sufficiently egalitarian' because not all forms of equality will suffice (e.g. Kantian 'equality'). However, equality of access to welfare/advantage (Arneson/Cohen) and/or stricter welfare egalitarianism will.

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are not harmed by — and thus not owed compensation for — injustices committed against their ancestors, but are nonetheless owed compensation for the current injustices that harm them, based on the principles of egalitarian justice.

Conclusion

The Principle of Reparation demands full compensation whenever an injustice causes someone harm. However, ancestral injustices can never cause harm due to the Non-Identity Problem of Ancestral Injustice. Even so, *failure* to compensate for ancestral injustices, as George Sher shows, itself counts as a current injustice, which demands reparation like any other harmful injustice (e.g. a street mugging). In the strange and interesting Too Late Case that George Sher posits, whereby there is no failure to compensate for the ancestral injustice but it nonetheless seems to demand compensation, we are forced to investigate our own conception of justice.

Two ways (although perhaps not the only ways) to reconcile all our intuitions are therefore i) to redefine harm and/or compensation or ii) to allow an egalitarian notion of justice do the compensating work that our intuitions demand. Since the definitions put forth work in the vast majority of normal cases, we ought to opt for the latter; that is, rather than redefining harm or compensation to fit our intuitions in strange cases, let us admit there is no need to compensate current generations for ancestral injustices. Instead, we should look to egalitarian justice to justify compensating individuals for the harms they suffer as the result of current injustices, which may or may not have been brought about by injustices committed against their ancestors.

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References

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- [5] Cohen, G. A. 'On the Currency of Egalitarian Justice', *Ethics*, 99, 1989: 906-944.

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