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Book Discussion

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HEIRS OF OPPRESSION

This is a brilliant book. The first few chapters contain the most convincing and devastating criticisms of those widespread and popular philosophical arguments that attempt to subvert the argument for Black and Native American reparation with utilitarian forward looking considerations veiled by specious appeals to forgiveness, reconciliation, and moral repair. Adopting what must be described as a “take no prisoners” approach Professor Corlett exposes and demolishes these hopefully unintended insults to truly oppressed peoples.

But my comments are supposed to be critical or at least aimed at getting the author to think more deeply or carefully into some of the claims, arguments, and positions that he makes, raises, or defends in his book and so I turn to this task.

My criticisms are focused on Chapter 4 titled “Reparations as a Human Right.” In that chapter Professor Corlett says that his argument for reparations as a human right will take the form: “If there are human rights as a species of moral rights beyond mere convention, then the right to compensatory reparation is a human right.” (p. 90) This general form of argument reminiscent of H. L. A. Hart’s argument for the natural right to be free, is a promising way to begin the case for a right to reparation. Professor Corlett can show his own argument to be sound by showing that if the right to compensatory reparation is not a human right, then there are no human rights as a species of moral rights beyond mere convention.

I thought at first that this was what he was up to with his thought experiment of Bullyville. Bullyville is modeled on Nowheresville. Most of you will remember Feinberg’s justly famous thought experiment of Nowheresville. In Nowheresville there are no rights, or better perhaps, no rights are recognized, and Feinberg then attempts to persuade us that Nowhereville most of us would find Nowhereville to be sadly lacking morally. In particular we would find that its inhabitants would tend to lack self-respect as well as respect for others.

Since Bullyville has no rights to compensatory reparation, or does not recognize such rights, I thought that Professor Corlett was going to argue that that there would be no human rights in Bullyville, and in this way show that if the right to compensatory reparation is not a human right, then there are no human rights as a species of moral rights beyond mere convention. If he could do this then he would have established his claim that “If there are human rights as a species of moral rights beyond mere convention, then the right to compensatory reparation is a human right.” In fact however Professor Corlett uses Bullyville to show as he puts it himself, the “importance” of a right

to compensatory reparation. His strategy is to show that Bullyville is a pretty miserable place. If it succeeds he will have shown the importance of the right to compensatory reparation, for except for lacking that right, Bullyville has a good set of other rights. One caution before we proceed. By saying that the right to compensatory reparation is important Professor Corlett does not mean that this right is sufficient for harmony in a society or for a good society. God forbid the thought! The U.S. and white settler societies did recognize in their laws and morality a right to compensatory reparation. And look what happened. Bullyville is meant to demonstrate that a right to compensatory reparation is *necessary* for a good society, or more weakly yet that as Professor Corlett puts it, “important” for a good society. I would add that even more important than a right to compensatory reparation is the power to see that rights are respected. We must not allow the siren song of the reconciliation theorists to lull us into a sweet forgetfulness of that important truth. Once again I thank Professor Corlett for alerting us to the hidden dangers of that song.

But let us return to Bullyville. I think that the attempt to conduct a thought experiment of Bullyville modeled on Nowheresville is a wonderful way to see why a right to reparation is essential. But I also think that Professor Corlett does not conduct the experiment carefully enough. What I mean is that he has not been careful enough to Bullyville with all possible moral values, including all the possible rights, except for the right to compensatory reparation. He subtracts a right to compensation from Bullyville, but he also subtracts a lot of other good things from Bullyville that could possibly exist there even if it lacked a right to compensatory reparation. If so his claim that Bullyville would be an unattractive place, may be true but irrelevant to his aim. Bullyville may be unattractive because it lacks many good things it could have, even if it does not have a right to compensatory reparation. If so the nastiness of Bullyville would fail to show the importance of a right to compensatory reparation.

Feinberg was careful not to make that mistake in his thought experiment of Nowheresville. The place had no rights, but Feinberg was careful to make it replete with all the moral values and principles that are possible even if rights are not recognized. In Nowheresville the inhabitants have all the virtues they could have without believing that they have rights. Consequently when we find Nowhereville objectionable we know that it must be because Nowhereville does not recognize any rights. The parallel thing is not true in Bullyville.

Professor Corlett takes out more good things from Bullyville than a right to compensatory reparation. For example he states that there are problems with Bullyville because “it is impossible to have authentic peace without genuine justice.” (p. 94) Taken in one way this begs the question. If genuine justice includes a right to compensatory reparation then surely Bullyville will not have genuine justice since it lacks a right to compensatory reparation; but of course the point at issue is whether genuine justice must include a right to compensatory justice.

But Professor Corlett’s statement can be taken in another way that is non-question begging. Namely it can be taken to mean that there will be many, many, violations of rights in Bullyville— just because it lacks a right to compensatory

reparation. But now the statement seems clearly false, or at least unsupported. Why for example must there be many, many, thefts and assaults say, in Bullyville? Couldn't these crimes be suppressed by harsh punishments? Or is Professor Corlett relying on the undefended claim that there can be no justified punishment unless there is a right to compensatory reparation. I do not see why this claim must be true. In Locke's classic treatment punishment and reparation are treated as different and separable. (John Locke: Second Treatise of Civil Government Chapter 2 Sections 8–12.) Besides the possibility of controlling injustice with punishment the virtues of the people of Bullyville may persuade them from acting criminally. Professor Corlett may object that I have no right to attribute any virtues to the people of Bullyville. But why not? If we must assume the inhabitants of Bullyville to be vicious, then Professor Corlett has not withheld only the right to compensatory reparation from Bullyville. He has also withheld the virtues. But then we cannot be sure that Bullyville is unattractive because it lacks the right to compensatory reparation. It may be unattractive because it lacks the virtues.

One way to block this line of criticism would be to take the view that people in a society without a right to compensatory reparation must also lack the virtues, in particular the virtue of a sincere disposition to act justly. Perhaps a sound argument can be made for this view, but it cannot be simply assumed. It must be made. And the argument, whatever it is, cannot be simply, that a disposition to act justly depends on the idea of a right to compensatory reparation because a right to reparation is a part of justice. Such an argument would be question begging.

Professor Corlett claims that there will be plenty of poor people in Bullyville who got that way because they were treated unjustly and never compensated. But that claim is unsupported. The fact that there is no right to compensatory reparation in Bullyville does not imply that the harmed wrongdoers are not compensated for their losses.

Here we must be precise. Not all compensation for harm is reparation. Compensation for harm is reparation only when it is made by the transgressor, and made by him either because he acknowledges that his harmful transgressor demands that he compensate the harm he caused, or because someone else forces him to pay compensation just because he is responsible for the harm that he compensates. As Locke emphasized, if a transgressor wrongs another, and as a result harms that other, he, the transgressor and only the transgressor, owes the victim reparation. (Chapter 2 sections 8–12) In Chapter 16 Section 183 Locke cites what may look like or even be an exception. He clearly implies that the beneficiaries or heirs of transgressors may have to part with some of their inheritance to compensate the victims of the transgressors. But it is arguable, and I would argue, that Locke did not believe that these beneficiaries or heirs are making reparation. I think he would or should say that they simply have no right to what they thought they inherited from the transgressor, and must give it up to its true owners, namely, the victims of the transgressor.

Of course none of this implies that Locke meant that a Good Samaritan cannot or should not compensate the harms of someone *others* have transgressed against and harmed, and left uncompensated. His point was that although a

Good Samaritan can help compensate for another's wrongfully caused harms, what he does is not reparation, even if it does compensate for a harm or injury. In such a case we can say that the harm or injury is compensated for or that the Good Samaritan compensates the harmed person; but we cannot say that the Good Samaritan makes compensatory reparation. In other words if a victim of wrongdoing is harmed by the wrongdoing, it is altogether possible that he be compensated for his losses by a third party, someone entirely innocent of wrongdoing. I think Professor Corlett agrees with this as he makes clear at another place.

But if all this is true then it is not at all clear why Bullyville has to contain lots of people who are poor because they have been wrongfully harmed and never been compensated. Professor Corlett has said nothing to rule out the possibility that there are a lot of Good Samaritans in Bullyville. Must Bullyville lack Good Samaritans? Is a society that does not recognize a right to compensatory reparation necessarily lacking in Good Samaritans? Perhaps but we need an argument. If there are such Good Samaritans in Bullyville and lots of them they could compensate the victims of wrongdoing. And if they did, why would the victims of wrongdoing be poor or even harmed? Indeed there is nothing in principle to rule out the possibility that the transgressors may themselves be Good Samaritans. Remember, one makes reparation only if one does so acknowledging that one owes reparation for one's harmful wrongdoing, or if someone else compels one to make reparation for the reason that one owes it to the victim. The transgressor-Good Samaritans could compensate their victims simply because they felt sorry for them. In that case they would not be making reparation, but that is not the point. The point is that there would not be a lot of people in Bullyville who are poor or harmed because they have been wrongfully harmed and never compensated.

Again this line of criticism can be defeated by arguing that there cannot be Good Samaritans in Bullyville, but again we need to hear such an argument. We cannot simply assume that the lack of a right to compensatory reparation will make Good Samaritans extinct.

There is another problem. Professor Corlett also claim that there will be plenty of wealthy and powerful individuals in Bullyville who got that way from acting unjustly and not having to make reparation for their injustice. But this too is not necessarily true. The fact that there is no right to compensatory reparation in Bullyville does not imply that it allows wrongdoers to keep their ill gotten goods.

Here again we have to be precise. We must distinguish a right to compensatory reparation from a rule forbidding unjust enrichment. Just because Bullyville has no right to compensatory reparation does not mean that it fails to have a rule against unjust enrichment. Although Bullyville does not provide for people demanding reparation as a right, it may have rules that require that ill gotten gains be confiscated and put into the general coffers of the society. I see no reason to suppose that this cannot be so. So again even if we condemn Bullyville we may not do so just because it lacks rights to compensatory reparation. And in that case we have failed to show that the right to compensatory reparation is important.

To draw any conclusions about the necessity or importance of a right to compensatory reparation from Bullyville we must be sure that we take only that right from it. To be sure that we are not condemning it for reasons other than its lack of a right to compensatory reparation let us be sure to include in it a stiff rule against unjust enrichment, stiff penalties for violations of rights (for there are, at least by assumption, rights in Bullyville; we are not talking about Nowhereville), and let us give it a goodly supply of Good Samaritans. Or if this sounds too fanciful let us imagine that Bullyville has an insurance system that carefully collects all monies that are acquired unjustly, both monies that involve violations of right and harm to others and monies that may be gained by violating rights while causing no harm. And let us that imagine the system also pays out compensation to all victims of injustice according to their harms. Bullyville would not have a right to compensatory reparation, since the harmed victims of wrongdoing would not get compensation from those who transgressed against them and harmed them. But there would be no persistent residual harms from transgressions, that is, wronged and harmed people would be compensated, though they would not get reparation. The transgressors would not be allowed to get rich and powerful. And injustices could be suppressed by stiff punishment.

It may be objected that the system I described would be underfunded and many harmed people would not be compensated. We can lessen the force of this objection by supposing that in punishing wrongdoers we substitute heavy fines for imprisonment, especially where the wrongdoer has deep pockets, *even if his wrongdoing causes little harm*. This would be entirely possible and not necessarily wrong. For example while the fines would hopefully exceed what was owed as compensation, that fact would not be an objection to them because they would not be justified as compensation, but as punishment. In this way the system might be very well funded. If does not lay the objection about underfunding to rest completely let us remember that in any ordinary society many people will not get compensatory reparation for harms done to them wrongfully– even if the society *does* recognize a right to compensatory reparation. The fact that a society does recognize a right to compensatory reparation cannot guarantee that wrongfully harmed people will be compensated for their harms. This is because there is no necessary connection between the transgressor's means, how deep his pockets are, and the harms his transgression causes. A poor criminal can cause a heck of a lot of harm for which he can never make proper reparation. The benefits the transgressor gains or does not gain as a result of his transgression also have nothing to do with the amount of compensation he owes if his transgression causes harm. If a man spitefully destroys a million dollars worth of his enemy's property he owes his enemy a million dollars. It does not matter if he gained nothing from the crime except the satisfaction of committing it. Nor does it matter whether he has deep pockets or whether he is a pauper. If he is a pauper he will pay nothing because he can pay nothing; but he owes it

as much as he would if he was a billionaire; and his victim is as badly harmed. The only difference between the two cases is that where the transgressor is a pauper, his victim will have to suffer the loss and not be compensated. And if you have little sympathy for a man with a million dollars of real estate to lose, remember that the victim of the spiteful pauper could be another poor man, who loses his simple ramshackle dwelling to the spiteful pauper and can never be compensated. In other words I am not at all clear that a society that recognizes a right for compensatory reparation will have fewer uncompensated harms than Bullyville with the kind of insurance system I suggested.

The two cases that Professor Corlett discusses in detail, the theft of the land of Native Americans and the enslavement of blacks, are peculiar in that in both cases the transgressors had and have deep pockets, the harms their transgressions caused and are causing are tremendous, and the gains they made from their transgressions were equally tremendous, but this is not necessarily always the case. And remember that we are speaking now of Bullyville, not the U.S. or the other white settler societies that involved theft of native lands. In other words we are trying to make a general case for a right to compensatory reparation, not a right to compensatory reparation in the U.S.

Professor Corlett claims that Bullyville would deny those who have been wronged in the past the moral standing to protest against the way they are treated by their oppressors (p. 95). I don't see why. The victims of harmful wrongs in Bullyville can complain and protest as loudly as the victims of harmful wrongdoing in other places. They can demand justice because they can demand and support stiffer penalties for these transgressors. The only thing they cannot do in Bullyville that they can do in other places is sue their transgressors for reparation. But why should they want to do that? They are compensated by the insurance system responsible for compensating them, and they can appeal to the law courts to compel the system to compensate them if it fails to do so or drags its feet. Have I sneaked in a right to compensatory reparation into Bullyville? I do not see that I have. The right to compensatory reparation is a right to demand and exact compensation from those whose transgression caused one to be harmed. Such a right seems to remain absent from the Bullyville that I have described. But why is this bad for its inhabitants? Professor Corlett suggests that it means that they cannot be respected. But why must they have a right to demand compensation from the very ones who wrongfully harmed them in order to be respected? Why isn't it enough that they are compensated? That they can demand the punishment of their transgressors?