Esclavages & Post-esclavages

Slaveries & Post-Slaveries

5 | 2021

Réparations et esclavages

Introduction

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Electronic version

URL: <https://journals.openedition.org/slaveries/4940>

DOI: 10.4000/slaveries.4940

ISSN: 2540-6647

This article is a translation of:

Introduction - URL : <https://journals.openedition.org/slaveries/4925> [fr]

Publisher

CIRESC

Electronic reference

Magali Bessone and Ary Gordien, "Introduction", *Esclavages & Post-esclavages* [Online], 5 | 2021, Online since 25 November 2021, connection on 05 January 2023. URL: <http://journals.openedition.org/slaveries/4940> ; DOI: <https://doi.org/10.4000/slaveries.4940>

This text was automatically generated on 5 January 2023.

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Introduction

Magali Bessone and Ary Gordien

- 1 This issue of the journal *Esclavages & post-esclavages/Slaveries & Post-Slaveries* focuses on demands for reparation arising from the transoceanic slave trade and colonial slavery in the 20th and 21st centuries. The aim is to explore how contemporary social actors attach the history of slavery to theoretical, legal and political debates in order to address the reproduction of relations of inequality, whether geopolitical, social or racial. When one begins to study the topic of ‘reparations’ as they concern the slave trade and colonial slavery, a number of difficulties arise. To begin with, how does one define the topic in temporal or spatial terms?
- 2 It is *very old*: as Ana Lucia Araujo stresses in the case of the United States, the notion of reparations for slavery goes back long before emancipation, since it was already present during the development of the slave trade and slave system in the South (Araujo 2017). But as a ‘public problem’ it is also *very recent* (Michel 2017), and since the beginning of this century fiercely debated in the public arena in Europe, the United States and beyond, where it is considered a ‘hot topic’, a source of symbolic struggles which define its contours. We therefore have to try at the same time to understand how it came to be constructed historically, and to situate it in the collective passions and emotions to which it gives rise today.
- 3 It is also a topic which on the one hand is *narrowly contextualised* in historical, geographical and juridical terms: the formulation of demands for reparation, the methods and the very nature of those demands (for indemnities, memorials, official apologies etc.), together with any response that may be received from institutions and public or private individuals, are as much bound up with the local reality of the slave systems that trigger them as with the procedures and norms of the national political and legal institutions that are available as channels for them to be expressed. This emerges clearly from the interview conducted on 23 November 2020 by Marie-Jeanne Rossignol, Claire Parfait and Michaël Roy with the historian Adam Rothman, professor at Georgetown University, which opens this number: since 2015 the university has been exploring the particular and relevant forms of reparation that the institution might

adopt in view of the specific historical links which it had with slavery, and the benefits that it derived from it.

- 4 But on the other hand it is a *profoundly international* topic, in part because the slave trade and slavery were inter-state and transnational phenomena, and in part because the categories under which reparations can be understood have been constructed through global comparisons. In 'La promesse de l'Afrique. Chief M. K. O. Abiola et les réparations pour l'esclavage et le colonialisme, 1990-1993', Giulia Bonacci retraces the steps whereby Chief Abiola's political and financial commitment to reparations in Nigeria was consolidated in and through alliances with the African diasporas and pan-African movements, particularly in the United States.
- 5 Finally, it is a *pluridisciplinary* topic, whose theoretical and juridical dimensions cannot be dissociated from a socio-anthropological analysis of the actors involved in the cause of reparations, of their trajectories and the skills they have acquired through transnational alliances which make it possible to transmit and test conceptual paradigms and 'good practices' in reparation (Miller & Kumar 2007): that is why undertaking to recount individual trajectories, as Giulia Bonacci does for Chief Abiola, or Olivier Maheo does for Audley Moore, enables us to glimpse the complexity of reparations and the political, ideological and practical issues that they involve.

Repairing, compensating, redressing, rectifying...

- 6 We do not even know exactly which term to use: Araujo mentions a number of synonyms, all of which have been used in English in different ways to describe claims for reparation: 'redress, compensation, indemnification, atonement, repayment, and restitution' (Araujo 2017: 2). In French, the term *indemnités* (indemnities) was used in the debates surrounding the second abolition in 1848, when it was a matter of indemnifying slave owners for the loss of their 'property' (Balguy 2020; Beauvois 2013). But 'compensation' is the term most widely used in contemporary tort law, that section of civil law concerned with establishing damage, identifying the victims and the officials charged with compensating them, and finally determining the nature, forms and amount of reparations (Bessone & Cottias 2021). In international law, reparations initially referred to the *compensation* owed by one State to another to repair war damage. But over time, mediated by the theoretical outcomes of transitional justice, a paradigm elaborated in the 1990s to theorize practices bound up with the transition of societies from a state of conflict to one of reconciliation, the meaning of reparations was extended until it embraced a whole diversity of mechanisms.
- 7 Today, reparation studies (De Greiff 2006) focus on measures as varied as rehabilitation, individual or collective financial compensation, restitutions, official apologies and memorial monuments, commemorations and educational material (school textbooks and curricula).¹ But compensating, restoring, redressing, apologizing, recognizing and returning are all different gestures which create different relationships with the past and the present, with individuals and with groups. What is being 'repaired'? Wounded identities or subjectivities, ruptured relations between individuals or groups, breach of confidence in our institutions and governments, or even our sense of continuity with our own past and the departed? With what words, and with what measures?
- 8 The text published in English in this issue by the anthropologist Nicole Immler's opts for the term 'repair' and 'questions 'What is Meant by "Repair" when claiming

Reparations for Colonial Wrongs? Transformative Justice for the Dutch Slavery Past'. This choice of vocabulary perhaps echoes a desire, as the anthropologist Deborah Thomas explains, to identify aspirations which go beyond the remit of civil law (see also Garapon 2008):

Repair, like refusal, is practice-oriented and quotidian; it is non-eventful and deeply historical and relational. Like its nominal counterpart, repair urges us to interrogate the multiple scales of entanglement that have led us to where we are now. But where reparation seeks justice through the naming of names, the exposure of public secrets, and the articulation of chains of causality, repair looks for something else. It demands an active listening, a mutual recognizing, an acknowledging of complicity at all levels – behavioral evidence of profound interior transformation. (Thomas 2019: 212)

- 9 But, as Nicole Immler emphasizes, there is also a call for *justice* expressed in demands for reparation – a form of justice which goes beyond the compensatory or rectificatory paradigm of civil law, and which is articulated in claims for economic redistribution, social recognition and political reconstruction.

Reparations as a strategy for achieving equality and emancipation

- 10 Since the last laws of abolition at the end of the 19th century, the question of reparations can be seen at times to have come to the fore in one or another national context; there have been moments by contrast when the question seems to recede, without ever disappearing altogether, before returning to assume the international resonance that it has today. This dynamic depends firstly on the place given to other types of demand for equality, emancipation or racial justice, which sometimes seem to be in competition with reparations. It also depends on the success or failure of certain strategies, where failure imposes a reconfiguration of the demands, or their relocation on ground as yet unexplored. Araujo emphasizes that reparations have in the main assumed two main forms: one consisting of claims for real and formal liberty and political rights, the other focusing rather on financial and material compensation. One or the other is dominant in practice and in discourse, depending on the period.
- 11 Olivier Maheo's article, which follows the trajectory of the Afro-American activist Audley 'Queen Mother' Moore from the 1920s to the 1970s, provides an illustration of the diversity of reparation strategies adopted, even at the heart of the US radical left. Moore denounces the damage that the legacy of slavery – or to be more precise, the *absence* of legacy because of the break in the line of descent – has caused to the present generations in terms of *loss of identity* and personal and family history: 'They owe us more than they could ever pay. They stole our language, they stole our culture. They stole us from our mothers and fathers and took away our names from us' (Keough 2005: 59-60).
- 12 But Moore was also one of the first to *internationalize* the demands by deploying legal categories which emerged from the criminal trials after the Second World War, in particular that of genocide. She asserts that the definition of genocide, as it appears in the Convention on the Prevention and Punishment of the Crime of Genocide which came into force in 1951, mentions practices which were standard in the slave trade and commonplace on slave plantations.² Since genocide is an imprescriptible crime, Moore

references it to claim reparations in the form of *restitution* of land, monetary *compensation* – 200 billion dollars for 400 years of slavery – and *aid* for Afro-Americans who wish to ‘return’ to Africa. Finally, she was the inspiration for the creation in August 2000, by the academic Charles Ogletree, law professor at Harvard, of the *Reparations Coordinating Committee* (RCC), the aim of which was to shape a reparations strategy capable of prevailing in national and international Courts of law. The goal was not so much to obtain financial compensation as to provoke a *change in mindset* in American society by publicizing the cases and the arguments deployed.

- 13 By narrowing the field of enquiry to the socio-historical analysis of the trajectory of an iconic militant figure who embodies the most famous voice of the movement for reparations in the USA, Maheo enables us to grasp the multiplicity of forms of claim, their local and international roots, together with the social and strategic logic of their modes of expression as they evolve over time according to alliances, resistance and competition. We can also trace back some of the determining factors which lead to the current perception that it is time to ‘come to terms with the past’ (Torpey 2006). What has characterised the state of reparations since the beginning of the 21st century is the strongly international dimension of the demands, the breadth and variety in the forms of reparation demanded, and finally the explicit link between the reparations and the struggle against structural racism.

Reparations since 2001

- 14 Reparations were placed centre stage at the World Conference against Racism, Racial Discrimination, Xenophobia and Related Intolerance, organized under the auspices of UNESCO, which took place at Durban in South Africa from 31 August to 8 September 2001. This, as Giulia Bonacci reminds us in her article, gave them an explicitly international dimension, despite the timidity of the final declaration which shows every sign of compromise, and even of ‘betrayal’ of the fundamental expectations. In his opening address Kofi Annan, Secretary-General of the United Nations, remarked that the problems that accompany racism and discrimination ‘are in part the legacy of terrible wrongs in the past - such as the exploitation and extermination of indigenous peoples by colonial Powers, or the treatment of millions of human beings as mere merchandise, to be transported and disposed of by other human beings for commercial gain. The further those events recede into the past, the harder it becomes to trace lines of accountability. Yet the effects remain. The pain and anger are still felt. The dead, through their descendants, cry out for justice’.³ Reparations are due for the injustices of the past which are the source of injustices in the present, and they are an essential element in a radical realignment of the debate on globalization and injustices world-wide between the North and the South.
- 15 The same year, the Taubira Law in France recognized that ‘the transatlantic and Indian Ocean slave trades on the one hand, and slavery on the other, perpetrated from the 15th century onwards in the Americas, the Caribbean, the Indian Ocean and Europe against African, Amerindian, Malagasy and Indian peoples constitute a crime against humanity’. Certain organizations seized upon what they saw as an at least implicit recognition of a right to reparation and took legal action against the French State in 2005. Although the first instance tribunal, the appeal tribunal and the highest civil Court (*Cour de cassation*) decisions all agreed that the Taubira Law does not provide the

legal basis for a right to reparation, and that the principle of non-retroactivity combined with prescription justify the conclusion that no reparation is legally due, the organizations in question took the case to the European Court of Human Rights, which in February 2020 deemed it admissible. This judicial dimension, which will now draw on the resources of European Law, runs alongside demands for reparation in France, in the Overseas Territories, and in Europe, which take on multiple political and cultural forms, which aim to resist symbolic violence and structural racism by means of cultural militancy (Milot 2003; Gordien 2019), and which advocate a subjective and even psychological understanding of 'reparation' from within. This multiplicity of forms, both internal and external, of reparation is closely related to the regional strategy laid out in particular in the 'Ten-Point Plan' promoted by the Caribbean Community, Caricom. This plan figures in the *Caricom Reparations Justice Program*, which in 2013 issued ten formal demands to European States, including official apologies, a repatriation programme, a development aid programme, debt cancellation, technology transfer, the creation of cultural institutions and research centres, but also psychological rehabilitation.

- 16 Nicole Immler shows similar concerns in the Netherlands. Her article details, and aims to map out on a continuum of forms of justice, the diversity of the demands and of the reparatory measures – demands for memorials, gestures of recognition (annual commemoration, establishment of a National Institute for the Study of Dutch Slavery and its Legacy, creation of specific exhibitions in national museums, expressions of apology or regret), but also 'self-repair', which represents a way of decolonizing or disalienating the mind, a 'healing' at once objectively self-sufficient and a necessary condition for political reconciliation. In this ordered plurality Immler sees the effect of the European adoption of the more 'holistic' approach advocated by the Black Lives Matter movement which emerged in the Afro-American community in 2013.
- 17 Black Lives Matter,⁴ which initially came into being to fight police violence and systemic racism in the United States, published *A Vision for Black Lives* in 2016 which explicitly placed its claims on reparations for slavery at the centre of other modes of struggle against inequality and racial violence. BLM advocates a more global approach to reparation. Socio-political, economic and legal methods are considered indispensable *when taken as a whole* in response to the massive inequalities and oppression that are still experienced today by Afro-Americans, and beyond them by Black people all over the world. The movement has gathered pace, notably in Europe in the summer of 2020, and has been influential in the adoption of a certain number of measures; in Belgium, for example, a legislative commission on the colonial past has been established, and held its first public session on 5 October 2020. If this momentum in favour of reparations has given the latter present-day relevance in France, Europe and beyond, it is also essential to grasp the historical depth of the demands, and the long labour of theoretical reflection and tentative practices which are at their origin.
- 18 Thus if we are to understand the topic of 'reparations' in its full diversity of forms and concerns, but also in its dynamic unity, it is essential to adopt a two-way movement between local, national or regional and international contexts, and to bring together the diverse disciplines of law, history, anthropology, sociology, political science and philosophy. This is the dialogue to which we invite readers of this issue.

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NOTES

1. www.kairoscanada.org/wp-content/uploads/2015/06/UN-Joinet-Orentlicher-Principles-Diagram.gif. See also the page on reparations published by the International Center for Transitional Justice : www.ictj.org/our-work/transitional-justice-issues/reparations.
2. The five acts cited in article 2 of the Convention are: '(a) Killing members of the group; (b) Causing serious bodily or mental harm to members of the group; (c) Deliberately inflicting on the group conditions of life calculated to bring about its physical destruction in whole or in part; (d) Imposing measures intended to prevent

births within the group; (e) Forcibly transferring children of the group to another group’.

3. Statement by the Secretary-General of the United Nations, Mr Kofi Annan, Annexe II to *Report of the World Conference against Racism, Racial Discrimination, Xenophobia and Related Intolerance*, p. 147. Available online: http://www.oas.org/dil/afrodescendants_durban_declaration.pdf.

4. www.reuters.com/article/us-usa-politics-race/slavery-reparations-sought-in-first-black-lives-matter-agenda-idUSKCN10C3E1.

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