

indictment, which reflected a more accurate description of the crimes alleged against that individual. In this respect, it appears the author would have benefited from more interviews with senior prosecutors and managers. (It is worth noting that with respect to the ICTY, Peskin acknowledges a number of Registry officials, who would have little knowledge of these issues, but few prosecutors and no senior trial attorneys.)

Despite these limitations, Peskin's book makes a significant contribution to our understanding of how international justice works and the challenges that face chief prosecutors. In this sense, it is a groundbreaking work that considerably increases our knowledge of how the process of struggling for cooperation from less than supportive states occurs in practice. It will no doubt make an interesting companion, and a useful contrast, to Carla Del Ponte's recently released book on her experiences regarding state cooperation.¹ Moreover, as Peskin notes in his concluding chapter, practitioners of international justice will continue to face these issues, in even more difficult circumstances, as the International Criminal Court battles for cooperation in environs that have no EU or other visible means of support.

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Advance Access publication: 2 April 2009

doi:10.1093/ijtj/ijp002

Reparations: Interdisciplinary Inquiries, ed. Jon Miller and Rahul Kumar. Oxford University Press, February 2007, 368pp. ISBN: 9780199299911 – hardcover (£58).

Reparations to Africa, Rhoda E. Howard-Hassmann and Anthony P. Lombardo. University of Pennsylvania Press, July 2008, 264pp. ISBN: 9780812241013 – hardcover (\$49.95).

Both of the books reviewed here provide deep analysis regarding the challenges of repairing historical mass crimes and past harmful policies, as well as the limitations and difficulties of such endeavors. They are important contributions not just to the general debate on reparations, but more specifically to the application of these debates to the topic of reparations for Africa.

Reparations: Interdisciplinary Inquiries, a compilation edited by Jon Miller and Rahul Kumar, attempts a comprehensive overview of reparations for historical and mass human rights violations. It encompasses the interesting debate on the search for a political theory that justifies reparations; presents the limitations of the notions behind this search; and provides arguments to help define who might be entitled to reparations, who might be responsible for paying reparations and

¹ Carla Del Ponte, with Chuck Sudetic, *Madame Prosecutor: Confrontations with Humanity's Worst Criminals and the Culture of Impunity* (New York: Other Press, 2009).

what reparations might include. In the more recent *Reparations to Africa*, Rhoda Howard-Hassmann localizes some of these debates and provides an analysis of the different dimensions of what could be a reparations effort for Africa and what such an effort might include and require.

Many of the chapters in *Reparations: Interdisciplinary Inquiries* refer to reparations for historical injustices, such as slavery, colonialism and racial oppression, but some of the arguments presented are also relevant to the debate on reparations for victims of contemporary conflicts and mass violations of human rights. The volume's diversity of authors and positions provides a broad spectrum of arguments that could help identify grounds for the creation of large-scale administrative reparations programs that include a variety of complementary measures. In doing this, the chapters contribute to a move beyond a debate on reparations that, when addressing human rights violations, is generally limited to financial compensation and one-off payments.

It is equally the case that legalistic approaches tend to monopolize discussions on defining and justifying reparations. Reparations policies cannot be grounded solely in the traditional legal arguments used in individual claims, which aim to restore the situation of victims to the *status quo ante*. This 'tort law' approach, while important for individual court-based decisions, is not workable either for mass violations or for determining the aims and scope of administrative programs that try to provide reparations to thousands of victims. It is nevertheless the approach used by international conventions on human rights in regard to the right of victims to effective remedies and often assumed uncritically by many of the authors of both volumes. It is interesting to note the dissenting perspective offered by Pablo de Greiff, who asserts the benefits of administrative programs of reparations which allow for broader accessibility and coverage in contrast to purely judicial decisions.

The volume's discussion on 'how to repair' also provides interesting debate on the definition of reparations policies in the context of mass human rights violations. It provides a way to respond to the frequent debate on the need to differentiate reparations from development measures or access to public services, which people are entitled to as bearers of social and economic rights. By providing a context of acknowledgment to the provision of some specific services, such as healthcare, education, documentation and housing, and prioritizing access for victims, these services could have a reparatory meaning. The question could then be reframed away from whether or not such policies count as reparations, to rather look at under what conditions services could be perceived by victims as reparatory. The way in which the services are provided can deliver the message that society acknowledges the dignity of victims and values them. These ideas are especially useful when viewed in the context of Howard-Hassmann's discussion of reparations to Africa.

Unfortunately, there is insufficient attention paid in Miller and Kumar to concrete examples of implemented reparations policies and their effects on victims and societies. The discussion frequently occurs on an abstract level that does not help to answer many of the questions it raises. The gaps between objectives, intentions

and the concrete reality of reparations policies are usually substantial, and they appear even bigger when one considers that reparations policies have actually been implemented in only a few cases. A more empirical study could help answer whether it is possible to reestablish civic trust between victims and a society of bystanders and perpetrators. In addition, much of *Reparations: Interdisciplinary Inquiries* is based on examples from the English-speaking world, which limits the availability of experiences offered.

The comprehensive way in which Howard-Hassmann addresses reparations to Africa in her volume by that title constitutes a great contribution not only to the debate for reparations for the slave trade, but about the reparations debate in general. She starts her analysis with the influential 2001 World Conference against Racism and develops arguments in favor and against reparations for the slave trade, colonialism, neocolonialism, globalization and postcolonial relations. She considers the responsibility of different actors in each of these issues, including that of western states and other countries involved in the slave trade or postcolonial oppression. In analyzing underdevelopment and poverty on the continent, Howard-Hassmann considers the responsibility of African leaders, in addition to that of international financial institutions and transnational corporations, in these historical injustices; drawing on examples of specific crimes and abuses or discriminating policies that might deserve special attention, such as the genocide against the Herero people in German South-West Africa (present-day Namibia), the exploitation of the people of Congo during the reign of King Leopold II of Belgium and crimes or discrimination committed during the independence struggles in Algeria and Uganda.

The author portrays very well the degree of frustration that many Africans harbor against the West, which is reflected in a section on voices from Africa. To date, the struggle for reparations to Africa has been neither politically easy nor likely. The West is reluctant even to acknowledge responsibility for the slave trade or colonialism, fearing that acknowledgment will bring with it the obligation to repair. This narrow reliance on western legal norms misses, however, that the very act of acknowledgement and expression of regret could in fact have great symbolic value, lessening the demand for reparations, affirming the dignity of past and present victims and greatly enhancing the relationship between these states and their African counterparts. Instead, traditional colonial powers have chosen to retain a focus on development aid rather than on reparations, perpetuating a relationship where resources are contributed on a voluntary basis and where the nature of the aid and granting conditions remain in the control of the grantor and do not touch on larger questions of wrongdoing.

The two books together provide interesting reflections on the normative goals of a reparations effort for historical injustices and mass human rights violations derived from conflict, as well as the possible elements of such a process and how to define them. It is especially interesting for the case of reparations to Africa, where effort is needed to find common ground for a debate about what is expected by all parties and what a discussion about reparations should include.

Generally, countries that attempt to come to terms with past abuses do not start by implementing reparations but rather by uncovering what happened. The demand for truth comes first, especially in the context of crimes that have been denied for years. In many cases, the work of a truth commission provides the political will needed to engage in a process of reparations. An undeniable truth usually provokes indignation and the consensus needed to redirect resources to repairing the harm. The truth also helps societies to recognize the victims, who, in many cases, have been invisible.

For these reasons, Howard-Hassmann argues in favor of a truth commission for Africa, noting that the establishment of the truth about slavery, colonialism and postcolonial injustices in Africa may help to narrow the margin of debate about the extent of the harm caused and the distribution of responsibility. In doing so, she borrows the distinctions made by the South African Truth and Reconciliation Commission between factual or forensic truth, personal or narrative truth, social or dialogic truth and healing or restorative truth. Factual or forensic truth, established by a nonpartisan, representative and well renowned team of scholars could help to find, if not a consensual view, something close to it about slavery, colonialism and postcolonial oppression or discrimination and the consequential poverty and subordination of Africa today. The truth would make it difficult for the various actors to deny their responsibility, including western states and African leaders and elites. The narrative truth, meanwhile, would give a voice to Africans and allow beneficiaries to feel that they are listened to and valued. It also could help expand the conscience of westerners about their obligation to become engaged in reparations and to redress the global imbalance of power. Some truth commissions have used both factual and narrative truth, combining research and victim testimonies, and many have achieved an important degree of acknowledgment of the harm done and set the stage for reparations and some measure of justice.

Defining the Goals of Reparations

In the context of historical oppression or mass violations, reparations are aimed at restoring relationships on the basis of the equal dignity of all involved. They are, in some way, oriented toward the future. It is impossible, however, to restore or establish relationships based on mutual respect without acknowledging past abuses and their consequences in the present.

In addition, setting the stage for more equal relationships can go some way toward providing guarantees of nonrepetition. Reparations should provide the conditions needed for future relationships based on the mutual recognition of dignity, as well as conditions that guarantee not only that the same kind of oppression will not happen again but also that the mindsets and ideology that allowed it to occur are eradicated. The equality of the relationship is thus not just a matter of the material conditions of the formerly oppressed but also of how both groups understand their history. The oppressor group or nation needs to demonstrate its willingness

to question and modify an ideology of pretended superiority that led it to deny the rights and dignity of those oppressed. This implies, among other things, revising that nation's or group's history and how it is taught.

In *Reparations: Interdisciplinary Inquiries*, Glenn Loury argues that finding a common narrative for the nation should be an important component of reparations for slavery and the Jim Crow laws in the United States. He suggests that part of the effort to overcome racial inequalities is developing a nation's sense of shared purpose and common fate. This narrative, according to Loury, cannot be constructed through mere color-blind liberalism, but requires acknowledgment of a history of oppression. He notes, however, the need to address how social and economic policies are implemented and how members of different race groups are treated in these policies. Additionally, he argues that the effects of the policies on the progress or further marginalization of racial groups should be incorporated into their definition and evaluation.

In looking for ideas on how to modify the relationship between oppressed and oppressor, Rajeev Bhargava, in the same volume, offers a notion of the cultural injustices of colonialism and useful proposals on how to overcome them. He affirms the continuity of the cultural legacy of inequality in former colonies even after independence. In addressing this legacy, he suggests changes not only to the way the *oppressed* view themselves but also to how the *oppressors* view themselves, as well as to how both groups see each other and their relationship. This is difficult in a situation where cultural discourse and scholarship is dominated by concepts developed in the West. Bhargava's solution is not just to develop indigenous, nonwestern cultures, which could end up being limited, isolated and marginal, but rather to find ways of using as an advantage the ability of nonwestern scholars to relate to both their indigenous culture and their western knowledge.

An important goal of reparations policies must be to empower victims to take control of their own future, which means that policies should not reinforce dependency. This suggests more than the obvious demand for participation in the definition and implementation of reparations and victims' right to be considered equal partners in future relationships. For victims to have the ability to take their destinies into their own hands, it is important to review how power is shared among them. In the case of reparations to Africa, corrective measures are needed to change patterns of political and economic exclusion that often affects large majorities within African countries. These could guarantee that reparations provide the needed empowerment to those who suffer the most and set the foundation for nonrepetition of abuses in both international and national relations.

Once a clearer understanding of what we seek to achieve through reparations programs is established, the next step is to define the crimes and period covered by a set of reparations policies. This is always a difficult endeavor because the definition of the scope of the process determines in important part the conclusion of the process, as evidenced by many postconflict negotiations concerning the mandate of truth commissions or reparations efforts. With reparations to Africa, Howard-Hassmann distinguishes between slavery, colonialism and the

postcolonial period, presenting arguments in favor and against including each in the mandate of a proposed truth commission for Africa. As in any case, these definitions determine the type of truth sought and the responsibilities of different actors.

The inclusion of the postcolonial period requires covering the present relationship of Africa with the international community. As Howard-Hassmann writes, it is inconsistent to analyze and judge past relationships of oppression without examining existing ones. This option broadens the number of countries and institutions responsible for different forms of oppression and human rights violations, including former colonial powers, current powers (for example, China and its involvement in Darfur), transnational corporations and international financial institutions and African authorities and elites, who have been the most directly responsible for widespread abuses.

In judging abuses committed over such a long period and large area, with so many actors involved, degrees of responsibility are important to distinguish. Howard-Hassmann offers a useful distinction, developed by Douglas Anglin, between core, contributory and circumstantial causes. These distinctions might be helpful in establishing responsibilities in situations that include different actors with different types of participation; from the role of some chiefdoms that could have benefited from the slave trade to the role of postcolonial powers or transnational corporations in current human rights violations committed by African dictators.

In defining the scope of what is to be investigated and repaired, race must be considered a fundamental factor. Both Louri and fellow contributor Andrew Valls, in discussing reparations for African Americans in the United States, argue the necessity of not limiting such efforts to slavery alone and of including the policies of segregation and oppression that followed slavery's abolishment and their contemporary legacies of discrimination and poverty.

In the same volume, Carolyn Benson highlights the need to address the situation of African-American women in efforts to overcome racial inequality. She makes visible a usually hidden or forgotten crime of slavery: the sexual exploitation of women slaves and its links to the current situation of African-American women. This invisibility, she argues, comes from both the civil rights and the feminist movement, as both separated the experience of racial discrimination from that of gender discrimination. Benson argues the need for

a conscious acknowledgment of the social and political barriers that black women face in adequately communicating their experiences, as well as the putting into effect of substantive measures to ensure the collective inclusion of their particular historical subnarratives. (*Reparations: Interdisciplinary inquires*, p. 140)

In the context of reparations to Africa, this might be the only way of being faithful to the universality of the demand for acknowledgment and reparations. In fact, addressing poverty and oppression in Africa without addressing the situation of women would be to limit the scope of the effort to half the continent's population and to perpetuate another form of discrimination.

Forms Reparations Might Take: Beyond a Legalistic or Strictly Compensatory Approach

Finally, a debate about reparations for historical injustices or mass violations, and especially about reparations to Africa, needs to specify how reparations should be defined. This is an area where a legalistic approach based on the civil noncontractual obligation to repair the harm done by restitution or compensation provides more confusion than guidance. In the context of reparations to Africa, the question of how to assess, and thereby address, the harm caused to the continent – or even the degree of undeserved enrichment that might have benefited the colonial powers – is particularly daunting. One interesting orientation is provided by an interviewee in the Howard-Hassmann book, who criticizes the western ‘insurance’ culture, where each harm has a price in money, a notion that seems absurd to other cultures.

If reparations aim to establish relationships based in equality, adherence to some western legal forms seems not only unnecessary but also contradictory. If the effort is about communicating a message of acknowledgment of responsibility for crimes or abuses committed, of accepting responsibility for their consequences and of affirming the equal dignity of Africans and African descendants, it is both irrelevant and insulting to victims to debate the legality, according to national and international law established by western powers during the 17th and 18th centuries, of slavery or of the colonial slave trade. The treatment of slaves is repugnant to the universal conscience today and must be addressed precisely because the legacy of slavery does not allow the establishment of equitable relationships with slave descendants and Africa as a whole.

Howard-Hassmann argues that the rhetoric of reparations might not be the best way to approach the legacy of the crimes that still affect Africans. She is more inclined to base the effort on the economic and social rights of Africans and on the obligation of the rest of the world to ensure basic living conditions for all of humanity. She demands distributive more than restorative justice. The call for a development effort that includes all countries and guarantees accessibility for all Africans to their economic and social rights is compelling. However, if provided only under the rhetoric of aid or distribution, it does not carry the message of acknowledgment of past crimes or the atonement needed to provide reparation to Africa. An effort focused exclusively on the future will not change the historical relationships and mindsets created by the oppression, subjugation or inequality forged over several centuries in both the West and Africa. The rhetoric of reparations is important precisely because of its capacity to address these relationships, not just the situation of the worse-off party. This means that we must change the way westerners and Africans perceive and relate to each other.

A reparations program with such a goal could be future oriented and aim to guarantee accessibility to social and economic rights while also being defined by the duty to repair. The scope of policies and material measures could be the same, but the difference is that it would carry a message of acknowledgment and responsibility, as well as of recognition of the dignity of the recipients. A reparations

effort that is rooted in the need to do justice and to reestablish equal relations is vastly different from one based on the notion of providing aid 'because they are in need and we are fair.' Acknowledgment and atonement on the part of western nations, rather than patronizing 'charity,' could also challenge the inequalities of African descendants living in the West and of immigration policies in general.

Despite such efforts, this form of reparations could be rejected for not providing immediate closure. As both books demonstrate, however, the harm that needs to be repaired is too big for any one approach or monetary sum to 'repair.' This conclusion reinforces the inadequacy of a purely legalistic approach to reparations. As can be seen from the experience of countries that have embarked upon reparations programs for victims of mass human rights violations, these are debts that are not settled with one action; they require the continued affirmation and acknowledgment of the dignity of victims in order to achieve their goal of repairing past harm.

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Advance Access publication: 9 May 2009

doi:10.1093/ijtj/ijp007