I. Introduction

Recent years have seen an increase in the number and boldness of calls for international reparations. Symbolically at least, these culminated in 2001. The 2001 United Nations “World Conference against Racism, Racial Discrimination, Xenophobia and Related Intolerance” in Durban, South Africa, generated a reparations demand by African states against European and North American states for the “crimes against humanity” of African colonialism and the slave trade. In this essay, we develop and defend an approach to theorizing reparations claims, including those asserted in Durban. While our focus is on international reparations, our approach has implications also for the analysis of domestic reparations claims.

Our approach is Rawlsian. This will strike many readers as peculiar. In his only work on international justice, *The Law of Peoples*, Rawls does not discuss reparations claims or reparative justice issues. With respect to correcting future injustices, he discusses only the principles governing just war. With respect to present reparations claims arising out of past injustices, he says nothing. He does articulate and defend a duty of assistance owed by all decent peoples to all “burdened societies” unable through no fault of their own to sustain themselves as well-ordered peoples. But this duty, which surely obligates European and North American states to provide substantial assistance to most African states, is forward-looking and distributive in nature. It is owed by all decent peoples, not just those guilty of historical wrongdoing, and it is owed to all burdened societies, not just those burdened through historical injustice. It is triggered not by a backward-looking concern to correct past injustices, but rather by the forward-looking distributive concern to realize a just society of peoples.

For some, Rawls’s failure to discuss reparations claims or reparative justice issues is simply symptomatic of a more general failure on his part to take seriously the deeply historical nature of justice. In *A Theory of Justice* Rawls affirmed principles of distributive justice surely advantageous to Blacks over and against the status quo they then faced. But he did not address the issue of reparations for the historical injustices of American slavery and Jim Crow. Indeed, he gave the impression that these historical injustices were relevant, as a matter of political morality, only insofar as they constituted a causal root of existing distributive injustice. Once distributive justice was secured, they would be of only historical interest. Similarly, in *The Law of Peoples* Rawls's failure to discuss reparations claims or reparative justice issues is simply symptomatic of a more general failure on his part to take seriously the deeply historical nature of justice.
of Peoples Rawls affirms principles of international distributive justice surely advantageous to the “burdened societies” of the global South and East over and against the status quo they currently face. But he does not address the issue of reparations for the historical injustices of conquest, colonization, the slave trade and so on. Indeed, he gives the impression that these are relevant, as a matter of political morality, only insofar as they constitute a causal root of existing distributive injustice within the international order. Once international distributive justice is secured, which for Rawls means once all peoples are well-ordered as either decent constitutional republics or liberal democracies and free and fair trade is the norm, then the familiar litany of historical international injustices will be of only historical interest. The charge, then, is that Rawls’s conception of justice is ahistorical in all the wrong ways.

We are not persuaded. In this essay we undertake to develop and defend a Rawlsian approach to theorizing reparations claims tied to past international injustices. We hope to shed light both on Rawls’s failure to address such claims head on in The Law of Peoples and on ongoing debates over international reparations claims. We hope also to contribute to the critical assessment of The Law of Peoples.

In a recent essay defending Rawls’s position on global economic justice, Samuel Freeman remarks that we must be careful not to assess Rawls’s rejection of a global difference principle against the global distributive order as we find it. Instead, we should project it onto an order not yet realized, one in which duties of assistance have been fulfilled and all necessary reparations have been made.3 We think this is correct. But we also think it of the first importance to get clear on just what it means to speak of necessary reparations being made above and beyond fulfilling duties of assistance. This is, as it happens, no easy task.

We proceed as follows. In the next section we discuss the nature of reparative justice generally and the mix of backward- and forward-looking considerations relevant to the adjudication of any reparative justice claim. In the following section we develop a principled basis for a tripartite taxonomy of reparative justice claims. This taxonomy sorts reparative justice claims according to key structural features of the historical injustices from which they arise. These features determine what we call the field of judgment for reparative justice claims. In the final section, we bring our analysis of reparative justice claims to bear on Rawls’s The Law of Peoples and explain its implications for international reparations claims.

II. Reparations and Justice

Political philosophers traditionally distinguish between distributive and corrective justice. Distributive justice concerns the basic distribution of rights and responsibilities, benefits and burdens, resources and obligations within a just society. Since this distribution will be effected through the rules constituting basic social institutions, the political philosopher’s task is to

---

identify the substantive principles constraining the choice of such rules, not to determine literally
who gets what, for that will be determined by what individuals do, what moves they make and so
on, under the rules. The general aim of distributive justice is to secure a determinate social order
the basic rules of which situate and empower each person just as she or he ought to be.
Distributive justice is therefore generally if not exclusively forward-looking.

Corrective justice concerns the problem of noncompliance with the rules constituting a
distributively just social order. Thus, if a rule securing persons in personal private property is
among the rules of a distributively just social order, then corrective justice concerns the problem
of theft. The general aim of corrective justice is to return to the status quo prior to the instance
of noncompliance. Corrective justice is therefore generally if not exclusively backward-
looking.

Like corrective justice, reparative justice is unavoidably backward-looking, at least to
some degree. It presupposes and is responsive to a past wrong or injustice. But like distributive
justice, reparative justice is also unavoidably forward-looking, at least to some degree. It seeks
the repair of moral relationships ingredient in and central to a shared and just future.

Reparative justice is like punitive justice in the sense that it unavoidably looks both
backward and forward. Punitive justice concerns the collective imposition of punishment or
hard treatment on wrongdoers in response to their wrongdoings. And as the punishment
literature amply demonstrates, neither backward- nor forward-looking considerations can be
fully excluded from an adequate account of punitive justice. But reparative justice is not
punitive justice. While reparations claims are responsive to past wrongdoing or injustice, they
are not punitive claims. The African nations that called on European and North American
nations to make reparations for colonialism and the slave trade at the U.N. Conference in Durban
were not calling for punishment. They were calling on European and North American nations to
take responsibility for those injustices and to undertake to repair their relationship to African
nations. Unlike punitive claims, which are made in the name of the community, reparations
claims are made in the name of victims and against their wrongdoers for the sake of their
relationship. The community might facilitate reparations, but ultimately reparations concern the
relationship between wrongdoer and victim, not wrongdoer and the community at large. The
aim is to repair the moral and material damage done by a particular wrong or injustice.

Since reparative claims are not punitive, it is tempting to think that they are purely
compensatory in nature, asserting only a claim to compensation for damage inflicted or harm
suffered. But while reparations claims typically include a compensatory element, they are not
predicated simply on the suffering of some harm or loss. They are predicated on wrongdoing or
injustice. They give rise to compensatory demands to the extent that the wrongdoing itself
imposed a harm or loss and compensation is necessary or conducive to making amends and
restoring justice between the parties. But it is the wrong that is fundamental. This makes
reparative claims different from other sorts of purely compensatory claims. Consider a
compensatory claim made against a collective insurance scheme for losses incurred as a result of
a hurricane, or against a driver who non-negligently causes harm to others under a no-fault
liability regime. Here the claims are predicated simply on the harms or losses suffered. And while they are backward-looking vis a vis the harm or loss, their normative force is a function of whether the insurance scheme or no-fault liability regime is distributively just as an institutional distribution of harms or losses suffered regardless of wrongdoing. Unlike purely compensatory claims of this sort, the normative force of reparative claims is always a function of backward-looking corrective considerations tied to the underlying wrong. Harms or losses without wrongs do not generate reparative claims. The distribution of liability for them is fundamentally a matter of forward-looking considerations of distributive justice.

Even when reparative claims demand compensation, as they often do, they never demand only compensation. Compensation alone is never sufficient to satisfy a reparative claim. An apology or some further reparative act is always required. Reparative justice aims not at a just distribution of the costs of various harms or losses. It aims rather at the repair of relationships torn by wrongdoing or injustice. Indeed, as a response to a reparative justice claim, mere compensation can be offensive, constituting either a refusal to recognize wrongdoing or an assertion that while the victim might have been harmed, she was not wronged.4

Though reparative claims are not punitive in nature, they do share with punitive justice an emphasis on the public recognition of past wrongdoing or injustice. Though they are not purely compensatory in nature, being triggered by wrongs or injustice and not merely harms, they do typically demand compensation. Reparative claims are distinctive in another regard. They impose demands on the victims in whose name they are made. Since the repair of a moral relationship is not something wrongdoers can effect on their own, reparative justice demands of victims a willingness to venture forgiveness or at least reconciliation in response to a wrongdoer’s reparative efforts at making amends.

The Janus-faced nature of reparative justice, at once looking both backward and forward, is no doubt a significant part of the best explanation of both the structure and persistence of disagreements over reparative justice claims. Some theorists take a sort of non-instrumentalist stance and privilege backward-looking considerations, working from what Iris Young dubs a

---

4 When Japan offered monetary compensation without apology for the abuse of Korean “comfort” women in World War II, this offer was turned down by the victims on the grounds that it was itself offensive. For discussion, see Part Three of Roy L. Brooks, ed., When Sorry Isn’t Enough: The Controversy over Apologies and Reparations for Injustice, NYU Press, 1999. On the shortcomings of the “compensation paradigm” generally, see Gerald Gaus, “Does Compensation Restore Equality?” in Rodney Roberts, ed., Injustice and Rectification, Peter Lang Publishing, 2002; T.L. Zutlevics, “Reconciliation, Responsibility, and Apology,” Public Affairs Quarterly, v. 16.1 (2002); Debra Satz, “Reparations and International Injustices: On the Limits of the Compensation Paradigm,” in Rahul Kumar & Jon Miller, eds., Reparations, Oxford University Press, forthcoming (this volume collects essays originally presented at a conference on reparations at Queen’s University, Canada, in 2004; all references to essays from this volume are to the essays as originally presented at the conference).
“liability model.” On this model, reparative claims obligate determinate wrongdoers to repair their relationships with those they wrong. Others take a more instrumentalist stance and privilege forward-looking considerations, working from what Young calls a “social connection model.”

Young develops this model to deal with past structural injustices with respect to which it is not possible to single out a determinate wrongdoer. Such injustices obligate all those who participate in the relevant social structures or practices to take responsibility for insuring that those structures or practices are in fact now just. The focus is not on repairing a particular relationship between wrongdoer and victim, but on repairing a social structure or practice in a more holistic fashion.

The liability and social connection models each have their merits. Yet neither is sufficient as a frame to the full range of reparative justice claims. If we think exclusively from backward-looking considerations within a liability model, we will have a hard time explaining why the sins of, or the wrongs inflicted on, generations long past necessarily give rise to valid reparative claims today. We’ll also have a hard time identifying the compensation owed given the innumerable counterfactuals involved in determining what would be the case now absent some long past wrongdoing (especially if compensation is to be made to persons who would not have existed but for the injustice). And even if we could overcome or get round these difficulties, we’ll still have to consider the forward-looking demands of distributive justice before making any final pronouncement on the backward-looking demands of reparative justice. For it is hard to see how anyone could have a valid reparative justice claim to that which would,
for example, bankrupt a nation or generate substantial distributive injustice. For these and other reasons, thinking from exclusively backward-looking considerations may lead us to conclude that many historical injustices have simply been “superseded.”

On the other hand, if we think exclusively from forward-looking considerations within a social connection model, we’ll have to explain why only those past wrongs causally related to existing distributive injustice call for repair, and how it is that realizing distributive justice today makes amends for specific historical injustices. On an exclusively forward-looking approach to reparative justice, if we realized distributive justice within the United States tomorrow, the historical injustices committed against Blacks and Native Americans would no longer underwrite valid reparative claims; they would be of only historical interest. They would not underwrite valid reparative claims outweighed all things considered by other justice-based demands. Rather, they’d underwrite no such claims at all. But this seems counter-intuitive. Surely past injustices matter simply as past injustices. They generate backward-looking reparative claims even under recently realized conditions of distributive justice.

Given our sense of the implausibility of any purely backward-looking or purely forward-looking approach to reparations, we might be expected to retreat to an ad hoc particularism, taking each claim made in the name of reparative justice on its own terms, weighing and balancing all the relevant considerations uniquely put in play. But we think we can do better. In particular, we think we have a principled framework for thinking about the relationship between the backward- and forward-looking considerations put in play by any reparations claim. It is to this framework that we turn next. We shall then return to Rawls’s *The Law of Peoples* with an eye toward understanding and evaluating its apparently curious failure to discuss international reparations claims at all.

III. The Field of Reparative Justice Judgments

Every reparative justice claim presupposes a past wrong. But not all past wrongs or are alike. And their differences are not simply a function of their gravity or severity. They differ structurally, and this makes a difference when it comes to understanding the reparative claims to which they give rise.

We begin by noting the difference between entitlement (or liability) and desert. Within any rule-governed social practice, whether a game, a domestic polity, or contemporary international relations, the rules determine that to which each participant is entitled (or liable). You are entitled to your salary by virtue of the rules of contract law, the market economy, and so on. You are entitled to vote by virtue of the rules governing citizenship, suffrage, and so on.

---


Your other entitlements will similarly depend on the rules of some social practice in which you participate.

The rules giving rise to entitlements within any social practice will typically track and express the underlying desert- or value-basis of that practice. The rules of soccer ought to make it likely that the team that plays best wins. And the rules of criminal trials ought to make it likely that the guilty are convicted and the innocent acquitted. For a variety of reasons it is rarely possible to design rule-based systems of entitlements so that entitlements perfectly express and track the underlying desert- or value-basis. Sometimes the team that plays best loses. And sometimes the guilty are acquitted and the innocent convicted.

As between entitlements and their desert- or value-basis, it is the latter that is analytically primary. It is for the sake of the latter that the former exists. Normatively, entitlements and their desert- or value-bases operate on different planes. You deserve something, say a particular mode of treatment, just in case you possess some property or attribute in light of which that mode of treatment is, naturally and apart from any system of entitlements, especially appropriate or fitting. Thus, the quickest or most coordinated team deserves praise. But unless it scored more goals, it is not entitled to the prize. And women or Blacks deserve the right to vote. But unless they fulfill the conditions of suffrage, they’re not entitled to it.

To deprive someone of that to which they are entitled is a wrong. If someone takes your salary from you or prevents you from voting you will have suffered an injustice. You will have been denied something to which you were entitled by virtue of the rules governing a social practice in which you were a participant. If the team that scores the most goals is denied the prize, it is done an injustice. Many reparative justice claims arise out of just such entitlement violations. Kuwait’s claims against Iraq for its 1990 invasion arise out of such an entitlement violation. The rules constitutive of the international order as a shared social practice entitled Kuwait to immunity from such an invasive act of external aggression. Kuwait was wronged and Iraq owes Kuwait not just compensation for harms done or losses suffered, but an apology and whatever else is necessary to make amends and repair the torn relationship as a moral relationship of mutual recognition and trust within a rule-governed international order. This is the simplest and most straightforward sort of reparations claim: the entitlement violation.

But many contemporary reparations claims are of a different sort. They are predicated not on some historical violation of a determinate entitlement given by the rules constitutive of an established social practice, but rather on some structural moral failing of those rules taken as a whole and as the basis for a system of entitlements. There are three distinct sorts of failings of interest here. First, an otherwise acceptable system of entitlements may exclude some persons which, according to its manifest and morally acceptable desert- or value-basis, it clearly ought to include. Second, as a whole a system of entitlements may prove indefensible in light of its manifest and morally acceptable desert- or value-basis. Third, as a whole a system of entitlements may be predicated on, may reflect and express, a morally unacceptable desert- or value-basis. Each of these moral failings counts as a wrong or injustice. Yet each is structurally different from the others, and none have the structure of entitlement violations. Still, there is
common ground between the second and third cases just mentioned. Each involves a system of entitlements morally defective as a whole (either because indefensible in light of its manifest and morally acceptable desert- or value-basis or because predicated on an indefensible desert- or value-basis). So, while we identify four kinds of historical injustice in all (including entitlement violations), the latter two may be grouped together because they involve social contexts that are in some sense completely or pervasively unjust. We’ve already discussed entitlement violations, so we must turn now to the remaining three kinds of historical injustice.

The first sort involves an exclusion from or distinction within a system of entitlements (or liabilities). Such exclusions or distinctions can be unjust, morally indefensible, inconsistent or incoherent, if they fail to track, to capture and express, the manifest desert or value basis of the rule-governed social practice. Consider the case of American slavery. In 1810, slaves were denied nothing to which they were entitled by the rules, constitutional, legal or otherwise, constitutive of the American polity. They were treated unjustly of course. But they were not denied that to which they were entitled within the American polity. Rather, they were wrongly excluded from the system of entitlements given by the rules constitutive of the American polity. Their exclusion was a wrong because the manifest desert- or value-basis of the American polity as an institutionalized system of entitlements was then as it is today: the possession of what Rawls calls the two fundamental moral powers. It is by virtue of our possessing these two powers that we think it appropriate to treat one another as free equals when it comes to the cooperative undertaking that is our body politic. The rules constitutive of our institutionalized polity, and thus the system of entitlements they underwrite, should reflect and express this desert- or value-basis. And this they have done, though only partially, imperfectly and with uneven progress to be sure, from the start. But slaves were excluded from this system of entitlements. The moral arbitrariness of their exclusion is evident. Given the desert- or value-basis of the system of entitlements realized by the American polity, they should have been included. This was evident to many Americans, even in 1810. The moral arbitrariness of their exclusion is further highlighted by the fact that there were many Free Blacks in 1810 exercising their legal rights as citizens in the Northern states and elsewhere, thus making “race” a suspect basis for the exclusion of slaves.

We can say of the antebellum United States, then, that it wrongly or unjustly excluded slaves (and as the Civil War approached eventually almost all Blacks) from its institutionalized

---

system of political and legal entitlements (and liabilities). It did not violate the entitlements of slaves or Blacks. Rather, the system of political and legal entitlements failed adequately to express and reflect its manifest desert or value basis. It did not fail completely. The exclusion of Blacks was indefensible. Apart from this exclusion (and similar exclusions, e.g., the exclusion of women from much of political and economic life), the system of entitlements reflected and expressed (imperfectly to be sure) a manifest and morally plausible desert- or value-basis. After entitlement violations, unjust exclusions of this sort constitute our second kind of historical injustice. Our third and fourth kinds concern more complete moral failures of rule governed social practices or systems of entitlement.

The third kind concerns a system of entitlement indefensible in light of its manifest and morally plausible desert basis. Consider the case of legal punishment. Morally culpable persons naturally deserve blame. This is the desert- or value- basis of our institutionalized practice of legal punishment. We have this practice so as collectively to be able to express public condemnation. Whether any person is liable (or “entitled”) to be punished is just a matter of whether they have been found legally guilty according to the rules constitutive of the practice. But whether the practice is itself morally defensible or sound is another matter. That depends on whether we have good reason, first, to affirm the manifest desert- or value-basis of the practice and, second, to think the practice justifiable in light of that desert- or value-basis. Let us suppose we have good reason to affirm the desert- or value-basis of our practice of legal punishment. Do we have good reason to think the practice justifiable in light of that basis? Perhaps not. Legal punishment is more than just the public expression of collective condemnation. It is also the coercive imposition of hard treatment. This is perhaps one way to express condemnation, but it is not the only way. So it must be justified. If it turns out that we have no good or insufficient reasons for this central feature of our practice of legal punishment, then the practice would itself be unjustified, even though its desert- or value-basis is sound. Then, even if we punished only those judged legally guilty according to the rules, so that we violated no liabilities or entitlements, we would still work an injustice by punishing persons, would still wrong them. And we would still wrong them even if they were morally culpable and deserving of public condemnation. We would wrong them by subjecting them to a system of punishment that leaves them liable to more than just public condemnation, that leaves them liable to hard treatment as well, without sufficient reason. Worries of a similar sort might be raised about other rule governed social practices. For any rule-governed social practice may turn out upon critical inquiry to be unjustified, notwithstanding its manifest and morally plausible desert- or value-basis.

A fourth kind of historical injustice arises when rule-governed social practice or system of entitlements lacks a morally plausible desert- or value-basis altogether. This may or may not be evident to anyone participating in or subject to it. All those participating in or subject to it may mistakenly think its desert- or value-basis morally sound. Or they may not think critically about their social practice or system of entitlements at all, except to notice entitlement violations. Nevertheless, without a morally sound desert- or value-basis, an institutionalized system of entitlements (or liabilities) may be morally defective, regardless of the beliefs of those participating in or subject to it. The Aztec practice of human sacrifice was morally defective in
this way. So too was the international order of the 15th and 16th centuries, with its permissive stance toward conquest and colonialism. So too was the globally ubiquitous practice of slavery in its many forms from the ancient world up to the 17th or 18th centuries. In these cases, the problem with the relevant social practice or institutionalized system of entitlements (or liabilities) was not that it failed to track its desert- or value-basis adequately. The problem was its desert- or value-basis. These practices wronged persons (and in the case of conquest and colonization, persons organized as “peoples”) because they failed, systemically, to express or reflect a morally plausible notion of the dignity of persons. It is possible that our present treatment of animals, institutionalized in various ways, similarly lacks a morally plausible desert- or value-basis, since it is, or until rather recently has been, predicated solely on the use and exchange value of animals.

We have then at least four structurally distinct kinds of historical wrongs or injustice, the last two of which share the feature of being thoroughly systemic or complete: (1) straightforward entitlement violations (which may in some cases be widespread, as when a population is forcibly and illegally dispossessed of property or other goods to which it was entitled); (2) exclusions from an institutionalized system of entitlement indefensible in light of the system’s manifest and morally plausible desert- or value-basis; (3) subjection to an institutionalized system of entitlements that is indefensible, even though it has a manifest and morally plausible desert- or value-basis; and (4) subjection to an institutionalized system of entitlements (or liabilities) for which there is no morally defensible desert- or value-basis. Instances of each kind of historical wrong or injustice may give rise to a reparative justice claim. But the structure of the claim in each case — or, to put it another way, the balance of backward-looking and forward-looking considerations, both of which are always in play in any reparative claim — will vary according to the structure of the kind of injustice from which it arises.

With respect to reparative claims arising out of simple entitlement violations, the backward-looking considerations must be given great weight. Exactly how much weight will vary from case to case. But in no case of an entitlement violation will it be insignificant. And in most cases backward-looking considerations will be by far the weightiest considerations in play. In the paradigm case of a reparative justice claim arising out of a simple entitlement violation — say, a typical theft within a system of entitlements not itself distributively unjust to any significant degree — reparative justice will demand a return to the status quo ante. It will demand a return of the stolen property coupled with an apology or some other reparative act undertaken to restore the moral trust and recognition between the parties as participants in the system of entitlement. This is what Young’s liability model gets right.

Of course, no matter how weighty or dominant the backward-looking considerations, forward-looking considerations will always have some weight. They’re never completely irrelevant, not even in the paradigm case just suggested. And it’s always possible they will prove in some case sufficient to undermine the case for a return to the status quo ante rooted in backward-looking considerations. Stolen property may be acquired on good faith many years later by a bona fide purchaser and subsequently held for a length of time sufficient to make reasonable a strong expectation of continued possession on the part not only of the purchaser but
the community at large. Or it may be put to a use which if disrupted would adversely impact economic efficiency or distributive justice to some significant degree. These forward-looking considerations – the utility of protecting expectations or considerations of economic efficiency or distributive justice – may be fairly weighty in particular cases, perhaps even weighty enough to justify a result other than returning to the status quo ante. As with backward-looking considerations, we cannot say in advance how weighty the forward-looking considerations will be with respect to any particular reparative claim arising out of an entitlement violation. Everything will depend on the facts of the case. What we can say is that the maximum possible weight of forward-looking considerations will never be enough to offset the minimum necessary weight given to backward-looking considerations, and in many cases the weight of forward-looking considerations will be negligible.

With respect to reparative claims arising out of straight-forward entitlement violations there is, then, a range of reasons within which judgment must be exercised. The boundaries of this range are defined by the minimum and maximum possible weights to be assigned to both backward- and forward-looking considerations. For reparative claims arising out of entitlement violations, backward-looking considerations are never insubstantial and are often very substantial, while forward-looking considerations are often negligible and only rarely very substantial. Accordingly, there is great pressure to see these claims as requiring a return to a status quo ante or full compensation for harms suffered and to think that they may pass from one generation to the next via a sort of inheritance.

The debates over familiar reparations claims tied to entitlement violations – for example, claims arising out of the Nazi theft of property from Jews, the Iraqi invasion of Kuwait, various illegal political activities undertaken by Latin American governments during the 1970s, the American internment of Japanese citizens during World War II, and so on – reflect this structured relationship between backward- and forward-looking considerations. Of course, each claim is unique and the exact relationship between backward- and forward-looking considerations, and thus what reparative justice demands, will vary from case to case. But in none of these cases does it make sense to say that the backward-looking considerations are insubstantial or negligible and that the only thing of any real importance is realizing distributive justice here and now as everyone moves forward together into the future. In all these cases, the main challenge is to determine just what the weighty backward-looking considerations demand.

Consider now a reparative justice claim of the second kind, one arising out of an indefensible exclusion from an institutionalized system of entitlement, an exclusion indefensible in light of the system’s manifest and morally plausible desert or value basis. We have identified American slavery as our paradigm example here. But there are plenty of examples. A recent case in Atlanta concerning the exclusion of Black police and fire officers from a special pension fund is one, though one which might also be cast as an entitlement violation if one widens the
scope so as to take account of entitlements based on citizenship status. One might also imagine claims of this second kind arising out of allegedly unjust exclusions from important and otherwise morally defensible systems of institutional entitlement within the international order, say indefensible exclusions of well-ordered decent peoples from an institutionalized system of free and fair trade. With respect to this kind of reparative justice claim, backward-looking considerations must be given significant weight. After all, an identifiable party was wronged, even if not by an entitlement violation. But precisely because the wrong was not an entitlement violation, backward-looking considerations may be given less weight than they must minimally be given in the case of a straightforward entitlement violation. Or at least they may be given less weight relative to the relevant forward-looking considerations. Without an entitlement violation, there is neither a straightforward entitlement basis for assessing the compensation needed to make amends and repair the wrong, nor a straightforward entitlement basis for recognizing the transfer of the reparative justice claim from one generation to the next after the last generation of wrongful exclusion. Because the wrong was structural or systemic, its correction must also be structural or systemic, as rightly suggested by Young’s social connection model. This puts the backward-looking demands of reparative justice in direct competition with the preeminenly structural or systemic forward-looking considerations of distributive justice. Because backward-looking considerations yield so little determinate content in cases of this sort, while forward-looking considerations seem so unavoidably significant, there is a temptation to deny that reparative justice claims arise in cases of this sort, to insist that the only thing that matters is moving forward together to realize distributive justice under conditions of mutual trust and recognition.

We think it would be a mistake to yield to this temptation. Injustices of this kind may give rise to valid reparative justice claims. American slaves were not entitled to citizenship and freedom prior to the Reconstruction Amendments. But from 1776 forward they deserved it in light of the manifest and morally plausible desert basis of the American system of entitlements from which they were arbitrarily and inconsistently (though constitutionally) excluded until the Reconstruction Amendments (and legally and illegally excluded in many quarters until the end of Jim Crow). They were done an injustice, and they were done that injustice by the American polity. The fact of this historical injustice, between a wrongdoer and victim, both of whom still stand in a moral relationship, generates a backward-looking demand for repair. Even if Blacks were today fully integrated into a distributively just United States, we think the corporate body politic would still owe an apology and at least a symbolic act of compensation to American Blacks as a matter of reparative justice. This is not an entitlement-based reparations claim on Whites literally inherited by all and only the descendants of slaves (for, say, the value of lost wages). It is instead a group-based claim on the polity as a whole, where the claimant is Blacks as historically constituted through the exclusion of American slavery. The key point here is that while forward-looking considerations weigh more heavily relative to backward-looking considerations in a case of this sort, as compared to a straightforward entitlement violation, cases

10 The story was widely reported. For the National Public Radio account, go to: http://www.npr.org/templates/story/story.php?storyId=5199194
of this sort still give rise to valid reparations claims. Though, of course, the content of claims of this sort will depend on the details of the case at hand.

Consider now reparative justice claims arising out of either our third or fourth kind of historical injustice, subjection to an institutionalized system of entitlement either indefensible notwithstanding its manifest and morally sound desert- or value-basis, or without a morally plausible desert- or value-basis. We’ve given the practice of legal punishment (as hard treatment) in the United States as a possible example of the first case, and current or recent practices regarding the treatment of animals as a possible example of the second case. But, so as to stay within the orbit of international reparations claims, let us focus on reparations claims arising out of slavery and the slave-trade worldwide in the 15th or 16th century, or out of international acts of colonialism and conquest during the same centuries. These were grave historical injustices. But they were neither entitlement violations, nor indefensible exclusions from a system of entitlements otherwise defensible in light of its manifest and morally plausible desert- or value-basis. Instead, in these cases the wrong or injustice done was of either the third or fourth kind, though most likely the fourth.

While entitlements varied from polity to polity, slavery and the slave trade was not uncommon and was legally recognized throughout most of the world during this time, as it had been off and on since ancient times. Those vulnerable to slavery included debtors, criminal offenders, prisoners of war, members of nondominant religious or ethnic groups, women, children, the disabled and so on. While slavery was less common in Europe by the 15th or 16th century, European pagans and Muslims were still vulnerable. Many Irish Catholics were enslaved by the conquering British during the 17th century. Slavery was not uncommon in Africa, with Africans often holding Africans as slaves. And there was a substantial slave trade from Africa eastward to the Middle East and beyond. Slavery was and had long been practiced in Japan, India, China, and pre-Columbian South America. The slow but steady worldwide abolition of slavery began in the 17th century and reached a peak in the 19th. But slavery persisted in Egypt until the latter years of the 19th century and in Saudi Arabia and Mauritania well into the 20th. The institutionalized national and international systems of entitlement during the early modern period simply allowed for slavery. Now, it is possible that in other ways these systems of entitlement evidenced a manifest and morally plausible desert- or value-basis (say, the dignity of persons) in light of which their ubiquitous toleration of slavery was and is indefensible. But it seems to us more likely that, at least in the 15th and 16th centuries and before, the manifest desert- or value-bases of these systems of entitlement were themselves morally defective.

The same point may be made with respect to conquest and colonization within the international order during the early modern centuries. While the international order was not

11 And, of course, slavery exists even today. But today it is always an entitlement violation, since slavery is globally illegal, prohibited by all national systems of law as well as established international law.
devoid of rules giving rise to entitlements (and liabilities), there was no international entitlement to be free of attack, conquest, colonization and so on. No people or state was entitled to this simply as a people or state. All were vulnerable, at least formally. It is possible that this was a systemic failure to reflect and track the manifest and morally plausible desert- or value-basis of the international order. But it seems more likely that the international order was not then predicated on a morally plausible desert- or value-basis (say one tied to the moral status of persons or peoples, or the right to collective self-determination, or some other desert- or value-basis we would today affirm as a morally plausible basis of the system of entitlements constitutive of the international order).

Either way, the wrong or injustice of both slavery and the slave-trade and conquest and colonization in the 15th and 16th centuries (and before) was a systemic wrong or injustice of the most complete sort, neither an entitlement violation, nor an unjust exclusion from an otherwise defensible system of entitlements. In this sense, all were wronged.

Of course, with both slavery and the slave trade and conquest and colonization, the harms generated by those participating or acting under the unjust system of entitlements fell unevenly. Not everyone suffered equally. Some, including much of Africa, suffered much worse than others. Some, including much of Europe and North America, were no doubt advantaged. But reparative justice claims arise out of wrongs, not merely harms. And the wrongs in question here can be understood only as systemic or structural wrongs of the most complete sort.

With respect to reparative justice claims arising out of these kinds of historical injustices, the weight of backward-looking considerations approaches the zero point. Everyone was wronged and no one in particular was the wrongdoer. Of course, there were no doubt entitlement violations and perhaps even indefensible exclusions from systems of entitlement during the 15th and 16th centuries (and surely no shortage of interpersonal immorality). But slavery and the slave-trade, conquest and colonization, were part and parcel of the existing systems of entitlement (and liability) being more or less uniformly applied to everyone (even as it harmed some persons and nations or peoples more than others, and perhaps some not at all).

And so with respect to reparative claims arising out of these kinds of historical injustices, forward-looking considerations dominate. The focus is inevitably on moving forward together to create a distributively just order, whether national or international. But backward-looking considerations cannot be ignored completely. African nations have a reparative claim based on slavery and the slave-trade, or conquest and colonization, in the 15th and 16th century. The harms they suffered at that time were not mere harms or losses unrelated to any wrong or injustice. They were imposed on them not by nature or God, but by humans acting under conditions of systemic injustice. Responding to those harms cannot be merely a matter of securing distributive justice (in the way it would be if the harms had been the result of forces of nature). In both theory and practice, distributive justice must be secured over and against a morally neutral default condition. And this history has not left us with. But the reparative claim to which this history of injustice gives rise is not properly lodged against those nations that managed to benefit from the unjust system of entitlements. It is properly lodged against all those who participated in
and sustained it over the relevant centuries. And the claim cannot be for compensation for the harms suffered, for the harms suffered were not the result of an entitlement violation or an unjust exclusion from a system of entitlement. Nor can it be for an apology for specific acts of wrongdoing or injustice, for the relevant wrongdoing or injustice was systemic. So, though African nations have a reparative claim, backward-looking considerations will play but a negligible role in determining the demands that claim makes on others. Most of the work will be done by forward-looking considerations of distributive justice. Still, it seems correct to say that the world owes African (and likely some Middle Eastern, Asian and South American) nations a public acknowledgment of and some reparative response to the fact that Africa and its peoples were harmed more severely than others by the systemic injustices of slavery and the slave-trade, conquest and colonization, during the 15th and 16th centuries. To deny this, it seems to us, is to give no weight at all to backward-looking considerations and thus to take a too cavalier or dismissive an attitude toward past injustice.

Figure 1 (below) represents the analytic framework we have presented above. It represents what we call the field of reparative justice or reparative justice judgments. A few remarks regarding its interpretation are in order. The field represents the range of permissible weights for and thus relationships between backward- and forward-looking considerations as they arise in different types of reparations claims. The upper boundary of the field of reparative justice indicates, respectively, the maximum and minimum possible weights of backward- and forward-looking considerations. The lower boundary indicates, again respectively, their minimum and maximum possible weights. The field does not represent the exact weight of or relationship between those considerations for any particular reparations claim. It also does not represent any metric for determining what a valid reparations claim is a claim to by way of compensation or reparative act. That must be determined on a case by case basis once the exact weight of and relationship between backward- and forward-looking considerations is determined. On these matters there is no substitute for deliberative judgment. Our point is simply that for all reparative justice claims deliberation is properly bounded by a determinate field of reparative justice. Within that field, neither backward- nor forward-looking considerations are ever completely irrelevant, though in some cases their weight may be negligible. The range of permissible judgments for any particular reparative claim will be determined by structural features of the injustice from which it arises. Finally, we do not claim that the types of injustice we’ve identified exhaust the range of structural differences between historical injustices. There may be other or more fine-grained differences of import.

[INSERT FIGURE 1 HERE]

IV. Rawls and International Reparations

So, what light does all this shed on Rawls’s failure to discuss international reparations issues in *The Law of Peoples*?

Rawls distinguishes between ideal and non-ideal theory, and he structures *The Law of*
Peoples along the line marked by this distinction. The aim of ideal theory is to construct a conception of justice out of a normative interpretation of a given institutional order in light of its desert- or value-basis. This construction is undertaken subject to two assumptions. The first is that if the persons subject to or participating in the institutional order can comply with the demands of justice, whatever they turn out to be, then they will comply. The second is that the material and other general conditions for realizing a just institutional order will be favorable. The conception of justice constructed at the level of ideal theory should underwrite and inform a reasonable hope for a realistic utopia for those subject to or participating in the institutional order as historically given but revisable.

The aim of nonideal theory is to determine the demands of justice, given the conception arrived at within ideal theory but under nonideal conditions of only partial compliance or unfavorable circumstances. That portion of nonideal theory that deals with issues raised by partial compliance with the demands of justice deals, in Rawls’s words:

“...[with] how we are to deal with injustice. It comprises such topics as the theory of punishment, the doctrine of just war, and the justification of the various ways of opposing unjust regimes, ranging from civil disobedience and conscientious objection to militant resistance and revolution. Also included are questions of compensatory justice and of weighing one form of institutional injustice against another. ... [These are] pressing and urgent matters. They are the things we are faced with in everyday life.”

That portion of nonideal theory that deals with issues raised by unfavorable conditions concerns the determination of whether and when such conditions justify a departure from the conception of justice given in ideal theory. So, for example, in A Theory of Justice Rawls discusses the possible justification of a plural voting scheme (within which the less educated get less votes than the more educated) under the unfavorable conditions of a largely uneducated electorate. And in The Law of Peoples he discusses duties of assistance owed to societies unable to constitute themselves as a well-ordered people due to unfavorable conditions. Rawls does not present these duties as part of the law of peoples as given by ideal theory. Instead he presents them as what the law of peoples requires under unfavorable, nonideal conditions.

Rawls does not discuss what the law of peoples requires given the unfavorable conditions of longstanding historical injustice, the asymmetric or disproportionate distribution of harms ingredient in that history, or the animosities and mistrust between groups rooted in these harms. These matters can be set to the side, of course, within ideal theory. But they are not taken up as a matter of nonideal theory. Of course, Rawls was always primarily concerned with ideal theory. But he devotes a third of The Law of Peoples to nonideal theory, and so the omission is striking.


13 Rawls, A Theory of Justice, Section 37.

Is Rawls simply inattentive to historical injustices or their relevance to the demands of international justice within nonideal theory? What are we to make of his failure to address longstanding historical injustice?

The first thing to notice here is that Rawls addresses future violations of the law of peoples (or any system of international law faithful to it). He explicitly takes up just war as a response to unjust violations of the law of peoples. And he both acknowledges the need for additional principles of nonideal theory and says nothing inconsistent with the principles set out in the “Draft Articles on the Responsibility of States for Internationally Wrongful Acts” adopted by the International Law Commission in 2001. These Draft Articles address international reparations. Taken together, these matters arguably cover future injustices of either the entitlement violation variety or the unjust exclusions from a system of entitlement variety. That they cover future entitlement violations should be clear enough. Under the law of peoples (and any system of international law faithful to it), well-ordered peoples are entitled to sovereignty and non-intervention, for example. Hence an invasive act of aggression would violate an entitlement and give rise to an entitlement-based reparative claim, as well as a right to engage in a just war of self-defense. That they cover unjust exclusions is less obvious. But we think just war theory (which must include jus post bello) and the Draft Articles sufficient to reach future injustices of this sort.

Rawls excludes “benevolent absolutisms” from full recognition and respect within a just society of peoples governed by the law of peoples. Suppose he is wrong to do so and that this

---

15 For Rawls’s recognition of the need to supplement his law of peoples with additional principles, see The Law of Peoples, pgs. 36-7. The Draft Articles on state responsibility are available at http://www.un.org/law/ilc/texts/State_responsibility/responsibility_articles(e).pdf.

16 Article 1 states: “Every internationally wrongful act of a State entails the international responsibility of that State.” Article 31 states: “The responsible State is under an obligation to make full reparation for the injury caused by the internationally wrongful act; and injury includes any damage, whether material or moral, caused by the internationally wrongful act of a State.” And Article 33 states “The obligations of the responsible state set out in this Part may be owed to another state, to several States, or to the international community as a whole, depending on the character and content of the international obligation and the circumstances of the breach.” Articles 34 through 37 specify full reparation, which includes restitution or compensation and satisfaction or a reparative act, such as a public apology.

17 “Benevolent absolutisms” honor most human rights, but fail to given subjects influence in political decision-making. They thereby fail to instantiate any degree of reciprocity between ruler and ruled and accordingly fall short of “well-ordered decency.” See Rawls, The Law of Peoples, pg. 63.
exclusion therefore counts as an injustice. Does Rawls offer principles of nonideal theory applicable to this case? Not explicitly. But we can say two things on Rawls’s behalf. First, the Draft Articles proposed by the International Law Commission may be extended to cover cases such as this. Second, in the absence of such an extension, a wrongly excluded polity would have a right to dissent from its exclusion, engage in international civil disobedience, perhaps even militantly resist the international order or engage in revolution – just war – if the stakes were high enough. The use of warfare to correct the injustice would fall under just war theory, and since just war theory covers jus in bello, it would extend to any reparative claims left unresolved after hostilities cease. The point is that Rawls’s law of peoples looks like it covers, at least in a very general way, the necessary ground when it comes to future entitlement violations and unjust exclusions.

But what about the possibility that the law of peoples is itself unjust because predicated on a morally indefensible desert- or value-basis? Well, Rawls can hardly be faulted for failing to contemplate the possibility that his theory of international justice is in fact mistaken so that its instantiation is itself an injustice. Nonideal theory concerns the demands of justice as given by ideal theory but as adjusted to the fact of partial compliance or more generally unfavorable conditions. It does not concern the demands of justice as adjusted for the possibility that the underlying conception of justice given by ideal theory is incorrect.

So Rawls’s law of peoples addresses the problem of future unjust violations of the law of peoples and the entitlements it underwrites. What then are we to make of its failure to address past historical injustices and the harms associated with them? Slavery and the slave-trade? Conquest and colonization? And so on. After all, it is these historical injustices that underwrite the vast majority of the now familiar reparations claims advanced within the international order. Shouldn’t Rawls have addressed these historical injustices within his discussion of nonideal theory?

He should have, and did, albeit indirectly and incompletely. Everything depends on the kind of reparative claim being advanced. Those tied to past entitlement violations (injustices of our first kind) give rise to little theoretical difficulty. They are to be addressed on a case by case basis and their proper resolution will be determined by a deliberative judgment made within the field of reparative judgments delimited by the permissible range of backward- and forward-

---

18 Of course, there are few today who think Rawls’s law of peoples insufficiently inclusive. The main objection, which we reject, is that it is too inclusive, that it wrongly makes space for nonliberal, nondemocratic but otherwise decent constitutional republics. But that is another matter.

19 Reparative justice under the law of peoples and positive international law (e.g., the Draft Articles on State Responsibility) must be developed also so as to capture international wrongs committed by multinational corporations or other non-state international actors. We do not address here how that is best done.
looking considerations for such cases. As a practical political matter, these claims are being addressed through legal and political means around the world. Those tied to past unjust exclusions (injustices of our second kind) and past instances of more complete and systemic injustice (injustices of either our third or fourth kind) present greater theoretical difficulty.

Consider reparative claims arising out of past complete, systemic injustices (either our third or fourth kind), claims ultimately triggered by the asymmetric distribution of harms or losses and benefits or gains under a system of entitlements thoroughly unjust. Given the structure of the underlying injustice, reparative claims of this kind must be settled almost exclusively by forward-looking considerations of distributive justice. Nations disproportionately harmed as a result of these systemic injustices have valid reparative claims. But the claim is not against any particular nation or number of nations. It is against the world or international order as a whole. Further their claim cannot be to any entitlement-based measure of compensation, for no entitlements were violated. Rather, it must be to whatever is needed to secure their full inclusion within a just international order free of any burdens history has left them to bear through no special fault of their own.

Rawls’s duty of assistance answers this claim. It obligates all well-ordered peoples to provide aid to burdened societies sufficient for them to enter a just society of peoples as a well-ordered people free of any burdens our collective history of injustice has left them to bear through no special fault of their own. It does not compensate them for the value of lost resources, wages or other entitlements. Rather, it compensates them by securing for them their place within a distributively just international order. For Rawls, this means securing for them what is effectively the global or international social and economic minimum of well-orderedness, whether as a decent constitutional republic or as a liberal democracy. Of course, for those who reject Rawls’s conception of international distributive justice this may seem inadequate. But then the objection is not to Rawls’s failure to address the historical injustices at the root of familiar international reparations claims. The objection is rather to Rawls’s theory of international distributive justice.

So Rawls can in fact address the issue of familiar historical injustices within the international order. He can do so indirectly, through the duties of assistance as nonideal theory duties tied to the demands of justice under unfavorable conditions, in particular our common history of systemic injustice. But as we said above, his treatment of the matter is incomplete.

First, nowhere does Rawls recognize that there is any backward-looking component to the duty of assistance. The duty targets all burdened societies, not just those burdened through harms arising out of historical injustice. And there is no duty of assistance to those harmed in the past but no longer burdened. In their case only forward-looking considerations are in play. To be sure, the vast majority of existing burdened societies are probably burdened largely through harms arising out of historical injustices of the sort under discussion here. And well-ordered peoples fulfilling their duties of assistance might satisfy the compensatory element of the reparative claim these societies have against the world as a whole. But what of the non-compensatory element of their reparative claim? And what about those polities harmed by past
injustice but no longer burdened? Even if they have no compensatory claim, do they not have a non-compensatory claim to public recognition of the harm they suffered due to injustice?

Because the duty of assistance requires no backward-looking public recognition that past harms were generated by a historically unjust institutional order, fulfilling the duty of assistance cannot satisfy reparative claims. Burdened societies have a valid claim to the public recognition of the fact that the burden they bear, and that others are helping them to throw off, is a harm generated by a historically unjust international order. Indeed, even presently well-ordered peoples harmed by past structural injustice have a valid claim to the public recognition of that aspect of their past (and thus present). Neither has a valid claim to an apology from any one or any polity.

Burdened societies have a claim to the public recognition of the fact that their burdened condition is itself largely the upshot of harms generated under conditions of systemic injustice. Their history is not, after all, a history of being battered about by forces of nature. It is a history of shared interaction with others, a human history of harm and loss under systemic conditions of injustice. And it is for this reason that their being brought to well-orderedness and full inclusion in a just society of peoples is an _erga omnes_ obligation within the law of peoples. That should be acknowledged.

Second, Rawls fails to address the question of whether well-ordered peoples fulfilling their duties of assistance to all burdened societies will prove sufficient to dissolve the mistrust and animosity that currently stains the relationship between typically wealthy well-ordered peoples and the many nations impoverished in no small measure as part of the legacy of slavery and the slave-trade, conquest and colonization, or other injustices of this (third or fourth) kind. There are three reasons for thinking it may not prove sufficient. First, without some public recognition of the fact that what is being lifted is largely the burden of harms generated by a historically unjust institutional order from which others benefitted (though without entitlement violations or unjust exclusions), mutual trust and recognition are not likely to be fully secured within the international order. Second, even if Rawls is right about global distributive justice, so that no people is entitled by distributive justice to more than well-orderedness as a global social-economic minimum, being brought to the level of well-orderedness may not be sufficient to secure mutual trust and recognition between presently burdened societies and the rest of the world. Within an international culture ever more consumerist and materialist, the temptation to think “but for slavery and the slave-trade, conquest and colonization, we would be as rich as the United States” may underwrite enduring mistrust and animosity, even after the United States and other well-ordered peoples fulfill their duties of assistance. Third, given Rawls’s refusal to endorse for the international order what Nozick would have called an “end-state, patterned” theory of distributive justice, states burdened by historical injustices may think that being brought tomorrow into an international system of “free and fair trade” with only that degree of material and human resources necessary to sustain well-orderedness (and no international

---

commitment to anything more than Pareto efficiency within international trade and so forth) condemns them to remaining forever at the bottom end of the wealth ladder within the international order. And this may breed resentment.

The foregoing raises two questions. First, as an empirical matter, are societies presently burdened through harms generated by a global history of injustice likely to remain bitter, mistrustful and resentful even after they have been brought to well-orderedness by other peoples fulfilling their duties of assistance? Second, even if they are, would such bitterness, mistrust, and resentment be reasonable? Only the second question is properly philosophical. Unhappily, we do not have an answer to it (or the space here to answer it).

This brings us to the reparative claims arising out of past injustice that present the greatest difficulty for Rawls. As we’ve seen, past entitlement violations present little difficulty. And past injustices tied to complete systemic failures of historical systems of entitlement can be addressed properly through the duty of assistance, supplemented by some recognition of the fact that backward-looking considerations are not without any weight at all in these cases. The difficult case is past unjust exclusions from an otherwise morally defensible system of entitlements.

It is certainly possible that some of the reparations claims advanced today, perhaps even some of the claims coming out of the Durban conference, are of this second sort. Certainly as the current system of entitlements constitutive of the international order continues to take shape and to secure full inclusion, claims will be made regarding past exclusions. As with the history of the United States, it is possible that the international order will steadily realize an ever more inclusive and complete system of entitlements predicated from the beginning of the undertaking on a manifest and morally plausible desert- or value-basis. This is certainly possible if we suppose that the history of the current international order begins with the familiar post-World War II developments. In this case, as in the case of the United States, there may be unjust exclusions from an otherwise morally defensible system of entitlement. And these are the most difficult reparations claims to address (hence the vexed issue of reparations for American slavery). They pit against one another forward- and backward-looking considerations of potentially nearly equal weight. If there are international reparations claims of this sort, Rawls’s duties of assistance cannot possibly stand as an adequate response to them, even if supplemented by some recognition of the fact that backward-looking considerations are not without any weight. The minimal weight that must be accorded backward looking considerations in these cases demands more. And forward-looking considerations cannot dominate as fully as they can in cases of the third and fourth sort of historical injustice. In cases of this second sort, we have more than simply determinate parties asymmetrically harmed under general conditions of injustice. We have determinate parties that have been wronged by determinate parties, even if the wrong is not an entitlement violation. And repairing this wrong is not simply or even mostly a matter of realizing distributive justice as we look forward to the future. Neither of Young’s models, the liability and the social connection models, adequately captures this complexity.

There are two difficulties here. First, claims of this second kind must be distinguished
from claims of the first and third or fourth kinds. Second, if there are any claims of this second kind, a judgment as to what reparative justice demands must be reached and honored. Current reparations claims arising out of past entitlement violations or past injustices of our third or fourth kinds will likely prove amenable to resolution on an ad hoc basis through informal international political processes. But those arising out of injustice of our second kind are likely to prove less tractable. We suspect the need for some more formalized international institutional mechanism for adjudicating impartially such claims, perhaps along lines of what the ILC Draft Articles suggest for the resolution of future claims arising out of entitlement violations.

At the very least, given our present legacy and diversity of historical injustices, whether of the second, third, or fourth kinds on our taxonomy, it is morally incumbent on all well-ordered peoples to fully and promptly satisfy their duties of assistance, while giving full public recognition to that historical legacy.

V. Conclusion

There are at least four kinds of potentially valid claims to reparations corresponding to found distinct kinds of wrongs subject to reparative justice. The different kinds of wrongs underwrite differences in the possible weights given to and normative relations between the backward- and forward-looking considerations relevant to determining what is required to effect appropriate repair in any given case. (See Figure 1 above.) Once these differences are noticed, it is easier to understand Rawls’s failure to discuss in *The Law of Peoples* international reparations claims explicitly. Rawls’s failure is perhaps a manifestation not of his inattentiveness to history or the historically embedded nature of the struggle for justice but rather of his attentiveness to the fact that not all historical injustices are alike, and that they differ not just in terms of severity or gravity or scope, but also in terms of their underlying structure. History matters, in particular, the history of institutional context.

Once these structural differences between historical injustices and the reparations claims to which they give rise are noticed, Rawls’s position, or at least a Rawlsian position, becomes easier to reconstruct. With respect to what we’ve called the third and fourth kind of reparative justice claims, forward-looking considerations dominate and backward-looking considerations are de minimis. Thus, Rawls’s duties of assistance, as forward-looking duties of distributive justice applicable to the unfavorable conditions of societies burdened by historical injustice, constitute a nearly, though not fully, adequate response to such reparations claims. With respect to what we’ve called entitlement violations, the first kind of reparative justice claim, there is little need to engage in theoretical discussion, and so Rawls’s silence is unobjectionable. It is with respect to what we’ve called unjust exclusions, the second kind of reparative justice claim, that Rawls’s failure to discuss reparations claims in *The Law of Peoples* seems most problematic. Assuming there are such claims, we think the law of peoples must be extended to address them if it is to serve, as we think it can, as a blueprint for a realistic utopia for which we might hold out reasonable hope and work: a just society of peoples, free, independent and cooperating for common ends under conditions of mutual trust and recognition.
February 25, 2006

Jeppe von Platz, University of Tennessee
David A. Reidy, University of Tennessee