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Pour citer cet article : **Guertin-Armstrong, S. (2013) « Historical Justice, Nationhood and African Americans », *Ithaque*, 12, p. 23-51.**

URL : <http://www.revueithaque.org/fichiers/Ithaque12/Guertin-Armstrong.pdf>

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Historical Justice, Nationhood and African Americans

Simon Guertin-Armstrong*

I will, in the name of humanity which is outraged, in the name of liberty which is fettered, in the name of the constitution and the Bible, which are disregarded and trampled upon, dare to call in question and to denounce, with all the emphasis I can command, everything that serves to perpetuate slavery — the great sin and shame of America !
- Frederick Douglass¹

Abstract

The intelligibility of historical justice is linked to matters of agency and causation. This article presents an account of historical justice limited to transgenerational collective agents which is immune to the agency and causation problems affecting traditional theories of diachronic justice. The novel theory is applied to the case of African Americans, to whom no reparations for past wrongs have been made up to now. When conceived as a transgenerational collective agent — i.e. as a nation—, the African Americans are shown to be owed reparations by the American polity. These reparations are deemed necessary to the goal of reconciliation and to the establishment of relations of mutual respect, which are construed as preconditions to effective distributive justice, here and now.

* L'auteur est étudiant à la maîtrise en philosophie à l'Université de Montréal. Il tient à remercier Dominique Leydet pour ses commentaires judicieux, tant sur le fond que la forme de l'argument, formulés dans le cadre du séminaire de recherche en philosophie politique et du droit « Histoire et responsabilité : la justice réparatrice », ainsi qu'un évaluateur anonyme dont les commentaires ont été tout autant appréciés. Cette recherche a été financée par le CRSH (766-2011-0236) ainsi que par le FQRSC.

¹ Excerpt from the speech *What to the Slave is the Fourth of July?* (1852).

Why repair past wrongs and past injustices? Politics have limited resources and numerous demanding contemporary moral stakes: distributive justice, climate justice, penal and criminal justice, only to name a few. According to John Torpey, the “end of History²” explains the recent spur of interest in reparation projects: when the future offers no prospect of significant change, there is a temptation to turn back to the past in order to make whole what has been smashed³. Independently from this contingent historical conjuncture, one might argue that reparations are justified for they aim to rebuild mutual trust and mutual recognition relationships deemed necessary to distributive justice, *hic & nunc*⁴.

However, the project of reparative justice faces important theoretical problems. For example, is it reasonable to sanction agents for their forbearers’ deeds simply because they are their descendants; or is it likewise reasonable to compensate agents for harms that were inflicted to their forbearers? It is generally accepted that identifying victims of past injustices and their descendants as well as perpetrators and their descendants is a necessary first step to attribute rights to and obligations of reparation⁵. In many cases however, it is difficult to assert that harm is effectively transferred from the victim to its descendants. So serious is this difficulty that in some cases past injustices might be superseded by the mere passage of time; and thus, they become inadequate to ground rights to or obligations of reparation⁶.

There might nonetheless be a general exception to this problem. When past injustices involve transgenerational collective agents which have an ontological identity spanning centuries, rather than mere

² Fukuyama, F. (2006), *The End of History and The Last Man*.

³ Torpey, J. (2006), *Making Whole What Has Been Smashed. On Reparations Politics*.

⁴ Wenar, L. (2006), “Reparations for the Future”.

⁵ Waldron, J. (1992), “Superseding Historic Injustice”; Sher, G. (1980), “Ancient Wrongs and Modern Rights”; Kukathas, C. (2006), “Who? Whom? Reparations and the Problem of Agency”; Simmons, J. A. (2000), “Historical Rights and Fair Shares”.

⁶ Waldron, J. (1992), “Superseding Historic Injustice”; Sher, G. (1980), “Ancient Wrongs and Modern Rights”; Kukathas, C. (2006), “Who? Whom? Reparations and the Problem of Agency”.

individuals agents or aggregates of individuals, then the identity of victim and perpetrator are no longer in doubt. Attributing historical rights and obligations thus seems feasible. Janna Thompson offers in *Taking Responsibility for the Past. Reparation and Historical Justice* an obligation-based account of historical justice which limits its scope to transgenerational collective agents. According to Thompson, historical obligations derive from the moral practice of making promises as well as from the respect due to nations on the basis of their primary collective right to internal self-determination. However, her theory presents a number of difficulties.

In this paper, I aim to present a plausible account of a theory of historical justice limited to transgenerational collective agents. First, I will briefly sketch a typology of collective agents in order to point out the descriptive inaccuracy and circularity in Thompson's argument and to ascertain the concept of a transgenerational collective agent. Second, I will offer an account of national historical responsibility grounded on the former typology of collective agents and on David Miller's convincing argument for extending moral responsibility to nations as collective agents rather than to states⁷. Third, I will contend that African Americans are a nation, and that the theory of historical justice limited to transgenerational collective agents presented in this paper can help us assess historical rights and obligations relative to the many wrongs perpetrated against them. Fourth and last, I will list *plausible* reparations which could be owed to the African American nation by the American nation, recognizing that reparations are first and foremost a political process and thus refraining from any definitive assertion. This stance allows the argument to remain within the proper boundaries of a philosophical investigation on political matters.

1. Transgenerational Collective Agents

To fully grasp the value as well as the limits of Thompson's interesting argument for an obligation-based account of historical justice, fundamental issues of social ontology must be addressed. To understand what exactly transgenerational collective agents are, one must first understand what collective agents are, and how they can

⁷ Miller, D. (2007), *National Responsibility and Global Justice*.

properly be considered moral agents, capable of contracting rights and obligations through the exercise of collective agency. It is also necessary to clarify how historical injustices are to be distinguished from common, non-historical injustices.

The temporal dimension of responsibility seems at first glance to be a new parameter which must be accounted for in order to understand the specificity of historical justice as a theoretical endeavor. However, responsibility is always responsibility for past actions, inactions and omissions, whether they originate from an individual or a collective agent: there is a non-zero timespan between the action, inaction or omission which causes harm, the voicing of a demand for reparation, and eventually the reparation itself as processed by the judiciary. The criterion used to distinguish between “normal” justice and historical justice cannot therefore be the timespan itself, unless it is possible to specify a difference of kind – and not of degree – between one year and ten, a hundred, or four hundred years – which seems rather unpromising. The sole other plausible candidate is the ontological permanence of agents. Whereas normal justice has for scope the competing claims about rights and obligations of actual agents, historical justice encompasses claims about rights and obligations related to the deeds of deceased persons.

Actions, however, are not only performed by individual agents, but also by collective agents. Tracy Isaacs identifies four types of collectives: the organization, the goal-oriented group, the aggregate and the random aggregate⁸. The random aggregate is a mere collection of individuals. The aggregate is a collection of individuals which share one or many common characteristics. The goal-oriented collective is a group of individuals which may share one or many goals, and whose functioning rules are variable:

[...] a goal-oriented collective is a collective whose members come together around the achievement of a particular goal. That goal might be long or short term. Its achievement may involve considerable planning or virtually

⁸ Isaacs, T. (2011), *Moral Responsibility in Collective Contexts*, p. 24-28.

none. The collective might have many members or just two⁹.

Lastly, the organization is a group of individuals endowed with a formal structure, which establishes a hierarchy by distributing roles, obligations and prerogatives, states a purpose and entrenches procedures for decision-making and acting¹⁰. Of these four types of collectives, only the organization and the goal-oriented collective qualify as collective agents. Following a standard definition, three phenomena mark the ontological emergence of collective agents and distinguish them from their constitutive elements: collective agents accomplish deeds distinct from their individual members' (performance); collective agents survive the change in cast of their individual members (permanence); certain acts done by individual members are only intelligible by reference to the collective agent (reference)¹¹.

Organizations and goal-oriented collectives are collective agents because of their decision-making structure which allows for the formation of collective intentions. This intentional capacity grounds these collectives' capacity for collective action. It also constitutes them as collective moral agents, morally responsible whether they act or not: omission and inaction are as liable to moral evaluation as action¹².

Which type of collective agent is Janna Thompson referring to in her argument? She conceives the transgenerational collective agent as something which symbolically survives the succession of generations of constituting members. For two generations to be distinct in Thompson's sense, they must be mutually exclusive: the first generation¹³ has necessarily vanished if the second is to exist. Individual generations are considered as agents rather than the

⁹ Isaacs, T. (2011), *Moral Responsibility in Collective Contexts*, p. 32.

¹⁰ *Ibid.*, p. 28.

¹¹ Cripps, E. (2011), "Collectivities without Intentions", p. 1.

¹² Isaacs, T. (2011), *Moral Responsibility in Collective Contexts*, p. 27-28.

¹³ Here, "generation" is not conceived as the demographic unit of the *cohort*, which refers to any group of individuals born within the same 20-years-or-so timespan. Thompson uses the concept of generation to refer to all the members of a given nation who are alive at any specific *t* moment.

transgenerational collective itself: Thompson's conception thus reduces transgenerational collective agents to symbolic bonds between generations, rather than construing the collective as an ontologically distinct social entity.

This conception is descriptively inaccurate. As David Miller astutely remarks, the idea of succeeding generations is a mind's view; there is in fact a constant demographic flow of births and deaths which replaces over time entire populations¹⁴. The idea of *relations* between *unrelated* generations is thus also incoherent, but Thompson's argument ultimately rests solely on this: the moral relation between generations. It is why she needs to invoke a principle, which links the moral responsibilities of otherwise unrelated generations, in order to respect the basic principle of justice which forbids to hold B responsible for A's actions. Thompson mobilizes the "Aristotelian principle" to accomplish this linkage, because it commands what one might call diachronic reciprocity: even though two collective agents are not related because they do not *exist* in the same timespan, they share a symbolic characteristic (such as common nationhood or common faith) which acts as a bond commanding that the latter agent respects the promises made by the former agent on its behalf¹⁵. However, the validity of the Aristotelian principle is assumed rather than demonstrated, as remarks David Miller:

Thompson's argument [...] depends on assuming what has to be shown, namely that later generations ought to honor the promises made by earlier generations. If that is assumed, then of course we will judge that our successors ought to keep any promises we make, and that we ought to keep the promises made by our predecessors. But no argument has been given for the assumption itself¹⁶.

For this reason, the Aristotelian principle does not succeed in circumventing the problems of circularity and descriptive inaccuracy which plague the argument. However, they can be overcome if we

¹⁴ Miller, D. (2007), *National Responsibility and Global Justice*, p. 151.

¹⁵ Thompson, J. (2002), *Taking Responsibility for The Past. Reparation and Historical Justice*, p. 14-18.

¹⁶ Miller, D. (2007), *National Responsibility and Global Justice*, p. 144-145.

abandon Thompson's distinct generations' account for an account of truly transgenerational collective agents: that is, collective agents whose identity remains stable despite changes of cast in their membership. Nations, I contend, are such agents. And when they are organized and capable of intentional collective action, they are – following Isaacs's account of collective agency – morally responsible *as nations* for their past actions, inactions and omissions.

2. National Historical Responsibility

Proper justification must be provided for such a contention. First, how can a nation be considered a collective agent responsible for its collective actions, inactions and omissions? To be deemed morally responsible, a collective must be capable of intentional collective action: “collective moral responsibility requires that collectives be agents capable of intentional actions¹⁷”. Organizations and goal-oriented collectives, as stated previously, have this capacity by virtue of their decision-making structure, whether it be formal or informal¹⁸. Can a nation be morally responsible according to this criterion?

To answer this question, we must first agree on what a nation *is*. According to Michel Seymour, one can define a nation as a cultural, ethnical or political¹⁹ collective, which is regarded by its own members as a fundamental part of their personal and collective identity they wish to preserve²⁰. This minimalist definition mobilizes objective and subjective elements and is thus apt to mobilize an enduring and large consensus²¹. As defined by Seymour, a nation

¹⁷ Isaacs, T. (2011), *Moral Responsibility in Collective Contexts*, p. 53.

¹⁸ *Ibid.*, p. 27.

¹⁹ A nation has first and foremost a specific and distinct structure of culture, composed of a common public language, a common public history and common public institutions – irrespective of its cultural, ethnic or political nature (Seymour 2008, 32).

²⁰ Seymour, M. (2008), *De la tolérance à la reconnaissance. Une théorie libérale des droits collectifs*, p. 32.

²¹ David Miller proposes a definition in five points which overlaps with most of Seymour's definition (Miller, D. (2007), *National Responsibility and Global Justice*, p. 124-134). Seymour's minimalist definition has an advantage over

approximates a goal-oriented collective whose minimal goal, notwithstanding numerous sociopolitical splits, is the preservation of the nation as one of the foundations of a shared collective identity and of a sense of belonging. Because of this goal, the nation cannot be reduced to a simple aggregate whose members share objective characteristics but lack a common purpose. However, such a minimal goal – even if shared by tens or hundreds of thousands – does not constitute a collective agent capable of intentional collective action. Nations thus seem to be limit cases in Isaacs' typology of collectives: neither a mere aggregate, nor necessarily capable of intentional action, nations must err in the fringes of social ontology.

Nations, however, *can* become capable of intentional collective action. To coordinate their many goals, to resolve internal conflicts and to levy the resources necessary for collective action, *inter alia*, some nations design, implement and use systematically formal decision-making structures. The state – or the government, for some non-sovereign nations – is the organization which allows the nation to *act* as a collective. One can thus distinguish between two social types of nations: *organized* nations, contingently capable of collective action; and *unorganized* nations, contingently incapable of collective action²².

If the state is in normative democratic theory an instrument meant to serve the nation, it happens sometimes that the elite controlling the state apparatus is divorced from its nation's common political good. The responsibility of the state and the responsibility of the nation must thus be distinguished, and the conditions that allow for a logical connection between the nation's responsibility and the responsibility of its organization must be specified. According to Thompson, when a government is democratically elected, it can generally be considered a representative of its nation, and the nation can be considered responsible for its acts²³. In other words, a nation is responsible for its political representatives and agents' actions,

Miller's as it allows recognizing different types of nations and minority fragments of nations.

²² This distinction will prove useful in latter stages of the argument.

²³ Thompson, J. (2002), *Taking Responsibility for The Past. Reparation and Historical Justice*, p. 15.

inactions and omissions if it can be reasonably inferred that the nation *authorized* these actions, inactions and omissions through the political process. David Miller specifies more stringent conditions to hold nations responsible for its political representatives and agents' deeds²⁴. It does not suffice that co-nationals be duly represented in legislative and executive (where applicable) institutions, deliberation *fora* must also exist:

Where nations are subject to outside rule, any ascription of national responsibility becomes problematic. The nation is *governed* in a certain way, *but it does not act* politically at all. [...] In the absence of a political forum in which national aims and values can be articulated and debated, it will be difficult to establish how far the population as a whole is implicated in support for the activities in question²⁵.

What is problematic is not outside rule *per se*, it is heteronomous rule: local political elite can govern as arbitrarily, if not more, than imperial elite dominating the nation. This case can be observed in dictatorial and totalitarian regimes where the endogenous political authority serves ends that are alien to the nation. A nation thus cannot be held responsible for the actions, inactions and omissions of heteronomous political elite, but it nonetheless has the obligation to constitute a counter-power to resist and oppose an arbitrary power²⁶. Karl Jaspers' grave sentence, written in the wake of the dissolution of the Nazi regime, can be understood this way: "a people answers for its polity²⁷".

But can a national minority be held responsible for the deeds of the national majority²⁸? According to Miller, because all members of the mono- or pluri-national polity share the benefits – though not necessarily equally – of social cooperation, they should also share the costs and obligations it brings forth. Two types of situations do

²⁴ Miller, D. (2007), *National Responsibility and Global Justice*, p. 126-127.

²⁵ *Ibid.*, p. 127, emphasis added.

²⁶ Locke, J. (1690), *Traité du gouvernement civil*, § 229-243.

²⁷ Jaspers, K. (1961), *The Question of German Guilt*, p. 61.

²⁸ This remark applies equally to dissidents of a mononational polity (national minority) and to minority nations in a plurinational polity.

however invalidate the obligation of social solidarity: unfair distribution of benefits and burdens of cooperation²⁹, and irreconcilable cultural or axiological differences between nations³⁰. All in all, national responsibility appears to be a coherent concept. The validity of the national type of collective responsibility requires that a nation be organized, that its political regime be minimally democratic – by both representation and deliberation –, that benefits and burdens of cooperation be shared minimally fairly, and that cultural and axiological diversity be not so dire as to prevent the formation of a minimal consensus over political values.

Second, what does it mean for a nation to be morally responsible? How does that differ from moral responsibility contracted as a *member* of a nation? What are the relations between collective and individual responsibility for transgenerational collective agents and their members? Tracy Isaacs distinguishes two levels of moral responsibility: collective moral responsibility, which is the moral responsibility of collective agents, and individual moral responsibility, which is the moral responsibility of individual agents, or physical persons. Individual moral responsibility for actions, inactions or omissions can be contracted either as a member of a collective agent or simply as an individual agent capable of intentional action. When a person acts as a member of a collective agent, he or she has the intention to participate to the collective action of this agent. The constraints and potentialities which circumscribe possible actions for individuals as members of collective agents delimit the scope of their moral responsibility. Distinguishing these two levels of moral responsibility makes it possible to think the moral responsibility of both the *acting* nation and the individual member, proportional to his or her individual authority, according to the position held within the functional structure of the organization. These two levels of moral responsibility are irreducible and *sui generis*³¹.

²⁹ We can leave aside, for the sake of the present argument, the issue of what exactly a fair distribution is.

³⁰ Miller, D. (2007), *National Responsibility and Global Justice*, p. 130-133.

³¹ The question of moral responsibility is distinct from legal responsibility; and thus the question of apportionment of sanctions does not need to be addressed here, however interesting it is.

If it satisfies the conditions enumerated *supra*, a nation is morally responsible for each and every action, inaction or omission of its members who have had, within the bounds of their duly authorized function, the intention to participate in the collective action. It would be nonsense to hold the nation responsible for the unauthorized acts of members to whom discretionary power was not ceded as a necessary prerogative to their functional role. Thus, when individuals accountable for blameful deeds committed within the rightful bounds of their official functions decease, it is only their personal moral responsibility which is superseded; the moral responsibility of the nation remains untouched. Nations as collective agents are thus permanently liable to moral obligations which derive from past wrongs, as long as the necessary reparations are not made or as long as the claimant does not declare the supersession of the wrongs. Or, as long as the responsible nation does not cease to exist, for that matter. As for the responsibility to repair, it befalls to the nation as a transgenerational collective agent and to the members of the nation which, in accordance with their official functions, are representatives of the *acting* nation in its relations to other nations³².

3. The Africans Americans as a Nation

Except for its use by the proponents of radical movements, the term “nationhood” is nowhere to be found in the literature on African Americans to designate them as a group, even in the literature produced by writers of African American descent. As the common public history and common public institutions of African Americans are well documented, this absence is striking but nonetheless understandable as the term “nation” has an exclusively patriotic denotation in the United States of America. One might hypothesize that the only legitimate national self-representation in

³² Miller’s argument is compatible with the argument presented here: “My claim is that one cannot legitimately enjoy such [national] benefits without at the same time acknowledging responsibility for aspects of the national past that have involved the unjust treatment of people inside or outside the national community itself, and liability to provide redress in whatever form the circumstances demand” (Miller, D. (2007), *National Responsibility and Global Justice*, p. 161).

America is mononational – that of being an American – and this precludes self-representation on the basis of another, supplementary nationality³³. For this reason, African Americans do not demand recognition of their distinct nationality, that of Afro-americanity. The “melting pot” policy³⁴ and ensuing ideology would thus be to blame for the skewed *public* self-representation of African Americans. In spite of this, African Americans *do* conceive themselves as distinct from Americans which are not the descendants of African slaves on the basis of history, language, culture and public institutions. The purpose of this section is to establish how and to what degree African Americans constitute a nation, notwithstanding *nominal* self-representation to the contrary, and as such to prepare the discussion on reparations for past wrongs in the following section.

The public common history of African Americans comprises many important past wrongs, starting with the transatlantic passage or deportation, continuing with slavery, *de jure* segregation under the Jim Crow regime and *de facto* segregation. Forever cut off from their native communities by deportation and also cut off from the rich Euro-American capitalist landowner society, American slaves of African descent or origin developed a distinct culture. In immediate proximity of Euro-American slaveholders and their employees, deported African slaves gradually adopted English as a common public language and Protestantism as a common public religion. African American Protestantism is a truly unique religion, in many ways different from the Euro-American version: it blends the doctrine of Protestantism with ritual elements from African spiritualities. Gospel songs – or negro spirituals – epitomize the original African American religious syncretism. According to Yourcenar, the negro spirituals embody a grand moment of human emotion, composed in profound grief and enlightened by elated hope³⁵.

Over time, African Americans developed various types of dance and music, a literary tradition and a culinary tradition absolutely novel

³³ Even though diverse and plural ethnic self-representations are common. But more on this subject later.

³⁴ The American practice of cultural assimilation.

³⁵ Yourcenar, M. (1980), *Les Yeux ouverts. Entretiens avec Mathieu Galey*, p. 190-191.

and distinct from similar cultural expressions of the society of European settlers and American landowners³⁶. They were distinct in so many respects and so early in their history that the authors of the report *A Common Destiny. Blacks and American Society*, published in 1989 by the Committee on the Status of African Americans of the Behavioral and Social Sciences Commission from National Research Council of the United States declare: “The world of black Americans has always been a part of American society, but the black and white worlds have also always been mostly separate. The inevitable consequences have been distinctive features of black culture and social organization³⁷”. The central institution of this parallel society is the African American Church:

Probably no other single institution has played such an important role in maintaining the cohesion of black society as the black church. As E. Franklin Frazier (1963:30) concluded: ‘An organized religious life became the chief means by which a structured or organized social life came into existence among the Negro masses’. The church was an agency of moral guidance and social control. It was also an organizational network that laid the foundation for mutual aid societies, developed much if not all the black community’s political leadership, and provided an impetus for educational advancement. The local church was often the center of black community life³⁸.

Research featured in the chapter on identity and institutions of the African American society of the report entitled *A Common Destiny. Blacks and American Society* not only assesses that African Americans believe they constitute a distinct nation, but also that they wish to preserve their distinct community – as it is necessary to their identity and self-representation³⁹. Although these beliefs were reported for

³⁶ Jaynes, G. D. and Williams Jr., R. M. (1989), *A Common Destiny. Blacks and American Society*, chap. 4.

³⁷ *Ibid.*, p. 163.

³⁸ *Ibid.*, p. 173-174.

³⁹ *Ibid.*, p. 165.

the first time in 1922, it is reasonable to believe such sentiments were commonly held before:

Overall, these findings suggest two main implications. First, most black Americans experience and attach importance to a group cultural identity. Second, an interwoven set of qualities – such as group cohesion, striving, and endurance – and a perceived need to continue to instill such qualities in future generations appear to be key elements of this cultural identity. To the extent that these orientations treat race as an important social characteristic, involve a sense of obligation to blacks, and indicate a commitment to overcoming group disadvantages, these patterns of cultural identity indicate a high degree of race consciousness among black Americans⁴⁰.

Following the definition of a nation as suggested by Michel Seymour, African Americans as a group constitute a cultural nation: they share a common language, a common set of public institutions and a common public history. They also wish to preserve their cultural distinctness and refer to their cultural group to define their personal identity.

Black Americans must be distinguished from African Americans. To be a Black American, one only needs to be an American citizen and to have a dark complexion. To be an African American, one's identity must be tied to the history of deportation, slavery and segregation, and to the distinct culture invented by the American black slaves and their descendants⁴¹. Based on this distinction, all African Americans are Black Americans but the converse is not true. According to the fourfold typology of collectives suggested by Isaacs, Black Americans are an aggregate of individuals which share a common objective trait – that is, a dark complexion. African

⁴⁰ Jaynes, G. D. and Williams Jr., R. M. (1989), *A Common Destiny. Blacks and American Society*, p. 200.

⁴¹ Descendants of African slaves in the Caribbeans have different languages and different cultures, and this makes them of a different national kind than descendants of African slaves in the United States of America.

Americans share much more, including the minimal goal to sustain the community from which they derive a sense of personal and collective identity. However, is it possible to distinguish in practice – not just conceptually – between Black Americans who also are African Americans and those who are not? It is an important matter, necessary to assess the feasibility of possible reparations for historical wrongs, knowing that in the year 2000 more than one Black American out of twenty was a first- or second-generation immigrant⁴². Fortunately, it is possible to identify the descendants of African American slaves because black immigration was close to nil between the end of the slave trade in the United States in 1808 and the adoption of the *Immigration and Nationality Act* which liberalized immigration policy in 1965 :

Among the peoples entering the United States after 1965 were millions of men and women of African descent. Prior to that date, the number of black people of foreign birth residing in the United States was so tiny as to nearly invisible. According to the 1960 census, the proportion was a fraction somewhere far to the right of the decimal point. Demographers, noting the small number of Africans arrivals between the closing of the slave trade in 1808 and the immigration reform of 1965, declared black America a closed population, the product of a century and a half of natural increase⁴³.

Being a descendant of American black slaves is a characteristic which could be used as a convenient proxy to identify members of the African American cultural nation. However, as a matter of fact some black immigrants might come to identify themselves with the African American language, culture, history and institutions; so much so that their (possibly pluri-) national identity would in fact reflect this sense of belonging⁴⁴. Because the African American nation is a

⁴² Berlin, I. (2010), *The Making of African America: The Four Great Migrations*, p. 7.

⁴³ *Ibid.*, p. 6.

⁴⁴ As is the case with the American President presently in office, Barack Obama.

cultural nation, this integration of migrants is not precluded logically – as would be the case for a nation founded on an ethnic basis.

In philosophical literature, the national status of African Americans is a matter of controversy⁴⁵: according to many authors, descendants of American black slaves do not constitute a nation. For the present argument, I will only discuss Janna Thompson's position on this matter. Surprisingly, Thompson does not offer arguments to support the claim that African Americans do not constitute a nation⁴⁶. If it is true that the African American nation was first created during and by slavery, then it is also true that this (relatively) new nation has no legitimate claims over unjustly dispossessed hypothetical property titles such as land or material goods. What African Americans were deprived of is the freedom and respect of dignity owed to them as persons and as a nation. Even though the racist supremacist ideology of the colonial era is in complete opposition with the contemporary universalist conception of human rights and rights of nations, it is the latter that must inform our understanding of the wrongs committed and of the reparations owed (if any). Inasmuch as the goal of historical justice is to make reparations for the future, enabling mutual trust to flourish again, we are justified in taking such a stance. The African American nation has never been an organized nation, but as a nation nonetheless it has had from the start the status of a collective moral agent and, as such, it has been a source of valid moral claims. Such a transgenerational agent cannot contract historical obligations due to its inability to form collective intentions and to act from them, but it deserves respect all the same and it can on this basis have historical rights and make reparation claims. The distinction between organized and

⁴⁵ A related problem has to do with the intelligibility of the demands for reparation which are voiced by agents who are *constituted* by the injustices themselves. See for example Kukathas (Kukathas, C. (2006), « Who? Whom? Reparations and the Problem of Agency »), second footnote. There is no need to assess the validity of the claim according to which agent A cannot demand rectification of an injustice if this very injustice is a necessary cause of agent A's being. It is sufficient, I believe, to remark that African Americans were victims of a *succession of distinct* injustices.

⁴⁶ Thompson, J. (2002), *Taking Responsibility for The Past. Reparation and Historical Justice*, p. 130.

unorganized nations allows accounting for the effects of inequalities wrought by historical domination. Nations sometimes exist on symbolic, cultural and/or identity grounds, without also translating into the creation of autonomous political institutions capable of articulating demands for institutional recognition of the right to internal self-determination – notably because of a common history composed of a succession of injustices. Theories of reparative and historical justice should be sensitive to phenomena of domination, such as the one African Americans suffered from, from the very start of their journey as a nation⁴⁷.

If the African American nation is a real social entity, it appears that the discourse of a mononational American society is only but a myth. A myth that is not innocent, as it serves to cover assimilation and exclusion goals under the veil of tradition, universality and patriotism. In fact, African Americans are still largely excluded in the distribution of American wealth :

[T]he great gulf that existed between black and white Americans in 1939 has only been narrowed; it has not closed. One of three blacks still live in households with incomes below the poverty line. Even more blacks live in areas where ineffective schools, high rates of dependence on public assistance, severe problems of crime and drug use, and low and declining employment prevail. Race relations, as they affect the lives of inhabitants of these areas, differ considerably from black-white relations involving middle-class blacks. Lower status blacks have less access to desegregated schools, neighborhoods, and other institutions and public facilities. Their interactions with whites frequently emphasize their subordinate status

⁴⁷ It is worth noting that the case of African Americans points to some limits of rights-based theories of historical justice: because they are constituted as a nation out of slavery, African Americans have no rightful claim to property titles, and to restitution thereof. Any enhancement of their socio-economic and civic status is thus to be understood as a net gain, according to the rights-based theories – not as betterment which results in an obligation to repair historical injustices.

– as low-skilled employees, public agency clients, and marginally performing pupils⁴⁸.

By almost all aggregate statistical measures – incomes and livings standards; health and life expectancy; educational, occupational and residential opportunities; political and social participation – the well-being of both blacks and whites has advanced greatly over the past five decades. By almost all the same indicators, blacks remain substantially behind white. [However, since] the early 1970s, the economic status of blacks relative to whites has, on average, stagnated or deteriorated⁴⁹.

Any attempt to assert a non-American national identity (even not as an exclusive national identity) is to be considered un-American. For this reason, a large majority of African Americans claim an American national identity, as well as an African American identity which expresses itself as a cultural or racial⁵⁰ identity, even though it has all the aspects of a national identity.

Americans are wrong in considering themselves as a mononational polity. They rather constitute a plurinational society, comprised of a majority nation of descendants of European settlers, an African American minority nation, Native Indian minority nations, as well as various immigrant communities, more or less assimilated into the majority nation. Reparations to African Americans as a nation for past wrongs brought unto them seem highly unlikely in the face of inadequate collective self-representation of Americans. Changing this perception is thus the first practical challenge for those aiming to make whole what has been smashed.

4. Reparations and the African American Nation

The claim that African Americans are not a nation does not resist scrutiny. It either hangs on a lack of relevant knowledge about

⁴⁸ Jaynes, G. D. and Williams Jr., R. M. (1989), *A Common Destiny. Blacks and American Society*, p. 3.

⁴⁹ *Ibid.*, p. 6.

⁵⁰ In the United States, the epithet racial has no pejorative connotation: it has the meaning of “ethnic”.

African Americans, or on a conception of nationhood that is too strict and thus blind to the effects of historical domination. Now, what are the reparations due to African Americans? Before we tackle this question, we must first clarify why reparations can be owed to unorganized nations, incapable of intentional collective action.

First, is it possible to consider without incoherence a moral relation between a nation which is morally responsible – because of its collective agency, being capable of intentional collective action by virtue of its organization – and a nation which is not morally responsible? Janna Thompson's theory allows for such asymmetry between transgenerational collective agents who can contract historical moral obligations and those who can make reparations claims based on historical moral rights⁵¹. Agents who contract reparation obligations must necessarily be capable of intentional collective action: they had to have this capacity in the first place in order to commit past actions, inactions or omissions; they must again have this capacity in order to be morally liable to reparations. As for agents who are victims of past injustices, it is not necessary that they be capable of intentional collective action to claim⁵² reparations. What matters is that this agent exists, not that it acts, which is sufficient to be considered worthy of respect. Barring few qualifications.

Thompson suggests that nations must be minimally democratic and must honor their promises to be worthy of respect⁵³. Respect is thus conditional on a specific type of organization and on a behavior deemed civil. There is however a more fundamental sense in which nations are worthy of respect: any nation, democratic or not, organized or not, has a fundamental collective right to internal self-determination⁵⁴ in recognition of its inherent dignity as a free and

⁵¹ Thompson, J. (2002), *Taking Responsibility for The Past. Reparation and Historical Justice*, p. 146.

⁵² To the exception that the delegation of legitimate representatives empowered to make such claim on the behalf of the nation, requires a nation to be minimally organized. More on that in the concluding section.

⁵³ Thompson, J. (2002), *Taking Responsibility for The Past. Reparation and Historical Justice*, p. 33.

⁵⁴ Moore, M. (2001), *The Ethics of Nationalism*; Buchanan, A. (2003), *Justice, Legitimacy, and Self-Determination: Moral Foundations for International Law*;

autonomous moral collective agent. Non-democratic nations are worthy of this same respect on the condition that they themselves respect the inherent dignity of all its citizens as free moral agents⁵⁵, according to John Rawls⁵⁶. His conception has the merit of balancing a minimum of universal respect for persons with liberal tolerance for cultural and axiological diversity. Thus, except for tyrannical or belligerent nations, every nation is worthy of respect.

Unorganized nations cannot be considered collective moral agents⁵⁷, but are nonetheless worthy of respect. They could be considered as moral patients, that is to say moral entities in respect of which moral obligations can be contracted, even though they cannot have reciprocal obligations due to their incapacity to neither act, nor deliberate. Traditional categories of moral patients are, *inter alia*, children, mentally impaired persons, senile persons and non-human animals. Now, there seems to be a case for adding for-the-time-being-unorganized nations.

Second, what are the justifications for the reparation itself? From the very start, we stressed that human, administrative and financial resources are insufficient to provide reparation for every historical injustice, and that they also are mobilized for the pressing needs of diverse stakes of contemporary justice. Why, then, repair historical injustices? Many authors claim that reparations essentially serve reconciliation⁵⁸. According to Thompson, reconciliation aims to reestablish relations of mutual trust and respect:

Seymour, M. (2008), *De la tolérance à la reconnaissance. Une théorie libérale des droits collectifs*.

⁵⁵ Specific conditions are not of interest here, but they can be found at pages 59-88 in Rawls, J. (1999), *The Law of Peoples*.

⁵⁶ Rawls, J. (1999), *The Law of Peoples*.

⁵⁷ This is not to say that they cannot be considered as agents whom the moral law commands in the Kantian sense, but that they cannot be considered capable of *relational* moral agency.

⁵⁸ Goodin, R. (2012), *On Settling*; Thompson, J. (2002), *Taking Responsibility for The Past. Reparation and Historical Justice*; Wenar, L. (2006), "Reparations for the Future".

[R]econciliation is achieved when the harm done by injustice to relations of respect and trust that ought to exist between individuals or nations has been repaired or compensated for by the perpetrator in such a way that this harm is no longer regarded as standing in the way of establishing or re-establishing these relations. An act or process of reconciliation that accomplishes this objective counts as a just reconciliation. Victims are not obliged or entitled to regard reconciliation as just unless their just demands are satisfied [...]⁵⁹.

If the reparation process sometimes demands restitution – partial or total – of heirloom property – such as the land of Native American tribes, rich with symbolic meaning –, it is not a necessary condition of all reconciliations. Leif Wenar astutely notes that the modalities of reconciliation are variable, according to the context and the agents involved:

Because these forward-looking reasons for reparations are based in the value of improving relations, they can support whatever reparative policies are appropriate to the particular context. What matters in reparations is what works, and what it means for such reparations to work is that they will help to build trust from now on⁶⁰.

For this reason, philosophers and political theorists can only but suggest forms of reparations more or less plausible, shedding the pretension of identifying necessary and sufficient conditions of reconciliation; the agents involved are deciding together what the modalities of a “just” reconciliation are. This paper’s argument thus assumes a political conception of historical justice.

The African American nation case suggests two types of symbolic reparations which seem almost necessary to reconciliation. Due to their symbolic nature, these reparations cost almost nothing and might be seen by African Americans as necessary proofs of *bona fide*

⁵⁹ Thompson, J. (2002), *Taking Responsibility for The Past. Reparation and Historical Justice*, p. 50.

⁶⁰ Wenar, L. (2006), “Reparations for the Future”, p. 405.

from the majority American nation to (re)establish mutual trust and guarantee public recognition of their collective dignity. The first symbolic reparation owed to the African American nation would be the public proclamation of official apologies on the behalf of the majority American nation, for the wrongs perpetrated during slavery, segregation *de jure* and segregation *de facto*. The second symbolic reparation would be the re-writing of a common public history to which both Americans and African Americans can agree as conveying all relevant experiences and events. As Randall Robinson underlines forcefully, though African Americans contributed massively to the development of the newly independent United States of America as slaves, nowhere is this contribution acknowledged. In this respect, the case of the Capitol monument is particularly telling:

I thought, then, what a fitting metaphor the Capitol Rotunda was for America's racial sorrows. In the magnificence of its boast, in the tragedy of its truth, in the effrontery of its deceit. [...] *This was the house of Liberty, and it had been built by slaves.* Their backs had ached under its massive stones. Their lungs had clogged with its mortar dust. Their bodies had wilted under its heavy load-bearing timbers. They had been paid only by the coin of pain. Slavery lay across American history like a monstrous cleaving sword, but the Capitol of the United States steadfastly refused to divulge its complicity, or even slavery's very occurrence. It gave full lie to its own gold-spun half-truth. It shrank from simple honesty. It mocked the shining eyes of the innocent. It kept all of us – black, brown, white – the chance to begin again as co-owners of a national democratic idea. It has blinded us all of our past and, with the same stroke, to any common future⁶¹.

Other possible reparations, more or less plausible, add to the proclamation of official apologies and the rewriting of a common history. First, the African American nation could demand monetary

⁶¹ Robinson, R. (2000), *The Debt: What America Owes to Blacks*, p. 6, emphasis added.

compensations⁶² for centuries of domination, economic (as well as sexual) exploitation, and brutal and cruel treatment. Whichever the form these compensations might take – whether as payments to individuals, to families, to communities, or as national or local dedicated trusts –, it is important to consider the paying capacity of the American polity. In a reconciliation perspective, a demand of monetary compensation cannot be morally valid if it threatens the capacity of the plurinational society to pursue economic cooperation⁶³. How then can we estimate a plausible amount owed in monetary compensation to the African American nation? Japanese Americans unjustly interned during World War II received 20,000 USD per person (either the victims themselves, or direct descendants) from the United States Treasury. A twofold compensation would seem to be a plausible minimum for the African Americans. According to the 2010 Census, Black Americans constitute 13.6 % of the American population, with 42,020,743 individuals. In 2000, 19 out of every 20 Black Americans were African Americans⁶⁴. We could thus loosely estimate that this proportion is 18 out of 20 for 2010 and calculate that African Americans total 37,818,669 individuals, or 12.2 % of the American population⁶⁵. At 40,000 USD per African American, the total sum owed to the African American nation in compensation payments is 1,513bn USD. This compensation represents only 0.04 % of authorized federal expenses in the American budget of 2012, which totals 3,796,000bn USD. Despite its staggering sovereign debt, the American nation has annual revenues more than sufficient (2,469,000bn USD in 2012) to pay for such compensation. If need be, the compensation could be paid in annual transfers over a few years. The payment of such monetary compensation would be a further proof of the seriousness of the reconciliation process.

⁶² Monetary compensations never equate the wrongs suffered and never can they make up completely for them or absolve their perpetrators. Money and dignity are incommensurable kinds.

⁶³ Boxill, B. (2011), “Black Reparations”, p. 39.

⁶⁴ Berlin, I. (2010), *The Making of African America: The Four Great Migrations*, p. 7.

⁶⁵ Rastogi, S., T. D. Johnson, E. M. Hoefel, et M. P. Drewery, Jr. (2011), *The Black Population*.

Second, the African American nation could demand the institutional recognition as a minority nation in the context of a plurinational American society, and of its fundamental collective right to internal self-determination. Without neither ancestral land to claim, nor geographical concentration, the African American nation cannot demand exclusive use over a distinct territory. However, the recognition of the right to internal self-determination does not require a transfer of territory. Given the non-geographical basis of African American national identity, and its compatibility with a plural national identity, such a demand appears unlikely.

According to Michel Seymour's theory of institutional recognition of national primary groups⁶⁶, the fundamental collective right to internal self-determination is best understood as a sufficient ground for four types of claims: 1) claim to fair representation in the relevant political and legal institutions of the plurinational society; 2) claim to political autonomy in the form of a devolution of powers (legislative, executive, legal and administrative); 3) claim to a duly recognized differentiated institutional status; and finally 4) claim to obtain targeted and specific rights within the plurinational association, which are to be settled through a deliberation process⁶⁷. This fourth and last claim is the ultimate consequence of the principle of self-determination according to which nations ought to govern themselves. It allows nations to identify targeted and specific rights necessary to the preservation and flourishing of their national identity, culture and sometimes specific language. These rights are deemed *specific* because they are those of a particular nation, due to its particular and sometimes unique characteristics. They are deemed *targeted* because they grant an enhanced autonomy in specific legislative areas, or an enhanced representation in specific decision-making bodies of the plurinational society.

Third and last, another plausible demand could be voiced by the African American nation. It is the proposition put forward by Roy L.

⁶⁶ National groups which are geographically distinct but also are culturally (or otherwise relevantly) similar fragments of a national primary group – such as diasporas – are to be distinguished from national primary groups, and cannot make claims of internal self-determination.

⁶⁷ Seymour, M. (2008), *De la tolérance à la reconnaissance. Une théorie libérale des droits collectifs*.

Brooks, who suggests a limited separation policy for African American and American communities⁶⁸. This suggestion is justified by the existence of a latent racism which, according to the author, impedes racial integration and thus maintains a *de facto* segregation, albeit a moderate one compared to the post-Jim Crow era. The socioeconomic segregation of African Americans is well documented, in various areas such as education, housing, employment, voting, health and criminality. This multifaceted disparity is enduring despite well-intended legislative efforts of integration, and it adds to the succession of historical injustices suffered by the African American nation. Limited separation is thought to be able to circumvent latent racism and to substantiate self-determination. In the words of Brooks:

[...] limited separation is voluntary racial isolation that serves to support and nurture individuals within the group without unnecessarily trammeling the interests of other individuals or groups. Racial isolation that results in a conscious choice or strategy of self-support by African Americans and that does not unnecessarily subordinate whites individually or collectively is what I mean by limited separation. [...] This policy is not, however, intended to supersede racial integration. Rather, it is designed to temper racial integration's tendency to place policy before people. [...] Racial integration and limited separation should be viewed as different paths to racial equality⁶⁹.

Brooks states three conditions jointly necessary to justify a limited separation policy⁷⁰. First, it must be possible to show that a systematic discrimination disadvantages or harms members of the group. Second, institutions created by the limited separation policy must not reproduce discrimination based on nationality or ethnic origin – but only reversed. They must be moderately inclusive and shun discriminatory practices. Third, the only exceptions to the interdiction of discrimination must be justified by practices which are

⁶⁸ Brooks, R. L. (1996), *Integration or Separation? A Strategy for Racial Equality*.

⁶⁹ *Ibid.*, p. 190.

⁷⁰ *Ibid.*, p. 191-192.

instrumental to the objective of allowing the discriminated community to thrive and flourish. Whether by itself or in conjunction with other approaches, limited separation could level the playing field for African Americans and make progress toward equality of opportunity in the plurinational American society. Brooks suggestion bears further relevance in the light of the fragmented geographical repartition of the members of the African American nation. This translates into a difficulty for them to demand political autonomy, which only geographically concentrated minority nations can claim coherently.

This brief list of possible demands of reparations for past wrongs to the African American nation is of course non-exhaustive, and is exploratory in nature. It aims to show that there is a wealth of possible claims which could be voiced in the political process of reconciliation of the nations that form the plurinational American society, and of restoration of moral relations between nations, grounded on the recognition of cultural differences and of moral equality.

Conclusion

This paper proposes a theory of historical justice limited to transgenerational collective agents inspired by Janna Thompson's account. By clarifying fundamental matters of social ontology, collective agency, collective moral responsibility and the nature of nationhood relevant to historical justice between groups, it aims to overcome the difficulties faced by Thompson's argument. Applying this theory to the case of African Americans serves both as a test for the theory's viability to tackle real-world cases of historical injustice and as a substantial argument, concluding that reparations are owed to the African American nation. In doing so, the argument answers classical objections according to which African Americans do not constitute a nation, hence there is no basis for reparation since they have never possessed any property titles as slaves.

Two important obstacles must be overcome to render reparations to African Americans tangible. First, the public recognition of the African American nation requires a reconceptualization of the American polity. White Americans generally represent themselves as

a homogenous society due to the “melting pot” assimilation policy, and as a virtuous and morally exemplary society due to the doctrine of American exceptionalism. This collective representation must nevertheless be redefined to make way for the recognition of the African Americans and Native Indians as *nations part of a plurinational polity*, and for the recognition of past injustices. Demographics, which predict Latino Americans will be the largest ethnolinguistic group in the United States in 2050 due to an impressive population growth rate, will in time sound the death knell for the homogenous, mononational, exceptionalist conception of the American polity.

Second, even though it has been established that the African American nation is worthy of respect and that it can rightfully claim reparations for historical wrongs, it must become minimally organized in order to *deliberate* over proper reparations and to *voice* its deliberated demands. It is possible for a nation to organize, even without a government, through local and national associations empowered to represent the nation. The *National Association for the Advancement of Colored People*, founded in 1909, could be in the position to exert influence in this respect and to build a polity-wide liberal nationalist movement – and, eventually, organization.

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