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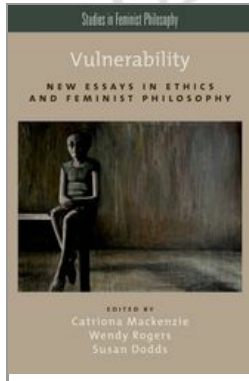
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Published version. "Moral Vulnerability and the Task of Reparations," in *Vulnerability: New Essays in Ethics and Feminist Philosophy*. Eds. Catriona Mackenzie, Wendy Rogers, and Susan Dodds. New York: Oxford University Press, 2014: 111-133. [DOI](https://doi.org/10.1017/9780199329111.006). © 2014 Oxford University Press. Used with permission.

University Press Scholarship Online

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Vulnerability: New Essays in Ethics and Feminist Philosophy

Catriona Mackenzie, Wendy Rogers, and Susan Dodds

Print publication date: 2013

Print ISBN-13: 9780199316649

Published to Oxford Scholarship Online: January 2014

DOI: 10.1093/acprof:oso/9780199316649.001.0001

Moral Vulnerability and the Task of Reparations

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DOI: 10.1093/acprof:oso/9780199316649.003.0005

[–] Abstract and Keywords

This essay seeks to understand the domain and demands of reparative justice in terms of moral vulnerability. Significant harms raise the question of whether victims stand in truly reciprocal practices of accountability; if they do, they enjoy the power of calling others to account as well as bearing the liability of being accountable to others. In the aftermath of harms, victims' moral vulnerability is tested: they may be exposed to the insult and injury of discovering that they do not enjoy the moral standing of holding others accountable. While the occasion of reparative justice is significant wrongs and wrongful harms and losses, this essay argues that the aim of reparative practices is not only or even primarily to redress those harms and losses, but to address the moral vulnerability of victims by affirming their status in accountability relations.

Keywords: vulnerability, moral vulnerability, reparative justice, reciprocity, accountability

There is little philosophical agreement on the nature and aims of reparative justice. I seek to understand the domain and demands of reparative justice in terms of moral vulnerability. Significant harms raise the question of whether victims stand in truly reciprocal practices of accountability; if they do, they enjoy the power of calling others to account as well as bear the liability of being accountable to others. In the aftermath of harms, victims' moral vulnerability is tested: they are exposed to the insult and injury of discovering that they do not enjoy the moral standing of holding others accountable. While the occasion of reparative justice is significant wrongs and wrongful harms and losses, the aim of reparative practices, I argue, is not only or even primarily to redress those harms and losses but to address the moral vulnerability of victims by affirming their status in accountability relations. I draw some consequences from this view about the obligations of communities and the communicative functions of reparations as understood in recent political practice. This view also begins to explain how varieties of reparative effort reflect variations in kind and degree of moral vulnerability.

The idea of “making good” for a wrongful loss or injury by tendering to the victim something of value, usually in a ritualized manner or in a symbolically scripted context, is ancient and seemingly spans all cultures.¹ There is yet little agreement, however, on the nature and aims of reparative justice.²

(p.111) There is a strong association, and many consider it central or obvious, between reparative justice and restitution or compensation through transfers of money or other materially valuable goods. One paradigmatic practice is tort law and the central principle is that of compensating persons injured by wrongful conduct to restore the antecedent status of the wronged party or to provide equivalent or replacement value for damage to her interests or well-being.³ The other historical referent attached directly to the term *reparations* is the postwar punitive practice, between nations, of losers being compelled to pay winners for the losses suffered in conflict—as in the familiar case of reparations exacted from Germany by victorious nations after the First World War. In the later twentieth century, however, a new practice of reparations has since been initiated by nations, elaborated in the jurisprudence of international courts and embedded in United Nations guidelines for combating impunity and making remedies and reparations available to victims of grave human rights abuses.⁴ This new practice identifies individuals (and in some instances where individuals are targeted collectively, groups) as the bearers of rights to remedies and reparations from states for grave abuses of their human rights. As a result, the very concept of reparations has shifted rapidly and dramatically from a transaction between states to an obligation of states (and possibly by implication other entities) to redress individuals or in some instances groups by means of diverse forms of reparations that may include restitution or compensation but go beyond them. Complexities of this new practice of reparations call for rethinking some familiar ideas of reparative justice as *restoring the status quo ante* or *compensating in proportion to harm*. I will argue that what is revealed in reparations movements and struggles is a dimension of reparative justice that goes beneath the harms in question to still deeper

issues of moral relationship and a distinct kind of vulnerability to indignity that inheres in it.

I claim that what is at stake most fundamentally in circumstances where reparations are at issue—cases of mass violence, systemic abuse, or historical injustice—is whether those wronged possess the standing to *call to account* those who have wronged them or who bear responsibility for the repair of the wrongs they have suffered. To better understand this dimension of reparative (p.112) justice, I introduce the concept of *moral vulnerability*. By moral vulnerability, I mean a vulnerability that inheres in our assumption that we possess a certain moral status as full participants in reciprocal accountability relations. All of us who see ourselves as possessing this status anticipate that we are rightly able to call others to account even as we ourselves are rightly liable to be called to account by others. The vulnerability in question is the potential for being exposed to the insult and additional injury, when we perceive ourselves wronged, of having our standing to call others to account denied, dismissed, or ignored in ways that call our very status as full participants into question. Practices of accountability that position individuals—and in social and political life, groups—in presumed reciprocal relations of accountability are the scene of our moral vulnerability. To be vulnerable, in its primary (and root) meaning, is to be “capable of being wounded.” In cases of moral vulnerability, the wound to which we are vulnerable is dismissal or degradation of our status as full participants in reciprocal accountability. Significant wrongs and wrongful harms and losses test our vulnerability to being wounded in that way by supplying the occasion for our attempts to hold others accountable.

All of us are vulnerable to this form of disregard—not only to being wronged but also to finding our demands for morally appropriate responses by others to be without effect. On my view, the concern and aim of reparative practices is not only to supply measures to assuage or compensate for wrongful harm and loss but also, and in some cases primarily, to address the moral vulnerabilities of victims by ensuring that they do not suffer the indignity of dismissal. In cases in which reparations are at issue, victims of grave and usually massive wrongs have typically suffered persistent denial and exclusion from relations of reciprocal accountability, both in the event of wrongdoing and often in its genesis and aftermath. In these cases, grave wrongs supply the occasion of reparative justice and restitution or material compensation on some such occasions may be necessary or uniquely effective as one part of reparations. I argue, however, that the concern and aim of reparative practices is always also to recognize and address the past and continuing moral vulnerabilities of victims of serious wrongs. It is only by addressing the dignitary wounds and future threats of failures of reciprocal accountability that such wrongs are truly redressed. It is only by understanding this dimension of reparative justice that the different demands of different contexts of reparation are explained.

In Section 1, I give varied examples of the new practice of reparations to bring out the complexity of reparations struggles and demands and to sharpen the question of what this practice reveals about the guiding concern of reparative justice. In Section 2, I explain how moral vulnerability inheres in accountability relations both in everyday life

and in the kinds of cases at which reparations aim and argue that attention to moral vulnerability exposes a deeper unifying concern of reparative justice. In Section 3, I show the role that moral vulnerability plays in shaping reparations demands and attempts, as different kinds **(p.113)** and histories of accountability failures leave different wounds and threats to be reckoned with as a matter of justice. In Section 4, I conclude with some observations on the ways that monetary compensation—a measure so associated with reparations that it can eclipse the larger aims and logic of reparative justice—plays its role.

1. A New Practice of Reparations

The basic principle of reparations, affirmed by the UN General Assembly in 2006 after a decade of study, is that victims of gross violations of international human rights law or serious violations of international humanitarian law should be provided with “full and effective reparation.” Recognized modes of reparations include the following: restitution; material compensation; rehabilitation through legal, medical, and social services; guarantees of nonrepetition through institutional reform; and “satisfaction” (a category of diverse measures that include truth-telling, exhuming human remains from atrocities, public apology, commemoration, and educational activities) (United Nations, 2006).⁵ This emergent political practice of reparations has been driven sometimes by legal actions and decisions, sometimes by political movements, and sometimes by the interaction of both as well as by contemporary movements for the recognition of historical injustices to groups.⁶ In cases of systemic or mass violence and historical injustice, the legal model of proportionate compensation for individual injury can seem inapt or inadequate on both theoretical and practical grounds.⁷ In response, a recent generation of theoretical work on reparations and reparative justice includes expressly moral and political conceptions in which compensation is an instrument or part, never in itself sufficient and not always necessary, of a larger set of measures meant to recognize victims of violence and injustice, reaffirm their moral dignity, and create or reinstate their status as citizens equal to others or recognition of their status as a people or nation (see de Greiff 2006; Thompson 2002; Verdeja 2007; von Platz & Reidy 2006).

(p.114) Examples of the contemporary practice of reparations demands and reparations programs are diverse. For many, the case of unjustly interned Japanese-American citizens during World War II is illustrative of a meaningful and effective reparations effort. During the war, Japanese-American citizens had been indiscriminately and forcibly removed from their homes as a security risk and interned at bleak and distant camps, suffering captivity, humiliation, and loss of property. They eventually achieved recognition and reparation on behalf of the nation when the United States Congress conducted extensive hearings with hundreds of witnesses to produce its official report, *Personal Justice Denied*, finding that violation of Japanese-American citizens’ rights occurred due to racism, war hysteria, and failed leadership. With the Civil Liberties Act of 1988, individual survivors received not only acknowledgment through the report but also a symbolic monetary payment of \$20, 000 (close to the amount suggested by advocacy organizations), an individual letter of official apology from the president of the United States, and pardon for convictions related to violating the internment and restoration of

status and entitlements. Funds were also appropriated for research and public educational activities related to the internment. Interned Japanese-American citizens saw their internment publicly examined and repudiated, their rights as citizens and subjects of justice reaffirmed, and their humiliation and suffering acknowledged through a variety of symbolic measures.⁸

In another and very different kind of case, the long-running pursuit by the Lakota Sioux people of return of the Black Hills by the United States has not been settled or repaired, despite a 1980 United States Supreme Court ruling in *United States v. Sioux Nation* that the 1877 statute that appropriated the Black Hills from the Lakota was an unconstitutional taking of treaty-guaranteed lands, legally obligating the United States to pay just compensation to contemporary Lakota people. The Sioux, however, refuse to this day to accept the monetary award that was placed in trust, today standing at over USD\$500 million, despite crushing rates of poverty, unemployment, incarceration, and ill health among the Lakota and periodic efforts to effect a monetary settlement. The Lakota Sioux insist on return of the Black Hills, which are central to their political and cultural identity. Indian legal theorist Rebecca Tsosie explains that the tort model of compensating citizens for past wrongs does not meet the claims of Indian people to cultural and political rights as separate governments, including rights to protect their lands. Further, the settlement of a property claim fails to touch “the moral and dignitary harms” suffered by the Sioux as a people, such as the genocidal military campaign against them and purposeful attempts to destroy their culture, of which the taking of their lands is one part (Tsosie 2007, p. 54; see also Barkan 2003). Attempt to redress the Lakota (p.115) Sioux dispossession by means of a monetary payment within the framework of property rights remains inscribed within and reiterates the legal and cultural framework that not only displaced those of Native nations through conquest but also devalued them and legitimated the destruction of American Indian cultures with their own understandings of justice and of their status as nations.

While the turn toward a new practice of reparations is commonly dated to West Germany’s program of reparations to Jewish survivors of the Holocaust, other well-known cases of extreme rights violations from the same era remain unresolved. The long and tangled history of silence, denial, evasion, and compromised reparations attempts in the case of women sexually enslaved in military brothels run by the Japanese Army in World War II defies brief description. Although the enslavement, daily multiple rapes, forced abortions, and other gross abuses of the women (unfortunately labeled *comfort women*) was known at the conclusion of the war, the government of Japan did not make a clear admission of its role until the Kono statement of 1993. Its reparative attempts consisted of a trail of apologies from successive prime ministers of Japan and the creation of the evasively named Asian Women’s Fund in 1995 to disburse monies to elderly survivors. The fund, which terminated its operations in 2007, paid compensation (called *sympathy money*) to 285 women, a fraction of existing survivors. Many survivors have refused the offer because much of the money in the Asian Women’s Fund was raised by private sources and none of the Japanese attempts at official apology have been judged by the women to accept blame categorically on the part of the Japanese government. The

situation has been worsened by continuing resistance or oscillation in statements by the Japanese government regarding admission of wartime atrocities, including the enslavement of the women, and by revisionist tendencies in Japanese textbooks concerning sexual enslavement (and other slave labor).⁹

Many other cases might be discussed: precedent-setting German postwar reparations to Jewish survivors of the Holocaust and to the new State of Israel; extensive reparations programs to individual victims in several Latin American countries—Argentina, Chile, Brazil—in the aftermath of repressive governments that practiced torture, disappearance, and illegal detention against their own citizens; the continuing pursuit by African Americans of redress for slavery or for Jim Crow legal discrimination and segregation; monetary reparations to victims who testified before South Africa's Truth and Reconciliation Commission; demands of African countries for reparations from Europe for colonialism; direct reparations from individual (p.116) perpetrators to victims of lesser crimes or property offenses through the innovative Community Reconciliation Procedures implemented by Timor-Leste's Commission for Reception, Truth and Reconciliation. While I cannot in this paper do justice to individual cases or elaborate fully on differences among types of conflicts, between episodes of repression and intergenerational histories of injustice, and between the reparations aimed at individuals (even if targeted as members of groups) and reparations aimed at groups, I offer these cases as a point of reference for my question concerning the fundamental issue at stake in reparative justice. Can any significant unity be found in the guiding concern of reparative justice that also helps to explain the different demands reparative justice makes in different situations and the reasons victims have to entertain or to reasonably reject reparative offers that involve both the transfer of money or goods and other gestures of reparation?

2. Accountability Relations and Threats to Moral Standing

It is widely acknowledged that reparations cannot *just* consist in the tendering of goods or money to those who have suffered grave wrongs and wrongful harms. Compensation can be purely remedial and forward-looking, seeking to create fair distributions or equality of opportunity without addressing effects of wrongful treatment or injustice. Compensation can also be a charitable act impelled by compassion for loss and unjust suffering that comes from those who accept no responsibility or bear no relationship to a wrong. The very concept of reparations, however, seems deeply connected with issues of wrongfulness and responsibility. Decades ago, Bernard Boxill (1972) made this point: "Part of what is involved in rectifying an injustice is an acknowledgment on the part of the transgressor that what he is doing is required of him because of his prior error.... Without the acknowledgment of error, the injurer implies that the injured has been treated in a manner that befits him; he cannot feel that the injured party is his equal" (p. 118).¹⁰ Boxill's insight draws attention to the importance of what the reparative interaction reveals about the wrongdoer's appreciation of the standing of the injured party. As I will argue shortly, the original wrong is the occasion for an act of reparations, but what is at stake in whether (adequate) reparations are offered is the recognition of a certain kind of relationship and its implications. Nor does this recognition have to do only

with the wronged party and the wrongdoer.

(p.117) To capture the widely shared sense that reparative justice and reparations involve issues of wrong, responsibility, and just redress, I characterize clear cases of reparations in this way: reparations consist in responsible parties' intentionally giving appropriate goods to victims of wrong as a specific act (or process) that expresses acknowledgment of that wrong, responsibility for that wrong or its repair, and intent of rendering just treatment deserved by a victim in virtue of that wrongful treatment. This characterization tells only what kinds of acts or programs count indisputably as reparations: they must directly communicate recognition of the reality and the nature of wrongs, the insult and harm suffered by the victim in wrongful treatment, the victim's deservingness of repair as a matter of justice, and the responsibility of those offering reparations to take up the demand of reparative justice.¹¹ It is true that common usage is more elastic than this definition allows. Sometimes the achievement of a legal judgment or settlement is taken by victims, or is claimed by responsible parties, or is reported in news media as "reparations" when responsibility is not clearly or expressly communicated or even when it is formally denied. I do not seek to reform common usage, but I believe that my explanation of reparations in terms of moral vulnerability helps to illuminate why these extended uses can make sense in context or may be strategically useful or symbolically hopeful, a point I return to briefly in conclusion.

If paradigmatic acts of reparations embody acknowledgment, responsibility, and an intent to do justice, why are these aspects of central importance? What most fundamentally does reparative justice concern, and to what must it respond? I suggest the key lies in that form of relationship that is constitutive of any moral structure in actual life: relations of accountability that connect individuals to others through recognition of responsibilities under certain shared norms. The norms that structure accountability relations are norms for acceptable conduct. Among these are norms for acceptable responses to unacceptable conduct—conduct that has failed to observe mutually recognized norms. Wrongs always in principle pose a set of questions and a set of potential threats to the structure of accountability and to those who see themselves as parties to it. I call the threat that serious wrongs pose *moral vulnerability*, that is, a particular kind of vulnerability that arises from our participation in the practices of accountability. Moral vulnerability involves exposure to a particular kind of wound that can be inflicted on any of us who stands in, or aspires to stand in, reciprocal relations of accountability based in mutually recognized standards.

To be a participant in practices of accountability, to borrow some language from P. F. Strawson's (1968) classic essay, is to be viewed as an apt target (pending excuse or exemption) for demands for accountability by others in virtue of how we behave. But Strawson reminded us that not all individuals are seen all **(p.118)** of the time as eligible and competent participants and that to be a human actor who is not so seen is to be viewed with an "objective attitude" by others who do so see themselves as full participants. Strawson did not mean that within the objective attitude people are seen as objects rather than human beings. He meant that human beings seen in that way fall

outside (wholly or in part) the form of relationship experienced by those who see themselves and each other as eligible and competent. This relationship is one of accountability: it consists in suffering the demands of others on us to render accounts of our conduct and, where our conduct is unexcused, accepting responsibility and in turn enjoying the standing to make similar claims upon others. When seen from the objective attitude, one is an object to be controlled or managed, not a participant in reciprocal accounting. The standing to hold and to be held to account is what makes one a participant, and being able to hold others and being oneself held to account in particular ways characterizes one's relative position as a participant. To possess this standing is a kind of recognition and empowerment, even if its consequences can be onerous.

The situation I call moral vulnerability is the possibility that one may fail to be recognized as a participant, or as the kind of participant one believes one is entitled to be, in a particularly direct way, by the refusal of one's demands for accountability. One may also find that the norms governing and constituting relations of accountability are in some crucial respects not as one believes that they are or should be.¹² Subordinates in a workplace can discover that their objections to being treated thoughtlessly or rudely by superiors receive no apology or even no reply. A sex worker can be met with skepticism or ridicule in trying to press a complaint of assault or theft by a customer to authorities. Victims of political violence may discover that their fellow citizens, even their neighbors, find security in assuming that they must have done something that earned their mistreatment. Not infrequently, others would rather not know. Ksenija Bilbija (2005) quotes a high school student who disappeared for nine months during the military dictatorship in Argentina: "'Don't tell us anything,' her parents warned her when they were all alone in the house" (p. 115). Not only wrongdoers but also communities can fail to demand accountability or to stand with a victim of wrongdoing who demands it.

Reparative justice, I suggest, aims to maintain accountability relations by tending to our moral vulnerability. It "does justice" by remediating wrongful loss and suffering that should not have to be borne or absorbed by the victim, but even more fundamentally it responds to our right and need to have **(p.119)** purchase on others' due attention when we suffer unacceptable treatment. Because wrongful harm and loss of material, physical, psychological, and social sorts is so obviously the occasion of reparations, it can obscure the presence and import of specifically moral vulnerability as the issue at its core. Moral vulnerability is the potential for harm that inheres in the situation of one who has suffered serious wrong in the context of those practices of accountability to which one considers himself or herself a party. If the whole concern of reparations were indemnification or making good for loss, it is unclear why reparations demand the acknowledgment of wrong and responsibility to repair it as a matter of justice. Acknowledgment and acceptance of responsibility confirm that the one wronged is entitled to an accounting, and this may be of special importance for those who have suffered persistent unacknowledged or unredressed wrongs.

Accountability is a relation: to be accountable is to be accountable to someone in the matter of one's conduct. The most minimal sense of accountability is *answerability*, to be

in circumstances where one is obliged to inform others concerning one's conduct and activity. More specifically, one must answer with explanations or justifications that are responsive to others' legitimate interests and expectations in regard to that behavior. To be answerable submits one at the least to judgments of the acceptability or unacceptability of one's conduct. Another meaning of accountability is *liability to sanction*, that is, exposure to penalty or punishment for behavior that fails, without excuse or justification, to satisfy a requirement or normative expectation, an expectation about how others should or must behave, based on law, morality, agreement, or common understandings. Behavior that violates standards or norms creates a warrant for inflicting disapproval or reproof and enforcing some demand on the violator in the forms of punishment, penalty, or amends.

Both forms of accountability—answerability and liability to sanction—adhere to authority relations, usually asymmetrically: employees are accountable to bosses, subordinates to superiors, children to supervising adults, where the authority has standing both to demand accounts and to take remedial or punitive action. Common morality, however, supposes that competent agents are answerable to and may in turn demand accountings from at least some (if not all) others with respect to some matters. The accountability constitutive of common morality reveals itself especially in the case of behavior that appears to violate widely recognized moral norms, where people are likely to be pressed to explain themselves or admit fault, whether or not any sanction beyond disapproval or reproach can be applied. In the optimal case, the offending party is called to answer (whether voluntarily or under some compulsion) and, lacking excuse or justification, to accept liability at least to negative judgment and potentially to demands for remedial action (at a minimum, an apology), even if the required response cannot be commanded or compelled. Offended parties and others who share in commonly accepted standards, then, are in a **(p.120)** position to demand accounts for apparently unacceptable or faulty behavior, and offending parties are required to give accounts and to recognize the legitimacy of negative judgments and to respond to their consequences.

If this is what accountability means in its most elementary form—answerability that opens at least the possibility of negative assessment and its potentially demanding consequences—there are vulnerabilities on both (or all) sides when wrong has been done. The apparent wrongdoer is vulnerable to misplaced demands for accounting or to attributions of fault or responsibility that might be unreasonable or unfair. In discussions of reparations for historical injustices, atrocities, or systemic violence, the cogency or fairness of placing responsibility on particular parties is often discussed: whether currently living people can bear responsibilities of reparation for injustices committed long before they existed or for their eventual effects; whether being under others' authority or being influenced by intense situational pressures constitute excusing circumstances; or whether some are unfairly scapegoated if they are held responsible when some others who behaved similarly are not.

I intend here, however, to examine the moral vulnerability, the exposure to a *moral wound*, of the seriously wronged individual. The potential wound of one wronged is to be

ignored or repudiated in, or erased or excluded from, one's standing to demand an account from another for conduct one believes is a serious wrong or the source of wrongful harm to oneself. For the apparent wrongdoer, freedom from accounting to the wronged party or to others is moral *invulnerability*, the most profound form of impunity—not merely freedom from punishment or other sanction but also exemption from the most basic kind of accountability, the obligation to answer for one's conduct to some (or all) others. For the victim, the inability effectively to command accounts from others for apparent wrongdoing raises a question—and sometimes an alarm—concerning the victim's participant status in relations of accountability. In both terms of the accountability relation in any context, there are possibilities of dignity and degradation for those who call for an accounting and those who are called to it. Since my concern here is with the moral vulnerability of the victim of serious wrong, I examine the structure of the victim's situation.

Suppose X is the apparent agent of wrongful hurt, harm, or loss. Then X stands liable to accounting, assessment, and pressures for sanction or reparation. The apparent victim should be able to demand an account of X, to confront X with a negative assessment, and possibly to demand satisfaction from X and the support of others in seeking satisfaction (through informal or formal reproach, punishment, or amends) from X. The "ability" to do these things refers to a standing within relations of accountability that must be recognized by others, not to a physical or psychological capability. So the victim's specifically moral vulnerability concerns whether the victim does enjoy that standing. The victim is morally vulnerable to finding that others, including **(p.121)** but not only the perpetrator of wrongful harm, in some way fail to respond in ways that affirm that standing. Others might not see what the victim has suffered as wrong because they blame the victim or do not believe him. They might not recognize that the victim is entitled to call the offender to account, perhaps because the victim is negligible or despised or the offender is powerful or esteemed. Others might not recognize the victim as protected by the norms that support the victim's negative assessment of the offender, as if standards of common courtesy, decency, or justice apply only among people in some social places and the victim is not among them. They might not recognize or support the victim's demands on the offender or others for satisfaction or redress as legitimate or compelling; they might think that this is, after all, the lot of a woman, a servant, or a person of lower caste. The wronged party who believes that he or she enjoys reciprocal accountability relations with the presumed wrongdoer, or at least enjoys this standing in the domain of interactions at issue, is exposed to the moral wound of being disqualified, degraded, or excluded from fully reciprocal accountability relations, at least in the instance at issue. A statement rejecting "overly critical" history textbooks, attributed to the Japanese Ministry of Education in the 1950s, for example, reveals an entirely common attitude by no means specific to Japan: "The violation of women is something that has happened on every battlefield in every era of human history. This is not an issue that needs to be taken up with respect to the Japanese Army in particular" (Lind 2008, pp. 35–36).¹³ Indeed, accountability for sexual violations of women in conflict was not firmly established in international law until the past two decades; the disputed reparation for comfort women described earlier emerged in this recent climate.

Of course, a self-described victim may be simply mistaken or out of bounds in claiming wrongs, assigning responsibility, or putting demands. Yet accountability practices are dynamic; they are a medium in which obligations, values, and accountability relations are affirmed or denied, contested or negotiated. For this reason the patterns embodied in practices of accountability are important for asserting or testing one's participant status. One way to assert an existing or proposed boundary within relations of accountability is to refuse to account for behavior to persons who are not, in one's view or by the standards one believes prevail, entitled to demand accounts. You may not have any standing to monitor my financial or familial or sexual affairs, and if you presume upon me for accounts I will justifiably refuse to give them. It is also true that our social and moral worlds are segmented by specialized accountability relations: the truth owed a friend is not necessarily owed a stranger, and my employer may impose a pay reduction in penalty for my unauthorized early departures when my irritated coworkers may not.

(p.122) In speaking of reparations, however, we are typically speaking of very grave wrongs and harms to human beings. We are speaking of wrongs such as assaults to physical, psychological, and social well-being; denial of rights; subjection to inhumane or humiliating treatment or deprivation; or significant destruction or alienation of property, livelihood, or heritage. With respect to these profound insults to well-being and dignity, human beings will usually feel themselves grossly ill-treated, even if their social or legal positions institutionalize their diminishment in, or exclusion from, fully reciprocal accountability. If they cry out against injustice anyway, and in the case of oppressed groups some invariably do, they bid for some or for greater recognition that something is owed to them for a real wrong and the harms it inflicts. In doing so, they assert a participant role in accountability relations that is uncertain or that has been denied to them.

Those who experience what they take to be gross injustice yearn for, and where possible seek, some validation from others that their sense of their experience is true. Most simply, moral validation, from the perpetrator of a wrong or from others, consists in those others' affirmation with the victim that the wrong is real and its wrongfulness is clear, that someone else bears responsibility, and that others owe an accounting and may be liable to sanction or for redress. At its most effective, moral validation is a social process in which convergent judgments about grave wrongs within a community or society assure the victims of wrong (and anyone else who may be uncertain or resistant) that norms are shared and that the victims are recognized and valued members of a community prepared to respond to the mistreatment the victim has suffered with appropriate and justified demands for accountability on those who have done wrong.¹⁴

This is why it is always a standing obligation of communities to respond to claims of serious wrongdoing with respectful attention and to respond to evidence of serious wrongdoing with an affirmation of the standards violated and a confirmation that the injury of the victim is real and is a matter for redress. Moral validation might not be forthcoming from wrongdoers themselves; indeed, in large-scale violence offenses are typically minimized, justified, and simply denied by those with responsibility. Nor do

victims always value or respect an affirmation of standards from individual wrongdoers; victims might find the affirmation of wrongdoers incredible or irrelevant. In any case wrongdoers are in a position to affirm (belatedly) only their own recognition of the authority of violated moral standards. Wrongdoers are not necessarily in a position to affirm either that standards are authoritative for a community or that the victim is within the community's protective concern. There is always a communal responsibility in moral validation that alone can fully meet the **(p.123)** threat of moral vulnerability. The commission charged to study the Tulsa Race Riot of 1921 affirmed the necessity of official governmental validation in some cases: "There is no way but by government to represent the collective, and there is no way but by reparations to make real the responsibility" (Cose 2004, p. 151).¹⁵ The government of Oklahoma, however, declined that responsibility on behalf of its community.

Where moral validation desired or sought by victims of apparently serious wrongs is not forthcoming from wrongdoers or the relevant community, what does it mean? It might mean that the facts or seriousness of the violation are in doubt or uncertain in the eyes of others. It might mean that the moral standards that define wrongs in the victim's eyes are questioned or rejected by others. It might mean that the facts concerning responsibility are uncertain (e.g., that the victim is, in whole or in part, to blame) or that standards of responsibility are unclear or contested in the kind of case at issue. If moral validation is not forthcoming, at least the judgment of the victim concerning wrong and responsibility is in question; the victim's standing to enter claims to accountability may or may not be directly impugned.

Challenges to the victim's perception of wrong and responsibility in some cases, however, indicate a kind of discrediting or disqualification of the victim's standing to make a judgment that embodies the authority of group norms, and this in turn can mean that the victim is perceived as somehow not a "normal" or "representative" or "authoritative" judge who embodies the community's point of view. A victim's attempt to enter accountability claims may also be blocked if the victim is not seen as protected by standards that protect others, or at least not at the hands of the perpetrator in question. It may also be that the alleged wrongdoer is not viewed as subject to the standards invoked, or at least not in the case of the victim in question. In such cases, the victim does not possess socially recognized authority to press accountability upon the supposed wrongdoer. When those who see themselves as seriously or grossly wronged fail to receive validation, it may not be clear which of these situations obtains, but social hierarchies and de facto relations of very unequal power or social authority often result in systematic accountability differentials or asymmetries.

It is because the victim's standing to require accountability can be in question that acknowledgment of wrong and responsibility is crucial in constituting reparations. It is the clarity and adequacy of that acknowledgment that resolves the question in favor of the victim's standing as a full participant with others under shared moral standards and one whose sound claims concerning **(p.124)** wrong and redress require respectful attention. When this acknowledgment and responsiveness is refused (or confused), the

potential for moral diminishment, erasure, exclusion, or abandonment by whatever community the victim appeals to for validation is realized. The victim is morally vulnerable to the response: "You are in no position to make demands on us." That is to say, the victim's standing as a participant in reciprocal practices of accountability is either unrecognized or denied, at least with respect to some wrongs the victim experiences as urgent and damaging. This refusal of accountability is common enough when wrongdoers continue to enjoy social power and prestige. While this might enrage victims, it is not as consequential as a community's failure or refusal to lend its authority to victims seeking recognition of wrongs.

3. Moral Vulnerability and the Task of Reparations

Once moral vulnerability is recognized as the underlying issue in redressing wrongs, and once the multiple facets of the standing to demand accountability are exposed more precise sense can be made of what is at stake in redress. Differences in what reparations concretely demand will track the contours of the kind and extent of moral vulnerability that is at issue or the nature and depth of the actual wound of moral diminishment, exclusion, erasure, or abandonment that individuals and groups have endured in addition to their wrongful injuries and losses.

Reparation in all cases is in some ways necessarily backward looking: It works on assessing and relieving the threat of moral vulnerability that inheres in the wrong already done and the history of the situation and relationships involved. In cases where the victim's standing has been questioned or denied, reparations work at closing and healing the wound of erasure, exclusion, or abandonment that is opened up by a failure of validating responses to the wrong. Cases that call for reparation, however, vary greatly in the defining dimension of moral vulnerability. If there is no salient or serious threat to the victim's standing in an instance of wrongdoing, a simple apology or a straightforward compensatory transaction can rectify a breach in conduct that does not reveal a gap in accountability and the mutual recognition it signifies. If there is an accountability gap, however, the nature of the gap matters and may itself become the site of other challenges, threats, and fresh wounds. In disputes about fact or history, parties may see each other as merely mistaken, or some parties may arrogate solely to themselves the authority to define the situation. If moral values or standards of responsibility are applied in disparate ways by victims and those they would hold to account, it matters whether this is a disagreement among equals or whether there is evidence that some parties refuse to apply values and principles to certain individuals or groups. In cases of historical injustice, individuals or groups bring forward offenses (**p.125**) and damages previously denied or rationalized with reparative demands that encompass a history of exclusion, subjection, violence, stigma, or exploitation and in some instances previous rebuffs to earlier demands. In every case, reparations will have different hurdles to clear, and different kinds of communicative and reconstructive work will be possible and necessary between the parties.

Reparations also have forward-looking aims. Discussions of reparations that emphasize the element of acknowledgment often speak of the aim of reparations as achieving

respectful relations, restoring trust, or establishing the victim's equality. Yet even if these goals—to establish respect, trust, or equality—are the ultimate or regulative ideals of reparative practice, more immediate questions about inclusion and recognition in mutually understood accountability relations are at stake in reparations struggles. For two reasons, it is unwise and implausible to burden reparations efforts with too much responsibility for good future relations. First, to do so diverts attention from what I am arguing is the primary locus of actual reparations attempts or struggles—a negotiation of accountability in and of the present in light of a sorry past. Second, to do so is to conflate reparations efforts and fulfilling demands of reparative justice with the achievement of substantial reconciliation. These two issues are linked.

First, when reparations are made, they call the parties to the reparations process to a shared attempt at convergent judgments of wrong and responsibility and to jointly meaningful action that responds both to the wrongful harms done and to whatever threats of moral vulnerability are revealed. The scene of this attempt at renegotiating accountability relations is the here and now. An interesting fact about actual reparations movements, proposals, and programs is the degree to which the problems and concerns to be faced are often, perhaps typically, only fully revealed in the event of demands, rebuffs, proposals, debates, negotiations, and agreements. I believe this is explained by the fact that moral vulnerabilities are multiple, complicated, and not always clearly visible to the parties. They are likely to express themselves most clearly in the very event in which reparations are offered or sought, as this process exposes disjoint perceptions of wrong, responsibility, and obligation. Even to arrive at a determination of what is wrong about what happened in the past and who is responsible for it or its repair—no small feat in many cases—does not necessarily reveal all aspects of moral vulnerability or the extent to which its threat of moral erasure or abandonment has been realized. This is a substantial part of the work of reparations in the present.

Those who suffer moral vulnerability as victims may feel it acutely. They may be infuriated by the questions raised about their understanding of the facts and wrongs of the matter and outraged by the fact that those to whom they assign responsibility often have the power—socially, institutionally, and politically—to also appoint themselves arbiters of the validity of responsibility (p. 126) claims. They may be frustrated by the degree to which their claims are met with confident or casual rejection or are deemed false, incredible, or exaggerated. Pierre Hazan (2010), writing of the fractious 2001 World Conference Against Racism in Durban, describes a European diplomat as saying that African claims for compensation for colonialism and slavery were “unreasonable, bordering on psychotic” (p. 86), while Rosa Amelia Plumelle-Urbe, an Afro-Columbian writer, says of the Europeans, “They procrastinate and assume a right that defeated Germany itself never dared claim, that of defining their crimes, and, in place of their victims, to decide what historic weight to give or not give to these events” (p. 70). It is true that those seeking reparations might be mistaken in these feelings and the perceptions that ground them. But it is also possible that they might be experiencing precisely an asymmetry in relations of accountability that shifts the burden of proof and justification to them, even as it seems to tilt the balance of respect and credibility away from them. Issues of moral vulnerability

are diffuse and abstract relative to the harms victims grieve and for which they seek repair; these harms can include lost years of wrongful imprisonment or the deprivation of professional work, ravages of torture, the disappearance of a child, or the dispossession and decimation or the enslavement and subjugation a people. It is obvious in many cases that what has been lost can never be returned or compensated. No one knows this better than the victims. The struggle for reparations is nonetheless crucial to see whose claims will be acknowledged and whose responsibility will be established. Without understanding moral vulnerability, one does not understand what is at stake in reparations attempts and why they proceed as they do.

Often reparations (or reparations demands) come in waves, or in fits and starts, as partial acknowledgment, rebuffs, offers, shifts in perspective, and historical and political developments unfold within or around the struggle or negotiation for reparations. This is most so in reparations for structural injustices or mass violence in the national or international political arena. Reparations, I suggest, are really about a present moment (although sometimes a protracted one) in which those held responsible for reparation and those seeking it, and possibly others, argue over acceptable interpretations of the past they can share and try to negotiate an interaction in the present that models fair terms of reciprocal recognition and accountability. The moment that a discussion concerning reparations commences is a moment of considerable uncertainty for all parties to the interaction. Those who had confidently ignored or denied others' claims of injustice and injury are responding newly both to the claims and to a new standing for the claimants. Those putting claims are beginning to exercise powers and might experience leverage and opportunity long denied them. This means that things are already not what they were, but are not yet what they need to become. One might characterize the sense of relationship among the **(p.127)** parties as the possibility of reparations dawns and momentum for reparations builds as a midway (if not a mid-air) position, in terms of accountability. Reparations are about where the parties can get to in the present in an attempt to transform their relative positions in the past. A reparations effort might best be seen as a bridge from a past not just of unrepaired harms but also of accountability denied to a present of reciprocal accountability acknowledged. Seeing it this way brings into focus the intricacy of the threats, wounds, tentative steps, and difficult new understandings that are characteristic of the reparative process.

This leads me to the second point: It is unrealistic to expect from reparations measures too much and implausible to explain the function and aims of discrete gestures or programs of reparations too largely in terms of distant future relations. It is true, ideally, that the establishment of fair terms of accountability and shared recognition of the moral standards they predicate should forecast better future relations. It is certainly true that successful reparations are in part successful if and because they render parties to the interaction hopeful about future relations. A measure of success is whether the parties are moved to try to fulfill the promise for a possible future that reparations token. Successful reparations ignite hope; hope involves energized attention, imagination, alertness to possible routes to the goal, and the resilience to keep looking for and trying them.¹⁶ But reparations given are best understood as a marker of present achievement

in the history of relations among people or among peoples, an achievement measured by its distance from the past scene of wrongdoing.

With respect to the future, reparations can only at best set an example and make a promise or commitment based on what is achieved in the present instance. The idea that they actually achieve trusting, respectful, and compassionate relations asks too much, especially in the aftermath of gross and massive violence or intergenerational injustice. That they give reason and create motivation to seek out possibilities for building trusting, respectful, and compassionate relations is a more fitting goal. As the wrongs of the past set terms for reasonable fear, disillusionment, hatred, or cynicism, the present at best can give reasons for hope by creating a sense of what is possible. Hope in turn creates motivation to build the relations that the reparative interaction at its finest exemplifies and models. I do not think it wise to claim that it builds those relations; it supplies a model and ideally kindles receptiveness and motivation, for that construction project over time and under tests. This underscores the important point that reparations do not “close books” in many cases; they instead get parties on the same page concerning accountability going forward.

(p.128) 4. Conclusion

I have argued that we can make sense of significant differences in a large range of reparations contexts by viewing the core issue of reparations as the negotiation by parties of mutually acceptable standings in accountability relations governed by shared norms. Not to enjoy such a standing is not only to be open to disregard, attack, or abuse but also to lack an effective claim upon those responsible to give accounts and to take responsibility for wrongful harms one has endured. Yet it would not be right, either, to say that reparations are “not really about the money.” Money or other material transfers are often very much at issue. It is better to say that sometimes it is crucially about material restitution or compensation but is not so in every case and that, even where compensation is in order, the reparative momentum depends on what the money or goods mean. Restitution or compensation is reparative when, in context and accompanied by other gestures, it can sustain the necessary messages of acknowledgment that affirm reciprocal accountability under shared standards. The emotional blight and material losses of the internment is not erased for Japanese-Americans unjustly interned, but they received unambiguous validation and multiple gestures of repair as citizens from their nation’s highest representative body. For the Lakota Sioux, the settlement of a property claim by a money payment effaces their understanding of the nature and gravity of the wrong done to them and bypasses the crucial issue of relations among sovereign entities upon which their treaty commitments with the United States were premised. Those women sexually enslaved in Japanese Army brothels who accepted payments from the Asian Women’s Fund might or might not have found the context and message of the money reparative; some might have found it so, while others reasonably judged that they were unlikely to get anything more or better. The women who publicly rejected the payments made clear that they continued to find the Japanese government shielding itself from full accountability to them. Money alone does not avail as reparations.

With states, however, money is clearly one powerful and objective medium in which accountability may be pursued and demonstrated. Yet even when it is, acknowledgment of wrong and responsibility, the embodiment of accountability, is often paramount as a goal and a driving force for victims. Countries such as Germany, Argentina, and Chile have conducted substantial monetary reparations programs, but they took shape in stages, enlarging the numbers of victims and the nature of violations compensated, in an expanding universe of accountability reshaped over time by legal and political developments concerning accountability of states to victims of human rights abuses.¹⁷ It is not surprising that reparations demands entail and respond to shifts in legal and **(p.129)** political status and standards of accountability, for law and politics embody moral standing in public and enforceable ways.

It is also not surprising that cases where money is won, through litigation or negotiation, are sometimes called reparations even if unambiguous acknowledgment of wrong, responsibility, or an obligation of justice is missing. Victims who pursue legal redress might consider a monetary or restitution settlement a kind of reparations because they believe that the settlement in fact concedes or implies wrong and responsibility publicly whether or not it is admitted. Victims or others may, approvingly or disapprovingly, view monetary payments and other forms of recognition as reparations even when they are not so called by those who bestow them. In 1994, the Florida legislature awarded compensation to survivors of a white riot that burned the African American town of Rosewood, Florida, to the ground in 1923. The State of Florida acknowledged that it failed to prevent the unlawful destruction and provided compensation payments, a scholarship fund, and other efforts. It did not apologize or refer to its compensation as reparations, but it was “the first time that any American governmental body had acknowledged its responsibility for an act of racial violence committed against African Americans, in the long history of such acts” (Nunn 1999, p. 435).¹⁸ In historical context, against a backdrop of denial and silence about many such events, seeing this response as reparations claims a kind of victory. In another case, the Japanese government refused to call the payments it agreed to in connection with its colonization of Korea reparations but agreed to let Korea inform its public that Japan had paid reparations, allowing the meaning of the interaction to play differently for different audiences (Lind 2008, pp. 47–48). It is true that the potential for future disillusionment or betrayal looms in cases in which full acknowledgment of responsibility, precise appreciation of wrong, or acceptance of an obligation of reparative justice is lacking, hedged, or ambiguous. Future behavior, or continuing or future denial of wrongdoers or responsible communities, can reopen wounds, nullifying hopeful reparative interpretations. But this can also happen in cases that fully meet the standard of acknowledgment, responsibility, and intent to do justice. Reparations can only ever be an act or process at one time; the reciprocal accountability they token must be secured and shown real over time.

I have argued that a kind of moral vulnerability inheres in accountability relations. Victims of wrongs are vulnerable to the additional moral insult and injury of being denied the standing of full partners in reciprocal relations of accountability by those they would hold to account. The potential for or the **(p.130)** reality of additional insult and injury in the

aftermath of wrongs provides a unifying view of the task of reparations. Reparations must address not only the harm and loss caused by the original wrong but also the nature and extent of the moral vulnerability exposed by the wrong or realized by the absence of redress. The role of moral vulnerability in the past and the present explains why different reparations contexts require very different responses.

Acknowledgments

My great thanks to editors Catriona Mackenzie, Susan Dodds, and Wendy Rogers for thoughtful and helpful feedback on earlier versions of this paper. My thanks also to audiences who heard and commented on various iterations of this paper at the Conference on Vulnerability, Agency, and Justice, Macquarie University, 2009; the Canadian Society for Women in Philosophy Conference, 2009; Arizona State University; University of Wisconsin–Milwaukee; the Indiana Philosophical Association Meeting, 2012; and Pennsylvania State University.

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Notes:

(1) See Braithwaite (2002, pp. 3–27) on the widespread use of reparative practices across cultures.

(2) I will call this kind of justice *reparative justice*, choosing the broadest and most intuitive label although even the terminology remains unsettled. The kind of justice that requires redress of wrongs and wrongful harms and losses is variously called corrective, commutative, compensatory, rectificatory, reparatory, reparative, and now also sometimes restorative justice. These labels have different connections and connotations, however, and there is no universally shared view about whether they refer to the same concept of justice or about what are the paradigmatic cases or defining characteristics of justice of that kind.

(3) Philosophical arguments for one or another principle of individualized and ideally proportionate compensation include Nozick (1974, pp. 57–58), MacCormick (1977), Nickel (1976), Coleman (1994), Wenar (2006), and Winter (2006).

(4) The point of this shift is widely agreed to be the unprecedented program of massive reparations by the Federal Republic of Germany to individual victims of the Holocaust. On this dramatic historical shift, see Colonomos and Armstrong (2006, p. 391), who call it a "model of an entirely new kind of reparations." See also Falk (2000), Teitel (2000, pp. 119–128), Torpey (2003, pp. 4–5), and Barkan (2003, pp. 95–98). On the jurisprudence of the Inter-American Court of Human Rights, see Carrillo (2006). Falk stresses how large and significant a shift in international law is involved in the developing concept of state responsibility. I do not here defend state responsibility for reparations, although I believe it is defensible and is, in any case, the existing standard.

(5) The conditions and nature of group claims are an area in need of much more examination. The Basic Principles in its preamble notes that victimization may "also be directed against groups of persons who are targeted collectively" and, in Article V, that "victims are persons who individually or collectively suffered harm." On some ambiguity in the idea of collective reparations, see Rubio-Marín (2009, especially pp. 385–387).

(6) On the interaction of legal claims and settlements and legislative actions in some reparations contexts, see Guembe (2006) and Lira (2006).

(7) See de Greiff (2006) on the need for a political, rather than legal/juridical, conception of reparations. See also Brooks (2004), rejecting a tort model of reparations to African Americans; see Roht-Arriaza (2004) on the relevance of collective and symbolic reparations for communities. I contrast a juridical with a restorative justice framework in Walker (2006b).

(8) Brooks (1999) contains source materials on Japanese-American internment and redress. The case is discussed by Minow (1998) and Yamamoto and Ebesugawa (2006).

(9) Much of the tangled history is summarized in Iida (2004). Some recent developments are reported in Onishi (2007a, 2007b) and Fackler and Sang-Hun (2007). Lind (2008) closely studies the backdrop of struggles with and within Japan over responsibility for wartime atrocities, including the enslavement of women in brothels. Hamber and Palmary (2009) offer a detailed consideration of the apologies. A Congressional Research Service Memorandum by Nicksch (n.d.), an Asian specialist, is a useful compendium of information up to 2007.

(10) For parallel distinctions emphasizing this specifically reparative dimension that transcends compensation, see Roberts (2002), Satz (2007), Thompson (2002), and von Platz and Reidy (2006). Gaus (2002) argues that compensation cannot restore moral equality. Bernstein (2009) stresses that the award of damages not only serves to indemnify the victim for losses but also allows the victim to pursue security and freedom through recognition of the victim's rights; compensation is necessary but not sufficient for reparations.

(11) I study in detail the communicative structure and what I call the *expressive burden* of reparations in Walker (2013).

(12) I introduce here the barest bones of the practice of accountability. Some discussions of accountability relations and the effects of context and power differences on the ground are Harvey (1999) and Walker (2007). Smiley (1992) offers a pragmatic theory of responsibility that exposes the evaluative judgments involved in all responsibility assessments, affecting for what and to whom one is accountable. On a positional and relational view of accountability, see Kutz (2000).

(13) On recent recognition of sexual violence in international law, see Askin (2003), Duggan and Jacobson (2009), and United Nations General Assembly (1998, articles 7 and 8).

(14) My broader account of victims' needs for voice, validation, and vindication is found in Walker (2006a).

(15) The community that is relevant in affirming standards is context dependent. For human rights violations, the *international community* may be the relevant authority. See

Addis (2003) on how the international community is constituted in the process of invoking international norms and applying sanctions.

(16) A fuller discussion of hope and repair is found in Walker (2006a, 2010).

(17) On German reparations, see Colonomos and Armstrong (2006). On Argentina, see Gueembe (2006), and on Chile, see Lira (2006).

(18) See also Cose (2004, pp. 154–156), who contrasts this case with that of the Tulsa Race Riot of 1921. Destruction of the African American community of Greenwood, Oklahoma, and the massacre of between 75 and 300 people was documented by a special commission in 2001, but no compensation or other measures of official recognition have been forthcoming.



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