

Historical Injustice

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I. Introduction

Historical injustice is ubiquitous in human history. The origins of just about every institution relevant to human political life has a pedigree stained by injustices of various magnitudes. Slavery, genocide, mass expropriation of property, mass internment, indiscriminate killings of civilians and massive political repression are all depressingly familiar features of human history, both in the distant and more recent past. Should any of them be redressed? Can historical injustice be redressed? Should states be held accountable for their bloody origins, such as the brutal colonization of the indigenous peoples of the Americas and Australasia? Should former imperial powers have to redress the descendants of those whom they colonized? Should the descendants of slaves and holocaust survivors be compensated for the harm done to their people? Dealing with historical injustice has also become a major task for countries struggling to found new institutions and forms of collective life after years of oppression or civil conflict – for example, in Central and Eastern Europe after the fall of Soviet Communism, as well as in post-colonial Africa, South America and Asia.¹

So in what sense do these historical injustices matter? They mattered to the victims at the time, to be sure. But do they have any moral consequences for the descendants of both the perpetrators and the victims? Why should an injustice that occurred long ago, by people now dead against people who are also dead, be a matter of justice today? On the one hand, it just seems obvious that history matters, and especially to those for whom it

isn't even past yet. It would be morally callous and possibly unjust to simply dismiss every historical injustice as superceded by the passage of time. And yet, on the other hand, the passage of time surely does change things; it changes the facts on the ground, and arguably it should change our understanding of the moral significance of what occurred. Is the justice associated with claims for reparations necessarily backward looking, and for that reason deeply problematic politically speaking? As much as these are complex philosophical questions they are politically charged ones too. In fact, the skepticism of many philosophical accounts of the plausibility of reparations for historical injustice has been matched by their increasing political relevance. And so my emphasis on the politics of historical injustice is deliberate. As a general issue, the challenge of dealing with historical injustice touches on a range of deeply contested yet essential concepts in contemporary political philosophy, such as the nature of justice, rights and responsibility. And yet there are practical urgencies as well. At the heart of many serious conflicts in the world today lie some kind of historical grievance. Many of these claims are dubious, and the historical tales lying behind them often bogus. But many are not. So grappling with the nature of historical injustice is often a necessary feature of political life.

Any plausible defense of the idea of making reparations for past injustices must deal with six questions: How much normative weight should we give to the past in deliberations about what we owe to each other? Which historical injustices matter and why? To whom are reparations owed? Who should pay them? What form of reparation? And finally, what kind of prudential and political considerations need to be taken into account when defending (or criticizing) reparations? I shall try to work through these

questions as a means of providing a critical survey of recent work in political theory that addresses the problem of historical injustice. In the final section, I offer a modest defense of making reparations for past injustices. But there are no easy answers. Understanding and dealing with the moral consequences of the past is one of the most important political issues of our time, and yet also one of the most intractable.

II. Modes of reparation

By historical injustice I mean those harms or wrongs committed by individuals, groups or institutions against other individuals and groups who are now dead, but whose descendants live today. And by ‘descendants’ I mean not only individuals, but various kinds of groups made up of individuals who identify with a collective identity (embodied in various institutions and practices) that has persisted through time. It follows that where there are no descendants of either the victim or the perpetrator, there is no case of historical injustice to answer, although a great harm might indeed have been done. [The situation is more complicated where one exists but the other does not].

Historical injustice is usually thought of in close relation to demands for reparations. And reparations are usually thought of as involving payments to claimants on the basis of past wrongs, but where the transfer between identified wrongdoer and victim is complicated by the passage of time and where an ordinary legal remedy is unavailable. There are, at least, three different modes of reparation - restitution, compensation and what I shall call ‘recognition’ or ‘acknowledgement’ – all of which can then take various practical forms (such as cash, or ‘in-kind’ payments such as apologies, affirmative action programs, new legal or constitutional provisions, truth and reconciliation commissions,

etc.). Although these modes are often combined, it's worth noting the differences between them. One reason why is that often both skeptical and vindictory arguments assume that defeating (or vindicating) one mode of reparation works for the rest. But this doesn't follow. For example, if full restitution is impossible, it still has to be established why some form of compensation or acknowledgement isn't due. So by restitution I mean the restoration, or handing back of the thing that was originally taken. If my wages are stolen, I get them back; if our land is stolen, we get it back. By compensation I mean the attempt to make amends for, or offset the consequences of, a harm, accepting that literally restoring what was taken is impossible. We tend to talk about compensation when the consequences of the wrong are such so as to render literal restitution impossible. No amount of money can compensate for the loss of a child, or for being tortured, or for the legacy of colonialism. Much is often made of this fact by skeptics about claims for reparations. But various forms of compensation – including money - can go some way to repair a harm. It can help someone make a new start in life, or cope with some of the consequences of the harms, without ever pretending to make that person (or group) whole again (Kutz 2004). Finally, by recognition or acknowledgement I mean the sense in which reparations force the recognition of the basic humanity and subjectivity of the victims denied in the perpetration of harm against them. Recognition is, of course, built into the act of restoring to or compensating someone for a harm they have suffered. But recognition of responsibility takes on other meanings too, especially when embodied in a public apology and forms of collective remembrance. In fact, public recognition of past injustices is a uniquely political act, something often missed by an overly legalistic analysis of these issues. The law can restore certain legal powers or

rights to a victim, but it can't address (alone, at least) the denial of their social or political agency. In this context, reparations are intended to help re-construct or re-found a political community that has been broken by civil conflict, or scarred by historical injustice. That is, reparations are seen as contributing to an ideal of democratic inclusion, to what it means to treat each other equally, and thus to preserving and maintaining a democratic way of life.

As we shall see, there are a series of powerful counterarguments to the thought that historical injustices matter for the determination of justice in the present. But one general thought that is often expressed in both public and academic debates is worth highlighting here. It is often suggested that paying too much attention to historical injustice is a symptom of political correctness, and that it promotes victimization and resentment, much of it unjustified. A slightly different objection, deeper and more challenging in my view, is that the ubiquity of historical injustice is not simply a reminder of human fallibility, but confirmation of some hard truths about human nature and the naïve moralism of much normative political philosophy. Too much emphasis upon historical injustice is undoubtedly a bad thing. But at the same time, these objections overreach themselves. First of all, as I've already tried to show, the attribution of guilt is premature; what is at stake is the attribution of responsibility, and attribution of guilt is only one of the possible outcomes – and not necessarily the most likely or productive in each and every case. Context matters. The details of the particular histories matter. But if we value living in a society in which freedom is taken seriously, then we should take responsibility seriously (Scheffler 1992; Ripstein 1994). And so we should take historical injustice seriously.

III. Responsibility and justice

To begin with, we need a basic sense of the relation between responsibility and justice. When it is justified to hold someone, or a group, responsible for their actions and when it is not? Responsibility is central to considerations of corrective justice, of course, but it is also central to distributive justice. Corrective justice involves the rectification of the wrongful invasions of legitimate entitlements that people hold, for example, to moveable or fixed property, or to bodily integrity and well-being. Thus it is often associated with what a person is due as punishment. Distributive justice, on the other hand, refers to what we're legitimately entitled to in the first place, both negatively and positively, and thus the appropriate distribution of benefits and (non-punitive) burdens within a political order. What is the relation between corrective and distributive justice? This is a massive topic, but roughly: Corrective justice must surely presuppose a community of persons who enjoy (or at least who ought to enjoy) certain entitlements – such as basic liberties, rights and opportunities and thus a political order within which they are provided. Therefore, corrective justice can't be completely independent of considerations of distributive justice. In fact, our intuitions about distributive justice play a crucial role in providing a normative baseline against which we judge whether or not the violation of an entitlement merits a 'correction' of some kind.

Thus, both corrective and distributive justice presuppose that people can be held responsible in various ways, in the sense that they can be held blameworthy. This can sometimes get lost in political debates. 'Liberals', for example, are often supposed to believe that no one can ultimately be held responsible for their actions, given their

emphasis on taking the background conditions of people's actions seriously as a precondition for holding them responsible. 'Conservatives', on the other hand, are accused of rushing to infer liability from culpability, no matter what the circumstances in which someone acted. But the debate is not between one side that believes in responsibility and the other that does not (Ripstein 1994). The real debate is over more basic political questions. Thus, liberals tend to think of someone as responsible when we attribute to her the consequences of her actions such that, other things being equal, the resulting benefits and burdens should fall to her (Miller 2001; 2004; Ripstein 1994). But in order to figure out which benefits she should have (or burdens she should bear) in the first place, we need a sense of what the overall distribution of them should be. Thus the purpose in assigning responsibility here is normative. As Arthur Ripstein puts it, the idea that people should take responsibility for the costs of their activities to others 'gets its content from an interpretation of equality, not vice versa' (Ripstein 1994, 8). Whether or not we can attribute the consequences of an action to someone will depend on whether my action 'revealed proper respect for you....some sort of balance has to be struck between my interest in going about my affairs and your interest in security' (Ripstein 1994, 9). In other words, we take responsibility claims seriously in part because of the importance of the underlying social and political relationships to which these claims refer and help protect.

Now can something like this basic idea of responsibility be attributed not only to individuals, but to groups? Can groups be held collectively responsible for their actions? There is a continuum of possible agents eligible for attributions of responsibility: crowds who become mobs, firms who pollute rivers, as well as various kinds of private and

political associations – up to and including nations and states (Feinberg 1970; May 1987, 1993; Miller 2004). But what are the conditions required for doing so? This is a complicated question, but here is a rough sketch of one influential model: We begin with an agent with some locus of decision-making power, and then some capacity for acting on the basis of its decisions. We need, in other words, a collective agent with a ‘unit of agency’, that is, a way of ‘resolving conflicts, making decisions, interacting with [others] and planning together for an ongoing future’ (Korsgaard 1996, 373). In the case of both nations and states, these interactions are shaped through the mutual identification of the members with each other, and who share a public culture and set of embodied arguments over time about a particular set of aims or values. Moreover, membership provides access to various kinds of benefits and which people value, and which help make their lives go well. Now, we find something like these characteristics present in most nations and states, although to varying degrees. And these variations are important for distributing responsibility. So, for example, the more individual members have the opportunity to shape (or contest) the decisions and actions their representatives take, and the more they are able to identify with (or at least, not be alienated from) the results, the more confident our ascription of collective responsibility. Then again, most of us haven’t chosen to be members of the states in which we live, nor is it easy to leave if we were deeply unhappy with what our state or nation was doing (or once did). The citizens of Saddam Hussein’s Iraq had little opportunity to shape or contest the decisions he took, and thus bear less collective responsibility –if any – for his genocidal treatment of the Kurds (and others). Having said that, it doesn’t follow that if a nation or state is deeply undemocratic or autocratic its members never bear any responsibility for its actions.

Members of autocratic states have a duty to take whatever steps they can, however small, to ensure that they don't participate in the perpetration of great harms on others, as long as it's not too costly or difficult to do so. (The duty is stronger in states which offer greater opportunities for voicing one's opposition safely and effectively.) Or, we might think that dissidents and others who have resisted the regime are much less morally blameworthy for their state's actions than those who did nothing. (Feinberg, 1970, 222-51; Miller 2004, 248-257). Having said all this, the ascription of collective responsibility to entities like states and nations is fraught with difficulty. Nations undergo constant change and transformation. States emerge but also disappear. Sometimes states and nations coincide, but often they don't, which further complicates the ascription of responsibility.

Finally, it is important to note that responsibility can't be made sense of exclusively in terms of consent, and thus there are limits to thinking of it exclusively in terms of personal or criminal liability (Williams 1993). Buying products made by sweatshop labour doesn't make me criminally liable for those conditions, but the anti-sweatshop labour movement does want me to feel responsible for them in some way. Here the idea is that just by participating in interconnected and interdependent social, economic and political processes that produce such unjust conditions – that form the background to many individual actions - I have some responsibility for alleviating them. (Young 2001, 11-15; 2004). I shall return to this wider sense of political responsibility below.

IV. Against reparations

If it's hard enough to establish how both individuals and groups can be held responsible for their actions in the present, how can we hope to ascribe responsibility to them for things that happened in the past? Can we – as members of political communities, for example - inherit responsibilities or obligations? The property of the dead can't be restored to them. The living can't be punished for the misdeeds of the dead. Guilt can't (and shouldn't) be transferred through the blood. It's a basic rule of the common law, for example, that actions for redress are extinguished by the death of the wrongdoer. Then again, we often feel bound to honor the desires of the dead in various ways. We usually respect their wishes concerning the distribution of their property, although not absolutely. We care about remembering them, and how they will be perceived in the future, at least for awhile, just as we care about how others will remember us. And some have argued that we can actually benefit the dead by helping to satisfy their (morally sound) preferences or desires - for example, that their descendants flourish (Wheeler 1997; Mulgan 1999; Ridge 2003). Still, relying on the preferences of the dead to guide our judgments about reparations is a murky business. Should the preference of the recently dead count more than the long-lost dead? Don't present generations have the right to over-ride the preferences of their ancestors?

The most skeptical thought would be that the imposition of any inter-generational burdens or duties is unjustified because the present generation didn't consent to the arrangements that generated the obligations. But this standard of legitimacy is bedeviled by serious problems – mainly, that almost no political institution could survive the categorical emphasis on meaningful voluntary consent (cf. Simmons 1993). It not only

seems to make the very idea of political society impossible, and neglects the problem of how institutions and social practices are sustained across time, but also suggests a deeply implausible conception of personhood – a kind of heroic self-shaper, constructed only out of materials he chooses to use.

Similarly, an emphasis on the inviolability of property rights faces equally serious problems. Robert Nozick famously justified property rights on the grounds of a Lockean appropriation from the state of nature, or through chains of (genuine) voluntary exchange, extending all the way back to the original (legitimate) expropriation (Nozick 1974). It followed that property not acquired in this way was unjustified and should be returned to its original owners. However, an appeal to these rights doesn't help resolve conflicts over justice, since the dispute is in part over the justifiability of those very property rights in the first place (Waldron 1993, 21). And secondly, the consequences of such a theory would be deeply unjust, as well as impractical. In relation to land, at least, just about every title in existence would fail the Nozickean test. And in the case of other kinds of physical property, what if the original was destroyed, or the economic value of the confiscated property ruined? As Tyler Cowan and others have pointed out, the sum total of claims may exceed the resources available for rectification along strong rights-based lines (Cowan 1997; Elster 1992). The point applies more broadly. When the injustices are widespread and yet the resources for reparations limited, there are moral and practical constraints on trying to rectify them. For some, this adds up to a reductio of reparations arguments: If past injustices are ubiquitous, then almost every one is in principle eligible for reparations, or only some are. But if the former is absurd, then how to distinguish (non-arbitrarily) between those that deserve reparations and those that don't?

One response is to shift away from pure rights-based claims and focus on counterfactuals. Why don't we ask what my situation would be like if the land stolen from my ancestors had never occurred? This might provide us with a sense just how much damage has been done by the original injustice up until now. If the Aboriginal peoples of Canada, for example, had retained most of the land promised to them in various treaties negotiated with the Crown in the 17th and 18th centuries, then their economic situation today would be very different than it actually is. But there are at least three problems with this approach.² First, counterfactuals are inherently under-determined. Even if we are modest about the possible futures envisioned, there are still problems with producing any kind of determinate answer to the question of what would have happened had X not occurred, given a set of relevant alternatives. Although we know that Aboriginal leaders, for example, wouldn't have gambled their land away in a poker game, what else do we mean? It's very hard to resolve these matters, not only because our knowledge is imperfect, but because there is no fact of the matter to discover in the first place and no natural stopping point for our calculations (Cowan 1987; Waldron 1992). Note that this means that political judgments based on counterfactuals can cut both ways. Opponents of reparations for slavery in the United States have suggested, for example, that the relevant alternative future is that the victims and descendants of slavery remained in Africa, and hence that African-Americans today are not so badly off, compared with had slavery never occurred. A second major problem is the elapse of time. The longer the time and the greater the number of generations between the present and the past injustice, the more complicated and difficult it is to put counterfactual reasoning to work. It becomes more difficult, in general, to disentangle and attribute clear

lines of cause and effect from the multitude of intervening acts by different agents between the time at which the injustice occurred until now (Sher 1981; Parfit 1984). Finally, even if all of these difficulties could be overcome, why assume that restoring the status quo prior to the injustice is itself justified? What if the prevailing property system at the time was deeply unjust? What if, for example, it would have excluded some of those modern descendants who are now pressing for reparations for the injustices that dislodged that very property system? If we reject the pure rights approach, and don't simply want to endorse the status quo, then why should we take for granted that a claim based on an entitlement from 100 years ago – let alone 300 years ago– is valid today (Lyons 1977)?

These kinds of considerations undermine another intuitively attractive way of thinking about the moral basis of reparations. Call it the 'benefits argument'. If my well-being is tied to historical injustices committed against others, then surely I bear some responsibility for that historical injustice? Or, if the unpaid labor of slaves laid the groundwork for the economic success of my family, or even my country as a whole, surely I owe something to the descendants of those slaves, especially if they continue to suffer from the legacy of slavery in various ways?

The benefits argument seems straightforward. But once again there are complications. In many cases, and especially given the passage of time, there are great difficulties in tracing who, exactly, is a net beneficiary (or loser) given the consequences of past injustices. This problem has been prominent in debates over slavery reparations (Robinson 1999; Fullinwider 2001). What if it could be shown that slavery, and even the post-Civil War legal and social oppression of blacks, provided no net positive economic

benefit to slave-owners or whites in general? And even if it could be shown that whites benefited from slavery in various ways, why should the argument depend on that? Slavery and Jim Crow constitute great wrongs, whether or not whites benefited from them. Interning Japanese Americans and Canadians during the World War II was wrong whatever the putative benefit to Americans and Canadians might have been. Taking Aboriginal children away from their families without their consent or for good reason was wrong whether or not anyone else benefited from the policy.

However, our sense of how badly off indigenous people or African-Americans are today (both as individuals and as groups) seems an important aspect shaping our judgment about the plausibility of reparations. So change the examples slightly. Imagine if I was worse off (economically speaking) than the descendants of those whose land was stolen, or whose wages my ancestors never paid, and the capital I had enabled me only a bare subsistence. Does the claim for reparations against me still stand? What if the land to be returned, or the amount of compensation owed, was so great that it affected the state's ability to meet the basic needs of all of its citizens, or involved massive economic dislocation? Even if the resources required to meet reparations were not as great as this, there would be opportunity costs; the resources could be used in other ways, perhaps to the benefit of a wider range of people in greater need (Elster 1998; Kutz 2004). Thus critics of reparations argue that our intuitions in these cases suggest that what is really driving apparently backward-looking claims for reparations are forward-looking claims of distributive justice, or for the 'reconciliation' of a divided society. 'It is the impulse to do justice now that should lead the way', argues Jeremy Waldron, 'not the reparation of something whose wrongness is understood primarily in relation to conditions that no

longer obtain' (Waldron 1992, 27; Vernon 2003; cf. Patton 2004). And this means the connection between redressing the past and doing justice in the present is essentially contingent. There may be other ways of doing justice in the present for historically disadvantaged groups – and to promote reconciliation or non-humiliation – other than by making reparations to them.

V: Reparations revisited

So the case for reparations for past injustices faces some difficult philosophical and political hurdles. Does this mean that we should let bygones be bygones and wipe the slate clean? Is the obligation to forget, rather than to remember? History would matter then only in the broad sense that it provides important facts about what has happened in the past, and these should feature in our practical judgments in various ways, but no extra moral weight should be given to past injustices compared to those that exist today.

As I mentioned above, while many philosophers have been quick to reject the case for reparations, their political significance has grown. It is striking that at one point in his important article, Jeremy Waldron says that although 'full' or 'genuine' reparations are not owed to indigenous peoples for the injustices committed against them in the past, something else is due, namely forms of public remembrance: 'Like the gift I buy for someone I have stood up', suggests Waldron, public remembrance or symbolic payments are 'a method putting oneself out, or going out of one's way to apologize' (Waldron 1992, 27). There is something jarring about comparing the acknowledgement of past injustice with a gift you buy a date you have stood up. But Waldron's struggle to articulate what is due suggests that even when we reject the pure rights approach and

accept that the passage of time can change the nature of various entitlements, we still can't simply wash our hands of the past (Kukathas, 2003; Ivison 2002; Posner and Vermeule 2003). But what are we do?

Instead of trying to shoehorn the problem of historical injustice into our existing models of responsibility, we should use these claims and the issues they raise as an opportunity for critically reflecting upon them, and seeing how they point to new modes of conceiving of responsibility. Many claims for reparations and for the recognition of historical injustice today are intended as political claims not only about the past, but also the present. And many are linked to deeper claims about the structural nature of injustice in our societies today; for example, the way the legacy of slavery is tied to racial injustice in the United States, or the way colonialism persists in relations between indigenous peoples and the state in the Americas and Australasia . Much of the intuitive appeal of the skeptical arguments derives from the difficulty of establishing something like legal liability for the actions of past generations. And this is certainly reflected in the public debates about these questions. Assigning moral responsibility to individuals or corporate agents who don't deserve to be blamed or punished for the harms that occurred in the past is unjustified, and bound to generate resentment. But in considering the legacy of slavery, or of the expropriation of indigenous lands, we are usually not talking about personal liability, and certainly not criminal liability. Instead, they pull us away from standard legal models of liability and towards something more like civic or political responsibility, and thus a form of collective responsibility.

Now there are two ways of conceiving of collective responsibility in this sense, one less historical than the other. The first is to see claims about historical injustice as being

essentially forward-looking, insofar as their main purpose is to link present-day injustices to a long history of injustice and to motivate and mobilize collective action to get people to take political responsibility for changing the situation. History matters here mainly in terms of what we might call the ‘politics of memory’ (see Margalit 2002; Young 2004). The differing ways in which ‘we’ – both individually and collectively - remember the past and situate ourselves in relation to it, significantly shapes our sense of whether and how the past persists in the present. Remembering the past as we struggle against injustice in the present, can help to forge understanding and possibly greater trust between estranged racial, cultural or national groups. But then again, it might not.

The second sense of collective responsibility keeps certain aspects of the liability standard, but places them in a slightly different context. Here collective responsibility inheres in the personification of a political community as a collective agent – whether a state, a nation, or group. And responsibility is distributed down to each member, not necessarily in terms of their personal complicity with past injustices, such as slave-holding or the maltreatment of indigenous people, but rather in terms of their civic membership or identity (Fullinwider 2001; Ivison 2002; Miller 2004). Thinking of collective responsibility for the past in this way relaxes the standard of establishing strict causal links between individuals today and the actions of those in the past, which is extremely difficult to establish. It is crucial for this conception of responsibility that membership in a political community be understood in a particular way. The libertarian consent standard has to be jettisoned, but that doesn’t mean we’re literally constituted by the past. Instead, we need to pay attention to the trans-generational structure of a political association, and especially a democratic one. A political community is

constituted not only by the actions of those in the present, but also by those in the past, through the construction and maintenance of its identity over time. The anchors of legitimacy in a democracy are thus not exclusively present-centered, but also tied to the past – not only through legal practices such as precedent, but through ideals and norms associated with constitutional ‘foundings’. This temporal dimension of political membership manifests itself in other ways. When we identify with a nation or state we often associate ourselves with its past as much as its present, not only in terms of things about which we take collective pride, but also those for which we may feel a sense of shame or regret. [Whether or not that sense of regret can be matched with the attribution of responsibility is what is presently at issue.] For example, when we make commitments in the present we often intend for them to bind our successors in various ways (Thompson 2002). And when we honour arrangements and obligations made in the past, we see ourselves as sharing a set of moral commitments with our predecessors, ones that form part of the reasons we have for identifying with that political community in the first place. However, the mere fact that such commitments are made doesn’t entail that honouring transgenerational promises is always morally required; circumstances can change, and past commitments might now be considered morally dubious. Thus it’s perfectly possible that citizens today, as well as future generations, will decide not to honour various commitments made in the past, without necessarily undermining the value of promise-keeping in general.

A variation of the benefits argument can be put to work here. Citizenship entails a set of special obligations with others, namely those with whom one shares membership in a political community. In particular, we have special obligations to help maintain and

support those political institutions and collective social practices which enable us to live decent lives. These aren't the only obligations we have. We also have general moral duties towards others both within and outside of our boundaries. Special obligations are always, at least in principle, defeasible. But they help constitute valuable relations. As citizens we inherit a territory, institutions, practices and various kinds of physical and cultural capital that have been added to, developed and nurtured by past generations. What connects us to these institutions are the historical facts; that we share a history of being shaped by and participating in sustaining this way of life, on these lands, over time (Hurka 1997; Margalit 2002, 84-105). Now if we have special obligations in this sense, then we also have special responsibility for the wrongs that have been committed through those very same interactions and by the institutions we value. The underlying principle is something like this: if we claim the inheritance of the goods of our political community and the obligations that flow from them, then we also inherit responsibility for the harms that have occurred in relation to them as well. Of course, very difficult questions remain about what kind of redress or action is appropriate. But remember that there are different ways of understanding what follows from taking responsibility for the past, including different modes and forms of reparation, which can be combined in various ways depending on the context. Substantive and prudential considerations interact in complex ways here (Posner and Vermeule 2003). Monetary compensation is not the only option. As I mentioned above, various other forms of reparations in-kind are possible – such as affirmative action programs, apologies, group rights of different kinds (to land or self-government, for example, or voting rights), truth and reconciliation commissions and hybrid combinations thereof.

Conclusion

There are important objections to these arguments, and to conclude I shall consider four. First of all, something like the objection to an earlier version of the benefits argument can be applied to the version just discussed. If someone feels they haven't particularly benefited from being a member of a society, or they (or their ancestors) were coercively assimilated into it, there may be just as strong reasons not to value those relations and indeed to reject them. The argument presupposes, in other words, that everyone shares a view about the relevance of the past. And that is deeply problematic. What about recent migrants, or descendants of immigrants, who are being asked to redress events that happened long before they even conceived of joining that community? What about refugees, or other kinds of 'resident aliens', who may lack the rights and capacities associated with full citizenship? As long as migrants are given equal opportunity to participate in and benefit from the collective practices and institutions of that community, then arguably they too form part of the intergenerational structure that underpins civic responsibility for the goods (and bads) produced by the community over time. In the case of refugees or other resident aliens, it's less clear. They are usually not given equal opportunity to participate and share in the collective benefits of society, and as such shouldn't be asked to bear the same burden of helping to rectify past injustices.

Another problem is that political associations like states and nations, or cultural groups, as well as other kinds of legal persons such as corporations, change over time and often dramatically. This is particularly true of states. So if responsibility for past injustice depends on the persistence of both the wrongdoer and victim over time, what happens when one of them disappears, or is absorbed into another? (Posner and Vermeule 2003,

738; Spinner-Halev 2004).³ It might be that descendants of the victims in these cases have no remedy, because there is no agent to whom responsibility can be assigned in any meaningful way. Sometimes a new state is advantaged by an injustice it didn't commit; and sometimes descendants of the victims have gone on to live decent lives without ever receiving any remedy (or even asking for one). Are they still owed some form of reparation? Not all historic injustices matter because not all of them feature in the shared history and collective memory of people, or a state, in the same way (Margalit 2002, 94-104). And collective memory can be manipulated to dreadful effects, as we know. However, that doesn't mean the best strategy – moral or prudential – is simply to ignore claims about historical injustice. Although they can be forms of interest-group special pleading, they also often point to wider issues of structural injustice and unfreedom.

This leads to a third problem which has also been mentioned above, but bears repeating. Don't most claims for reparations that we find compelling overlap with ongoing disadvantage? And if so, what real work is the historical nature of the injustices doing? Maybe it reminds us of how badly people have been treated in the past, or the harm states and peoples can do. But that doesn't necessarily give us any additional reason for doing justice now; our reason for helping people now has to do with their current situation, not the fact that they were badly treated in the past. So when historical injustice and contemporary disadvantage overlap, the case for reparations is considerably stronger, but mainly because of forward-looking reasons (distributive justice, reconciliation, non-humiliation) not backward-looking ones. But I think our intuitions are pulled in different directions here, and we should acknowledge the tension as opposed to eliding it. The relative wealth of present-day African-Americans or Jews doesn't lessen the wrongs of

slavery or the Holocaust, and so we shouldn't, by definition, reduce all claims for reparations to claims about contemporary disadvantage. Facts about relative and absolute levels of well-being matter for making political judgments in these cases, but the historical facts also matter. They matter because historical injustice plays a crucial role in shaping how the rules and norms of a political society (and arguably, the international system) evolved, and thus in shaping the kinds of inequalities that become entrenched and replayed within various extant institutions and practices (even those intended to address them; see Pogge 2004). The tension is this: if you reject historical obligations completely, then you risk ignoring the trans-generational structure of political relations that are integral to the reasons we have for valuing them. And yet if these obligations always take precedence over our wider moral duties, we can end up entrenching injustice in the name of redressing the past.

This leads to the final objection, which is to reject the significance I've placed on the special obligations altogether. Since we are morally bound to ensure every human being can lead a decent life, and not just our fellow-compatriots, and since the resources we inherit as citizens are often the result of arbitrary and unjust circumstances (war, conquest etc.), they should be treated as a common asset to be distributed equally amongst the people of the world according to a global theory of justice. The emphasis on civic responsibility clashes with our transnational moral responsibilities to those beyond our borders, and with whom we are increasingly enmeshed through the processes of globalization.

This touches on a deep debate between the value of self-determination and the scope of justice. The problem is this: If nations and/or states can't be held responsible for the

collective assets under their control, or for the decisions they make about using them, then it's hard to hold them responsible for their actions in general, past or present (Miller 2004). So, on the one hand, it is morally unacceptable to hold a poor nation entirely responsible for its fate, given what we know about the distribution of resources in the world and the way the world economic order is structured (Pogge 2002). On the other hand, we have good reason to value collective self-government, a corollary of which is attributing to that 'unit of agency' some form of collective responsibility.

But taking historical injustice seriously is compatible with moral cosmopolitanism in at least one way. If, as economists and other social scientists tell us, path dependence plays a crucial role in explaining how social institutions and practices actually work, then understanding the history of these processes helps us understand the nature of various kinds of inequalities that persist today, and maybe also what we can do about them. Distributive justice should not be reduced to historical injustice, but no scheme of distributive justice, global or domestic, can ever fully escape the legacy of the historical injustices that precede it, except in the pure realm of philosophy. So it behooves those whose aim is to overcome the inequalities and distortions of the past to recognize the ways in which it continues to shape what we think we owe to each other and why, as well as who we think that 'we' is in the first place.

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¹ Despite frequent claims about the impossibility of redressing historical injustice note that there have been extensive reparations programs in the United States and Canada, as well as elsewhere, since at least 1946. For a detailed list see Posner and Vermeule 2003, 696-7. Note also the emergence of ‘truth and reconciliation’ commissions and programs in many countries since the 1970’s; see Hayner 2001, 291-317 for details, and below for a general discussion of the variation in modes and forms of reparation.

² See Lyons 1977; Sher 1981; Parfit 1984; Cowan 1987; Waldron 1992, 2002; Simmons 1995; Elster 1998; and Vernon 2003.

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