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From Reparations for Slavery to International Racial Justice: A Critical Republican Perspective

Abstract: This paper focuses on demands for reparations for colonial slavery and their public reception in France. It argues that this bottom-up, context-sensitive approach to theorising reparations enables us to formulate a critical republican theory of international racial justice. It contrasts the critical republican perspective on reparations with a nation-state centred approach in which reparations activists are accused of threatening the French republic's sense of homogeneity and unity, thus undermining the national narrative on the French identity. It also rejects the liberal egalitarian perspective, which itself rejects reparations in favour of focusing on present disadvantages. In so doing, this paper illustrates how the notion of non-domination offers a superior way of conceptualising global racial injustices compared to more traditional distributive outlooks.

Keywords: Critical republicanism; France; non-domination; racial justice; reparations; slavery

Introduction

This paper aims to defend a critical republican theory of international racial justice by discussing the contemporary reparations debate in France. It argues that reparations demands are valuable in their critical political dimension because they open up discussions about race and France's history of slavery and colonialism, especially based on the knowledge and voices of currently marginalised citizens. As such, and in contrast to the current public perception of reparations claims, reparations have the potential to repair the French *demos*. They also highlight that there is an inherent international dimension to the French polity and national identity.

In this paper, the term 'critical republicanism' primarily refers to Cécile Laborde's view, which builds upon Philip Pettit's republicanism¹ with its specific emphasis on non-domination as denoting independence from arbitrary interference. Laborde mainly contrasts critical republicanism with French 'official' republicanism, which is 'focused on the centralized nation-state and its direct relationship to the individual citizen, and founded on principles of universality and equality.' In Laborde's words, while critical republicanism admits the significance of ideals such as universality and equality, it 'is critical in the sense that it is not an "ideal theory" but a practical philosophy, which

¹ Philip Pettit, *Republicanism: A Theory of Freedom and Government* (Oxford: Clarendon Press, 1997).

takes at its core concern the normative relevance of [...] complex sociological facts.’² This paper argues that a critical republican theory of racial justice can be based upon a bottom-up and context-sensitive approach. In particular, I suggest that the claim for reparations in the French context has led to a conflict of norms, which provides a particularly effective entry point for a normative theorisation of racial justice.

I follow Charles Mills’ conception of ‘racial justice,’ according to which

[r]acial justice is a heuristically useful category because, to a high degree, it tracks the legacy of the unfair global racial structure, established by colonialism and imperialism, white settlement and African slavery, that tendentially privileges whites globally, and that needs to be ‘repaired.’³

Applying this concept of racial justice to the French context highlights two concerns: first, that political philosophy’s favoured ideal ‘distributive paradigm’ of justice lacks the resources to effectively address racial injustice and that a critical republican framework is better suited to this task; and second, that racial injustice is fundamentally international, which challenges ‘official’ republicanism with its focus on the bounded, domestic community.

First, Rawlsian and post-Rawlsian theories of social justice have mainly focused on distributive issues; their prime concern has been designing a general distributive principle to ensure that all members of a given polity have equal access to material and symbolic resources. In the French context, demands for reparations for slavery have not been primarily focused on the transfer or redistribution of economic resources, at either the individual or group level.⁴ Rather, they have specifically assumed the political form of a demand for an inclusive debate on French colonial history and the recognition of the citizens of ‘Régions d’Outre-Mer’ (former slave colonies) as equal partners in the French

2 Cécile Laborde, *Critical Republicanism, The Hijab Controversy and Political Philosophy*, (Oxford: Oxford University Press, 2008), 8-9.

3 Charles W. Mills, ‘Race and Global Justice’, in B. Buckinx, J. Treho-Mathys and T. Waligore (eds.), *Domination and Global Political Justice* (New York and London: Routledge, 2015), 181-206, p. 198.

4 Financial demands were raised in the context of tort law (see below) when it became clear that no national political conversation about reparations would occur. However, even in this context, the financial demands were symbolic rather than really concerned with establishing a realistic proportion between the crime and its compensation: in 2005, the association MIR Martinique asked for 200 billion euros for the crime of slavery committed against the ‘Martiniquais people.’

polity.⁵ Then, what do proponents of reparations actually demand in the French context? Although the definition of reparations remains an open process, they broadly require ‘bringing about effective forms of recognition that probe the links between the history of slavery on the one hand, and contemporary forms of racial discrimination and socio-economic inequality on the other.’⁶ Françoise Vergès, a prominent intellectual committed to reparations and former president of the Comité pour la mémoire et l’histoire de l’esclavage, spoke more specifically of ‘constructing effective public policies: education and research programs, textbooks reforms, [and] documentation centres, that pay close attention to scarred populations.’⁷ In essence, reparations activists in the French context ask that all members’ equal capacity to *participate in the justification* of their structured social context, which has been continuously denied to them due to a history of racialised subordination, be recognised: they ask for justice as discursive non-domination. This is a claim that arguably escapes the Rawlsian distributive framework and is better served by critical republican theory.

Second, the injustices at stake, slavery and the slave trade, are constitutively international injustices; this has two implications for theorising about racial justice in the context of republican theory. The first implication is that it outlines the hypocrisy between the French republic’s universalist rhetoric as based on global emancipatory principles of justice and the particularistic reality of the acquisition of full national citizenship as a racialised process. Slavery, which accompanied the first French colonial empire’s project,⁸ was racially based, and formal emancipation in 1848 only reinforced racial divisions in the old colonies.⁹ Demands for reparations point to these unrecognised forms

5 See § 66 and 67 of the European Commission against Racism and Intolerance’s Monitoring Report on France, published on 1 March 2016:

ECRI observes a feeling of resentment among certain vulnerable groups about the lack of response by the authorities to the question of reparations in respect of the slave trade and France’s colonial past. It understands that the statements made by the President of the Republic in May 2015 do not preclude reparations other than of a strictly financial nature. (...) ECRI recommends that the French authorities carry on the debate further to the statement made by the President of the Republic in May 2015 on the question of reparations other than of a strictly financial nature in respect of the slave trade and France’s colonial past, in consultation with civil society, and to formulate a policy in this connection.

The report mentions ‘the setting up of the Committee for the Memory of Slavery which became, in 2009, the Committee for the Memory and History of Slavery’ as an important measure adopted by the government.

6 Nicola Frith, ‘Saving the Republic: State Nostalgia and Slavery Reparations in Media and Political Discourses’, *Modern and Contemporary France*, 23/2 (2015), 213-232, p. 222.

7 Michel Henry, ‘Ce sont surtout des jeunes qui portent ces questions.’ *Libération*, 24 May 2012, <http://www.liberation.fr/societe/2012/05/24/ce-sont-surtout-des-jeunes-qui-portent-ces-questions_821200> (accessed: 4 December 2016)

8 The French colonisation process occurred in two main phases. The first colonial Empire began in the 17th century and existed until 1814: it comprised Canada and Louisiana, the West Indies and French Guyana. The second colonial Empire began with the conquest of Algeria in 1830 and was concentrated mainly in Africa but later extended to Indochina and the South Pacific.

9 Jean-Luc Bonniol, *La couleur comme maléfice. Une illustration créole de la généalogie des ‘Blancs’ et des ‘Noirs’* (Paris: Albin Michel, 1992).

of injustice, in particular, the ongoing denial of the discrepancy between the French republican polity's universalistic and individualistic myth and its actual racialised historical unfolding. This denial has influenced the definition of the polity itself, the nature and boundaries of the 'people' and its supposedly homogenous and unified national character, which is based on voluntary agreement and legal equality. The second implication of the fundamentally international character of colonial injustices is that the correct 'scale of justice' for the diagnosis and theorisation of such injustices is the 'international' scale – not the global or domestic scale, as I explain in Section 1 below.

In this paper, I claim that a critical republican perspective committed to methodological internationalism¹⁰ allows me to propose an international critical theory of racial justice. And, to do this, I analyse a contextualised case : my further claim is that it is only through contextual analysis that we can understand how international racial injustice operates in practice.

The rest of the paper will unfold in four sections. Section 1 is methodological and discusses critical republicanism and 'methodological internationalism' while the remaining sections focus on the recent demands for reparations for slavery in France and contrasts three interpretative models.

The first model, explored in Section 2, is official nation-state centred republicanism. In this paradigm, demands for reparations for colonial slavery are perceived as deleterious to French national unity; supposedly, an incompatibility exists between the two political requirements of repairing historic injustices on the one hand and sustaining the *demos* on the other – ensuring, or re-establishing, its continuous national identity and internal solidarity. Considering this conflict, it is argued that the *demos* must be prioritised because it is the main normative frame and unit of justice. However, I argue that this perspective assumes an idealised conception of the polity, and in doing so, it *de facto* silences racially dominated agents (whose claims are denied on the basis of the official, colour-blind national narrative) and prevents them from participating in the national conversation on norms of justice.

Section 3 assesses a second model based on a liberal egalitarian perspective that endorses a strict separation between issues of recognition and redistribution.¹¹ According to this perspective, reparations, considered exclusively symbolic gestures, strictly belong to the recognition paradigm while the main divisions within the *demos* pertain to socio-economic inequalities. The objectives of repairing the historic injustice of slavery and unifying the *demos* are viewed as two equally significant but competing and epistemologically distinct objectives

¹⁰ See below, Section 1.

¹¹ Nancy Fraser and Axel Honneth, *Redistribution or recognition?* (New York: Verso, 2003).

of justice. Although *prima facie* appealing, this perspective has several problems. It denies the importance of history for the constitution of identity. It is premised on an ‘Anonymity Axiom’¹², which denies the importance of racial injustice, and solely focuses on the unjust distribution of goods across abstract individuals. Most importantly, it neglects the *political* nature of reparations.

The final section explores a third, critical republican model. From this perspective, commencing a national debate about repairing the historic injustice of slavery is a significant move towards, and an indispensable measure for, constituting the *demos* as a non-domination structure. This perspective argues that the injustice that needs to be repaired, although it has its roots in slavery, is not a strictly historical injustice (i.e. an injustice whose victims and agents have been dead for several generations). Instead, it is an ‘enduring injustice’¹³: it includes the maintenance of a profound and widespread domination structure based on racial distinctions within the polity, stemming from the colonial structure, whose systemic effects in our current social and political organisation have never been addressed either during emancipation processes or after the abolition of slavery. This perspective admits the normative relevance of both the norm of equal participation and the history of continuously asymmetrical relations of racial domination within the *demos*. Importantly, it entails epistemic justice (inclusion of all in the community of knowledge and recognition of one’s status as a knower), thus enabling all members of the French people to share a similar feeling of membership through their common participation in a shared historical narrative and a common conversation about race. The critical republican model, therefore, has the resources to interpret and accommodate the current claim of reparations activists in France, who demand the recognition of the history of slavery and colonialism and their continuing impact on the current *demos*.

Methodology: Critical Republicanism and ‘Methodological Internationalism’

My approach here broadly corresponds to a general non-ideal approach along the lines that have been famously identified by Amartya Sen¹⁴ and James Bohman as a ‘shift to the priority of injustice.’ Both critical republicanism and the focus on racial injustice aim to ‘address the persistent and sometimes unrecognised normality of injustice.’¹⁵ From this perspective, knowing what perfect justice is in an ideal situation is neither necessary to diagnose current injustices nor

12 Glenn Loury, ‘Trans-generational Justice: Compensatory versus Interpretative Approaches’, in Jon Miller and Rahul Kumar (eds.), *Reparations: Interdisciplinary Inquiries* (New York: Oxford University Press, 2007), 87-113, p. 99.

13 Jeff Spinner-Halev, ‘From Historical to Enduring Injustice’, *Political Theory*, 35/5 (2007), 574-597.

14 Amartya Sen, *The Idea of Justice* (Cambridge: Harvard University Press, 2009).

15 James Bohman, ‘Domination, Global Harms and Injustice’, in B. Buckinx, J. Trejo-Mathys and T. Waligore (eds.), (2015), 71-87, p. 72.

sufficient to know how our non-ideal, unjust situation can be moved to the ‘ideally just’ one; rather, in the name of a more modest normative objective, we need to unveil the reality of current injustices given our non-ideal circumstances of politics. Moreover, norms of justice are simply ‘works in progress’ to be tested in experience, and as such, they are susceptible to constant revision.¹⁶

Both critical republicanism and racial injustice derive from a bottom-up, instead of a top-down, process of theorisation which considers the norm actually claimed by historically dominated and ‘normally’ (in normal, usual conditions of public discourse) unheard agents. The main reason our critical theorisation needs to emphasise such agents’ marginalised claims is that they are usually the ones suffering from a denial of their epistemic status as bearers of knowledge. When assessing if and why a situation is unjust, we must be careful not to reproduce situations of domination that deny people communicative or epistemic status. Miranda Fricker argues that a form of injustice that is relatively under-theorised in liberal egalitarian theories of justice is the distinctively epistemic injustice that affects persons situated at the margins of established public spheres through which social meanings are generated in their ‘capacity as knower[s].’ Particularly focusing on epistemically dominated people’s voices has both theoretical and practical consequences: it allows us to identify otherwise invisible forms of injustice and ‘we achieve a better grasp of what is required in practice to operate in a way that works against it.’¹⁷

However, listening to the agents’ normative claims does not imply that we should necessarily endorse these claims. Moreover, marginalised agents may have competing claims: dominated groups are not univocal. Therefore, from a methodological perspective, critical republicanism’s diagnosis and formulation of such injustices requires close collaboration between normative theory on one hand and sociological, juridical and historical empirical analyses on the other. Sociological, legal and historical examination is necessary to explore and expose the reality of the domination actually experienced by actors in different spheres as well as the specific dimension of idealisation in all our normative ideals.¹⁸ In Cécile Laborde’s terms,¹⁹ critical republicanism, if it indicates sustaining the priority of injustice and working toward non-domination, has to test ‘official’ republican norms or ideals against empirical facts to demonstrate how these ideals were genealogically constructed and how they sometimes sociologically

16 Elizabeth Anderson, *The Imperative of Integration* (Princeton: Princeton University Press, 2010), p. 5-7.

17 Miranda Fricker, *Epistemic Injustice* (Oxford: Oxford University Press, 2007), p. 7. On the relation between critical republicanism and epistemic injustice, see James Bohman, ‘Domination, Epistemic Injustice and Republican Epistemology’, *Social Epistemology*, 26/2 (2012), 175-187.

18 Lisa Schwartzman, ‘Abstraction, idealization, and oppression’, *Metaphilosophy*, 37/5 (2006), 565-588; Charles Mills, ‘“Ideal Theory” as Ideology’, *Hypatia*, 20/3 (2005), 165-184.

19 Cécile Laborde (2008).

operate as factors in oppression or exclusion.

Moreover, I suggest that such a critical republican theory leads us to a specific understanding of some global issues that are distinctively ‘international.’ This is different from current dominant paradigms — in particular, from the ‘methodological nationalism’ adopted by the tenants of what Laborde labels ‘official republicanism,’²⁰ as well as from what David Miller refers to as ‘strong cosmopolitanism.’²¹ Following Isabelle Delpla, I propose to name this form of non-individualistic methodological cosmopolitanism ‘methodological internationalism.’²² It implies both that states remain primary agents of international justice (they matter for historical reasons) and that they should *prima facie* be understood as international entities operating within the framework of *international law*. This view retains from methodological nationalism the idea that nation-states are fundamental agents of global justice. However, it agrees with methodological cosmopolitanism as it recognises that states are inherently embedded in an international system of norms. Nation-states are part of an international order that has foreign policy implications: other states, or international institutions and organisations, inevitably influence their internal decisions. More significantly, however, methodological internationalism highlights that *international* circumstances are an essential part of the domestic ‘circumstances of politics’ where we assess which principles of justice should structure our social settings and institutions. Principles of justice always have both national and international implications — there is nothing like a strictly domestic principle of justice. The significance of nation-states in matters of justice can thus be both acknowledged and deeply revised: to be a nation-state means to be an international political body.

Such methodological internationalism has two important epistemic consequences. First, it becomes not only possible but also appropriate to discuss global issues contextually. The meaning and significance of global political problems vary according to the perspective adopted, the public culture and the social norms of the political entity in which they are framed. This suggests that no political issue can simply be envisaged as a domestic issue and injustices in redistribution, recognition or representation always have an international

20 Here, I adopt Laborde’s method of ‘ideological contextualisation’ as a ‘two-way process’ aiming at a denaturalisation of the presuppositions of our own discourse (*Ibid.*, p. 6): analysing the question of reparations in the French context of justification allows me to describe and problematise them *de novo*, without taking for granted their interpretation in Anglo-American liberal political philosophy. According to this perspective, critical republicanism is an alternative to both French ‘official republicanism’ (envisaged as the French ‘public philosophy’ that frames public discourses in France) and egalitarian liberalism.

21 Ulrich Beck, *Power in the Global Age* (Cambridge: Polity Press, 2005); *The Cosmopolitan Vision* (Cambridge: Polity Press, 2006); Thomas W. Pogge, *World Poverty and Human Rights: Cosmopolitan Responsibilities and Reforms* (Cambridge: Polity Press, 2002). See David Miller, *Citizenship and National Identity* (Cambridge: Polity Press, 2002), p. 174. According to Pogge or Miller, strong cosmopolitanism commits to some form of global distributive equality as cosmopolitan morality is the only source of value.

22 Isabelle Delpla, ‘Cosmopolitisme ou internationalisme méthodologique’, *Raisons Politiques*, 54/2 (2014), 87-102.

dimension.²³ Second, such an approach pleads for a dynamic — transitional — self-understanding of political entities. It recognises that even those republican polities, such as France, that view themselves as essentially close-bounded and homogenous communities, have created this representation of themselves in an actively promoted domestic political myth, which involved denying their inherently international character. In official republicanism, our core national identity is supposed to have emerged ‘from within’ the nation rather than primarily from (a constant interaction with) international norms and procedures. Hence, identifying the nation-state as a constitutively international entity could lead us to support the view of the French republic as a more open and pluralist body: it promotes the possibility of an effective change in the self-representation of French national identity. This endeavour is, in contrast to official republicanism, an important challenge for critical republicanism.

For these methodological reasons, I suggest that the effort to prioritise injustices, coupled with a focus on their meaning in specific contexts whose national character is already international, can prove to be a heuristically useful manner of grasping global justice issues. Such contextualised theorisation allows us to develop a better understanding and more precise account of how new forms of injustice emerge from certain socio-historical relations within and across polities and how these are framed in situated languages or grammars that reveal the tension between their supposedly national, and really international, character.

The ‘Official Republican’ Perspective on Reparations

Reparations for colonial slavery have recently been prominent in the French public sphere. The demand for reparations appeared both as part of an international trend, precipitated by the UNESCO World Conference Against Racism in Durban in 2001, where African and Caribbean delegations set the agenda on reparations, and in the national context of the (first) ‘Taubira law’ (2001)²⁴ which recognised slavery and the slave trade as ‘crimes against humanity.’ The activist group Conseil Représentatif des Associations Noires (CRAN) called for a national debate on reparations in 2012 and 2013. Although

23 This is not only true of obviously trans-national problems, such as global warming or financial corruption, but also of seemingly internal issues actually impacted by international regulations, conventions or ‘good-practice’ incitements, such as welfare state policies, education programs, etc.

24 The ‘Taubira Law,’ ‘Loi tendant à la reconnaissance de la traite et de l’esclavage en tant que crime contre l’humanité,’ was passed on 21 May 2001. The first article reads, ‘The French Republic recognises both the transatlantic and Indian Ocean Negro slave trade, on the one hand, and slavery itself, on the other, that were practised from the 15th century, in the Americas, the Caribbean, the Indian Ocean, and Europe against African, Amerindian, Malagasy and Indian populations, as constituting crimes against humanity.’

this was rejected by the French state,²⁵ it was largely publicised in the media; however, it aroused both misunderstanding and opposition.²⁶ Reparations are perceived as an expression of the ‘memory war’²⁷ that has been raging in France since the late 1990s and was particularly virulent in 2005–2006 after the so-called ‘riots’ in the suburbs of Paris. This war is all the more acute because it affects the national identity narrative, in which unity and coherency is perceived to be threatened due to colonial fracture and the possible recognition of a criminal past.

This hostile interpretation of reparations includes considering them the material and judicial dimension of ‘régimes victimo-mémoriels’²⁸ (victim memorial regimes) that aim at recognising the existence, within the French *demos*, of particular identity groups. Reparations are seen as a judicial aspect of identity politics, devoted to claiming the specific collective rights that are due to victimised groups, which conflicts with the universalistic and individualistic legal position of republicanism, in which rights are due to any individual citizen, regardless of his or her psycho-social identity or particular affiliations. According to this perspective, reparations claims undermine the nation’s unity and excite divisions between deliberately constructed, and opposed, heirs of victims and perpetrators of an old crime committed centuries ago in the context of a long-disappeared ideology. The Third Republic definitively abolished slavery in 1848; hence, the current Fifth Republic and its ‘community of citizens’²⁹ cannot be blamed for it.³⁰ Reparations for slavery correspond to the divisive work of self-proclaimed ‘entrepreneurs of memory’³¹ who pretend to represent ethnic minorities but actually try to create these communities by aggregating otherwise heterogeneous individuals through the deliberately produced shared memorial narrative of victimisation. Defending particular interests instead of

25 The election of President François Hollande in 2012 had seemed to promise some change in the political attitudes towards reparations. However, one of his close advisors stated in the journal *Le Monde* ‘Il ne s’agit pas de réparer quoi que ce soit mais de porter notre vision de l’Afrique’ [It is not about repairing anything, but about carrying abroad our vision of Africa] (*Le Monde*, 11 October 2012); and Hollande’s speech of 10 May 2013 reiterated his position about ‘l’impossible réparation. Ce qui a été a été’. [the impossible reparation. What happened, happened.] <<http://www.elysee.fr/declarations/article/intervention-du-president-de-la-republique-a-l-occasion-de-la-journee-nationale-des-memoires-de-la-traite-de-l-esclavage-et-leurs-abolitions/>> (accessed: 4 December 2016)

26 Frith (2015), pp. 213–232.

27 Éric Savarese, *Algérie, la guerre des mémoires* (Paris: Non Lieu, 2007); Benjamin Stora, *La guerre des mémoires. La France face à son passé colonial* (La Tour d’Aigues: Editions de l’Aube, 2007).

28 Johann Michel, *Gouverner les mémoires, Les politiques mémorielles en France* (Paris: PUF, 2010), p. 133 ff.

29 Dominique Schnapper, *La communauté des citoyens* (Paris: Gallimard, 1994).

30 For two particularly representative republican intellectuals (among many) clearly voicing this interpretation, see Pascal Brückner, *La Tyrannie de la repentance*, (Paris: Grasset, 2006) and historian Max Gallo, *Fier d’être Français* (Paris: Fayard, 2006). In the words of the latter, ‘Honteux de notre passé, nous sommes condamnés non seulement à la repentance, mais à nous désagréger, à nous diviser, à capituler, à mourir dans l’aigreur, l’amertume, la haine, (...), nation balkanisée, violente, livrée aux bandes communautaristes’ [Ashamed of our past, we are doomed not only to repentance, but to disintegration, division, surrender, death with bitterness, hatred (...), as a balkanised nation, raped and abandoned to communitarian gangs] (132).

31 Éric Savarese, *La rencontre postcoloniale* (Bellecombes-en-Bauge: Éditions du Croquant, 2014), p. 36.

the common good, they are destructive of national solidarity and produce a communitarian fracture.³²

This interpretation is not unique to France, and it echoes Richard Epstein's position against reparations for slavery in the United States:

The effort to place reparations front and center ignores that time has shifted the locus of our current concerns to a new set of issues that will not be resolved by reliving the horrors of an early generation in some collective or official capacity. We have to live life going forward. We cannot make collective amends for all the wrong in the past. But we can create new and unnecessary hurts by trying to remedy past wrongs. A divisive campaign for reparations will undercut the efforts that we all want to make a stronger, more vital, more productive and more caring nation.³³

Such a position is widely shared in France. It resonates, on the one hand, with a broader fear grounded in a broadly speaking anti-communitarian sentiment — the destruction of the common social fabric. It resonates, on the other hand, with the self-representation of France as the 'motherland of human rights' and land of freedom in which slavery was simply an anomaly, contradictory to the republic, which the logic of republicanism itself had to dissolve — and did dissolve in 1848. From this perspective, the republic is blameless; it is emancipatory, and reparations claims propose partial narratives of 'counter-memories' that are destructive to social cohesion in the name of guilt and repentance.

When it became clear, in the late 2000s, that a national conversation about reparations was being dismissed by both the Right and the Left as profoundly opposed to republicanism's true inclusive nature and potentially destructive of the *demos*, several associations decided to go to court and use the procedures of tort law to push their case. They thought they could find new legal resources to ground the case in the recently passed 'Taubira law,' whose first article declared that slavery and the slave trade were 'crimes against humanity' and were therefore imprescriptible. However, the law was never intended as a normative law to be applied to these crimes; rather, it was only a declaratory law, immediately interpreted as one of several 'memory laws' passed in France since 1998. Therefore, all attempts to use the category of crime against humanity in relation to colonial crimes have been debunked by the Cour de Cassation (Highest Court of Appeals). The latter recently argued in a case referring to the

³² For a detailed analysis, see Pascal Blanchard, Nicolas Bancel and Sandrine Lemaire (eds.), *La Fracture coloniale: la société française au prisme de l'héritage colonial* (Paris: La Découverte, 2006); Nicolas Bancel, Pascal Blanchard, 'Comment en finir avec la fracture coloniale', *Le Monde*, 17 March 2005.

³³ Richard A. Epstein, 'The Case against Black Reparations', *Boston University Law Review*, 84 (2004), p. 1192.

Taubira law that

if the law of 21 May 2001 tends to the recognition of the slave trade and slavery as a crime against humanity, such a legislative provision, whose sole purpose is to recognize a violation of this nature, cannot be endowed with the normative significance attached to the law.³⁴

The Taubira law does not provide any legal ground for reparations: legally useless, it was soon merely perceived as the legal and institutional form of recognising minority memories that were competing with official national history.

Hence, reparation claims can only come to deadlock in the republican legal system. However, the fact that associations (MIR Martinique, CRAN) took this legal path and sought claims for material and financial compensations is used in public discourses to insist that reparations are judiciary and financial in nature and inherently belong to an adversarial and accusatory logic of blame. Moreover, reparations are perceived as being part of a more general 'politicisation of collective memory'³⁵ that can only lead to a fractured republic. Hence, in this nation-state centred republican perspective, such attempts should be silenced to return to a (fantasised) time when the republican ideal was perfectly embodied in the homogeneous French nation. France pictures itself as a self-sustaining polity whose homogeneity, unity and cohesion were achieved before 'France's heroic national identity' started being troubled by 'histories it would rather forget.'³⁶

This nation-state centred republican perspective is based on two main elements. First, the French identity is based on forgetting France's criminal past and denying continued internal divisions and asymmetries between dominant and dominated racialised populations. It is also blind to the deep significance of international norms and legal categories for the construction and meaning of core republican legal concepts, such as the concept of citizenship. In short, it denies the ways in which the French nation-state has been shaped in an international context.

Second, an explicit effort is made to maintain the privilege of narrating the official national history by dominant groups. As Sophie Guérard de Latour reminds us, 'in the republican perspective, the relation of a nation with its own history defines its moral and political identity.'³⁷ Insofar as reparations claims

34 Cour de cassation criminelle, Chambre criminelle, 5 février 2013, 11-85.909.

35 Sophie Guérard de Latour, 'Histoire nationale et minorités en France: une justification néo-républicaine des luttes mémorielles' in S. Guérard de Latour (ed.), *Le Multiculturalisme a-t-il un avenir?* (Paris: Hermann, 2013), p. 279.

36 Nicola Frith (2015), p. 219.

37 Sophie Guérard de Latour (2013), p. 293.

call for a recognition of the racial heritage of the French republic and insist that the narrative of the universal and emancipatory republic can be contested from an epistemological as well as moral perspective, they must be silenced in the name of the protection of the demos. In other words, the correction of epistemic and racial injustices is not a priority for these dominant groups; rather, the priority is the maintenance of an ideal, and official, conception of the French identity. The paradigm of official republicanism, with its emphasis on methodological nationalism, thus remains blind to issues of racial injustice.

Reparations and Distributive Justice

Can an egalitarian theory of distributive justice provide a way out of the deadlock and offer a normative justification of reparations for slavery? Liberal egalitarians argue that we should separate questions of justice (or injustice) from questions of history. The reason one should care about descendants of slaves or heirs of colonised countries (at the global level) is their current level of socio-economic disadvantage compared to descendants of colonisers or former colonising countries (if one finds such a discrepancy). For example, Leif Wenar argues that the reason ‘we do not hear calls for reparations from the Germans for the allied bombing on Dresden,’ for instance, is that they are difficult to justify based on principles of distributive justice. According to Wenar,

we do not hear demands for reparations from these believers because there is little sense that those who could potentially claim reparations under backward-looking principles suffer from an unjust distribution of rights or resources *at present*.³⁸

From this perspective, backward-looking principles have no specific normative weight in a theory of justice: issues of justice are not concerned with the historical causation of certain groups’ current socio-economic disadvantage but only with the present reality of some current disadvantage, regardless of how we arrived at the present unjust situation. Justice requires that the disadvantage be addressed and this can be achieved with forward-looking principles of redistribution. The claim is that backward-looking claims will be rendered redundant once the forward-looking principles of distributive justice have been implemented:

Take some distributive principle (as Nozick said in the Wilt Chamberlain argument, ‘your favorite’). Imagine this favored distributive principle to be instantiated in the world as it is now. Now imagine that reparations beyond the limited principle would require us to dislodge this distribution of perfect justice, so that the world

³⁸ Leif Wenar, ‘Reparations for the Future’, *Journal of Social Philosophy*, 37/3 (2006), 396-405, p. 402.

would become distributively less just. I doubt that many of my fellow theorists would be willing to make that transition. If in America blacks and whites were now perfectly equal in wealth, power, and prospects, you would not insist on reparations for the injustices of slavery. Or, if you favor a difference principle, imagine that such a principle is exactly realized, and that only whites are in the worst-off group. Would you then require that these worst-off white citizens be made still worse off, so as to better the situation of better-off blacks? If not, then you do not believe that such reparative claims have significant force of their own, separate from their overlap with principles of just distribution.³⁹

Neither is slavery *per se* to be repaired nor do we need to worry about the psycho-social identity of the worst-offs, as individuals or groups — in other words, there is nothing like identity injustice *per se*. What matters is ensuring that all members of the polity have equal access to social goods, resources, welfare or capabilities (depending on the ‘X’ that should be made equal).⁴⁰ The socio-economic inequalities that plague the society need to be repaired because it would be impossible to weigh competing claims to preferential treatment among groups that are all equally entitled to claims for historical compensation measures. This, it is argued, is due to the impossibility of tracing causal relations between historic slavery and current disadvantage; furthermore, another reason for this is, if we were to admit that history matters, heirs of mediaeval serfs in the feudal system (or any other descendants of injustice) may also have a claim for the correction of historic injustices. Moreover, given that massive economic disparities exist in the polity today, particularly when considering recent immigrant groups from former colonised countries, how can we weigh competing contemporary claims against these historical claims? Principles of justice, aligned with our well-considered intuitions, require us to wipe the slate clean and start from a *tabula rasa* to ensure that future principles of distribution are just.

Strictly speaking, from the liberal egalitarian perspective, reparations belong to the realm of symbolic recognition and correspond to the institutional acknowledgement that a crime was committed, decades ago, against former slaves. According to Wenar, some room for reparative arguments still exists in such a distributive approach in so far as reparations ‘prepare the soil in which future justice may flourish’⁴¹: they are needed in the form of official apologies, commemorative days (such as May 10th in France since 2006) and change of

39 *Ibid.*, p. 402.

40 See Elizabeth Anderson, ‘What is the Point of Equality?’, *Ethics* 109/2 (1999), 287-337.

41 Wenar (2006), p. 403.

street names to re-establish slave descendants' feeling of dignity and, thereby, ensure the possibility of future respectful relations between different members of the community. Such appeased relations are a necessary condition for distributive justice, that is for every member of the polity to be involved in the implementation of principles of fair distribution of goods and in the stability of the social structure.

Two other arguments lend weight to this approach. The first one is a strategic argument that emphasises that socio-economic difficulties are cross-racial and may help in constructing a shared feeling of membership, rather than creating a racial divide by focusing on race-specific socio-economic disadvantages.⁴² Achieving equality for all is arguably more feasible on the basis of a universalistic argument. Second, insofar as the crime of slavery is considered to be impossible to financially compensate, as one cannot evaluate the appropriate amount of money that could 'repair' an incommensurable crime against individuals, symbolic reparations are arguably the only appropriate response to it. Any other material measure that would pretend to definitely erase the French debt only adds insult to injury.⁴³

Despite these strong arguments, the liberal egalitarian perspective meets three objections. First, its emphasis on forward-looking arguments neglects the importance of history in a theory of justice. History is only considered to be an ancillary science, instrumentally useful to establish that an injustice was committed, with 'objective' evidence (e.g. documents, testimonies). It is not considered as the main vector of a shared sense of identity. However, as Sophie Guérard de Latour emphasises, 'the relation that citizens have with their national past does matter [for questions of justice], insofar as this identity basis is the condition of the value of their political status.'⁴⁴ In the republican tradition, citizenship is not only a matter of formal rights but also of interpersonal status relations: somebody may enjoy civil rights and yet be dominated, that is excluded from citizenship, for subjective as well as intersubjective reasons. From the subjective perspective, the specific identity that is assigned to an individual prevents him or her from experiencing a feeling of shared belonging in the common imaginary representation of the nation. From an intersubjective perspective, inclusion is only effective if it is the object of shared knowledge. One is dominated if s/he does not have the guarantee that s/he will not be submitted to a social situation where arbitrariness prevails. These two perspectives are manifested in an objective structure of juridical institutions that foster a subjective feeling of belonging, and, intersubjectively,

42 William Julius Wilson, *The Bridge Over the Racial Divide* (Berkeley: University of California Press, 1999).

43 Aimé Césaire, *Nègre je suis, Nègre je resterai* (Paris: Albin Michel, 2005).

44 Guérard de Latour (2013), p. 304.

through the explicit recognition of citizens' equal status in the codetermination of their context of justice.

Second, Glenn Loury argues that the principle of colour blindness, or more generally of indifference to differences, corresponds to a 'superficial moral standard' embedded in 'sociological naïveté.'⁴⁵ He considers it to be an expression of the 'Anonymity Axiom' that is posed in social choice theory literature, and pervasive in normative political philosophy, as a near universally imposed constraint on collective decision making. According to this axiom, if we imagine two situations, 'A and B, that differ only in the identities of the people located in the various positions of the social order' and that entail 'the same number of persons living in poverty ... the Anonymity Axiom then requires that a just public decision making process be indifferent between these two states.' Loury argues, 'It follows as an immediate corollary from this requirement that the diminution of racial inequality for its own sake would not be a legitimate social goal.' The racial subordination situation, inherited from slavery and persisting in contemporary manifestations of racial inequalities, is not recognised in this form of universalistic individualism which considers individuals as abstract *a priori* beings instead of as 'products of social relations, and of economic and political institutions.'

The third objection is concerned with the fact that such theorisation is deaf to the actual demands of reparations, their norms, logic and formulation. In other words, it neglects what Nancy Fraser, recently complicating her former binary model, identified as a third paradigm of justice: political participation. According to Fraser, her previous two-dimensional understanding of justice (which contrasted redistribution and recognition) remained blind to a third dimension, 'the political,' 'which concerns the scope of the state's jurisdiction and the decision rules by which it structures contestation (...). Establishing social belonging criteria, and thus determining who can be considered a member, the political dimension of justice specifies the reach of those other dimensions.'⁴⁶ Therefore, the norm that governs the political dimension of justice, 'parity of participation,' encompasses both issues of unequal distribution and misrecognition. The binary approach that places issues of reparations within the recognition paradigm and considers the *demos* only in socio-economic terms, ideally based on colour blindness, remains oblivious to the historically unjust constitution of the divided *demos* itself, thus leading to the political exclusion of some members. This liberal egalitarian framework, therefore, denies associations and individual claimants their actual voice: they

45 Loury (2007), pp. 99-102

46 Nancy Fraser, *Scales of Justice*, (New York: Columbia University Press, 2010), 17.

are asking not only for symbolic measures but also for actions that notably influence the writing and teaching of history, as well as measures which ensure a full citizenship status to people living in ‘Régions d’Outre-Mer.’ In the words of Christiane Taubira in 1999, when she defended the 2001 law at the National Assembly,

recognition of the crime, incitement to research, dissemination of and equal access to knowledge, rehabilitation of places of memory, encouraging meetings and cooperation, respecting and positively valuing languages and cultures, correcting inequalities in land distribution, ensuring an equitable access to resources and rationalisation of economies, are some of the major forms of reparations.⁴⁷

Maintaining a strict separation between symbolic and socio-economic measures amounts to the refusal to consider seriously the voice of racially dominated agents — it denies the ‘profoundly *political* essence of justice.’⁴⁸

Repairing Slavery to Ensure Non-domination: A Critical Republican Perspective

The official republican and liberal egalitarian perspectives present symmetrical normative weaknesses as they both lead to the minimisation or neglect of the voices of racially dominated agents. The nation-state centred, or official, republican public philosophy in France defends a history-based vision of citizenship but insists that the French identity’s official narrative belongs to dominant agents in charge of deciding the relevant boundaries of the ‘people,’ ideally presented as the ahistorical community of voluntarily contracting partners. The very notion that there might be historically inherited racial divisions in the community that need to be addressed is considered to be a deliberate attempt to destroy the unity of the *demos*, and the *demos* is the only legitimate frame of justice. The liberal egalitarian position is more open to the idea that some racial inequalities have been inherited from history; however, in the name of the Anonymity Principle that governs the normative stance on political decisions, it states that questions of history are simply symbolic issues of recognition and those of justice should only be concerned with remedying inequalities of distribution. Regardless of why certain individuals or groups are disadvantaged today, justice requires their condition be made equal to the condition of other members of the polity. To this end, principles of justice should not be based on backward-looking compensatory arguments but on forward-

47 Christiane Taubira, Rapport n° 1378, Assemblée Nationale, 10 February 1999, <<http://www.assemblee-nationale.fr/11/rapports/r1378.asp>> (accessed: 4 December 2016)

48 Forst (2015), p. 90.

looking distributive arguments.

In both cases, reparatory claims are disregarded. In the official republican view, they are considered as emanating from agents concerned with their private interests rather than with the common good — they come from morally illegitimate citizens. In the liberal egalitarian view, they are considered to express confusion between the cause and the nature of current injustices based on the illusion that correcting socio-economic injustices today requires their historical cause to be suppressed, in an implausible attempt to return to a situation when the injustice has not yet been committed. Both theorisations of reparations lead to a denial of their moral and political legitimacy within theories of justice.

However, a critical republican theory of justice can make sense of reparations claims as discourses that aim to diagnose and address current racial injustices within the stratified social structure of the French *demos*, as well as show that these injustices are structurally related to the international and historical crime of slavery. If this is an objective of reparations, it is best understood as an issue of domination rather than an issue of rights. In Philip Pettit's terms, non-domination is at the core of a theory of freedom, alternative to both the negative (as non-interference) and the positive (as self-mastery) conceptions, as the absence of *arbitrary* interference by others and the guarantee of one's capacity to control one's destiny. Cécile Laborde expands on this definition and offers a 'critical republican understanding of *citizenship as non-domination*': citizens are dominated by institutionalised cultural and social norms when they are 'humiliated, stigmatised, marginalised, silenced, indoctrinated, defined by others, and their capacity for (...) democratic voice is either denied or dismissed.'⁴⁹ Following this definition, reparations claims are best understood as claims for the recognition of racialised minorities' democratic voice in the diagnosis of the reality and nature of injustices otherwise invisible in the dominating pattern of French cultural and social norms.

As I argued in Section 1, it should be stressed that our serious consideration of actual demands for reparation does not amount to the assumption that these demands are 'just'; there might be distorted perceptions among the dominated. However, a critical perspective requires one to recognise that the expression of normative demands is not equally distributed in the public sphere; if equal access to the public sphere is a convenient fiction, then impartiality is a methodological error. Hence, the voices and themes of marginalised or dominated citizens should be positively listened to, and their actual demands, when effectively expressed, should be considered with specific attention. This does not imply that such demands should be taken at face value but that a

⁴⁹ Laborde (2008), p. 16.

bottom-up process of theorisation can start from them to assess whether, and why, a particular social situation is unjust.⁵⁰ Rainer Forst's use of the political notion of non-domination in contexts of justice provides an important step for such theorisation. Non-domination requires that 'no political or social relations should exist that cannot be adequately justified toward those subjected to them.' Non-domination is content neutral, and it is enrolled in a procedural theory of justice whose fundamental principle is a 'principle of general and reciprocal justification.' In sum, '[f]undamental justice guarantees all citizens an effective status as justificatory equals.'⁵¹ History provides one yardstick for determining which voices have so far been excluded.

The injustice that reparations activists have identified has two main characteristics: first, it is 'enduring' and second, it is structural. First, the injustice denounced by associations and individual claimants today, which must be the main concern of a non-ideal critical theory of justice for the normative reasons of epistemic justice stated above, is not, strictly speaking, the historic injustice of slavery but what Jeff Spinner-Halev⁵² calls an 'enduring injustice,' which has 'roots in the past' and continues 'to the present day.' Thus, the injustice being denounced is racial injustice. Racial distinctions grounded the slave system; in the 'Black Code' or 'Code Noir,' the legal code that justified slavery and established the status of slaves as property, the words 'black' and 'slave' are used interchangeably to refer to the enslaved population. In France, as is now well documented in the case of the United States,⁵³ emancipation was not followed by a better integration of former slaves into the polity but by the re-enactment of the radical separation between groups of the population on the basis of race. A segregation regime according to colour prejudice was maintained and even reinforced in the French Caribbean islands after emancipation, whereby a 'coloured' person, that is, a person of black descent, regardless of his/her degree of descent or physical appearance, was subjected to a specific administrative regime based on race. The abolition of slavery hardened, rather than softened, the reality and signification of the 'colour line' and the French social hierarchy's racial character.

Second, slavery was a structural crime,⁵⁴ that is, a crime committed at a systematic level by institutional as well as individual actors relying on social

50 Iris Marion Young, 'Communication and the Other: Beyond Deliberative Democracy', in Seyla Benhabib (ed.), *Democracy and Difference* (Princeton, N.J.: Princeton University Press, 1996), 120-35; Melissa Williams, *Voice, Trust and Memory: Marginalized Groups and the Failings of Liberal Representation* (Princeton: Princeton University Press, 1998).

51 Forst (2015), p. 90-92.

52 Spinner-Halev (2007).

53 Bonniol (1992); Cheryl Harris, 'Whiteness as Property', *Harvard Law Review* 106/8 (1993), 1707-1791.

54 Catherine Lu, 'Colonialism as Structural Injustice: Historical Responsibility and Contemporary Redress', *Journal of Political Philosophy*, 19/3 (2011), 261-281.

structural processes, regardless of agents' conscious intentions. Therefore, it produced long-lasting effects of structural inequalities and relations of oppression both during the slave system and after emancipation. Slavery was domestically organised on the basis of the Black Code, but it was also dependent on the international norms that were necessary to implement the slave trade, thus organising mutual profit relations between several states and national or private companies. As Catherine Lu writes,

A structural analysis reveals that the international society of states, in enacting through its rules, customs and practices a colonial international system, bears some historical responsibility for the unjust international social structures that enabled state wrongdoing. In addition, a structural approach identifies the contributory role of structural injustices within colonized societies in the production of some colonial injustices, thus raising questions about responsibility *of and among* colonised peoples.⁵⁵

When France questions its slave past, it cannot do so without considering the multi-level interactions that prevented freedom as non-domination being realised during historical slavery in the colonies, and afterwards in the first and second colonial Empires, in the republican structure of the polity itself and in the international relations between metropolitan France and the former slave colonies after their independence (Haiti, Senegal, etc.). When reparations are claimed today, they are claimed on the basis of a collective wrong that affected polity structure, rather than only on the grounds of the denial of rights or misrecognition that affect specific social groups. Hence, the political and moral legitimacy of reparations can be established on the basis of their capacity to foster a common feeling of commitment towards non-domination. History matters in the construction of a shared feeling of solidarity and belonging as well as a commitment for the common good among all members of a polity. Therefore, it is fundamental that such reparatory claims be publicly heard and defended. If possible, reparations claims ought to be expressed in the public sphere through national conversation, and if not, they should be heard in the courtroom at least in terms of strategic legalism. Hearing reparations claims ensures that all citizens are effectively given justifiable reasons for the current racial domination situation, inherited from a history of slavery, that plagues the polity's coherency and unity.

Moreover, when considered according to this enduring and structural perspective, one can see why it is illusory to try and assess the responsibility for reparations in terms of separated, and opposed, victims and perpetrators.

⁵⁵ *Ibid.*, p. 262-263.

This is the reason tort law is ill-equipped to respond to the crime of racial slavery. Following Catherine Lu's analysis on colonialism, one can state that '[a]cknowledging [racial] injustices as structural injustices generates a "political responsibility" to effect structural reforms that ought to be shared by [French citizens], as well as by the international society of states.'⁵⁶

Slavery was a key element of France's so-called first colonisation process that led to the first colonial Empire (St. Domingue, Guadeloupe, Martinique, Guyana, Louisiana, Senegal, etc.) in the 17th and 18th centuries. Slavery, briefly abolished by the First Republic in 1794, was re-established in 1802 during the First Napoleonic Empire 'in accordance with the laws and regulations prior to 1789.'⁵⁷ The colonies were a republican 'laboratory,'⁵⁸ used for the formulation and testing of several republican concepts and norms of identity. Republican legal theory, with its particular emphasis on the notion of citizenship, has been deeply shaped by the relation between metropolitan France and the French colonies; civic statuses and rights associated with citizenship have been established through differentiation with several minority statuses (colonial subjects, indigenous or native persons, slaves, free coloured persons, Whites, etc.) being defined. Moreover, it is now well known⁵⁹ that none of these civic statuses or techniques of power were unique to France; rather, imitation and adaptation was observed across European (Spanish, Portuguese, British and Dutch) Empires. The whole international order was concerned with race, racial divisions and racial 'civic' hierarchies of status. Although the French people are not correctly conceived as a sovereign national entity *in abstracto*, they have to be conceived as one of the many elements engaged in enacting racial domination, or realising non-domination, in a global relational perspective.

To conclude, the critical republican perspective shows us that reparations for slavery call for a renewed sense of a history-based national polity as an open, transitional entity that is always in the process of reducing domination and expanding inclusion and equality for all minority groups that constitute this polity and claim recognition of their common membership. Moreover, the political order should be conceived as the never achieved, always to be fulfilled, result of our political decisions to reduce domination and include groups within

56 *Ibid.*, p. 264.

57 Law of 20 May 1802 (30 Floreal Year X) re-implementing slavery in French territories.

58 Cécile Vidal (ed.), *Français? La nation en débat entre colonies et métropole, XVIe-XIXe siècle* (Paris: Éditions de l'EHESS, 2014), p. 9. Michel Foucault justly notes that 'one must never forget that colonisation, with its political and juridical technics and weapons, of course transferred European models to other continents, but also had many feedback effects on power mechanisms in the West, on power apparatus, institutions and technics' (Michel Foucault, *Il faut défendre la société* (Paris: Gallimard, 1997), p. 89).

59 Jane Burbank and Frederick Cooper, *Empires in World History, Power and the Politics of Difference* (Princeton: Princeton University Press, 2010); Josep M. Fradera, 'L'esclavage et la logique constitutionnelle des Empires', *Annales. Histoire, sciences sociales* (2008/3), 533-560.

a common narrative of our identity. The *demos* is then deeply transformed from an established status of citizenship into a dynamic process of enduring adjustment. Lastly, reparations demands are an important instrument of racial justice insofar as reparatory claims aim at the deracialisation of social relations by enhancing the epistemic capacity of racial minorities to participate in a conversation about the polity's boundaries and constitution. The Taubira law, in this regard, although legally useless, can prove to be a major instrument of non-domination as it focuses on providing resources that will enable the history of racial slavery and the slave trade to be written. It opens the path towards an important aspect of the much-needed political, structural reforms whose responsibility lies with all those who have been affected by the 'unfair global racial structure,' to borrow Mills' term quoted in the introduction. Therefore, far from threatening the *demos*, reparations demands are valuable in their critical political dimension. They prove to be an important asset of a non-ideal, critical republican theory of justice that is concerned with racial injustices.⁶⁰

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