

Freedom From Past Injustices: A Critical Evaluation of Claims for Intergenerational Reparations. By Nahshon Perez. Edinburgh: Edinburgh University Press, 2012. Pp. 186. £65GBP hardcover.

If this bold new book is designed to ruffle feathers, then it might achieve that goal; however, if it is designed to develop the philosophical literature on intergenerational responsibility, then it is perhaps less successful. Jerry Cohen used to say that good ‘debunking’ philosophy proceeds slowly. The critic must work like a search party to uncover all the potential arguments in the field before they declare it empty. Although pitched as a work of philosophy, Perez’s book has a polemic feel. Perez’s main thesis is that individuals are not obliged to bear the costs of historical wrongdoing. He sets out to disprove (nearly) all claims for intergenerational reparation and works through a series of arguments designed to support that conclusion. The main chapters (two, three and four) target particular problems in assigning historical liability by amplifying some of the better-known theoretical difficulties. There are three main areas: counterfactual reasoning, the ‘non-identity’ problem, and questions of collective responsibility. A fifth substantive chapter argues that forward-looking considerations will likely trump many backwards-looking claims. The sixth chapter concludes. There are moments of real philosophical interest in the book; however, the remainder of this review criticizes a few of the hastier arguments.

Like all good analytic theory, Perez begins by setting out his conceptual furniture. The subject is historical injustice, which is defined as cases in which all the original human participants are dead. Perez specifies that he will deploy an individualistic standpoint of ethics. Perez is right to say that moral arguments need to appeal to reasons that are *reasons* for individuals; however, he begins by overstating the point, rushing to the much larger claim that responsibility is largely a matter of voluntary action, which is rather implausible. Clarity on the question of responsibility isn’t helped by Perez’s failure to distinguish between different senses of responsibility (14-17). He appears to be talking about culpability. But if that is the case, then he will find few opponents, for few theorists defend the thesis that people can be *culpable* for the actions of other people. What is really at issue in accounts of intergenerational reparation is *liability*. And third-party liability is much more plausible than third-party culpability.

Turning to the second chapter’s discussion of counterfactuals, Perez suggests he will treat compensation as returning the ‘well-being’ of the injured party to ‘the level that it would have been had the wrong never occurred’ (42). Not only does the argument assume the well-being metric without telling the reader much about it, his account of compensation will not encompass injuries that are composed of ‘threshold failures’ that is, damage inflicted because wrongdoing causes an interest to fail to be sufficiently realized. Many injuries (like not getting enough air or sufficiently good medical care) are not ‘setbacks’ as Perez defines them, because they do not appeal to counterfactual reasoning in order to specify damage. Perez does consider threshold claims, but only in the ‘global’ sense that, taken as a whole, the claimant’s well being is below a reasonably acceptable level (55). That is an implausible restriction. One could imagine a very well off person who receives insufficiently good medical treatment for a serious complaint who has a reparative claim irrespective of the fact that the injury does not depress her global well being below an acceptable standard. Consequently, much of the argument’s attack on the difficulty of specifying appropriate counterfactual worlds does not, as Perez suggests, eliminate the possibility of damage. As a passing comment, Perez has a tendency to play up the epistemic uncertainties surrounding counterfactuals without exploring how corrective justice theory includes the means to confine at least some of these within manageable bounds.

Turning to the second problem, the non-identity problem is a particular version of the counterfactual problem as applied to genetic identity. Consider the historical changes that arose from the Holocaust. If personal identity is at least partly dependent upon genetic identity, then since even minute changes in the personal history of my parents would have likely affect which ovum and spermatozoa united in my mother’s womb. If the Holocaust had not happened, then I would not exist. Nor would most other people alive at present. In our place there would be an entirely different cast of humanity. The existence of particular individuals depends upon the fact that injustices have occurred.

Given that fact, the ‘non-identity problem’ for reparation emerges in two ways. A first way to argue about ‘non-identity’ appeals to the difficulties of assessing appropriate compensation. The second suggests that because life is a great benefit, people are not harmed by being brought into existence, and therefore people are not harmed by past injustices that are necessary conditions of their existence. This position is favored by consequentialists who believe that wrongdoing must involve harming. Perez affirms that coming into existence is a benefit, he says that the claimants’ ‘situation has *improved*’ because of wrongdoing (26 author’s emphasis). Consequentialists are rightly troubled by the non-identity problem, but consequentialism is not the only plausible meta-ethical position and nonconsequentialism has much less difficulty with non-identity cases. For non-consequentialists, the fact that we are benefitted by something does not mean we are not also injured by it.¹ Perez is not a consequentialist; therefore, the book needs a more refined discussion of metric.

The final substantive argument concerns collective responsibility. Some literature in this area relies upon bizarre claims of collective identity and Perez is right to pop some of those balloons. But his larger argument against assigning responsibility for past wrongdoing to *states* seems uncharitable. For example, Perez argues that collective responsibility attributions for historical wrongdoing must mean that present individuals are ‘blameworthy’ (66). But, as I said above, few serious thinkers argue that. An obvious alternative argument motivating reparations claims against collectives assigns rectificatory responsibility to the state itself and then ascribes some other sort of responsibility to the citizens who have to bear the substantive burdens. It is not at all obvious that the two ‘modes’ of responsibility need to be the same and liberal political theory regularly differentiates between them. For example, consider the difference between the state’s obligations to enact justice and the citizens’ obligations to contribute to the stability of just institutions. Indeed much of Perez’s subsequent discussion of identification, consent, benefit and fair play is taken from liberal legitimacy theory and his arguments against those values tracks the philosophic anarchists. That is well enough, but Perez should inform his readers of his radical stance. As it stands, he appears to think there is no basis for reparations claims against the state because there is no basis for the state. Those of his readers who think there might be room for the state in normative political theory should read the argument accordingly.

Perez assumes the theory of reparations is a subset of the theory of corrective justice, but it is remarkable how much actual reparations practice occurs under the rubric of restorative justice. Restorative justice is not the same thing as corrective justice. While it is true that restorative justice has its problems, corrective justice is not problem-free. Irrespective of intra-disciplinary debates between restorative and corrective adherents, the larger critical point is that no argument that seeks to debunk the possibility of intergenerational reparations claims without considering restorative justice could be sufficient.

To conclude, Perez should be congratulated upon his readable and provocative book. Theorists will welcome this work because it is informed by the techniques of the analytic tradition. As Perez shows, reparations theory is complex and interesting and I hope that Perez will continue to prosecute some of these arguments, albeit more carefully.

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¹ For examples of interesting discussions by nonconsequentialists see, Kumar, Rahul. "Who Can Be Wronged," *Philosophy and Public Affairs* 31, (2003), pp. 99-118. A more recent contribution is Vrousalis, Nicholas ‘Smuggled into Existence: Nonconsequentialism, Procreation, and Wrongful Disability’ *Ethical Theory and Moral Practice* (2012). DOI 10.1007/s10677-012-9378-z.