

The Limits of the Liability Model in Alleviating Structural Injustices

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Assigning responsibility for the injustices caused by the production process of dangerous chemicals, such as hydrofluoric acid (HF), is a highly complex endeavor. The difficulty lies in assessing the contributions from the various agents involved not only in the production process, but also in the consumption and marketing of HF around the globe. Hydrofluoric acid is a highly toxic and dangerous chemical most commonly used in the manufacturing of refrigeration chemicals, such as fluorocarbons for air conditioning and other refrigeration technology (Morales et al, 6).

Many of us, everyday consumers of refrigeration technology, do not consider ourselves directly responsible for injustices found in the production processes of HF. Instead, I think the common argument would be one that allocates responsibility for allowing injustices to arise to the managers of the factory producing HF, or the owners of the factory producing HF. It is easy to blame the managers or factory owners for the terrible labour conditions under which HF is produced. Moreover, many would say that it is the factory owners who should bear the responsibility for any environmental injustice whether it is pollution or risks to public health that arises due to negligent operation of the factory.

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However, assigning responsibility for an injustice, especially an ongoing injustice, is not so easy. Iris Young argues that our current model of assigning responsibility, the liability model, is not sufficient for distributing the shared responsibility we have for reproducing structural injustices, such as the processes that allow maquiladoras like the Solvay factory to operate and proliferate across the global south, and, instead argues for an alternative, the social connection model (Young, 96). In this paper I will argue that the current liability model is insufficient for distributing our shared responsibility for reproducing structural injustices, and, that Young's social connection model offers a superior alternative through its diffusion and diverse allocation of responsibility across all involved agents. Furthermore, I will use a case study of the Solvay chemical plant located in Ciudad Juarez, Mexico, as a primary model example of the negative symptoms that proliferate under ongoing structural injustices purported by neoliberalism, such as horrific labour conditions and unchecked negative environmental externalities. The Spanish word *maquiladora* is also used to denote the Solvay chemical plant, but has a more determined meaning, particularly, denoting a duty-free, tariff free manufacturing operation in Mexico near the US border, not unlike other special economic zones endemic to the global south (Morales et al, 6).

The problem with structural injustices is that it is difficult to trace an agent's actions linearly to the harmful act we seek to remediate (Young, 96). The reason for this lies in the constitution of a structural injustice, which according to Young is "reproduced by thousands or millions of persons usually acting within institutional rules and according to practices that

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most people regard as morally acceptable” (Young, 95). In other words, the causal chain of events that has produced and continues to reproduce a structural injustice may not be de facto illegal at all. However, it is altogether possible that agents involved in the production and reproduction of structural injustices do indeed engage in illegal acts, but they may go unsanctioned by other agents who are incapable, unwilling or indifferent to such harms. Thus those not directly responsible for illegal acts could be tacitly responsible for the resulting structural injustice if they fail to sanction an immoral actor. Persons who use air conditioning all over the world may not consider themselves responsible for the terrible labour conditions or the environmental degradation of the HF production process, however this may be just a result of the narrow scope of the currently favoured liability model of justice.

Questions of resolving or remediating structural injustices challenge the narrow scope of justice and obligation that is reproduced with the liability model for justice. Do consumers of HF have obligations to the labourer’s horrendous labour conditions, or the members of a community negatively affected by environmental degradation as a result of unchecked industry? To whom are consumers responsible and what is the extent of their responsibility? These are some of the questions that Young’s social connection model seeks to answer.

In order to comprehend the merits of the social connection model, the liability model must be examined first. Three distinct features characterize the liability model. First, in order to attribute responsibility for a harmful act, one must be able to assign responsibility to a particular agent who can be

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shown to be causally connected to the harmful act under examination (Young, 97). This agent could be the executive board of the Belgian corporation that owns the Solvay factory that produces HF, or it could be the Solvay factory overseer, who perhaps acts in contempt of the regulations and rules of his own bosses or government (Morales et al, 7). Actions found to be attributable to an agent who has caused a harmful event must be shown to be voluntary and not excusably ignorant in order for the agent to not be absolved from guilt (Young, 97). If an agent is found who meets these conditions, then this agent can be called liable for the outcomes of his or her actions. Thus the liability model is established.

One of the consequences of the liability model is that if an agent of negligence is found, and can be held solely responsible for an action, then the perpetrator of the harmful action is isolated and all others who may have been involved or connected to the outcome in some way are suddenly absolved without recognition. But it is rare for agents to act in isolation. For example, if the liability model were to be applied to a case of negligence where a worker was not provided with adequate safety gear, and then experienced an accident such as a chemical burn that could have been prevented with the provision of adequate safety gear, it could perhaps find a factory manager as liable and thus responsible for this harmful act. However, doing so would absolve other important actors such as the executive board who failed to adequately oversee factory operations, or even Mexican authorities responsible for regulating health and safety conditions on the factory floor, and finally, what about consumers who continue to purchase consumer goods made with chemicals produced under

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abhorrent labour conditions? Everyone who contributes to reproducing the structural injustice is responsible for doing so.

The second key feature of the liability model is that an action for which responsibility is being sought is seen as an anomaly or outlier. It presupposes that the harmful action being examined is an unacceptable deviation from otherwise acceptable background conditions. Thus the liability model assumes a morally acceptable, or even ideal background structure, from which the liable harm is but a particular deviation from this acceptable structure (Young, 107). As a result, sanctioning or punishing a harm is an act to restore structural conditions back to their status quo of assumed moral acceptability.

The problem with this second key feature of the liability model is its strong assumption that there are indeed background structural conditions that one could consider acceptable in the first place. It may be the case that there are very few particular aspects of the structural conditions, if any, that one could consider acceptable. For instance, many consumers in a wealthy northern country like Canada or the US would agree that it's fair and acceptable to export dangerous manufacturing jobs to global south countries where there is a large enough unskilled labour pool to fill the labour demand of a chemical plant like Solvay who might otherwise have trouble finding labour willing to work those dangerous positions for minimal compensation. Moreover, global north consumers are happy to benefit from the comparative advantage in unskilled labour costs in global south countries if it means cheaper consumer goods back home. What many of us consumers perhaps do not realize is that we are contributing to a race to the bottom in terms of labour

conditions and labour costs. As a result, the level of exploitation increases for unskilled labourers who are victim to factories like Solvay who remain competitive in the global market by cutting corners, such as in workplace safety standards by not issuing protective equipment. Evidence for this arises in Morales et al. when an interviewed worker explains that labourers were not issued protective equipment and instead relied on using rags or “old cloth” to protect themselves from the highly dangerous chemical HF (10). In fact, in the 1990s, it was reported that Solvay did not issue any protective equipment at all (Morales et al, 10). While the liability model could deal with a particular harm such as Solvay not issuing protective equipment for workers at a particular time, it is unable to remediate the structural injustice that is the continuing increase in the exploitation of labour as companies try to remain competitive over time.

The third and final key feature of the liability model is the idea that the harmful act for which responsibility is being sought is complete and consequently isolatable in time (Young, 109). Young argues that while there are many instances of the liability model being used as method of deterring future harms, for the most part, the primary orientation of the liability model is backward-looking and thus does not adequately address ongoing injustices or deter future injustices (Young, 108). An example of an issue that arises from the use of such a backward-oriented model against a structural injustice is the problem of corporations preferring to pay fines as a result of their environmental footprint rather than ameliorating their production process in order to operate without contravening local environmental laws (Birkeland, 217). It is unclear whether

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Solvay faces any limitations or financial sanctions for their negative environmental impact on the local area per the example; however, they continue to operate on a model of cutting costs by unloading negative externalities onto the local environment as illustrated by the unsecured pile of toxic waste that sits outside the factory and is prone to being blown around by the wind (Morales et al, 111-112).

Upon examining Young's critiques of the liability model, it is clear that the liability model is unable to rectify ongoing and persistent structural injustices. The liability model is valuable insofar that it singles out the worst offenders and allocates culpability onto them, however, it is limited in its ability to look to the future, whether that means deterrence of future crimes or even restructuring an oppressive structural order with the goal of making it less unjust. But the problem remains; the structural injustices that the neoliberal global order permits continue to operate unabated by the current liability model for justice. Using the Solvay chemical plant as example for an oppressive symptom of neoliberalism brings to light that this kind of injustice exists wherever regulations go unenforced and there exists enough vagrant labour to work otherwise deplorably dangerous unskilled labour positions. One only needs to survey labour and environmental conditions in economic processing zones throughout the global south to see the symptoms of this structural injustice play out, whether it is child labour in sweat shops or workers being exploited to death by adverse affects of unchecked toxin exposure such as the infamous black lung that still affects coal miners the world over.

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In contrast to the liability model, Young proposes the social connection model that she conceptualizes as a forward-oriented and inclusivity-seeking alternative. First off, the social connection model does not absolve those who participate in practices that reproduce and reify structural injustices, even when participation is not contravening the current legal framework (Young, 106). If we are seeking global labour justice, perhaps using the anti-sweat shop movement as a different example, the social connection model attributes a global notion of responsibility against those whose actions contribute to the reproduction of the injustice, such as consumers who continue to purchase commodities produced under abhorrent labour conditions with child labour. Thus I have obligations of justice to those who produce commodities under the oppressive structural injustices that flourish under neoliberalism.

Another function of the social connection model is that it serves to conceptualize a harmful act as the result of structural problems rather than a criminal deviation from the norm (Young, 107). The structural injustice of labour in the global south being heavily exploited cannot easily be traced back to individual agents. While profit seeking executives and investors, as well as negligent factory overseers can shoulder part of the blame, we consumers of commodities produced under such conditions are not without our own responsibility for reproducing this oppressive structure. It is by our aggregate actions as participants who adhere to otherwise acceptable rules and practices that these structural injustices are reproduced over time (Young, 108). We share a burden of responsibility even

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when we realize our ability to do otherwise is also constrained by these same structures to which we contribute (Young, 108).

Since the social connection model focuses on our shared responsibility, the only rational response is to take responsibility collectively. This movement from the individual to the collective creates strength in numbers once we realize that we cannot act effectively against structural injustices alone. Individuals must join together to form a collective action against the structural injustice at hand. Collective action is the only way for one's own responsibility to be wielded as a means for fulfilling their responsibility for justice.

It is by the means of collective action, done with the goal of challenging ongoing structural injustices that the social connection model is forward-oriented (Young, 111). Instead of sanctioning past actions without changing current structures that allow these actions to proliferate, the social connection model emphasizes the hope that we can change the future by forcing a restructuring of the unjust into the just through our collective action. No one can act against the proliferation of dangerous and inadequately regulated maquiladoras like Solvay alone. These oppressive processes can only be changed if agents from diverse positions within the social hierarchy come together to alter the outcome in favor of justice (Young, 111). While it would be easy if corporate executives and politicians could alleviate injustices through proper regulatory oversight, entrenched frameworks such as shareholder primacy vastly restrict permissible actions by those seeking to alleviate structural injustices. Instead, justice will likely come about only with the popular pressure of everyday consumers and workers, ideally forcing a shift from the present status quo. Only with

this grassroots support for alleviating structural injustices will those possessing the most concentrated positions of power change anything.

In conclusion, I have argued against the liability model as a means of adequately alleviating structural injustices and instead advocated for Young's social connection model. I focused on three key critiques of the liability model; that it isolates particular agents and absolves others; that it characterizes a harmful act as a deviation from assumed acceptable background conditions; and, that the harm for which responsibility is being sought is complete and thus isolatable in time. Using the maquiladoras and Solvay as primary examples of symptoms of structural injustices proliferating under neoliberalism, I was able to expose the limitations of the liability model in resolving this particular structural injustice. I argued for Young's social connection model on the basis that it exposes our shared responsibility in reproducing structural injustices; that it conceptualizes harmful acts as result of structural injustices; and, that it emphasizes collective action as the only way forward to change ongoing structural injustices for the better.

References

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