




Rectification *Versus* Aid: Why the State Owes More to Those it Wrongfully Harms

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Abstract

Are the state's obligations to victims of its own wrongdoing greater than to persons who have suffered from bad luck? Many people endorse an affirmative answer to this question. Call this the *Difference View*. This view can seem arbitrary from the perspective of the victims in question; why should a victim of bad luck, who is just as badly off through no fault of her own, be entitled to less assistance from the state than a victim of state-caused wrongful harm? This paper defends a qualified version of the Difference View, the *Threshold Version of the Difference View*. According to this view, all disadvantaged persons, no matter what the cause of their disadvantage, must be compensated until they reach a minimum threshold of wellbeing; however, among disadvantaged persons above this threshold, full compensation is owed for those who are victims of state wrongdoing, whereas full compensation is not necessarily owed to those who are disadvantaged due to bad luck.

Keywords Wrongful harm · Duties of rectification · Duties of aid · Respect

1 Introduction

What difference does it make to the duties that the state owes to persons if they are victims of the state's wrongdoing as opposed to being victims of other contingencies beyond their control? One view is that the state owes a greater *amount* of support to those persons it has wrongfully harmed and that it must give greater *priority* to compensating them, as compared to persons who have suffered from other forms of bad luck.¹ Let us call this the *Difference View*.² One challenge faced by the Difference View is that it is arbitrary to distinguish in

¹ While being a victim of state wrongdoing is, of course, one form of bad luck, I will henceforth use the term "bad luck" to refer to events beyond a person's control *other than* state wrongdoing.

² This view is discussed by Douglas (2010) and explicitly endorsed by Pogge (1995, 2004). The view that states should prioritise rectification over aid is also implicitly supported by others e.g., Nagel (1997: 315)

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the way that it does between victims of state wrongdoing and victims of bad luck. Consider this comparison:

Jack came to live in the UK with his parents when he was a baby. He and his family were commonwealth citizens of the Windrush Generation. As an adult, Jack was incorrectly deemed to be an illegal immigrant after the government destroyed his family's landing card slips, the only records with which he could prove his status as legally resident. As a result, he has been denied access to work over a significant period of time. This has had a deeply negative impact on his wellbeing.³

John, who suffers from a severe chronic illness, has been unable to access work over a significant period of time due to the challenges posed by his illness. This has had a deeply negative impact on his wellbeing.

According to the Difference View, the state need not provide the same amount of support or give the same priority to supporting John, as it must for Jack. Yet this seems morally arbitrary. Suppose that John has suffered as much as Jack as a result of his difficult circumstances. How can it be reasonable for the state to discriminate between the support it provides for them?

In this paper, I defend a qualified version of the Difference View. It maintains that, when victims lie above a minimum threshold of wellbeing,⁴ the duties the state owes to victims of its own wrongdoing can differ – both in amount and priority – from the duties it owes to victims of bad luck, even if everything else about the victims is the same. However, the state may not discriminate between the support it gives these two classes of victims when they lie below a minimum threshold of wellbeing. I call this qualified version of the Difference View the *Threshold Version of the Difference View*. In Sects. 3 and 4 I draw on hypothetical examples to show that the Threshold Version is intuitively more appealing than alternative views. In Sect. 4.1 I provide reasons for these intuitions via two foundational arguments for the Threshold Version, which both rest on the idea of respect for persons. I begin with a few preliminary clarifications.

2 Preliminaries

Duties of rectification⁵ and duties of aid are both duties of compensation. Note that when I refer to “compensation”, I therefore do not only mean a transfer of a resource to a person

and Nozick (1974: 150–151).

³ The Windrush Scandal left thousands of citizens from the Windrush Generation unable to prove their residential status in the UK. Many were denied re-entry to the UK after travelling abroad for work and holidays. Others were threatened with deportation and held in detention centres; some were deported to countries they had not set foot in since they were very young children (Williams, 2020).

⁴ It does not matter for my discussion whether we should compare or assess people's claims to compensation according to their wellbeing or the resources they possess. Henceforth, for simplicity, I will simply speak of people as being above or below a ‘threshold of wellbeing’.

⁵ There are different ways that we might understand rectificatory compensation. For example, one view is that rectification requires compensation that would restore the victim to the status quo ante. In this paper, when I refer to rectification, I have in mind compensation that makes up for the welfare loss that the victim has experienced as a result of wrongdoing, relative to the counterfactual scenario in which she was not a victim of the wrongdoing in question.

with the intention to make up for a wrong she has suffered. I have in mind a transfer of resources to a person who has suffered from harm (whether as a result of bad luck or the wrongful actions of others).⁶

I will call duties of compensation that the state owes to victims of harm, which it has wrongfully caused, ‘duties of rectification’, and duties of compensation the state owes to victims of bad luck, ‘duties of aid’. The key difference between rectification and aid, then, is that rectification is owed when a person is made worse off than they otherwise would have been due to wrongdoing, whereas aid is owed when a person is worse off than they otherwise would have been due to bad luck. There are three different respects in which duties of rectification and of aid might differ from each other. Firstly, they might differ with respect to *who has the duty to compensate*: there may be a difference between who bears the duty to rectify for wrongful harm and who bears the duty to provide aid (cf. Steiner 1997). Secondly, they might differ with respect to the *amount of compensation* they require; perhaps more is owed in compensation to victims of wrongful harm than to victims of bad luck. Third, it might be thought that duties of aid and duties of rectification differ in *priority*.⁷ Specifically, it might be thought that when a choice needs to be made about whether to fulfil a duty of rectification *or* a duty of aid, then, all other things being equal, the duty of rectification has priority. Notice that this priority claim allows that we must give equal priority between assisting victims of wrongful harm perpetrated by third parties and victims of bad luck.

In this paper, I focus on the second and third of these three ways in which duties of rectification and duties of aid may differ from each other. The first way in which they may differ from each other is not sufficiently controversial to warrant discussion. It is widely accepted that duties of rectification should be restricted to those responsible for harmful wrongdoing, whereas duties of aid are general duties that fall on all citizens collectively.

We can distinguish several views about how duties of rectification and duties of aid compare to each other in terms of differences in the amount and priority of compensation they require. The Difference View says that duties of rectification can differ from duties of aid in both the amount and priority of compensation they require. The version of the Difference View I defend – the Threshold Version – limits the difference between duties of rectification and duties of aid to cases in which victims lie above a minimum threshold of wellbeing. More specifically, it says that all persons who lie below the minimum threshold of wellbeing, no matter what the cause of their adversity, must be compensated until they reach a minimum threshold of wellbeing; however, among persons above this threshold, the state owes full compensation to those who are victims of wrongful harm by the state, whereas full compensation is not necessarily required for those who have been made worse off by other means, such as bad luck. The Threshold Version of the Difference View always prioritises compensating victims who are below the minimum threshold of wellbeing. Therefore, if the state could *either* (a) bring all persons up to the threshold *or* (b) fully compensate all victims of state wrongdoing, the Threshold Version would prioritise (a).⁸ By contrast, the No Dif-

⁶ I take it that compensation may also be owed as aid to persons who are in a badly off state, regardless of whether or not they have been harmed. The focus of my paper, however, is on whether it makes a difference to the compensation that the state owes to persons who have been harmed, whether they are victims of bad luck or wrongdoing by the state.

⁷ For a related distinction between the content and stringency of duties, see Shields (2016, Ch. 6).

⁸ A critic might say the lexical priority that the Threshold Version of the Difference View gives to securing compensation for all persons up to the threshold, implies objectionable permissibility of unjust distributions above the threshold. Suppose we could only bring about one of two worlds: in World A, there is a distribu-

ference View⁹ maintains that duties of rectification and duties of aid never differ from each other, either in the amount of compensation that is owed or in priority. I begin my defence of the Threshold Version by casting doubt on the No Difference View.

3 The No Difference View

While I will eventually recommend rejecting the No Difference View, I want to begin by discussing its appeal. Consider the following two cases:

Case 1 Alex is made homeless following a housefire, which destroyed his home. The fire was caused by lightning striking his roof. Prior to the fire, Alex had rented the house he was living in from a private landlord. The landlord had house insurance. However, his landlord's insurance company went bankrupt on the day of the housefire and was not able to fulfil any new claims. Alex's landlord is therefore unable to provide him with any assistance.

Case 2 Sam is made homeless following a gas explosion, which destroyed his home. Sam had rented his house from the council. The local authority responsible for Sam's property neglected to arrange for annual gas safety checks to be carried out. The explosion that destroyed Sam's home could have been prevented through proper maintenance of the property.

In both of these cases, a person has been made homeless by the destruction of their home. In Case 1, this is due to bad luck. In Case 2, this is due to wrongful negligence by the local authority.¹⁰

Let's suppose that Alex and Sam have similar socio-economic backgrounds and that neither has any significant savings, nor any family or friends capable of assisting them: without intervention, therefore, they will both be left homeless. What should we think about the *amount* of compensation that the state owes to the victims in the above cases? Does the state owe more assistance to the person whose homelessness is ascribable to wrongful

tion of 95% of the population at a wellbeing level of 300 (three times the threshold) and 5% at a wellbeing level of 99 (just below the threshold); in World B there is a distribution of 5% of the population at wellbeing level 600 (six times the threshold level) and 95% at wellbeing level 100 (at the threshold). The Threshold Version would say that we should bring about World B in which everybody is at or above the threshold, even though this leads to less wellbeing overall and greater inequality in above-threshold wellbeing. Knight (2021) calls this the *above-threshold distribution objection*. As he notes, "The second world may seem fairer in one respect (the worst off [are] slightly better off), but that is outweighed by the substantial unfairness of the second world's distribution between [the bottom 95% and the top 5%], who are both at or above the threshold." (Knight 2021: 17). Perhaps the Threshold Version of the Difference View could be adapted so that it acknowledges occasions where the state must weigh its obligation to provide compensation up to the threshold against other distributive and rectificatory considerations. However, I do not have space within the scope of this paper to explore this question in depth. For now, I will simply bite the bullet and concede that this is indeed an implication of the Threshold Version.

⁹ Derek Parfit has defended a view called the "No Difference View" when discussing the so-called non-identity problem (1984). The view I discuss under the same label is not related to Parfit's view or to the non-identity problem.

¹⁰ Stemplowska (2009) considers similar hypothetical cases when considering whether one of two men, whose homes are each destroyed by housefires, should be prioritised for assistance from the local authority according to their own level of responsibility for the fires.

negligence by the local authority (Case 2), than it owes to the person whose homelessness was the result of bad luck (Case 1)?¹¹ It might be thought – because Sam became homeless as a result of the council’s wrongful negligence – that the council owes it to Sam to provide him with replacement housing, whereas, the council owes less than this to Alex, whose homelessness was caused by bad luck; perhaps the council might not owe Alex a new home, for example, but instead owe him assistance in the form of an emergency loan, so that Alex can pay a deposit to secure a new private tenancy. The No Difference View denies this, and this seems plausible bearing in mind the very low level of wellbeing Sam and Alex experience due to the profound distress and vulnerability caused by their sudden homelessness. Intuitively, it seems that the state should provide both victims with assistance in the form of replacement housing.

Consider, next, a question about *priority*: suppose that the local authority has limited housing resources, and can only provide emergency housing for either Sam or Alex; should the council prioritise assisting the person whose homelessness is due to the council’s own wrongful negligence, over assisting the person who lost their home due to bad luck? The No Difference View denies this and, again, this seems plausible. Intuitively, there seems to be no reason to prioritise providing emergency housing to the victim of wrongful negligence; both victims are equally badly off due to circumstances beyond their control. (Perhaps the only fair way to determine who to give the only available emergency housing to is by using a lottery.) So far, the No Difference View appears to be a plausible view. Later, however, I will show that we can hold on to these intuitive judgements about Case 1 and Case 2 without endorsing the No Difference View.

Let’s look more closely at these seemingly plausible claims by the No Difference View. We can now notice that these claims become untenable when we consider a case that involves comparatively less significant harm. Consider the following case, which I have modified from a case suggested by Douglas (2010):

Case 3 An on-duty police officer is cycling along the road when he receives a text message. Carelessly, he decides to read the message while continuing to cycle. He fails to notice the red light at a pedestrian crossing and knocks into a pedestrian. The pedestrian’s mobile phone falls to the ground and breaks. By chance, at the same time, a nearby pedestrian happens to get caught by a strong gust of wind; her mobile phone also falls to the ground and breaks.¹²

What should the state’s duties be in Case 3? Most people would agree that the state has no duty to compensate the person who was caught in a gust of wind for the cost of repairing

¹¹ Some might not consider the failure of the council to perform annual gas safety checks to be a cause of – but merely a condition of – the gas explosion that destroyed Sam’s home. I believe this does not alter the intuitions drawn out by Cases 1 and 2, as direct causation is not necessary in order for the responsibility to compensate for wrongful harm to obtain; it is sufficient that one’s actions are a significant and morally relevant condition of the harm in question. The question here is whether it makes a difference to what the state owes Alex and Sam that in one case the harm resulted from bad luck, whereas in the other the harm would not have come about but for the wrongful actions of the state.

¹² Later, I discuss a modified version of this case where the individual the police officer knocked into suffers further harmful effects from the loss of her mobile phone. For now, let us assume that the loss of a mobile phone in this case is merely a costly inconvenience that will not lead to any further significant harm; neither individual has a pressing need to have a mobile phone with them at all times, and both have the means to replace their devices.

her mobile phone, whereas it owes the person who the officer knocked down the full costs of repairing her phone. Case 3 shows us that the No Difference View is implausible when it says that there is no difference in the *amount* of compensation a person owes to a victim of her own wrongdoing and a victim of bad luck. Case 3 shows that there clearly is a difference. Case 3 also illustrates that the No Difference View is mistaken in the claim it makes about *priority*: Suppose that the police officer is able to compensate one person for their broken mobile phone at the side of the road, and he must choose between compensating the person that he knocked down or the person who was caught in the gust of wind. The No Difference View would say that there is no reason for the police officer to prioritise compensating the person whose mobile phone was broken as a result of his wrongful actions. This seems counter-intuitive.

In summary, Cases 1–3 show us this: sometimes – as in Cases 1 and 2, it makes no difference to the amount or priority of compensation that a duty-bearer owes a victim, whether she is a victim of the duty-bearer’s wrongdoing or a victim of bad luck. Sometimes – as in Case 3 – this *does* make a difference both to priority and the amount of compensation that is owed. Thus, it seems that the No Difference View, regarding the questions of amount and priority, is plausible when we are considering harms to victims *while they are below* some threshold of wellbeing. However, the No Difference View is implausible with regard to these questions when we are considering harms to victims *while they are above* that threshold.

4 The difference view

Let us now shift our attention to the Difference View. There are different versions that the Difference View can take. One version is what I have called the Threshold Version; an alternative is the *No-Threshold Version*. I now want to explain why the *No-Threshold Version* of the Difference View is implausible.

The No-Threshold Version says that whether persons are victims of harmful wrongdoing for which the state is responsible or victims of other forms of bad luck makes a difference to the amount and priority of compensation the state owes them *regardless* of whether they lie above or below a minimum threshold of wellbeing. Earlier, when comparing Case 1 and 2, we saw that the first of these claims is problematic: intuitively, it seems that a person who becomes homeless due to bad luck should not have less of a claim to assistance from the state than a person who becomes homeless due to state negligence. The No-Threshold Version of the Difference View is also implausible in its claim about prioritization, for it implies that rectifying small harms for people who happen to be very well off should have priority over providing aid for unlucky people who are very badly off. The following example, from Douglas (2010: 698), illustrates this point forcefully:

Case 4 Suppose I have wrongfully caused a small amount of damage to a billionaire’s yacht when I notice a child drowning in the marina. Surely, I should aid the child before – or if necessary, instead of – reimbursing the yacht owner.

Supposing that it would be impossible for the person in Case 4 to *both* compensate the billionaire for the damage caused to his yacht *and* save the drowning child, it seems clear that priority should be given to rescuing the child. Clearly, then, when it is not possible to

provide both aid and rectification, there may be some cases where we should give priority to providing aid over rectifying wrongful harm for which we are responsible.

Both the No Difference View and the No-Threshold Version of the Difference View thus face significant problems. In Sect. 4, I defend the Threshold Version of the Difference View, which better captures the intuitions illuminated by Cases 1–4. Before coming to that, I first want to explain the structure of the Threshold Version of the Difference View in more detail.

It will help us to understand the Threshold Version properly, if we divide the amount of compensation that a victim of harm can be owed into two separate amounts:

- (1) *Up to the threshold amount*: an amount of compensation that raises a person up to a minimum threshold of wellbeing or ensures that they do not fall below it.
- (2) *Above the threshold amount*: an amount of compensation given to a person above that which would be required to raise them up to the minimum threshold or to keep them from falling below it.

The Threshold Version only applies the Difference View to questions of amount and priority when it comes to *above the threshold* compensation. It applies the No Difference View to these questions as they pertain to compensation below the threshold. In other words, the Threshold Version asserts that all persons below the threshold are owed the full amount of compensation that will raise them back up to the threshold, regardless of whether the harm that put them below the threshold was bad luck or wrongdoing. However, whether a person has been a victim of bad luck or wrongdoing can make a difference to the priority and amount of *above the threshold* compensation she is owed. I justify the Threshold Version's application of the Difference View to *above the threshold* compensation in Sect. 4.1.

The Threshold Version's application of the No Difference View to the amount and priority of compensation owed to persons below the threshold is justified by appealing to the claim that all persons have an unconditional right to compensation that raises them to a minimum threshold of wellbeing. Such a right can be grounded in a broad set of literatures, arguing, for example, that everyone has a right to have their basic needs fulfilled (Sen 1984; Shue 2020), to be able to appear in public without shame (Sen 1983), to be capable of a life of human flourishing (Nussbaum 2000, 2011), or to have enough (Shields 2020). I believe that the strongest reason to think that the minimum threshold makes a morally relevant difference is grounded in the duty to respect others as moral equals. When a state withholds assistance from a person who is below the minimum threshold of wellbeing, they fail in the duty to respect their citizens. As Axelsen and Nielsen (2020: 662) argue, "respect for moral agency ... requires ensuring that people have the ... resources, opportunities, capabilities, etc. needed to construct, revise, and pursue their plans for the good life...". When a person is below the minimum threshold, they lack the goods and capabilities that are necessary to act as moral agents; respect for a person's moral agency, therefore, requires that the state provide unconditional *up to the threshold* compensation to all, without making judgements of priority or entitlement based on the cause of a person's circumstances.

What would the Threshold Version of the Difference View say about Cases 1–4 discussed above? Consider Cases 1 and 2 again, both of which involve victims who lie below a minimum threshold of wellbeing. The Threshold Version of the Difference View would agree with the No Difference View that the persons in both of these cases are owed emergency housing assistance from the state. This is because the provision of emergency housing for

the homeless is, I assume, part of the *up to the threshold* amount of compensation, which the Threshold Version of the Difference View says all victims are owed regardless of whether they have suffered from bad luck or wrongdoing. So, the fact that in Case 2 the victims' homelessness was due to wrongful negligence, does not mean that they have a greater right to assistance to raise them up to the threshold than the victim of bad luck in Case 1.

We might, however, think that the victim in Case 2 is owed some amount of *above the threshold* compensation. For example, it might be that the local authority, who failed to ensure that annual gas safety checks were carried out, should pay some amount of financial compensation for the loss of their tenant's belongings. It might also be thought that the council owes further compensation to their tenant for the trauma he experienced or for the danger to his life from the council's wrongful negligence. In other words, if a person has become homeless because of events that are ascribable to wrongful harm by the state, it could make a difference to the total amount of compensation the state owes them, compared to what the state owes to a person who becomes homeless as a result of bad luck, but the difference may only exist in the amount of *above the threshold* compensation that is owed. In other words, there is no difference in the *up to the threshold* amount of compensation that is owed to victims of bad luck and victims of wrongful harm, but, *above the threshold*, there may be differences in the amount of compensation owed, depending on whether a person has been made worse off because of bad luck or because of the wrongful actions of others.

This distinction also justifies the intuitions drawn out by Case 3. Both the victim of bad luck and the victim of wrongful harm in this case are above the threshold. Since the Threshold Version of the Difference View holds that there can be differences in the amount of compensation owed above the threshold, depending on whether the harm was caused by bad luck or by the wrongful actions of others, the Threshold Version supports our intuitive judgement that the police cyclist owes compensation to the person whose mobile phone he caused to break as a result of his wrongful actions, but not to the person whose mobile phone broke because of an accidental fall. In summary, the Threshold Version of the Difference View is, I submit, intuitively forceful. However, displaying its intuitive force does not amount to a complete justification of it. For that, we must also provide a foundational argument for the Threshold Version. That is the aim of the next section. Before that, I first want to address an interesting question that arises if we accept the Threshold Version of the Difference View.

The Threshold Version of the Difference View tells us that, above the threshold, states should prioritise rectification over aid, and that victims of state wrongdoing are owed full compensation, whereas this is not the case for victims of bad luck. This raises an interesting question: What should the state do if, after fully compensating victims of its own wrongdoing, the state would have no resources left to provide any aid to victims of bad luck? It seems that, in this case, the Threshold Version of the Difference View would have to endorse leaving all victims of bad luck above the threshold uncompensated. If there were more victims of bad luck than wrongdoing, but the costs of rectification were greater than the costs of providing aid, then prioritising rectification might leave more people suffering harm overall.

The Threshold Version of the Difference View asserts that, for reasons of respect, it is morally more important for the state to provide *above the threshold* compensation for a victim of its own wrongdoing than for a victim of bad luck. Therefore, a proponent of the view will indeed be committed to requiring that states prioritise compensation for wrongdoing, even if this means that all victims of harm (i.e., victims of both wrongdoing and bad

luck) experience less welfare on aggregate than they otherwise would. Regrettably, I cannot, within the scope of the paper, specify exactly how much more moral importance should be assigned to state compensation for wrongdoing. There may be cases in which compensation for a very large number of victims of bad luck could be secured if the state did not compensate wrongdoing it perpetrated against just one person, and in which the state may, because of the large numbers involved, be required to do the former rather than the latter. The moral relevance of aggregating welfare is a large question in ethics and political philosophy, which cannot be settled in this paper.

4.1 Two arguments from respect

So far, I have explained what the Threshold Version of the Difference View says about cases of bad luck and wrongful harm. In this section, I develop two foundational arguments in support of the Threshold Version.

The Threshold Version asserts that the cause of a victim's harm, specifically, whether it is wrongdoing or bad luck, can make a difference to both the priority and amount of any *above the threshold* compensation she is owed. Victims of wrongful harm above the threshold are owed full compensation whereas this is not necessarily the case with respect to victims of bad luck. As noted in the introduction, this claim faces the objection that it is unfair to victims of bad luck above the threshold that they should receive less compensation than victims of wrongful harm. Consider Case 3 again. Now imagine that you are the person whose mobile phone has been broken by the gust of wind, rather than the person whose mobile phone was broken because the police officer crashed into her on his bike. You might find yourself thinking the following: 'I know it's only a phone, but why is it fair that I get no compensation, whereas the person the police cyclist crashed into gets full compensation? After all, we both lost our phones for reasons entirely beyond our control.' The Threshold Version of the Difference View might seem unfair, because in cases where everything else about the victims is the same, the Threshold Version leaves victims of bad luck above the threshold worse off than victims of wrongful harm, and this is due to circumstances that are entirely outside of the victims' control.¹³

The two foundational arguments I develop in support of the Threshold Version maintain that all persons are owed respect and that this entails that victims of wrongful harm are owed *full* compensation (whereas respect does not require full compensation for persons who are harmed due to bad luck). Each argument appeals to distinct reasons for why this is the case. Importantly, neither of these two reasons apply when the victim in question is a victim of bad luck, as opposed to wrongdoing. They thus provide principled grounds for distinguishing between victims of wrongdoing and victims of bad luck in the way that the Threshold Version of the Difference View requires.

4.1.1 Compensation and assurance

The first reason why respect requires full compensation for wrongful harm is that full compensation is necessary for the perpetrator to sincerely apologise (and perpetrators must sin-

¹³ One basis for the unfairness objection is the core claim of luck egalitarianism, namely, that no person should be disadvantaged relative to others for reasons beyond their control. The luck egalitarian literature is too large to cite in its entirety. For a good overview see Knight and Stemplowska (2011).

cerely apologise when they wrong others). The duty of respect requires us to assure others of our respect for them, at least when they have good reason to doubt that we do respect them. This is why we ought to apologise whenever we behave in a way that causes wrongful harm to others; by apologizing, and thus expressing regret, the perpetrator assures his victim that he respects her despite his wrongful actions. If the perpetrator leaves intact some of the wrongful harm that he caused his victim, when he could have rectified all of it (without causing himself or others to fall below a minimum threshold of wellbeing), then he shows that he does not really regret his wrongful actions, and he therefore fails in his duty to show his victim adequate respect. Thus, it is not possible for a perpetrator of wrongful harm to apologise sincerely if they fail to fully compensate, when they could have without excessive cost to themselves or others, for wrongful harm they have caused.¹⁴ A duty of assurance and apology has been defended on several grounds. Specifically, it has been argued that such a duty protects victims from a sense of fear for their own future safety (Radzik 2001), repairs moral relationships (Cohen 2016), and can support a victim's self-respect, which, as Rawls has argued, is 'perhaps the most important primary good' (Rawls 1971: 386).

Douglas (2010) has raised an objection to the argument that feeling and expressing regret requires full compensation for wrongdoing. The objection is this: it might be the case that perpetrators of wrongful harm ought to feel regret, and to express regret by apologising, but requiring this is not, strictly speaking, the same as requiring compensation. Douglas claims, in other words, that it is possible for perpetrators of wrongful harm to feel and express regret (for example, through apology) without ensuring that full compensation is provided. Douglas suggests that those who believe full compensation ought to be provided for reasons of respect, do not actually believe in compensation *per se*, but in regret *per se*, and that respect therefore does not require compensation, but only regret. The key to Douglas' objection must then be this: it is possible, firstly, to feel regret and secondly, to express regret, without ensuring that full compensation is provided, even in circumstances in which one is able to provide full compensation without excessive cost.

This objection is mistaken on both counts: it is incoherent to say that we can feel regret about the harm caused by our wrongful actions, and yet decide not to provide full compensation if (a) we could do so without excessive cost to ourselves or others – i.e., without causing ourselves or others to fall below the minimum threshold of wellbeing, and (b) failing to do so will leave the victim of our wrongful actions continuing to suffer the harmful effects of those actions. To feel regret is to wish that we had not acted as we did given the harmful effects. If someone felt genuine regret over their actions, they would therefore wish that the harmful effects of their actions did not persist. If one fails to compensate fully, however, the victim may continue to experience harm because of one's wrongful actions. Douglas is thus mistaken: it is not possible for perpetrators of wrongful harm to sincerely regret their actions, while allowing the victim of their wrongdoing to remain uncompensated, if they could have provided full compensation without excessive cost to themselves or others.¹⁵

¹⁴ Importantly, victims of bad luck are not owed a duty of assurance or apology in this way. This is because, when they lie above the threshold, victims of bad luck do not lack assurance of respect when we fail to provide them with full compensation. It is therefore not unfair that victims of bad luck should, through no fault of their own, be left worse off than victims of wrongdoing; full compensation is owed to the victim of wrongful harm as this is necessary for the perpetrator to be able to fulfil the duty to provide assurance of respect, whereas no such assurance is owed to the victim of bad luck.

¹⁵ It is worth noting that there may be cases where we must choose between providing compensation or fulfilling other, more urgent moral obligations. In such cases, it may be the case that we can coherently regret

Furthermore, it is not only required of us that we *feel* regret when we cause others wrongful harm, but also that we *adequately express* that regret in a way that provides assurance to those we have wronged that we respect them. It is not possible for perpetrators of wrongful harm to adequately express regret if they choose to withhold compensation from the victim of their wrongdoing.

It is worth noting the following: It does not follow from the claim that perpetrators can be required by the duty of assurance to provide full compensation, that compensation, apology, and assurance of respect cannot each be owed on distinct grounds. Nor does this requirement imply that an apology cannot be sincerely issued by those who are unable to provide full compensation, or that compensation is only owed in cases where the perpetrator must issue an apology. It is quite coherent to think that a perpetrator who is unable to provide full compensation could genuinely come to regret the wrongful harm they have caused and to apologise sincerely for this. Alternatively, we can imagine a case where a victim has no desire for an apology from the perpetrator, but nonetheless does want compensation from him. The argument from assurance does not claim that compensation is only owed in cases where an apology is also owed. Rather, it claims the following: When a perpetrator causes wrongful harm to another person, they must apologise for this in order to assure the victim of their respect for them (except on very rare occasions). While it is possible for a perpetrator of wrongful harm to compensate their victim without apologising or giving any assurance of their respect, it is *not* possible – if the perpetrator is able to compensate their victim – to sincerely apologise or offer assurance, while withholding compensation that is owed and expected. That is the key claim. Thus, in order to apologise for their wrongdoing and fulfil their duty of assurance, perpetrators must provide full compensation in all cases where they can do so without excessive cost to themselves or others.

While the assurance-based reason discussed above provides some support for the Threshold Version of the Difference View, it does not cover all cases of wrongful harm and is thus incomplete as a justification for the duty to provide full compensation for wrongful harm. This is because, in some cases the perpetrator might have strong countervailing moral reasons not to provide full compensation, and in those cases the failure to fully compensate the victims of their wrongdoing might not signify a lack of regret by the perpetrator. Additionally, there will be some cases in which respect arguably does not require assurance, namely, those cases in which our victim lacks the ability to understand our apology. Suppose, for example, the state causes wrongful harm to somebody who is brain damaged to the extent that they are unable to understand an apology. In this case, it may not be possible for the state to communicate regret to the victim or to assure them of their respect. Nevertheless, the state's inability to assure the victim that they are respected by the state does not imply that the state therefore owes them less compensation. For these reasons, the need to apologise and provide assurance of respect to victims of our wrongdoing does not, on its own, constitute a complete basis for the duty to provide full compensation. We should therefore turn to the second respect-based argument to fully justify the Threshold Version.

wrongful harm we have perpetrated without compensating for it. For example, we may not have to provide compensation for very minor harms if doing so would prevent us from keeping important promises to others. For reasons of space, I cannot explore the complexities of such cases in this paper. The view I endorse here is that in the absence of strong countervailing moral reasons against compensating, and in cases where a perpetrator is able to provide full compensation without excessive cost to themselves or others, it remains the case that failure to provide full compensation demonstrates a lack of regret and undermines the perpetrator's ability to provide a sincere apology.

4.1.2 Compensation and persistent harm

Before I explain how the second respect-based reason justifies the requirement of full compensation for wrongdoing, there is a preliminary point that must be understood: central to the ensuing argument is the idea that compensation is not only a way of making up for a harm that occurred in the past, but it can also be a way of preventing it from persisting and being compounded in the future. The assumption, here, is that many wrongful harms do not expire immediately after their occurrence, but exist and grow over time. As an example, let us return to Case 3. A police officer has just carelessly cycled into a pedestrian causing her mobile phone to be knocked to the ground and broken. Now suppose that the pedestrian in this example is a recipient of conditional welfare benefits and that she is due to have a telephone appointment for a Work Focused Interview with the Job Centre that afternoon. Because her mobile phone is broken, she misses the interview and subsequently has her benefits sanctioned. She has no other source of income, and thus falls behind on her rent and is evicted. The pedestrian's life in this modified version of Case 3 has now taken a completely different course than it would have taken had the police officer not knocked into her on his bike. What this shows is that harm is not necessarily a singular static event, but can stretch over time. If the police officer had quickly provided compensation for the pedestrian so that she could have had her phone repaired or replaced before her interview with the Job Centre, this compensation would have prevented the harmful effects of his wrongful action from persisting into the future and from compounding; it would have averted the additional harm suffered by the pedestrian, which was caused by her inability to attend her telephone interview with the Job Centre. Thus, failure to compensate for wrongdoing can cause harmful effects from our wrongful actions not only to persist, but to compound (cf. Fishkin 2014, Ch. 2).

With this in mind, we can now fully state the second reason for why full compensation is owed on grounds of respect to victims of wrongful harm. It can be stated in four premises:

- (1) To respect others, we must avoid wrongfully harming them.
- (2) When we wrongfully harm another person at a given moment in time T_1 , the harm we cause that person can persist and compound at T_2 , T_3 , T_4 , and into the further future.
- (3) By compensating a person at T_2 for a harm we wrongfully inflicted on her at T_1 we can prevent our victim from suffering persisting and compounding harm at T_3 , T_4 and into the further future.
- (4) By compensating a person at T_2 we thus prevent our wrongful harm at T_1 from causing harm to her at T_3 , T_4 and into the further future.

Conclusion: Therefore, to respect others, we must provide full compensation at T_2 .

Once we see that the harm our wrongful actions cause another person can persist into the future, and that we can prevent our victim from experiencing that persisting harm by compensating her at T_2 , we also see that unless we provide full compensation at T_2 , we cause her wrongful harm in the future. In other words, allowing these future harmful effects is in itself a kind of wrongful harming, and thus a failure in one's duty not to commit wrongful

harm. Respect for others therefore requires compensation as a way of ensuring that we do not wrongfully harm them.¹⁶

Somebody might object to this second argument by pointing out that harm resulting from bad luck can also persist and compound over time; it might be asked why we should prioritise preventing further harm that we have wrongfully caused rather than preventing further non-wrongful harm. The reason lies ultimately in the duty of respect. When a perpetrator withholds compensation, they allow wrongful harm they have caused to compound over time, and the disrespect they showed their victim when they committed the original act of wrongdoing thus continues. This is not so for cases of bad luck. It is, of course, very regrettable for a person to suffer from persistent or compounding harm caused by bad luck, but it is even more regrettable, all else being equal, for a person not only to suffer from such harm, but also to be a victim of disrespect.

In summary, there are two arguments that can be made for why respect requires us to provide full compensation for wrongful harm: the first argument grounds the duty of full compensation *via* the claim that respect requires us to apologise for wrongful harm and to assure others of our respect for them; the second argument from respect grounds a duty of full compensation *via* the claim that respect prohibits us from wrongfully harming others. This claim justifies a duty of full compensation because full compensation can be required to prevent our earlier wrongful actions from causing persistent and compounding harm to others presently and in their future.

5 Conclusions

The two arguments from respect show that, all else being equal, victims of wrongful harm have a stronger claim to compensation than victims of bad luck. The first respect-based reason does not provide conclusive support for the Threshold Version of the Difference View. Nonetheless, it does show that victims of wrongful harm are, at least in many cases, denied assurance of respect from perpetrators if the wrongful harm caused to them is avoidably left uncompensated, whereas this is not true of victims of bad luck. Thus, our duty of assurance provides some support for the Threshold Version of the Difference View. The second respect-based reason shows that perpetrators of wrongful harm disrespect the victims of their wrongdoing insofar as they withhold compensation in cases where the harmful effects of their wrongful actions persist or compound over time, whereas, again, this is not true of the victims of bad luck. These differences between the victims of wrongful harm and of bad luck provide justification for differentiating between the duties that are owed to them in the way that the Threshold Version of the Difference View does.

The Threshold Version tells us that, above a minimum threshold of wellbeing, the state owes more compensation to redress its own wrongdoing than it owes to redress the bad luck of its citizens. It is abundantly clear that the state wrongfully harms people. There exists no shortage of examples that clearly demonstrate this: in the UK context, examples of wrongful

¹⁶ This second, ‘persisting harm’ reason for why respect requires compensation does not justify a duty of compensation for harms which are temporary or short-lived. If we harm somebody through wrongdoing but they spontaneously recover and there are no persistent harmful effects from our earlier wrongful action, then the duty not to cause harm cannot ground a duty to provide compensation. In cases such as these, it might be that an apology and assurance of respect is all that is required.

harm by the state include the contaminated blood scandal (see Mitchell 2019), the Windrush scandal (see Williams 2020) and the ‘Spycops’ scandal (see Woodman 2018). My arguments show that the state owes full compensation to the victims in such cases.

Moreover, this conclusion is not only relevant for obvious and clear cases of state wrongdoing against discrete groups of individuals, such as, for example, the UK government’s wrongful denial of legal rights to members of the Windrush Generation; the arguments from respect might also have a wider application, depending on our understanding of what constitutes state wrongdoing against individuals. It may not be unreasonable, for example, to construe persons who suffer from socio-economic disadvantage as victims of “state wrongdoing” if their disadvantages are avoidably caused by the way in which the state arranges the basic structure of society – i.e., its main social and political institutions. If indeed this is correct, the Threshold Version of the Difference View may imply that the state has a duty to provide full compensation to victims of socio-economic disadvantage. An argument along these lines has not, as far as I am aware, received extensive discussion and is, I believe, worth pursuing in more detail (although, see Pogge (1995, 2002, 2005) for a version of this argument in the context of global justice). Given the important implications that might follow, further research might benefit from looking more closely at whether state wrongdoing should indeed be defined more broadly so that it includes the state’s maintenance of a socio-economically unjust basic structure, in which case social justice duties may in large part be owed as rectification.

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