

A Critical Theory of Reparative Justice

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Over the past decades, post-atrocity justice debates have expanded their focus from the Nuremberg legacy of individual prosecutions to include a concern for a number of related issues. A great deal of the contemporary literature provides comparative assessments of the possibilities and limitations of trials and truth commissions, the viability of programs to consolidate the rule of law, and more explicitly normative explorations over the status and desirability of reconciliation and forgiveness.¹ There has been comparatively little work done, however, on reparations for victims of recent (rather than historical) conflicts.² The lack of conceptual clarity about what exactly reparations are for – are they meant to return victims to the status quo ante, serve as a moral repudiation of the past, enable once-oppressed groups to achieve self-actualization, or something else? – has meant that reparations programs risk becoming normatively confused and practically ineffective.

This article clarifies the scope of reparations and their contributions by outlining a critical theory of reparative justice for transitional societies emerging from a recent history of political violence. As a critical theory, it seeks to provide a normative scheme for reparations that promotes policies furthering individual autonomy that are compatible with social justice and equality. It goes beyond liberal theory, as I will show, by emphasizing the fundamental intersubjective nature of reparative justice, from which certain types of policies follow. I anchor the theory within contemporary critical theory debates over recognition and redistribution. For the purposes of this essay, transitional democracies are nations emerging from a recent history of violence or authoritarian rule and moving in a broadly positive, liberal democratic normative direction. Reparations are understood as those policies and initiatives that attempt to restore to victims to their sense of dignity and moral worth and eliminate the social disparagement and economic marginalization that accompanied their targeting, with the goal of returning their status of citizens.

The article begins by sketching Bernard Boxhill's influential liberal theory of reparations. I then move on to outlining a normative framework for understanding the goals of reparations, and argue for the necessity of both material and symbolic elements to work toward what Nancy Fraser has termed 'status parity.' Such parity requires that certain concerns about economic marginalization (objective conditions) and identity-based disparagement (subjective conditions) be addressed. Drawing from this, in the following section I outline the theory as consisting of four ideal-typical dimensions – 'symbolic' and 'material' along one pole (concerned with the form of acknowledgement) and 'collective' and 'individual' along the other (regarding recipients). This four-fold rubric provides us with a clearer understanding of the possibilities and limitations of reparative measures. I illustrate these dimensions through a number of case studies in Latin America. While the experiences of these countries are quite different from one another, they share certain features in common: the violations occurred domestically; all of the violations are recent (rather than historical); and, generally speaking, these nations are attempting to move toward a consolidated democratic status, though in some cases their achievements are disappointing. Finally, I discuss several contributions to reconciliation that reparations can make, though these should be situated within a broader set of reconciliatory strategies.

I emphasize that reparations alone cannot achieve reconciliation; however, they can give victims a sense of moral worth and dignity; force society to reconceptualize its identity; promote public trust in state institutions; undermine perpetrator narratives that justified past atrocities; and, contribute to a critical reinterpretation of a nation's history. Reparations can promote these objectives, though securing them will require other reconciliatory and justice mechanisms as well, as I briefly discuss toward the end of the article. I begin with a discussion of the liberal theory of reparations proposed by Bernard Boxhill.

A Liberal Theory of Reparations

One of the most influential contemporary theories of reparations is found in the work of Bernard Boxhill, who defends reparations from a distinctly Lockean perspective, grounding repair and compensation within a theory of liberal rights. For Boxhill, reparation is appropriate “when someone has infringed unjustly on another’s right to pursue what he [*sic*] values,” such as by “thwarting unfairly another’s legitimate attempt to do or possess something,” or when “someone makes it impossible for others to pursue a legitimate goal.”³ Repair requires recognition of the wrong and commitment to right it. The duty to repair stems from Boxhill’s Lockean conception of rights, which as he understands it compels certain forms of behavior. Locke, for example, writes that in the state of nature, “he who hath received any damage, has besides the right of punishment common to him with other men, a particular right to seek *reparation* from him that has done it.”⁴ These rights are pre-political (they come from God), and therefore prior to the formation of society through the social contract.⁵ Nevertheless, this only means that the injured party has a right to *pursue* reparation for a wrong, but others will recognize these rights as normatively binding on *them* only within the context of a community.⁶ The victim has a right to seek redress in the state of nature, but there the remedy to a wrong depends wholly on the victim’s ability to get it, through force or persuasion. Only within a society – an organized group of individuals who understand themselves as enjoying a common identity, with certain privileges and obligations that flow from this – can these rights be understood as normative claims on others. For Locke and Boxhill, what keeps the community together, and what compels reparative and compensatory justice, is a thin conception of tacit consent.⁷ Members of the community tacitly consent to reparative justice because they consented to be part of the community in the first place. Because the individual has a (pre-political) right to pursue her own interests, she is entitled to reparation when others unjustly frustrate her in such endeavors. This right to repair is satisfied best within a community, since it is in this context that fellow individuals will recognize the right as binding.

Boxhill’s Lockean formulation is useful in that it takes rights seriously, situating them as fundamental components of what it means to be a person and thus placing normative proscriptions on the actions of others. Less convincing, however, is Boxhill’s reliance on a theory of subjectivity that is radically monadic and silent on how injuries may include *symbolic* harms that need recognition. While an individual may suffer a material wrong – her property unjustly taken, for instance, making it impossible for her to use her property to pursue her personal interests or desires – Boxhill underestimates the symbolic dimension of injustice, which concerns the disrespect and effacement of dignity that individuals also suffer. His theory of tacit consent establishes, at most, a basic norm that property and physical violations be addressed, but such a (Lockean) society rests on a conception of individuals pursuing their self-interest and who are largely *indifferent* towards others. Tolerance is a core value of liberalism, but tolerance can also become moral indifference, especially in the context of

massive harms like those considered here. A theory of individualism which posits self-interest as the primary characteristic of subjectivity and understands subject formation as transparent and self-referential (that is, not based on interactions with others) cannot grasp harms that result from mis-recognition – in other words, distorted forms of intersubjective relations. Boxhill does not satisfactorily envision the cumulative and systemic harms caused by mis-recognition; he can only address those violations that are singularly identifiable – such as theft – and which allow for some direct and concrete response. Thin consent lacks the necessary binding social norms that would direct citizens to address symbolic harms of disrespect and mis-recognition out of a deeper sense of social solidarity. Boxhill understands even enslavement under the broad category of labor exploitation *between individuals* aggregated across space and time, but its complex symbolic components (such as cultural legacies of racism and ostracism) are inadequately considered.

My aim here is not to map out an alternate, communitarian theory of solidarity, which is beyond the scope of this article. Rather, I wish to highlight the need for a theory that provides an analytical framework for interrogating all relevant forms of injuries and conceptualizing adequate responses. To do this, we must move beyond a liberal individualist theory toward an inter-subjective theory of recognition that takes seriously how symbolic wrongs can inflict damage, while maintaining a critical lens on material wrongs as well.

This can be fruitfully explored by turning to recent critical theory debates on recognition and redistribution. Over the past several years, a number of thinkers have elaborated a theory of recognition rooted in Hegelian forms of identity construction based on a dialogical mode of interaction. For them, recognition is a relation of reciprocity where subjects perceive one another as equals entitled to respect. Full individuality emerges through mutual recognition, an intersubjective process that emphasizes the fundamentally social nature of identity formation. Some thinkers have drawn on this model to develop the normative components necessary for healthy identity development.⁸ Jessica Benjamin, for instance, has developed a theory of identity that places heavy emphasis on intersubjective interaction as the cornerstone of the development of the self.⁹ For Axel Honneth, a healthy self emerges through undistorted intersubjective recognition, which includes three primary modes: *self-confidence*, resulting from affective relations between intimates and others who are emotionally proximate; *self-respect*, concerning the individual's capacity for autonomous moral action anchored in the discourse of rights; and *self-esteem*, developing through engagement in and contributions to an ethically rich social life. The modes are elaborated through dialogical interactions with other, equal subjects and are necessary for a healthy self.¹⁰ Charles Taylor has argued that individual processes of identity formation are similar at the macro-level, and advocates the importance of protecting forms of ethical life that are fundamental to group survival. Groups that are systematically oppressed are incapable of actualizing themselves satisfactorily, and ethical life remains stunted. For Taylor, "A person or group of people can suffer real damage, real distortion, if the people or society around them mirror back to them a confining or demeaning or contemptible picture of themselves."¹¹ To counter this, Taylor proposes enacting policies protecting vulnerable groups. Such policies amount to official, institutionalized forms of recognition. This conceptualization of subject formation is an improvement over Boxhill's for two related reasons: first, it replaces a Lockean monadic conception of the subject with an intersubjective one, thus giving us the necessary theoretical perspective to inquire systematically into the *social* dimension of harms. Recall that Boxhill understands collective harms as little more than individual harms in aggregate, largely because of the methodological individualism of his approach. However, if subjects develop a sense of who they are through their interactions with others – that is, through processes of reciprocal

recognition – then individualism of this sort is clearly inadequate, because it cannot explain how groups as such can suffer harms. A particular Guatemalan Maya may not have suffered directly from her government's genocidal policies, but by virtue of being Maya she experienced the fear, insecurity and disparagement that practically all indigenous Maya faced. Second, Taylor and Honneth correctly emphasize how harms have a symbolic dimension. Reparative justice must move beyond the merely material domain to confront symbolic wrongs tied to mass atrocity that continue to affect cultural perceptions of victims.

Nevertheless, we should be wary of adopting a primarily recognition-based approach to reparations. One concern is that Taylor, along with other neo-Hegelians, views cultural identity as largely homogeneous, and fails to capture the way that groups constitute and reconstitute their identities continuously through complex interactions. Treating cultural identity as a given – which is either recognized or not – gives the theory no purchase to distinguish between measures that promote justice and those that merely reaffirm authenticity claims.¹² An additional concern is that Honneth and Taylor overcompensate in their theories of recognition, reducing all harms to symbolic misrecognition while downplaying the particular effects of material inequalities.¹³

Consider these issues in the specific context of transitional democracies and reparations. Unsurprisingly, and quite understandably, victims' groups often make demands for special recognition following mass violence. Having suffered significant abuses, often the culmination of a history of subordination and discrimination, there is a justifiable demand for meaningful recognition. The question is not whether they should be recognized – they should – but rather what this entails. What does recognition of victims mean in the aftermath of political violence? Honneth and Taylor propose full recognition, which in fact entails the promotion of ethical (that is, *thick*) self-realization. However, the normative adequacy of this theoretical approach is unclear. It gives us no standard to evaluate appropriate measures of recognition versus those that go beyond legitimate victim demands. Claims for ethical self-realization are particularist, concerning the mores and values of a specific group. Moral principles, to follow Hegel and Kant, are universal and are thus binding on all people. This distinction is important in the case of transitional societies. The ethical danger arises with the possibility of 'cultures of victim-hood' developing, in which shared identities serve to bolster particularist authenticity claims. In these situations, the strength of the claims comes from the status of the speakers (as victims), rather than the content of the claims themselves. Victim group elites may use their moral capital to make normatively problematic demands or dismiss otherwise legitimate challenges. For example, elites of a particular group that suffered significant political violence (such as an indigenous group) may demand the right to subordinate an internal sub-group, say women, arguing that subordination is 'required' by their culture, or is otherwise an important part of their ethical self-realization.¹⁴

I am not arguing, of course, that victim demands are always problematic. My concern regarding reparative justice is that the principle of ethical self-realization advocated by Honneth and Taylor provides us with no practical criteria to distinguish between legitimate and illegitimate demands, and this conceptual confusion will produce reparative schemes with little normative cohesion. Within their recognition framework, intersubjective recognition is a necessary and sufficient condition for achieving undistorted, healthy identity. For Honneth, such a thick theory of ethical self-realization serves as a normative standard to determine whether a society is properly organized; he considers ethical life to contain "the entirety of intersubjective conditions that can be shown to serve as necessary preconditions for individual self-realization."¹⁵ While the general theory of intersubjective identity formation is a convincing account of subject development (certainly an improvement over Boxhill's Lockean

theory), and recognition is fundamental for peoples who have suffered massive wrongs, the neo-Hegelians endorse a robust notion of ethical life that is ultimately particularist. Adopting an ethical theory of self-realization prevents us from drawing distinctions between general claims of justice, which address both systematic forms of economic marginalization and symbolic misrecognition, and more particularist (that is, non-universalizable) authenticity claims.¹⁶

Additionally, theories of recognition tend to reduce all forms of injustice to symbolic misrecognition, while saying little about material inequality, except to consider the latter a predicate form of injustice. Honneth subsumes the latter under the former when he writes, "the conception of recognition, when properly understood, can accommodate, indeed even entails, a modified version of the Marxian paradigm of economic distribution."¹⁷ This has repercussions for reparative justice schemes as well. Victims often receive symbolic acknowledgement from the state, including an official apology or monument in their honor, while receiving no material support. And yet they are just as often left impoverished following mass violence, particularly where an entire ethnic group was targeted (such as the indigenous in Guatemala or blacks in South Africa). In this context, an apology is insufficient for social reintegration. Material inequality, then, requires theoretical elaboration in conjunction with symbolic forms, rather than being subsumed into the latter.

Up to this point, I have argued that neo-Hegelian recognition theories are inadequate reparative schemes because they risk collapsing into essentialism, privileging authenticity claims above concerns for symbolic equality, and reducing material inequalities to a subset of recognition harms. If such approaches are problematic, a wholly materialist approach to reparations would be equally unsatisfactory, though for somewhat different reasons. Political violence of the type I am concerned with here clearly results in material damage, such as population dislocation, economic collapse, infrastructural destruction to the community, and a legacy of impoverishment. Furthermore, victims are often unable to work or maintain their livelihoods, either because their employment opportunities and property have been destroyed, or they were so badly affected psychologically and physically that they can no longer meet the economic demands placed on them to survive. Material reparations of some sort are necessary to address the poverty and economic insecurity that follow violence. Nevertheless, material responses, by themselves, are insufficient. They do not address the ways that symbolic denigration can reproduce the conditions that led to the violence in the first place, and fail to account for how victims may continue to be disparaged and marginalized in public discourse. The endemic racism against indigenous peoples in Central America and the Andean nations not only reinforce existing poverty, but also facilitated the commission of massive violations against them by the state (an issue I will return to further below), making it easier for both the military and the population as a whole to justify state brutality. Better material conditions do not necessarily eliminate racism and ostracism, and shorn of proper forms of recognition these groups may continue to encounter mistrust, marginalization and even resentment, even if their material condition improves.¹⁸

Purely redistributive approaches also risk becoming little more than a form of blood money, allowing the state to pay out compensation to victims without having to raise uncomfortable questions about its responsibility and complicity in violations. Reparations gain their normative strength from being perceived as *moral* responses to the past, and without a symbolic element that makes this explicit – an element, in other words, that includes the state's condemnation of past wrongs and its acceptance, in no uncertain terms, of its own responsibility, as well as a promise not to engage in those actions in the future – material

compensation risks being cheapened, bereft of any moral weight. Victims will not consider better housing and educational opportunities, employment, and cash payments for physical and mental suffering morally satisfactory if symbolic gestures that acknowledge them as moral agents are not made, for otherwise these policies will be seen as little more than an effort to buy them off without addressing the normative aspects of past wrongs.

Consequently, any theory of reparations should include both material and symbolic components. It should avoid, on the one hand, claims of ethical self-realization to anchor it. It does not follow that we must privilege liberal individualist rights and reject all collective claims. That would miss the collective nature of violations, where *groups* were targeted (however defined by the perpetrator) and abuses carried out systematically. It is necessary to distinguish between those policies that protect culturally essentialist claims and those that promote status parity among citizens. On the other hand, it should not reduce all harms to material harms, for this misses continuing patterns of social denigration and marginalization that may exist long after physical violence has ended. A theory of reparations that seeks status parity as a goal will target both symbolic misrecognition and material maldistribution. In terms of symbolic recognition, it should emphasize the elimination of cultural views preventing individuals from recognizing each other as fellow citizens. Fraser has termed this the “intersubjective condition” of parity of participation.¹⁹ This requires the positive reevaluation of “disrespected identities” as well as the delegitimation of those social values that worked to justify violence and misrecognition.²⁰ In terms of redistribution, it necessitates addressing economic marginalization that prevents individuals from participating as equal citizens, and securing the “objective condition” of parity of participation.²¹ This may include a number of initiatives, such as monetary compensation for abuse and increased development programs in places targeted by the violence. The ultimate goal is to restore victims’ dignity and self worth so that they may participate fully in social, economic and political life, achieving “reciprocal recognition and status equality” with their peers.²² Without both material and symbolic strategies to correct past injustices, such a goal will remain unrealized.

A Critical Theory of Reparative Justice

The goal of a critical theory of reparative justice should be to secure victims’ sense of dignity and moral worth in ways that are compatible with social justice and equality. To do this, it should combat the social stigma associated with victimization, and re-establish their status as citizens. To this end, it promotes status parity. Here, I would like to sketch two ideal-typical axes, whose intersection creates four conceptual dimensions: one axis refers to the type of acknowledgement, which can be either *symbolic* or *material*. The other axis concerns recipients, who can be *collective* or *individual*. Consequently, there are four reparative dimensions: collective symbolic and individual symbolic reparations, as well as collective material and individual material reparations. Thinking of these as different dimensions of a general theory of reparations permits us to analyze the scope and type of reparation that is appropriate. While undoubtedly different reparative strategies are appropriate within each space (as I will illustrate below), they contribute to a coherent theory of reparations.

Consider the collective symbolic and individual symbolic components first. Political violence is normally targeted at some particular group, such as a racial, ethnic, class, religious or other group. Normally, it is combination of these different categories, depending on the history and particular political relevance of the group in question. Because of this collective dimension, reparations require a collective *symbolic* aspect of recognition. This requires

showing how abuses were the result of an organized and planned strategy against targeted enemies. This means highlighting both the strategies of repression that targeted them *as* groups, and the state and society's moral obligation to recognize victims' experiences and treat them as equals. This entails condemning perpetrator narratives legitimizing past abuse, and condemning arguments that place responsibility for suffering on victims. There are numerous strategies for doing this, including official apologies, public atonement for violations, creating museums, monuments and days of remembrance to preserve collective memory, and establishing public spaces to honor victims.

In El Salvador, The United Nations Commission on the Truth for El Salvador emphasized the importance of such recognition by recommending that the state establish a national day of remembrance and monuments to promote the memory of victims.²³ Both of Guatemala's truth commissions – The United Nations Commission for Historical Clarification (CEH), and the Church-backed REMHI truth commission – called for extensive collective symbolic reparations for the indigenous Maya, the main victims of the civil war. The CEH argued that the state had committed 'acts of genocide' against the Maya, and recommended official recognition of them and all victims, as well as the establishment of monuments and parks to honor them, the creation and protection of Mayan cultural places, the naming of public buildings and schools after victims, and the establishment of a national day of remembrance.²⁴

In a similar vein, official apologies can also serve collective symbolic goals. Chilean president Patricio Aylwin apologized in 1991 for the crimes of the Pinochet government, and recently, Argentine president Néstor Kirchner apologized for the violations committed by the military regime that ruled that country.²⁵ These apologies recognize, publicly and officially, the state's responsibility in persecuting its citizens and its promise to treat them as full members of society in the future. Furthermore, this collective element highlights the risk of continued devaluation that victims may encounter simply by being previously targeted.

Individual symbolic acknowledgement focuses on the importance of recognizing victims as individuals, rather than simply reducing them to an amorphous collective identity (a common consequence of collective measures). This requires attention to how violence affected individuals as individuals, highlighting how 'victim experiences' are not simply slightly differing versions of a general story, but reflect actual people who suffered in deeply personal ways. In practice, such recognition is unattainable, since the crimes are so extensive and included so many people, and certainly not all victims can be given a public platform to tell their stories. Nevertheless, some sensitivity to these experiences is necessary to show that victims are actual people, not simply a statistic. Jacobo Timerman, an Argentine torture survivor, has powerfully argued that individual suffering is more than a symbol of mass violations, and the difficult process of overcoming trauma and rehumanizing victims requires attention to this fact.²⁶ Furthermore, this type of acknowledgement assists in reaffirming their status as citizens, insofar as it shows acknowledgement toward fellow citizens that is a core aspect of any political order based upon democratic principles of equality and mutual respect. This is not to say that individual symbolic recognition is the same as liberal democratic rights,²⁷ but it is an important prerequisite. Without such recognition of individuals as individuals, *and* as equals with legitimate demands for respect, it is unlikely that they will secure and maintain full rights.

Symbolic recognition furthers victims' sense of dignity and self-worth, while reaffirming their place as fellow citizens; however, it does not address the material marginalization that is a common legacy of violence. Often, survivors are left impoverished by systematic violations, and special attention to their economic status is required if reparations are to be more than merely symbolic. Consequently, reparations should include some form of material support

that will give victims the capacity to lead meaningful and productive lives. One form this can take is *collective material* reparations. These reparations provide resources to victimized groups as a way of obtaining the material basis and security required for them to participate fully in social, political and economic life. They include many initiatives such as employment and housing assistance for groups whose economic situation was directly affected by the violence, physical and psychological support for trauma, and infrastructural investment in targeted communities (such as better roads, sanitation programs, rural education campaigns, and credit allowances for economic development). While the nature of the programs will require sensitivity to context and the particular needs of the victims, they share two characteristics: they are for groups that were targets of violence (and are thus collective), and they are dependent on the redistribution of economic resources, with the aim of enhancing the lives of victims so that they may realistically pursue their life plans. In Guatemala, El Salvador and Peru indigenous groups were the primary victims of political violence, and truth commissions called for significant investments in public education, housing, employment and economic development to offset the legacy of economic inequality inherited from the civil wars. These measures can help raise the standard of living of the most damaged communities, and contribute to reintegrating marginalized groups into society.

Combining reparations programs with broader development programs can be challenging, however. Some theorists have argued that combining the two can have positive results. Naomi Roht-Arriaza states this position succinctly: "If reparations are integrated into a larger reconstruction and development agenda, the two sets of needs converge."²⁸ To be sure, society would most likely benefit from increased economic development in poor areas. Nevertheless, combining these two programs can undermine the normative aspect of reparations, since doing so may submerge the specifically moral dimension of reparative justice beneath broader state policies to combat poverty. For many victims, reparations are a moral acknowledgement of wrongful suffering, and subsuming them into development strategies obscures this. What the state may consider reparations may very well be part of the duties it has toward its people as citizens. While employing a discourse of reparations may result in greater political and moral capital for state elites, it confuses the normative specificity of reparations with broader obligations. Any reparations program should be sensitive to this risk, and should be crafted in such a way that maintains its distinctly normative dimension, for example by explicitly invoking elements of symbolic recognition (apologies, days of remembrance, etc.), even if carried out simultaneously with general economic and infrastructural development plans.

Finally, a theory of reparations includes an *individual material* component. This focuses on providing individuals with greater autonomy than that found in collective measures. Individualized programs normally include familial and individual rehabilitation through access to medical, psychological and legal services, compensation for financially assessable losses, economic redress for harms that are not easily quantifiable, and restitution of lost, stolen or destroyed property. Reparations cannot, of course, compensate for death or torture, but they can help impoverished victims, and they emphasize that the state's recognition of victims is not merely symbolic, but also material and practical. The importance of this is evident in a number of cases. The Guatemalan CEH commission recommended that a National Reparations Program be established to provide compensation for serious violations. The commission also recommended psychological rehabilitation and restitution or compensation for stolen or destroyed property. Crucially, it highlighted the need for individual reparations disbursed according to the type of violation and the economic and social status of the victim, and called on the government to give special consideration for certain categories of people, such as minors, widows, and the elderly.

In El Salvador, the UN Truth Commission called for a special reparations fund administered through an independent state corporation. The corporation would conduct assessments of potential beneficiaries and disburse reparations to them, as well as monitor compliance with the truth commission's recommendations. Along somewhat similar lines, Peru's Truth and Reconciliation Commission also recommended a comprehensive collective and individual reparations program, with particular focus on indigenous communities. The program would include psychological and medical support, increased educational opportunities, employment training and cash payments.²⁹ While collective measures have begun in Peru, individualized reparations have yet to commence.³⁰

In Latin America, only Brazil, Chile and Argentina have enacted major reparations programs. Brazil's program is the smallest. In 1995, the legislature passed a law granting compensation of \$100,000 to \$150,000 to the families of over 130 people who had been "disappeared" by the military. No additional support, such as medical or psychological aid, was given.³¹ In Chile, the government established a more extensive program as a response to the legacy of violations of Pinochet's rule.³² The families of the disappeared or killed by state action receive checks every month of about \$480 for life, state medical allowances, counseling and access to a state medical program (this includes nearly 5,000 recipients).³³ Children of the disappeared or killed are provided with full tuition and expenses for university study. They are also given waivers for military service, and pension plans have been reinstated for those who lost employment for political reasons. A special automobile re-entry tax waiver was passed for returning political exiles. Survivors of illegal detention or torture receive no compensation or educational support and only some health benefits, though the government has promised to correct this.

Argentina has developed the most extensive reparations scheme in Latin America, though unlike Chile's it is the product of a series of laws over time, rather than a coherent and planned reparations program. The state disbursed one-time bonds of \$220,000 to the families of the disappeared and killed.³⁴ For families to qualify, victims had to be listed in the final report of the *National Commission on the Disappearance of Persons* (Conadep),³⁵ or have been reported to the state's Human Rights Office and confirmed as disappeared or killed. The total number of potential beneficiaries includes family members of about 15,000 disappeared persons.³⁶ Reparations were also given to those imprisoned without due process, those who were temporarily disappeared and whose cases were reported in the press, to the truth commission or to a human rights organization at the time, and those who were forced into exile for political reasons (though not those who opted for exile "voluntarily"). Additionally, Congress established the legal category of "forcibly disappeared," giving the disappeared the status of death for legal purposes and thus permitting spouses to process wills, close estates and remarry, while recognizing the possibility (however unlikely) that the disappeared will reappear.³⁷ Prior to this, it was extremely difficult for spouses or family members to retain control over property of their disappeared loved ones. Congress has also distributed housing credits to the children of the disappeared and waived mandatory military service³⁸ (though military service is no longer mandatory). In 2004, Congress passed a law for children born to mothers who were illegally detained by the state and subsequently disappeared.³⁹ In many cases, these children were later 'adopted,' that is, kidnapped, by military families and raised in these new homes.

Unlike collective measures, these payments permit a wide exercise of individual autonomy, allowing victims themselves to decide how to use funds according to their needs and desires. In this way, individual reparations can avoid some of the paternalism inherent in collective material reparations, and, to a certain extent, respect personal autonomy.

Of course, the theory of reparations presented here faces several challenges. The primary question is whether reparations offer some form of moral redress to victims. For some groups, symbolic reparations are always inadequate responses to massive violations, regardless of how extensive or well intentioned they are. "Unfortunately, no matter how well meaning, all reparations strategies and governmental commissions face the same, albeit obvious, intractable problem. Acknowledgement, apology, recognition, material assistance, a perpetrator's confession and even exhuming the bodies/bones of the 'missing' can never bring back the dead or be guaranteed to converge with, and ameliorate, all the levels of psychological pain suffered by a survivor."⁴⁰ Others have criticized material reparations as little more than blood money, a cheap way to secure victim silence while allowing the state to release itself of any future obligations to them. One faction of the Argentine victims rights group, Mothers of the Plaza de Mayo, has consistently leveled this charge against reparations and refused to accept any money from the government. Their fundamental concern, shared by many victims' rights groups, is that the state's motive for reparations may be utilitarian rather than truly moral. This skepticism is certainly warranted, particularly when victims have long been marginalized and there is little reason to believe that general social attitudes (and state policy) toward them will change in the short term, such as with indigenous groups in Central America and the Andes. However, these criticisms are fatal only if reparations are put forth as a complete and comprehensive response to the past. In these circumstances, there is a strong reason to remain skeptical of their practical impact and moral adequacy. But satisfactory engagement with a violent past requires more than symbolic and material reparations, though these are crucial (for reasons discussed below).

Reparations help restore to victims their dignity and sense of moral worth, and promote social justice. But they cannot eliminate impunity, secure accountability, reform corrupt and violent institutions or foster the rule of law. Indeed, the normative needs of transitional societies are numerous, and include accountability, establishment of the rule of law, truth-telling, and the promotion of norms of tolerance and respect, in addition to victim acknowledgement and reparations. The relationship between these goals is complex, and prioritizing them requires public debate about core social values. The crucial point, however, is that any theory of reparations should be placed within a broader theory of reconciliation, rather than be normatively burdened with expectations it cannot reach on its own. While this is not the place to outline a full theory of reconciliation, at the very least it would need to address these normative goals, and sketch how they are manifested in different social contexts, such as among political elites, within state institutions, in civil society and between individuals. Reparations can be moral, and not just instrumental, responses to the extent that a society commits itself to a just reconciliation and gives status parity to victims. To expect that reparations alone can reconcile a devastated society burdens them with accomplishing goals that are beyond what they are designed to do. With these limitations in mind, the following section discusses five contributions reparations can make to victims and societal reconciliation.

Contributions of Reparative Justice

Reparations work to restore to victims their sense of *moral worth and dignity*. This is rooted in a conception of personhood as emerging from intersubjective recognition among equals that includes recognition of their moral claims to dignity. Dignity reflects the values of autonomy and respect that anchor a healthy conception of the self, making it a fundamental property of personhood. Reparations recognize this moral claim by publicly expressing that the state and society consider victims bearers of moral value and dignity, as equals deserving respect.

Respect is based on a relationship that emphasizes the reciprocal recognition of the inherent value of individuals. Respecting another means that we recognize in her some inherent value – a claim to dignity – and we show this by behaving publicly in ways that affirm this. Respect, then, is not dependent on the utility we may derive from another person (by valuing her solely according to our desires or interests); rather, it requires that we acknowledge the other's claim *on us* to her moral worth and dignity, as well as the duty to treat her in ways that affirm this acknowledgement.

Respect entails a particular moral relationship between individuals, and is manifested fully in a condition of status parity. Nevertheless, it is not as demanding as the full reconciliation called for by theologians such as Marty Martin. Martin argues that respect and status parity are insufficient moral goods. What is needed is a deep ontological transformation among all parties (perpetrators, bystanders, victims) where animosity and bitterness are rejected in favor of broad-based public repentance and forgiveness.⁴¹ Such a massive transformation is probably unachievable and, regardless, impossible to verify. Instead, we should promote status parity for victimized groups by drawing attention to social patterns of devaluation and economic standing. Without some degree of equality, victims will remain subordinated politically, socially and economically.

Respect, however, means more than minimal tolerance toward others. It requires a more robust idea of politics than that developed by Schmittians such as Chantal Mouffe, who consider politics as agonistic with little mutual commitment to seeing one another as moral equals.⁴² Respect entails seeing another as an equal with moral value and dignity, but eschews demands for radical ontological transformation that many theologians place at the center of reconciliation. It highlights the importance of replacing mutual suspicion and violence with tolerance of others in public and semi-public life, and the cultivation of trust in democratic institutions. I want to emphasize that because dignity and moral worth emerge from experiences of mutual respect, this normative goal is fundamentally intersubjective, that is, it is premised on the importance of those modes of interaction that promote positive reevaluations of disrespected groups and requires both material and symbolic components. Unlike the liberal view I discussed earlier, which sees reparation as anchored in an individualist, monadic theory of subjectivity, I conceive of the ideas of dignity and moral worth as necessarily both a) intersubjective and b) encompassing components autonomy *and* social justice. Reparations publicly affirm the dignity and moral worth of victims, and draw our attention to the respect that should be accorded to them. Reparations, then, are especially important to victims.

Secondly, reparations force a society to confront the boundaries of the “we,” *to reconceptualize its sense of itself*. In addition to making moral claims to dignity and respect, victims also make claims in their capacities as citizens with legal rights and to participate in the political, social and economic spheres. These claims force all citizens to rethink the nature of citizenship: who is a member and who should be excluded. At its best, this may deepen democracy by signaling the importance of including those who have been marginalized and victimized. Similarly, reparations expand the domain of moral obligation, for they highlight the importance of recognizing victims as bearers of moral worth who are part of the same community. Crucially, then, reparations express the state's recognition of victims as part of the nation, and signal others to do so as well, calling for a broader understanding of who qualifies as a member of society.

A common legacy of state-sponsored violence is an erosion of public trust in state institutions. In Latin America, the security forces and judiciary were often the primary perpetrators of massive violations, and today many citizens maintain little trust in the state. Reparations

can *strengthen public trust in the state*, expressing the state's commitment to justice and the rule of law, as well as its condemnation of past policies against internal "enemies." Reparations, of course, do not secure public trust, which occurs over time, but they can begin strengthening support for a new democracy. Combined with sustained policies of reform, greater accountability, and fealty to the rule of law, reparations can signal that the new state is committed to democratic norms and transparency.

Fourthly, reparations can *help counter the justifications and ideologies of the perpetrators*. Prosecutions and truth-telling initiatives can be powerful tools for undermining perpetrator justifications, establishing links between their ideologies and their abusive policies. While reparations do not directly undermine such justifications, the process of reconceptualizing victims as moral beings and citizens reframes certain past events as violations, raising questions about their legitimacy and the reasons given to justify them. By drawing connections between radical ideologies and their consequences, reparations reposition victims at the center of political debates about the past, criticize apologist justifications of violence, and may assist in promoting democratic values of respect and tolerance. Once again, there is no guarantee that these justifications and ideologies will in fact be successfully undermined. However, the redefinition of victims as citizens can shift public discourse in a new direction, and introduce a more critical perspective toward the past.

In a related vein, reparations implicitly contribute to *an alternate, critical interpretation of the past* by repositioning victims as citizens whose rights were wrongfully violated. A critical history interrogates the assumptions and legitimacy claims underpinning those ideologies and accounts of the past which justified mass violations.⁴³ In particular, symbolic reparations highlight how these accounts and ideologies ignored or downplayed atrocity, and underscore the importance of a historical reappraisal. Such a reappraisal, of course, is heavily contested and can occur only over time, and reparations can only contribute to this, not secure it. Reappraisal will require sustained efforts at truth-telling and historical inquiry, and may include truth commission reports, investigations by historians and other scholars, and undoubtedly heated debates in the public sphere and parliament (what Fraser refers to as weak and strong publics⁴⁴), and possibly result in the reform of educational curricula and official historical accounts. This is a contentious, highly politicized process, and reparations are at best helpful rather than definitive factors in this. However, we should not minimize the public effect of symbolically reaffirming victims as moral equals and citizens; this is no small accomplishment in badly divided societies where violators often claim the mantle of saviors whose actions were justified by the threats the nation faced. In both Chile and Argentina, a kind of critical truth toward the Dirty Wars has developed, and right wing ideology has lost purchase among the population (more so in Argentina than Chile). Reparations have played a role in this, helping place the experiences of victims in the center of public discussions about the past. Symbolic reparations, then, can work with other transitional justice initiatives, such as prosecutions and truth commissions, in delegitimizing perpetrator ideologies and justifications for abuses, as well as assist in reframing historical memory.

I have argued that reparations can promote at least five important objectives. Crucially, they: publicly affirm the value of victims through material and symbolic measures; force a society to confront and rethink its identity, or sense of the 'we,' by reintegrating as equals those who were violated and disparaged; advance the development of public trust in state institutions, particularly important where the state is a major rights violator; help question and ultimately undermine the justifications and ideologies put forth by perpetrators insofar as reparations reposition victims as moral agents; and, assist in engendering a public, critical interpretation of history.

All of the objectives ultimately help promote status parity for victims, though undoubtedly reparations alone cannot accomplish this. They contribute to transforming victims into citizens, providing them with the recognition and material support that is necessary to lead meaningful and autonomous lives, with the imprimatur of the state. They do not, of course, reconcile a badly fractured polity alone. The worst violators will still need to be prosecuted, while corrupt and violent state institutions will require reform. Political elites and regular citizens must commit to the rule of law and peaceful democratic contestation, for otherwise, reconciliation does little but serve as a euphemism for the continued rule of the powerful. The challenges faced by transitional societies are significant, and reparations can, at best, only contribute to reintegrating victims and reconciling enemies. But while they may not secure reconciliation, they are certainly important in the effort to establish a peaceful and just society.

NOTES

1. Gary Bass, *To Stay the Hand of Vengeance: International War Crimes Tribunals* (Princeton: Princeton University Press, 2000); Geoffrey Robertson, *Crimes Against Humanity: The Struggle for Global Justice* (New York: The New Press, 2002); Anthony Ellis, "What Should Be Done With War Criminals?" in Aleksandar Jokic, ed., *War Crimes and Collective Wrongdoing* (Oxford: Blackwell, 2001), 97–112; Bill Niven, *Facing the Nazi Past: United Germany and the Legacy of the Third Reich* (New York and London: Routledge, 2002); Jack Snyder and Leslie J. Vijamurthi, "Trials and Errors: Principle and Pragmatism in Strategies of International Justice," *International Security* 28, no. 3 (2003): 5–44; James E. Young, *The Texture of Memory: Holocaust Memorials and Meaning* (New Haven: Yale University Press, 1993); Elisabeth Kiss, "Moral Ambition within and Beyond Political Constraints: Reflections on Restorative Justice" in Robert I. Rotberg and Dennis Thompson, eds., *Truth v. Justice* (Princeton: Princeton University Press, 2000), 68–93; Neil J. Kritz, ed., *Transitional Justice: How Emerging Democracies Deal with Former Regimes* (Washington D.C.: United States Institute of Peace, 1995) 3 Volumes; Carlos Nino, *Radical Evil on Trial* (New Haven: Yale University Press, 1998); Mark Osiel, *Mass Atrocity, Collective Memory, and the Law* (New Brunswick: Transaction Press, 1997); Ernesto Verdeja, "Institutional Responses to Genocide and Mass Atrocity" in Adam Jones, ed., *Genocide, War Crimes and the West* (London: Zed Books, 2004), 327–345.

2. Though see Asmal Kader, Louise Kader and Ronald Roberts, *Reconciliation Through Truth* (Cape Town: David Philip Publishers, 1997); Dorothy Shea, *The South African Truth Commission: The Politics of Reconciliation* (Washington, D.C.: United States Institute of Peace Press, 2000); Nigel Biggar, *Burying the Past: Making Peace and Doing Justice After Civil Conflict* (Washington, D.C.: Georgetown University Press, 2001); John Torpey, ed., *Politics and the Past: On Repairing Historical Injustices* (Lanham: Rowman and Littlefield, 2003); Pablo De Greiff, ed., *The Handbook of Reparations* (Oxford: Oxford University Press, 2006).

3. Bernard R. Boxill, "The Morality of Reparation," in Richard A. Wasserstrom, ed., *Today's Moral Problems*, 2nd ed., (New York: Macmillan, 1979), 259. Also see Boxhill, "A Lockean Argument for Black Reparations," *Journal of Ethics* 7, no. 1 (2003): 63–91.

4. John Locke, "The Second Treatise," from *Two Treatises of Government* (Cambridge: Cambridge University Press, 1988), Chapter II, sec. 10.

5. Boxhill, "The Morality of Reparation," 259. While Boxhill does not discuss the source of these rights, for Locke it is God.

6. For Locke, others may recognize these rights through their capacity for rational (or reasonable) thought, but they are only binding within the context of an ordered society.

7. Boxhill distinguishes between reparative justice, which is "backward looking," and compensatory justice which is "forward looking." The distinction is not crucial for our purposes. See Boxhill, "A Lockean Argument for Black Reparations," posted on the website of the *National Black Law Students Association*, www.nblsa.org. Accessed January 20, 2007.

8. See Charles Taylor, "The Politics of Recognition" in Amy Gutmann, ed., *Multiculturalism* (Princeton: Princeton University Press, 1994); Charles Taylor, *Sources of the Self* (Cambridge, MA: Harvard University Press, 1989); Adriaan Peperzak, *To the Other* (West Lafayette: Purdue University Press, 1993); Robert Williams, *Hegel's Ethics of Recognition* (Berkeley: University of California Press, 1997); Axel

Honneth, *The Struggle for Recognition: The Moral Grammar of Social Conflicts* (Cambridge, MA: MIT Press, 1996).

9. Jessica Benjamin, *The Bonds of Love* (New York: Pantheon, 1988); Benjamin, "Recognition and Destruction: An Outline of Intersubjectivity" in *Like Subjects, Love Objects: Essays on Recognition and Sexual Difference* (New Haven: Yale University Press, 1995).

10. Axel Honneth, *The Struggle for Recognition*, 88–91; 146–151; 160–179. Shorn of such recognition, subjects may turn to self-hatred. Honneth identifies three forms of disrespect, pathological forms of the modes identified above: a) most fundamentally, there are injuries to self-confidence caused by loss over control of one's body (such as by torture, rape, etc.). Following this, the subject experiences destabilization of identity and a sense of profound insecurity in the world; b) disrespect as the result of the denial of rights enjoyed by other citizens, and; c) damage to self-esteem through profound and continued devaluation of one's way of life. See Axel Honneth "Integrity and Respect: Principles of a Conception of Morality Based on a Theory of Recognition," in *The Fragmented World of the Social: Essays in Social and Political Philosophy* (Albany: SUNY Press, 1995), 249–254. Also see Gail Presbey, "The Struggle for Recognition in the Philosophy of Axel Honneth, Applied to the Current South African Situation and Its Call for an African Renaissance," *Philosophy and Social Criticism* 29, no. 5 (2003): 537–561.

11. Taylor, "The Politics of Recognition," 25.

12. Seyla Benhabib, "From Redistribution to Recognition? The Paradigm Change of Contemporary Politics," in *Claims of Culture: Equality and Diversity in the Global Era* (Princeton: Princeton University Press, 2002). Also see Andrew Vincent, *Nationalism and Particularity* (Cambridge: Cambridge University Press, 2002); Anna Elisabetta Galeotti, *Tolerance as Recognition* (Cambridge: Cambridge University Press, 2002); Anthony Simon Laden, *Reasonably Radical: Deliberative Liberalism and the Politics of Identity* (Ithaca: Cornell University Press, 2001).

13. Fraser, "Social Justice in the Age of Identity Politics: Redistribution, Recognition and Participation" in Fraser and Honneth, *Redistribution or Recognition? A Political Philosophical Exchange* (New York: Verso 2003). Also see "Rethinking Recognition," *New Left Review* no. 3 (2000): 107–120; "Recognition without Ethics?" *Theory, Culture and Society* 18, no. 2–3 (2001): 21–42; "From Redistribution to Recognition? Dilemmas of Justice in a 'Postsocialist' Age," in *Justice Interruptus: Critical Reflections on the 'Postsocialist' Condition* (New York: Routledge, 1997).

14. See Susan Okin, *Is Multiculturalism Bad for Women?* (Princeton: Princeton University Press, 1999); Georgia Warnke, "Feminism and Democratic Deliberation" *Philosophy and Social Criticism* 26, no. 3 (2000): 61–74.

15. Honneth, *The Struggle for Recognition*, 173.

16. Part of the difficulty here lies with the fact that Honneth's discussion of ethical life remains too abstract; that lack of concreteness results from too little attention being paid to the mediating political and social institutions that would connect his theory of inter-subjectivity to ethical life (i.e. social life), and how these institutions could function to contain (while doing justice to) a plurality of competing ethical claims characteristic of complex modern societies. Without discussing these institutions and the criteria that should be used in adjudicating between competing claims, we are back to the problem of authenticity as self-realization discussed above.

17. Honneth, "Introduction," *Redistribution or Recognition?*, 3.

18. Take an example here in the United States of a group that demands solely material reparations. The *National Coalition of Blacks for Reparation in America* (N'COBRA) seeks significant material compensation for slavery and its legacy. N'COBRA's demands are strictly economic – they believe that a massive governmental program of redistribution would amount to a proper form of repair, assuming the scope of the resource transfer could be assessed satisfactorily. This remedy, it seems, reduces racism to the (undoubtedly very real) material conditions that African Americans experience, but says nothing about continuing racism in the cultural domain. One need only think of how some black artists such as rappers may enjoy significant wealth but low social status to grasp that racism has both material and symbolic status consequences.

19. Fraser, "Social Justice," 36.

20. *Ibid.*, 13, 47, 73.

21. *Ibid.*, 36.

22. *Ibid.*, 23.

23. *El Salvador: From Madness to Hope: The 12 Year War in El Salvador: Report of the Commission on the Truth for El Salvador*, United Nations Doc. S/2550, Annex, 1993.

24. See *Guatemala: Memoria del Silencio: Informe de la Comisión para el Esclarecimiento Histórico*, (Guatemala City: Commission for Historical Clarification, 1999) 9 vols.; *Guatemala: Nunca Más: Informe del Proyecto Interdiocesano de Recuperación de la Memoria Histórica* (Guatemala City: Office of Human Rights of the Archbishop of Guatemala, 1998) 4 vols.

25. Patricio Aylwin, "Aylwin Pide Perdón al Pueblo Chileno," *El Mercurio* (Santiago, Chile: March 5, 1991); Néstor Kirchner, "Kirchner Pide Perdón en Argentina," *Esmas*, at <http://www.esmas.com/noticierostelevisa/internacionales/352624.html>.

26. Jacobo Timerman, *Prisoner without a Name, Cell without a Number* (Madison: University of Wisconsin, 2002). See also Judith Herman, *Trauma and Recovery* (New York: Basic Books, 1997); Elaine Scarry, *The Body in Pain: The Making and Unmaking of the World* (New York: Oxford University Press, 1987); Derek Summerfield, "Addressing Human Response to War and Atrocity: Major Challenges in Research and Practices and the Limitations of Western Psychiatric Models," in R.J. Kleber, C.R. Figley and B.P.R. Gersons, eds., *Beyond Trauma: Cultural and Societal Dynamics* (New York: Plenum Press, 1995); Wendy Orr, "Reparation Delayed is Healing Retarded," in Charles Villa-Vicencio and Wilhelm Verwoerd, eds., *Looking Back, Reaching Forward: Reflections on the Truth and Reconciliation Commission of South Africa* (London: Zed Books, 2000).

27. Such as negative and positive rights, access to the political process, and other obligations and benefits attached to full legal personhood.

28. Naomi Roht-Arriaza, "Reparations Decisions and Dilemmas," *Hastings International and Comparative Law Review* 27 (Winter 2004): 189. She goes on to criticize this position.

29. See "Plan Integral De Reparaciones," volume XI, *Peru: Informe Final de la Comisión de la Verdad y Reconciliación* at www.cverdad.org.pe. The *International Center for Transitional Justice* has translated sections of the report, which are available at www.ictj.org.

30. *El Comercio*, "Comienzan las reparaciones," Lima, Peru (June 16, 2007) 1.

31. Brazil, *Law of Victims of Political Assassination and Disappearance* (1995); Roht-Arriaza, "Reparations Decisions and Dilemmas," 170–1.

32. These benefits were established in the *Law Creating the National Corporation of Reparation and Reconciliation*, Law no. 19.123 (January 31, 1992), reprinted in Neil Kritz, *Transitional Justice*, vol. 3., 685–95. Additional information is in the first interim report of the National Corporation, *Informe Sobre Calificación de Víctimas de Violaciones de Derechos Humanos y de la Violencia Política* (Santiago: Corporación Nacional de Reparación y Reconciliación, 1996).

33. This includes the family members of the 2,723 disappeared or killed by the regime as established by the National Commission on Truth and Reconciliation and later the implementation agency, the National Corporation of Reparation and Reconciliation. See the commission's final report, *Report of the Chilean National Commission of Truth and Reconciliation* (Notre Dame: University of Notre Dame, 1984) 2 vols.

34. Law No. 24.411, Argentina, December 7, 1994.

35. *Informe de la Comisión Nacional sobre la Desaparición de Personas* (Buenos Aires: Editorial Universitaria, 1984).

36. While the commission documented 8,960 disappearances, further investigations have increased the tally.

37. Law No. 24.321, Argentina, May 11, 1994.

38. Law No. 23.852, Argentina, September 27, 1990.

39. Law No. 25.914, Argentina, August 30, 2004.

40. Brandon Hamber and Richard A. Wilson, "Symbolic Closure Through Memory, Reparation and Revenge in Post-Conflict Societies," *Centre for the Study of Violence and Reconciliation*, at <http://www.wits.ac.za/csvr/papers/papbhrw.htm>. Accessed July 15, 2006.

41. See Marty Martin, "The Ethos of Christian Forgiveness" in Everett L. Worthington, Jr., ed., *Dimensions of Forgiveness: Psychological Research & Theological Forgiveness* (Philadelphia: Templeton Foundation Press 1998), 9–28.

42. See Chantal Mouffe, *The Democratic Paradox* (London: Verso, 2000).

43. Avishai Margalit, *The Ethics of Memory* (Cambridge, M.A.: Harvard University Press, 2002).

44. Fraser, "Rethinking the Public Sphere" in *Justice Interruptus*, 69–98.

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