Compensation for Historic Injustices: Completing the Boxill and Sher Argument

Must people be compensated for injustices their ancestors suffered? If someone commits an injustice, it would seem that she should undo the effects of her transgression on all parties she has harmed, possibly including persons in subsequent generations. Victims’ descendants might then have claims to compensation.

However, nonidentity problems threaten any argument for reparation for historic injustices. In brief, the problem is this: how can any person have a claim to compensation for a wrong that was a condition of her existence? In such cases, there is no possible world in which the wrong

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was not committed but the claimant exists. If she cannot exist but for the wrong then she cannot claim damages for the wrong.\textsuperscript{2}

In separate recent articles, Bernard Boxill\textsuperscript{3} and George Sher\textsuperscript{4} argue that transgressors owe their victims reparation for an injustice and that the failure to provide such reparation is a further wrong against the victim. Boxill and Sher admit that an original injustice might be a condition of a victim’s descendant’s existence. They argue, however, that a later injustice of not compensating the victim after her child is conceived can be a compensable wrong to that child but not be a condition of the child’s existence. Boxill and Sher also consider how the compensation claim might also prevail across several generations.

The Boxill/Sher argument is convincing as far as it goes. Yet it fails to specify fully the conditions under which we can justify claims to compensation for children born to victims of historic injustice. This article proposes to complete their account by specifying such conditions. I argue that children can claim compensation only for those welfare gains their parents’ transgressor unjustly denied the children. Relying on a natural duty account of what level of welfare children may claim, I argue children’s right to support from their parents can help justify and determine the extent of a transgressor’s liability for some setbacks to children’s welfare. In the course of the argument, I discuss problems with sustaining reparation claims across generations and the challenge of fixing the welfare baselines that are the targets of filial duties. I also explore whether a victim’s actions might mitigate or cancel a transgressor’s liability to compensate the victim’s child.\textsuperscript{5}


\textsuperscript{3} Boxill, “A Lockean Argument for Black Reparations.”

\textsuperscript{4} Sher, “Transgenerational Compensation.”

\textsuperscript{5} Of course there are important differences in the aims and structure of Boxill’s and Sher’s essays, but I focus on completing their shared argument that attempts to sustain reparation claims in light of the nonidentity problem.
I. REPARATION AND THE NONIDENTITY PROBLEM

Reparation is not punishment. Transgressors owe their victims reparation as compensation for an injury. Reparation attempts either to put a victim into the position she would have occupied but for the transgression or to return to the status quo prior to the violation.\(^6\) In the case of reparations for historic injustices to previous generations, however, it might be meaningless to speak of what position a victim’s descendants would have occupied but for the transgression. Often the descendants would not have existed had the original injustice not taken place.

In response to such nonidentity worries, Boxill and Sher independently propose shifting our notion of when victims’ descendants suffered a compensable wrong. The relevant wrong is not the original injustice but rather the subsequent continuing failure to compensate the victim for the original injustice. This failure is separate from the original injustice. Since it is “repeated at every moment since the original injustice,”\(^7\) then it is repeated even after a victim’s child is conceived. Any continuing failure to compensate the victim after her child is conceived is thus not a condition of the child’s existence. The post-conception wrong of failing to compensate for the original injustice might then be a compensable injustice against the parent and the child.

The original victim’s unsatisfied claims are a wrong to her and can have a material impact on her child’s well-being. As Boxill notes in the case of black reparations, a child’s claim to compensation is not based on the historic wrong of slavery but is instead based on “the U.S. Government’s failure to compensate her parents after her conception. . . .”\(^8\) But for that injustice, the child “would have existed in less straitened conditions.”\(^9\) As Sher writes, since improvements in a parent’s welfare typically lead to improvements for that of a child, “it follows that


\(^7\) Sher, “Transgenerational Compensation,” p. 192.

\(^8\) Boxill, “A Lockean Argument for Black Reparations,” p. 89.

\(^9\) Ibid.
the child probably *would* have been better off if the wrong of not compensating his parent after he was conceived had not been done."\(^{10}\) The child then suffers a compensable wrong not for the original injustice but because she suffers due to her parent not having been compensated for the earlier injustice. Sher admits that determinacy problems remain, but the argument vindicates against nonidentity worries the core idea that a child born to a victim of a historic injustice is owed at least some compensation.\(^{11}\)

II. INJUSTICE AND IMPACT ON WELL-BEING

It may be unclear how a child is harmed when her parents are not compensated for an earlier injustice. Both Boxill and Sher argue that the failure to compensate a victim after a child is born to her is a new wrong not just to the parent but also to her child. Sher writes that the child “is owed compensation for that post-conception wrong’s effect.”\(^{12}\) In the case of failing to compensate two former slaves, Boxill notes that their daughter is thereby harmed because she “probably grew up in ignorance and straitened conditions.”\(^{13}\) The child then suffers a separate compensable wrong because her well-being is worse than it would have been had her parents been compensated after her birth.

Competing accounts of well-being would generate different understandings of the wrongful harm to the child. We can, for instance, understand well-being in terms of pleasure, desire-fulfillment, or certain (other) independently valuable goods.\(^{14}\) Whatever our account, if the Boxill/Sher argument carries any weight, the deprivation of compensation due a child’s parent somehow impairs the child’s well-being. The compensation might take the form of cash, some other exchangeable value, or the provision of some service or opportunity intended to

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11. Ibid., pp. 193–94.
12. Ibid., p. 193.
14. I borrow this classification from Roger Crisp, “Well-Being,” *Stanford Encyclopedia of Philosophy*, (http://plato.stanford.edu/entries/well-being/). Crisp is also careful to distinguish the formal from the substantive elements of well-being, where “the former state the constituents of well-being . . . , while the latter state what makes these things good for people . . .” (ibid.).
improve a person’s lot in life. That compensation is a commodity to which the child is entitled.

The commodities a person commands are distinct from her well-being, but those commodities are often a means to well-being. Depriv ing the child of the commodity that would compensate for the previous injustice harms the child either by damaging her well-being or by denying her an opportunity for the improvement of her well-being. I group such harms under the heading of welfare setbacks. However, showing a setback to welfare is insufficient to establish that someone has been wronged. In order to complete the Boxill/Sher argument, one must show that the child had a claim not to have her welfare thus set back. Accordingly, I next consider an objection that, if successful, would defeat their argument, namely, that the unrealized gain in welfare could simply be a windfall loss to the child.

III. THE VOLUNTARIST OBJECTION

If X wrongfully harms Y and Y is thereby unable to contribute to some improvement in Z’s welfare, has X also wrongfully harmed Z? According to what I call the voluntarist objection, the answer is no. Specifically, the objection is that, in the case of reparations to a victim who later has children, the claim to compensation is the parent’s and not the children’s. On this objection, transgressors are not liable for third-party welfare setbacks that depend on an intervening agent’s will. The parent (the transgressor’s original victim) has the right to dispose of the commodities she never received from the transgressor. The child’s unrealized welfare gain would not compound the liability of the


16. Such terminology is not intended to deny important controversies over competing formal and substantive conceptions of well-being. The term setback can speak alternately of adverse impacts on material welfare, opportunities for improvement in well-being, or, to borrow from Sen, the range of choice of “beings and doings” (Amartya Sen, Inequality Reexamined [Cambridge, Mass.: Harvard University Press, 1992], pp. 39, 41). There are also knotty counterfactual problems: actual well-being might be unaffected or improved because of a past or continuing injustice. Compensating for the previous injustice might even make the child worse off. For the sake of studying the strength of the Boxill and Sher argument, I pass over these issues and allow that the deprivation of the compensation owed the child can harm the child.
parent’s transgressor. It is not a compensable welfare setback but a sort of “windfall loss.”

The voluntarist objection to the Boxill/Sher argument drives a wedge between liability for harm to the parent and liability for any child’s unrealized welfare gains that depend on the parent’s will. As Jeremy Waldron writes, “It is the act of choosing that has authority, not the existence as such of the chosen option,” so even if the counterfactual is true that the parent would have conferred (some of) the value of her reparation claim on her children were she to have received it, that is insufficient to justify a child’s claim to compensation against the parent’s transgressor. The voluntarist objection thus denies that the transgressor is guilty of any compensable injustice against a victim’s child.

The voluntarist objection maintains that if the victim is due any compensation, it is up to her to confer any of it on her child. One response would be to argue that children have rights to at least some of the commodities their parents command. If parents have a duty to use their resources to support their children, then withholding compensation due the parents might amount to a separate harm against the children. We could then set aside the voluntarist objection in at least some cases. I next turn to a natural duty argument to this effect.

IV. THE DUTY TO SUPPORT CHILDREN

Minor children have a right to the support of their parents. This claim could be defended by a Lockean argument, but certainly that is not the only way to support the claim. On the Lockean argument, parents have natural duties to nurture their children. The parents’ duties correlate with rights by the children to be supported out of their parents’ labor. Children then have a claim to support independently of what their parents may otherwise wish. Against the voluntarist objection,

18. Waldron, “Superceding Historic Injustice,” p. 11. Waldron was neither addressing the Boxill and Sher argument (since his article preceded both Boxill’s and Sher’s) nor offering a “voluntarist objection.” Here I borrow his remarks and apply them to the Boxill and Sher argument.
the parents’ discretion over family wealth is severely constrained. The children’s rights to support can also explain why children have rights to compensation against someone who has transgressed against their parents.

On this account, some of the commodities the parents command—that portion that could be used to support the children—belong to the children. The parents are merely custodians of the commodities (or the claim) in question. When someone commits an injustice, he owes compensation to his victim. But he is guilty of an additional injustice when his failure to compensate his victim consequently impairs the victim’s children’s well-being. The children become victims of a new injustice.

In the case of the Boxill/Sher argument, the compensable wrong to the child is the harm the child suffers from the continuing failure to compensate the parents after the child’s conception. This wrong is distinct from the original transgression, and it is distinct from (though it depends upon) the wrong of the continued failure to deny compensation to the parent. What makes the failure to compensate a wrong to the child—and not just a harm—is the child’s entitlement to support from her parents. Accordingly, a person who owes compensation to the parents might then also owe some compensation to the child. The child has a claim on some of those commodities. The child would be owed for the compensable harm she suffered for not having access to those commodities.

Sher admits that the amount or form of compensation owed is difficult to determine. Much depends upon the type and extent of the unrealized gains to welfare the child suffered from her parents’ not being compensated for the earlier transgression, and these depend on knotty counterfactual and empirical issues. But Sher rightly claims we can nevertheless vindicate the intuition that the child is owed something because that child’s welfare would have been better had her parent been compensated for the earlier injustice. Yet, the vindication requires the additional premise that the child has a right to the support of the parents, and what is not clear from either Sher’s or Boxill’s remarks is how robust this right to support is. A child might have a right to be kept from

20. I am grateful to Bernard Boxill for correspondence on these issues.
perishing, but the right to support may go beyond that to include a right to a decent life and perhaps a right to share in a luxurious life.

The parents’ duties to the children with respect to the compensation at issue can take as their objects improvements in children’s material welfare. But as Sen points out, we must not confuse “well-being” with “being well off,” so we might say parents’ duties to children more broadly target improving the range of functionings available to the children on achieving adulthood. Here we need not settle the content of the natural duty except to note that on any plausible account, the child has at least a right to be kept from perishing. In many cases of reparation, this is exactly what is at issue: the children of uncompensated victims of earlier injustices die for want of access to the basic material conditions of existence. In other cases, the children suffer in conditions of severe material deprivation. The continuing failure to compensate the children’s parents for the earlier injustice leaves the children dead or materially worse off. The children’s rights to the basic material conditions of well-being are initially against their parents. When someone unjustly restricts the parents’ opportunities to satisfy the children’s rights, however, the children have a claim against that party for compensation in some form.

Notice that the injustice of preventing victims from recovering from an earlier injustice is distinct from the separate, additional, continuing wrong of failing to compensate the victim and any descendants for an earlier injustice. We should distinguish these not just for analytical clarity but because the core insight of the Boxill/Sher argument is that nonidentity worries do not derail children’s claims for compensation for the latter sort of wrong. Exploring what follows solely from the continuing injustice of failing to compensate for an earlier injustice is important in case a transgressor has wronged her victim and now merely ignores her.

It remains unclear, however, whether a natural duty to support children generates a sufficiently robust right to support that extends beyond protection from perishing. At least for Locke, the structure of children’s

23. I am grateful to an Editor of Philosophy & Public Affairs and to Andrew Altman for helpful suggestions on the issues in this paragraph.
24. Sen, Commodities and Capabilities, p. 16. See also Inequality Reexamined, pp. 5, 39, 41. There is further good reason to favor the broader interpretation given concerns over adaptive preferences (especially of those living in penury).
rights to support depends on whether the property to which a parent may lay claim is primarily familial or individual. After an illuminating discussion of the alternatives, A. John Simmons concludes that parents have discretion over property that is not otherwise claimed by children. Children have claims that their parents keep them from perishing. This follows from Locke’s general account of the function of property as an institution for sustaining mankind. Locke also seems to maintain that the children’s rights can be quite robust. Their dependence gives them a right against parents “not only to a bare subsistence, but to the conveniences and comforts of life, as far as the conditions of their parents can afford it.” Elsewhere Locke tempers this claim by suggesting that parents have discretion to dispose of property once children are “out of danger of perishing for want.” The children’s rights seem more stringent than a bare claim against perishing but are not so expansive as to entitle them to all of the commodities parents command. They are entitled to that portion of the commodities the parents command sufficient to provide for them. We need not determine with any more precision the exact content of the parents’ natural duty to sustain children, because if there is any such duty, the voluntarist objection fails. For some cases, a transgressor is guilty of an additional injustice when she fails to compensate her victim for the original injustice and especially when her failure persists after her victim has children.

A critic may object to any such natural duty argument either by (1) denying that children have any rights to parental support, or (2) saying that a parent’s duty to support children is satisfied simply if the children survive. In response to (1): here I have only asserted that children have

26. I use Locke only as an illustration of how to justify parents’ obligations to support children. Other arguments justifying a child’s right to support might work equally well here but also face similar challenges when specifying the stringency of the right.


28. See, e.g., Two Treatises on Government, II.5.

29. Ibid., I.9, sec. 93.

30. Ibid., II.6, sec. 65. See also the splendid discussion at Simmons, Lockean Theory, pp. 206–9.

31. If, again, the parents’ duties to support children target not just material well-being but enhancing the children’s available range of functionings, that would only affect the form and extent—but not the existence—of such duties, and so preserve the core idea of the Boxill and Sher argument.

32. My thanks to John Simmons for pointing out these objections.
a right to support against their parents and sketched how the Boxill/Sher argument might then proceed. If there is no natural duty to support children or if children have no rights to any level of parental support, then any Boxill-and-Sher-style argument would fail.\(^3\)

The second objection stipulates to a natural duty to support children or stipulates to children’s rights to some parental support, but says that the child’s survival suffices to satisfy either consideration. Consequently any living child would have no claim against persons who transgressed her parents. Indeed, it would then seem the only way a child could have a claim is if she were to die from malnutrition or disease that might arguably have been prevented had the parents had access to the compensation they were wrongly denied. Determining the appropriate level of compensation in such cases would be difficult; it would be a function of the value of a child’s lost life. The central idea of the Boxill/Sher argument would nevertheless be preserved. If a transgressor’s failure to compensate victims for an earlier wrong is plausibly a factor in the death of a child later born to the victims, nonidentity worries would not undermine the notion that there is a separate additional wrong against the child in having failed to compensate the parents for the earlier transgression.

It seems implausible in any case to object that a child’s right to support from parents only extends to bare survival. Otherwise, the claim might be satisfied if the parents were to raise the child in a small cage and provide minimal nourishment and stimulation.\(^4\) On any plausible account, the right to parental support extends to the provision of at least some of the material conditions required for the acquisition and development of a certain range of functionings.

For the purposes of understanding the commitments of the Boxill/Sher argument, let us suppose the child’s right to parental support only entitles her to parental provision of a level of welfare that falls in a range we might call W.\(^5\) W has a lower boundary greater than survival and W has some upper boundary. We need not fix these boundaries with any precision. It is also possible that the upper boundary is the lower

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33. Obviously a natural duty and a natural right are neither the same nor does one necessarily require or entail the other.

34. I am grateful to Andrew Altman for suggestions on this issue.

35. This right need not be infinitely stringent; it might be constrained by other moral considerations. Again, talk of “welfare” should not be construed to privilege any particular account of well-being.
boundary, thus eliminating a range of welfare levels to which the child is equally entitled. We need only note that if a child’s right to parental support entitles her at least to some level of welfare beyond survival, then a transgressor who fails to compensate her parents for an earlier injustice can wrongfully harm the child by denying her access to commodities to which she is entitled.36

To be clear, the child’s relevant rights are not merely portions of the parents’ rights or claims to some of the parents’ wealth. The rights in question are the child’s, as are some of the commodities the parents command. Thus, when the child’s parents suffer from the effects of previous injustice, and when the child endures welfare beneath W, the child’s right to compensation from the transgressor is not the parents’ right to compensation, nor is it a portion of the parents’ right to compensation. It is a new right because there is a new injustice. In this way, the reparation argument can avoid problems about transmission of rights. The parents do not need to transmit rights to compensation to the child since the child’s right to compensation is importantly independent of what the parents may claim.37

If the child’s right has any upper boundary, a transgressor who fails to compensate the parents for an earlier injustice does not thereby wrongfully harm the child whose welfare exceeds that point. Should the parents provide well for the child despite unsatisfied claims to compensation for an earlier injustice, the child would not seem to be entitled to the additional bump in welfare she might enjoy were her parents to receive the compensation they are due.38 The parents would then have the discretion to devote additional commodities to their child or not. It might even be

36. We might also describe parents’ duties to their children as duties to ensure some W that we define in terms of the “moral powers” Rawls describes, such as “the capacity to form, to revise, and rationally to pursue a conception of one’s rational advantage or good” and the “capacity for a sense of justice” (John Rawls, Political Liberalism [New York: Columbia University Press, 1993], p. 19). This approach might complement or substitute for subsistence or functionings-based accounts of the content of parental duties. Since the task here is not to settle the content of those duties but to explore the commitments of the Boxill and Sher argument, I pass over any discussion of the comparative merits of the alternative accounts. My thanks to an Editor of Philosophy & Public Affairs for suggestions on this issue.

37. Thanks to Stephen Kershnar for stressing the importance of this issue.

38. There are further counterfactual worries. The continuing injustice may embolden parents to work harder than they otherwise would have, perhaps rising above the penury they and their family might have otherwise endured. For simplicity’s sake I set these worries aside.
true that they *ought* to devote some additional commodities to their child and bring the child’s welfare beyond the upper boundary, but the child would not be entitled to those additional commodities by right.

Suppose then the child’s welfare at least at one point falls beneath $W$. What does this mean for the status of the child’s claim against the transgressor and any claim that her subsequent children might have? I pursue this issue in the next section.

V. REPARATION ACROSS GENERATIONS

Both Boxill and Sher claim their argument can be repeated for generations born subsequent to victims of the original injustice. The failure to compensate the original victim can wrongfully harm her children, and the failure to compensate those children for the harm of having failed to compensate their parents can also wrongfully harm the children’s children (the grandchildren of the original victim) should they be denied the improvements to welfare they would have enjoyed had their parents been compensated. My concern is with how and whether historic injustice creates compensation claims for descendants of earlier victims, so I pass over worries about the quantity and form of compensation owed across generations and focus instead on how the claims to compensation may be conveyed across generations given fluctuations in well-being within and across generations.

Expanding further on the Boxill/Sher argument, suppose victims of an earlier injustice later have children, and suppose the parents have yet to be compensated by a transgressor for the earlier injustice. Imagine too that at one point the welfare of at least one of those children falls below $W$, which is that level beyond which the child has no claim to any further share of the commodities the parents command. If the child’s welfare later meets or exceeds $W$, what then is the status of the child’s claim to compensation? Does it lapse?

The answer is clearly no. Suppose Jack transgresses Jill at time $T_1$. Later at $T_2$ Jack is guilty of an additional injustice if he has failed to

compensate Jill for the original injustice. At T3 Jill conceives her child, Luke, who is born at T4. If Jack’s continuing failure to compensate Jill unjustly restricts her opportunities to bring Luke’s welfare to W, then Jack is also guilty of an additional compensable injustice against Luke. He denies Jill commodities that rightly belong to Luke. Luke is entitled to parental support to bring him up to W. Some of the compensation Jack owes Jill must be used toward that end.

Suppose though at T5 Jill’s family becomes fabulously wealthy despite their unsatisfied claims against Jack. At that point, if Luke’s rights to parental support do not entitle him to welfare beyond W, and if Luke’s welfare exceeds the range of W at time T5, then Jack’s continued failure to provide Jill the compensation she is due is no further injustice to Luke. Luke is well provided for; his welfare exceeds W. Note that even though Luke’s welfare exceeds W at T5, he still has a claim against Jack. As Sher and Boxill might note, the injustice of failing to compensate Jill at T5 is not the wrong for which Luke can claim compensation. Luke still has a claim against Jack for the injustice of the unrealized welfare gain at T4, when his welfare was beneath W. Luke’s claim for damages for this unrealized improvement in welfare is a function of his rights to parental support. Indeed, Luke’s claim to compensation might only be to as much as was necessary to bring him up to W at T4. It might not even be that much because of mitigating circumstances, the extent of the original injustice against Luke’s mother, and other rival moral considerations.41

The key seems to be this: a child of a victim of injustice can have a claim against his parent’s transgressor if at any time in his childhood his welfare falls beneath W. At any subsequent point in time, the transgressor is guilty of an additional injustice against the child for failing to compensate him for the earlier unjust welfare setback. This identifies a necessary but not sufficient condition for the compensation claim, since, as I discuss later, there are conditions that can defeat or override the child’s claim or otherwise reduce its extent.

The implications for Luke on reaching majority and for subsequent generations are murkier. Suppose when Luke becomes an adult, Jack had never compensated him or his mother, Jill, for any previous injustice. Jack continues his benign neglect; he does not prevent the victims of

41. For related discussions, see Waldron, § IV; and Boxill, “A Lockean Argument for Black Reparations,” pp. 78–79.
his earlier injustice from recovering from their injuries. Does Luke still have a claim against Jack?

The answer may seem to depend on Luke’s current level of welfare. But circumstances have changed: Luke is now an adult whose welfare might have been higher had he received the compensation due him as a child. Drawing on the Boxill/Sher argument, Luke is the victim of the continuing injustice by Jack, namely, the failure to compensate Luke for the earlier injustice he suffered. The relevant compensable wrong here is not a function of the injustice of denying Luke the greater access to commodities he would have were his mother, Jill, now to receive the compensation due her and pass it along in some form to Luke by bequest or gift. At best that would be an inheritance argument for reparation, but that is not the issue here. The Boxill/Sher argument stresses that the relevant compensable wrong is the continued failure to compensate for an earlier wrong. Thus, the only way the adult Luke can have a claim against Jack on this account is if Luke ever had a claim against Jack, which would mean there would have to have been at least one point in Luke’s childhood during which Luke’s welfare fell below W.

The extent of adult Luke’s claim to compensation against Jack would be a function of several factors, among which are (1) the welfare gain Luke was denied when as a child his welfare fell below W, at which point his mother had yet to receive the compensation she was owed, some of which rightfully belonged to Luke; (2) damages to Luke for the welfare setback; and (3) the additional continuing injustice of being denied the compensation he was owed from (1) and (2). Luke’s claim is thus constrained in part by what he could have justifiably claimed as a child.

In this way, the Boxill/Sher argument can be spun down generations. Assuming the transgressor continues to fail to compensate the victim for

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42. It is an important issue in much of Boxill’s piece. See Boxill, “A Lockean Argument for Black Reparations,” pp. 69–85.

43. There is a potential regress problem here. Since any length of time is infinitely divisible, it may seem a victim can claim damages for an infinite number of wrongs and potentially claim an infinite amount of compensation. (Thanks to Andrew Altman for pointing this out.) To respond, first, even if a victim can in principle claim damages for an infinite number of wrongs, that does not necessarily convert into a claim for an infinite amount of compensation. Second, the relevant wrong here is the continued failure to compensate for an earlier wrong(s). The magnitude of that wrong (and the extent of recoverable damages) might very well increase as time elapses, but that does not entail any vicious regress of identifiable wrongs.
the earlier injustice, the children can be due compensation for welfare setbacks consequent to their parents’ unsatisfied compensation claims. The amounts may vary from one generation to the next depending upon the harms each suffered.  

One way reparation claims may lapse is if the welfare of third generation children never falls beneath W, which again is that range of welfare beyond which children have no right to a further share of parents’ resources. Return to the earlier example. Luke is the child of the victim of an earlier injustice at Jack’s hands. Suppose as an adult Luke goes on to become fabulously wealthy and always provides for his children quite well. Luke’s children would not seem to have a claim against Jack for compensation. They could have some such claim were their welfare as children ever to fall below threshold W. Whether they had such a claim—and its extent—would also depend upon whether and how Luke was independently responsible for his children’s needful condition. But they would have no claim against Jack if during their childhood their father, Luke, satisfied all filial duties of support. They may have other claims against Jack based on inheritance; their father is always owed compensation from Jack for the earlier injustice and the continued failure to compensate him. But that is not the sort of claim that is the heart of the Boxill/Sher argument.

VI. COMPOUNDING ANOTHER’S WRONG

Critics may wonder how a victim can blamelessly have children and thereby compound the damages of an earlier and continuing injustice. It may seem that the transgressor cannot be held accountable for children he did not conceive. The victim brings such needful persons into the world, so the transgressor can be guilty of no new injustice to the children.  

44. Here I also do not explore the many challenges involved when the original transgressor has died. But see Boxill’s excellent discussion of related points, at “A Lockean Argument for Black Reparations,” pp. 69–85.

45. Obviously great wealth is not a condition for adequately satisfying filial duties of support, particularly since such duties need not take as their object improvements in children’s material well-being.

46. Again, here I stress that the wrong in question is not an active effort to prevent the victim from recovering on her own from the previous injustice.
One objection to the Boxill/Sher argument could run as follows: needful parents do no wrong to children they conceive and birth, but in some circumstances parents wrongly harm their children by failing to place them for adoption in a better-situated family. Call this the perverse objection to the Boxill/Sher argument. According to the perverse objection, when parents refuse to surrender their needy children to adoption by better-situated families, those parents thereby cancel their transgressor’s liability for their children’s suffering. Among the conditions required for the perverse objection to succeed are (1) there need to be reliable and effective institutions for arranging adoptions; (2) the parents need to know of such institutions; (3) the children’s welfare must fall beneath W with little promise of improvement; and (4) the expected welfare gains to the children were they put into better-situated families must offset the loss of not growing up in their biological families and native communities. Clearly there are also significant related moral concerns about the stability of communities and cultures.

The response to the perverse objection begins by noting the obvious: in many cases the parents would not be poor had they received the compensation they were due for earlier injustices. The perverse objection would not be relevant in most situations since typically parents are better equipped to raise their own children than some surrogate. The perverse objection is all the more perverse since in many cases transgressors actively prevent their victims from recovering from the effects of earlier injustices, but again, that is not the injustice at issue. Even if we pretend that reparation does not involve a claim for compensation for such injustices, often the original injustice and the continuing one of failing to compensate for the earlier one were more than enough to create a culture of poverty, oppression, and dependence.

When a transgressor denies his victims access to the compensation they deserve for an earlier injustice, he might thereby unjustly set back the children’s welfare. The transgressor can easily avoid any such injustice: he need only give his victims as soon as possible the compensation they are due. We can thus set aside the perverse objection for many cases of reparation. When an earlier injustice puts or keeps a victim in penury and her poverty keeps her from amply providing for her children, the transgressor can be responsible for at least some of the harms the children suffer.
The transgressor is not absolved of responsibility if he does not know that his victims have gone on to have children who languish in penury. Since having a family is a common event in human lives, victims can reasonably be expected to go on to have children. The transgressor would seem to be responsible for determining whether children suffer from the effects of his injustice and then taking steps to undo this harm.

Imagine, however, a case of what I shall call *vindictive conception*. The parent in a vindictive conception is the victim of an earlier and continuing injustice and is not prevented from recovering from the effects of the injustice she suffered. She knows that she is due compensation, and she knows that the transgressor could be responsible for some unrealized welfare gains for any children she may have. She does not know that her children will suffer such setbacks, but she hopes to compound the damages for which he will be liable by having children who might then suffer unjust welfare setbacks. Is a transgressor liable for any harms to children in cases of vindictive conception?

It is tempting to claim quickly that the answer must be no. Surely one cannot be held to account for the acts of a victim who not only does not minimize the damages of a transgression but who actively seeks to compound them. On the other hand, the original injustice and the additional continuing injustice of failing to compensate for the earlier injustice might be responsible for the victim’s habits and qualities of character that made such a retributive impulse so appealing. In such a case the transgressor might not escape liability by insisting that his victims vindictively bore children in order to increase the chances of increasing his burden of compensation. Perhaps the transgressor would be liable for the relevant unrealized welfare gains of a child born through vindictive conception as damages consequential to his original and continuing injustice. In such cases the children are the innocent victims of a chain of events that wrongly began with an injustice that could have been remedied immediately or shortly thereafter.

Critics may object that such vindictive impulses should not be rewarded or encouraged. But the gratification vindictive conceivers

47. A similar argument is available to explain why the U.S. government (at least) is partly responsible for the chronically disadvantaged status of some persons of color. See, for instance, Boxill, “A Lockean Argument for Black Reparations,” p. 88; and *Blacks and Social Justice* (Lanham, Md.: Rowman & Littlefield, 1992), chap. 5.
might receive when it turns out their transgressors must pay more for their injustices is not a reason to cancel the transgressor’s liability. This might simply be the price one pays for the original and continuing injustice, and if the extra liability is part of the price of transgression, then it will not matter whether the original injustice is responsible for the victim’s vindictive desires.\footnote{48}

There is, however, one sort of case of vindictive conception where a transgressor’s liability might be offset in whole or in part. This would be a case where a victim has reasonable access to and knowledge of contraceptive methods but where the victim vindictively and knowingly conceives and bears a child into squalid conditions incompatible with a minimally acceptable welfare level. In such restricted and rare cases, the transgressor would not seem to be solely liable for the additional welfare setbacks his victim spitefully created. The victim deliberately, knowingly, and entirely avoidably conceived and birthed a child whose claims to support she knew she would not be able to satisfy. While this might identify a condition where a transgressor’s liability for children’s welfare setbacks is offset in whole or in part, such cases would seem to be so rare as to have little practical impact on the Boxill/Sher argument. Beyond such restricted cases, a transgressor is not automatically absolved of responsibility for an earlier transgression when victims compound the impact of the original injustice. Sometimes the victims’ behavior magnifies the scope of the original injustice to an extent that the original transgressor can be held to account.

VII. WELFARE BASELINES

A child may have a claim to compensation for injustices perpetrated on a parent if the child’s welfare ever falls below a certain minimally acceptable point. The extent of the child’s claim may depend upon many other factors, including the magnitude of the original injustice, the amount of damage the child suffered because of the continued injustice of failing to compensate the parent, and rival potentially mitigating moral considerations. Critics may insist, however, that a transgressor is no more

\footnote{48. My thanks to Andrew Altman and an Editor of *Philosophy & Public Affairs* for suggestions on this issue.}
responsible for the straitened conditions a victim’s child later endures than parents are for the poor choices they made long before their children’s conception.49

One version of this sort of objection focuses on the welfare baseline that is the target of parents’ filial duties. On this objection, that welfare baseline might vary depending upon the parents’ level of wealth. Other things equal, a child of peasant parents in nineteenth-century czarist Russia would seem to have a lower welfare baseline to which she can lay claim from her parents than a child of middle-class parents in the twenty-first-century industrialized world. Similarly, a child born to parents who are victims of some historic injustice might have a claim to a welfare baseline lower than what it would have been had her parents not been previously injured. According to the objection, the original injustice is one of the many circumstances that fix the welfare baseline to which the child has a claim. Because of nonidentity worries, no circumstance that affects the welfare baseline to which a child may lay claim can count as wronging the child.

There are two ways to respond to this objection. The first way restricts its scope. The second denies its premise. Consider then a first response that allows welfare baselines to vary depending upon circumstances predating a child’s conception. A child born after an injustice might only be able to claim a right to parental support up to some welfare level W1. Had the injustice not taken place, we can suppose the child’s parents’ level of wealth would have been higher, and the child might then be able to claim parental support at least up to some level of welfare W2 that is greater than W1. The post-injustice child provided with welfare W1 is not wronged if she would have enjoyed W2 but for the injustice. Granting the critic this much does not undermine the central insight of the Boxill/Sher argument since the issue is whether a transgressor can be responsible for welfare setbacks to children born subsequent to the transgression. The critic would gut the argument only by adding one of two controversial assumptions, either (1) a child’s bare survival satisfies her claims to parental support, or (2) children born to victims of historic injustices always enjoy welfare greater than or equal to the post-injustice, reduced welfare baseline.

49. I am grateful to John Simmons for correspondence and suggestions on the issues and objections I discuss throughout this section.
The second way to respond to the critic’s challenge is to deny that the relevant welfare baselines can vary. We might argue that children are always and everywhere entitled from their parents to some more or less fixed range of welfare that is greater than bare survival. Of course, any given child’s claim to parental support up to that welfare level might be overridden by rival moral considerations, but the extent of the child’s claim need not depend on the parents’ level of wealth. Consequently, there is yet room to mount a reparation argument inspired by Boxill and Sher.

Critics may still worry that the argument threatens to prove too much. If transgressors can be responsible for the distant effects on yet-to-be-conceived children of their victims, then why cannot parents be held to account for the foolish choices they made long before they conceived their children? In both cases, a subsequently born child is denied improvements in welfare to which she might otherwise be entitled. It seems implausible to say that children have rights against parents to the commodities the parents would have been able to provide had the parents made better choices before the children were conceived. So it may seem similarly dubious that a child has rights against a transgressor to the commodities the parents would have had had the transgressor not committed the earlier injustice.

The way to drive a wedge between these two sorts of cases is to revisit the central insight of the Boxill/Sher argument. The compensable injustice is not something that predates the child’s conception. It is the continued current injustice of failing to make up for an earlier injustice, the effects of which harm the child. A transgressor is guilty of an injustice when innocent children of her victims are deprived of commodities to which they are entitled. A future parent is guilty of no injustice if she squanders her wealth long before she conceives her child. She is foolish. She is imprudent. She is not unjust.

We might mount a Lockean argument, however, to show that a previously spendthrift person who later has a child can be guilty of an injustice against the child. Consider the child of someone whose spendthrift youth subsequently contributed to impoverished family circumstances. Suppose this child’s welfare falls beneath the threshold \( W \) with little promise of improvement and the parent refuses to surrender the child when alternative custody arrangements were readily available that would bring the child’s welfare above \( W \). In some such cases, the parent...
may be guilty of some injustice against the child. But note that the injustice is not her previous spendthrift ways but her current continued refusal to surrender custody of the needful child. Obviously the argument would succeed in showing an injustice not on condition that the parent denies her child any welfare improvement, but only if she denies the child the incremental welfare improvement needed to bring the child up to some minimally acceptable welfare threshold.50

Thus a reparations argument inspired by Boxill and Sher is not committed to condemning as unjust the earlier spendthrift ways of persons who become parents much later in life. Such an argument does not thereby prove too much. There is typically a difference between the foolish behavior of parents prior to conceiving children and the unjust depredations of transgressors whose victims later go on to conceive and bear children into straitened circumstances.

VIII. CONCLUSION

Transgressors owe their victims compensation for the harms they have suffered. When those victims have children, in many cases the transgressor commits a new injustice by failing to compensate the original victims for the earlier injustice. If a child has a right to parental support, a transgressor might wrong a child subsequently born to victims of an earlier injustice. The wrong compensable to the child would be the post-conception denial of commodities to which the child has a claim.

George Sher and Bernard Boxill independently argued that we could dodge nonidentity worries by relocating the compensable injustice to something that happens after victims of historic injustice conceive children. I have extended their argument by showing children have valid reparation claims in those cases where a transgressor’s continued failure to compensate for an earlier wrong now unjustly restricts parents’ opportunities to satisfy their children’s claims to support. If children

50. Here I pass over key details needed to apply this argument, such as fixing that welfare threshold and determining what the conditions are for “ready availability” of alternative custody arrangements. And again, any such argument would need to attend to other moral costs, such as the potential welfare disruptions involved in changing custody of a child.
have unsatisfied rights to support from their parents, those children may have compensation claims against someone who originally transgressed their parents.

Admittedly, this discussion has not addressed many important dimensions of reparation, especially determinacy problems and what to do when either the transgressor or a victim’s later conceived child has died. The discussion has also not considered how and whether countervailing moral considerations might condition reparation claims. I have also not resolved how to settle the level of appropriate compensation. This would prove to be a daunting if not insuperable task. Moreover, in some cases where the argument might be relevant (such as government reparations for American slavery and Jim Crow oppression), efforts to apply this argument to defend claims to compensation may also be complicated by challenges for reasonably identifying appropriate claimants and factoring in potential remedial offsets by various government policies and practices.51

However, in most cases of plausible reparation claims, many generations of people have suffered needlessly under the yoke of subjugation and now languish in penury. As Boxill notes, offering some reparation can be an important step toward satisfying the demands of justice and helping people overcome the hardship that is significantly the result of their oppression.52 When we further consider that in most cases of historic injustice the oppressed were not merely ignored but actively prevented from recovering from the transgressions they suffered, it is reasonable to conclude that many people have viable claims to reparation for a litany of injustices. Problems of nonidentity do not defeat that conclusion.

51. Thanks to Stephen Kershnar for correspondence on these issues.