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CHAPTER

17 Historical Injustice

Jeff Spinner-Halev

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Abstract

This article discusses the relevance of the history of an injustice. The history of an enduring injustice is important because it can help inform us about the nature of the injustice, particularly when the issue lies outside the bounds of liberal justice. Mistrust between a government and a group that is a victim of injustice is often comprehensible only by taking the history of the injustice into account. The idea of taking responsibility for the past too readily invites the response that people alive today are not responsible for the past; but they are responsible for the present, and that is reason enough for them to care about injustices that endure in their midst.

Keywords: [history](#), [injustice](#), [liberal justice](#), [mistrust](#), [responsibility](#)

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In 1998 National Sorry Day emerged in Australia after the release of a government report titled “Bringing Them Home” about the stolen generations of aboriginal children in Australia. In 2008 the Australian prime minister apologized to aborigines for past injustices inflicted on them, including the “stolen generations.” Shortly afterward, the Canadian prime minister apologized to indigenous peoples for past government actions that placed their children in Christian boarding schools with the intent to assimilate them. The U.S. House of Representatives passed a resolution apologizing for slavery and Jim Crow in the summer of 2008, while state legislatures in Alabama, Maryland, and North Carolina all issued apologies for slavery. In 1993 the U.S. Congress apologized for the overthrow of the Hawaiian monarchy 100 years previously, while in 2009 the California Parliament apologized for laws that discriminated against Chinese Americans in the nineteenth and twentieth centuries.

The academy and the politicians are moving in tandem on this issue, as political theorists and philosophers have increasingly addressed the issue of past injustices. While a few scattered articles on the topic appeared in the 1970s, since 2000 a spate of scholarly literature on historical injustice has emerged. Political communities need to take responsibility for their past, some charge, by which they mean that apologies, reparations, or compensation are due to the injured communities. These arguments typically suggest that if

political communities are to be moral, then they must remember the past—and not just the past they are proud of but also the parts of the past that are shameful. Many of these arguments suggest, for example, that if the United States (or Australia, or Canada, and so on) is to successfully confront racism, it must confront its racist past. If we—the dominant political communities in the New World—are to treat indigenous peoples properly, then we must have a better understanding and accounting of the past. An apology is often part of the solution to past injustices, as are reparations and compensation.

p. 320 Why, however, does the history of an injustice matter? All injustices have a past, after all. Nahshon Perez defines historical injustices as those in which all the original wrongdoers, and all the original victims, have passed away. The wrong is also noteworthy enough to merit our attention; it is not a minor case of John's stealing Jane's wallet in 1725 in London. It is an event (or events) that we know took place, so issues of information are not a major obstacle to understanding the injustice. Historical injustices concern people that were *not* involved in the wrong (Perez 2011). I would add that historical injustices are injuries done to groups; it is the harm done to many people that commands attention.

Still, many critics of taking past injustices into account say what should matter is current injustices, not past ones. If an injustice exists, the political community should be concerned, but why is the history of the injustice important? Arguments about past injustice rarely say much about this issue, perhaps because they are case driven—usually by one of two cases (indigenous peoples or black Americans). Driven by cases, these arguments rarely develop a theory of historical injustice. For example, Thomas McCarthy says his argument about memory and injustice applies only to African Americans: “The ‘logics’ and ‘dynamics’ of the constellations associated with the near extermination of Native Americans; the forceful subjection of the inhabitants of territories conquered from Mexico; the involuntary incorporation of Native Hawaiians, Puerto Ricans, and Alaskan Eskimos; and the exclusion or oppression of various groups of immigrants are sufficiently different to warrant separate treatment” (McCarthy 2002, 624). McCarthy's argument is atypical only in that he notices that other groups besides the one he discusses are victims of historical injustice. But in typical fashion, his argument applies to one group, begging a question about much of this literature: Does it present us with a principled argument or merely a complaint?

1. Memory

Some advocates of repairing historical injustice suggest that somehow the past calls us; in other words, we are obligated to remember its injustices. Pablo De Greiff says, “We have an obligation to remember what our fellow citizens cannot be expected to forget” (McCarthy 2002, 629). Similarly, W. James Booth argues that the “past wants to be remembered.” The past is there for us to remember, which we are called to do: “In invoking it, and giving it voice and remembrance, we answer its call. We do not make, or construct, this past” (Booth 2006, 67). Others argue that nations are intergenerational communities; their institutions and moral relationships persist over time and through generations. Members of these nations rightfully think they made demands on their successors; the same is true for obligations. A political community reaches from the past to the future, so we as a political community are responsible for the past just as it affects the moral character of our society. In one typical argument, Farid Abdel-Nour argues that people who take pride in their nation's achievements are also responsible for unjust consequences of their nation's actions: “When she is actively proud of national achievements in a way that allows her to imagine herself as having brought them about, she renders herself responsible for the specific historical actions with which they were in fact brought about” (Abdel-Nour 2003, 713; see also Sparrow 2000; Ivison 2002; Thompson 2002; Kukathas 2003; Weiner 2005; McCarthy 2004). By being part of a community with a history, we become responsible for that history. Thus, if an injustice occurred in our political community's past, then we are responsible for that injustice, or so these arguments suggest on their surface.

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When we are asked to take responsibility for the past, however, it is not clear which part of the past we are responsible for. We (by which I mean all people) cannot be expected to remember all historical injustices. The idea that the past calls us does not tell us which past is calling. The past cannot be there waiting to be remembered, because we forget most of it, as we must: “It is impossible to recover or recount more than a tiny fraction of what has taken place”; the content of the past is “virtually infinite” (Lowenthal 1999, 214). History is boundless; it is beyond the recall capacity of any person or people to remember even a tiny part of history. To remember the past is to choose to remember a particular past: *Remembering means choosing*. The idea that the nation is an intergenerational community and so in some sense is responsible for past injustices does not say much about which injustices we should remember or which past injustices need redress.

Arguments today that suggest that we are, somehow, called to remember the past overlook the fact that we forget most of history. How could it possibly be otherwise? Lawrie Balfour argues that the “story of reparations is centrally a story of memory’s suppression” — meaning that most Americans are opposed to reparations, because they have suppressed the memory of slavery (Balfour 2003, 40; see also Hendrix 2005). But most of history is forgotten, as it must be. It’s not that the past calls to us; it is that we call to the past — but not just any past, only particular pasts. Any account of remembering historical injustice, or of being responsible for the past, must give an account of which injustices (which pasts) we should recall.

Arguments about a political community’s responsibility for the past also leaves many historical injustices without an agent to repair the injustice. The Crimea Tatars were expelled from the Crimea (in the Ukraine) by Stalin. But Stalin is dead, and the Soviet Union no longer exists. Does that mean that no one is responsible for addressing the injustices faced by the Tatars? Similarly, governments are sometimes radically transformed. Is the Japanese government today, drastically altered after World War II, responsible for injustices done to the Ainu (an indigenous people) before the war? One response is to say that sometimes no one is responsible to help end the injustice, because the causal agent no longer exists. As Janna Thompson and Chandran Kukathas state, if the communities that committed the injustices disappear, then there is no agent responsible to help fix the injustice, and there is nothing to be done (Thompson 2002, 76; Kukathas 2003). One might think that the skeptics of repairing historical injustice would use this argument — the number of governmental changes through time is one more reason to focus on current injustices, regardless of their historical roots. Why, however, should the vagaries of history be an excuse to allow an enduring injustice to fester?

It is not clear why a responsible agent for the injustice must be found to have a political community responsible to correct the injustice. A country such as Sweden may have refugees from Bosnia or Somalia, and Sweden may have little responsibility for causing their exile and impoverishment. But once they are part of the Swedish political community, isn’t the political community responsible for helping the refugees live decent lives?¹ Justice does not mean that people or communities take responsibility for the past but rather that political communities take responsibility for the present and future. This does not mean that the history of an injustice is unimportant, but it does mean that using history to find the causal agent for the injustice is not particularly helpful.

2. Reparations

Arguments for reparations might seem more promising on this score, because reparations focus on particular injustices. We know that if the thief of a stolen bicycle is found, reparations would mean returning the bicycle in the condition it was taken, or the equivalent—money equal to what the bicycle, or a similar bicycle, was worth. Yet how can we determine the compensation or reparations for an injustice done decades or centuries ago to many people? The problem might be worse than it seems: Christopher Morris argues that it is likely that if the injustice in question did not occur, then the descendants of the victim of the past injustice would not exist (Morris 1984). If slavery did not exist, for example, the descendants of slaves would not exist. This is true for even less obvious examples, as any small injustice will affect the victims' procreation. Hundreds of millions of sperm cells are contained in a male's ejaculation so "any trivial difference affecting conception would ... [bring] it about that a different individual is conceived" (Morris 1984, 177; see also Wheeler 1997; Kershner 1999). Not only is the amount of reparations hard to determine, but the descendants of the victims of the past would not exist but for the injustice.

A rare response to this nonidentity problem dismisses it for leading to absurd conclusions. Daniel Butt agrees that it is unlikely that the exact children born shortly after the Bhopal or Chernobyl disasters would have been born if these disasters did not occur. Perhaps we can even say these children owe their existence to these disasters. Yet Butt poignantly asks, "Would anyone seriously argue that, in the event of their suffering health problems, they should not be compensated on account of the non-identity problem?" (Butt 2009, 106; see also Simmons 1995, 178–79). These children were harmed by an injustice, and so they are owed rectification for this harm. What we can say is this: If these unjust acts did not take place, then almost certainly fewer children in the area of Bhopal or Chernobyl would have health problems than currently do, which is sufficient reason for compensation to be owed to the victims.

A different response, pursued by Andrew I. Cohen and George Sher, is to argue that injustices are sometimes passed on to each generation anew. We can assume, Sher and Cohen suggest, that parents want to support their children and that in fact they have a duty to do so. An injustice done to parents that inhibits their ability to care for their children as well as they would have otherwise been able to is then also an injustice to the children. The injustice done to the parents also harms the children, and so the perpetrators must also compensate the children. This compensation is not endless; once the children have reached a certain level of welfare that is sustainable over time, the claims for redress fall away. A child whose welfare falls below a certain minimum because her parents are unable to provide sufficiently for her due to an injustice inflicted on them is also a victim of that injustice. If as an adult she suffers because of this welfare deficiency—which is due to an injustice done to her parents—then she is owed compensation from the perpetrator of the injustice; in this way compensable claims for injustice are passed down through the generations (Cohen 2009; see also Sher 2005).

How can we determine who deserves compensation? If the problem is that some people's ancestors suffered harm that may have been passed down, how are we to determine which people today deserve reparations? If it is just a few individuals, perhaps careful genealogical research may solve this problem—or it might complicate the matter, as victims of injustice may marry nonvictims. But none of the advocates of reparations suggest such a route. Rather, implicitly and often explicitly, they have certain social groups in mind, usually African Americans. Cohen suggests that if the descendants of victims are under some level of welfare ("W"), then we can assume they are due compensation. Cohen talks about Luke and Jill and others in his argument, so it is unclear how the argument transfers over to groups, which is clearly what he has in mind. Indeed, at the end of his article he discusses black Americans, as do nearly all arguments for reparations (Cohen 2009, 102). Yet how do we move from Luke and Jill to white and black Americans? If some Irish Americans are poor, do they have a claim for compensation? If they do, is the claim against the descendants of Irish landowners? the Irish government? the British government? the U.S. government? We

could, of course, extend this query to all poor people, trying to determine how they arrived at their impoverishment. Trying to do so, though, would be nearly impossible in large societies with millions of poor people. This explains why the move to groups makes sense as a practical matter, but Cohen does not explain how his argument can work for groups. What if some members of a certain group seen as impoverished do not live in poverty? What if some members of a group generally seen as above baseline “W” are in fact below it?

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Cohen notes these kinds of problems in reparations arguments: There are “determinacy problems,” “counterveiling moral considerations,” and so on to weigh (Cohen 2009, 102). It is hard to determine how an injustice done centuries ago affects one particular person today. Yet Cohen dismisses the difficulties in doing so, because in “most cases of plausible reparations claims, many generations of people ↴ have suffered needlessly under the yoke of subjugation and now languish in penury” (Cohen 2009, 102). This may be the case, but then why is the argument not that the American political community should focus on the injustices that black Americans face because they face them *now*? If the injustice that black Americans face now is enough to ignore the frustrating details in determining how people today are responsible for past injustices, why are the injustices that black Americans face today not enough to say that we should work to end this injustice? Cohen argues that compensation is due if the descendants of injustice fall below a certain baseline of “W.” Yet once we revert to a baseline, why does the history of the injustice matter? Most reparation arguments suggests that anyone below a certain minimum deserves compensation if their low economic status is below “W.” If that is the case, why does it matter if we can trace the reason for being below the minimum to an injustice that took place many years ago, if we can in fact do so. We can simply say that all people below this level “W” are owed assistance.

One possible way around this objection is to argue that those who benefit from an injustice should pay for it. This argument answers one common objection to repairing historical injustice: Some people argue that their ancestors were not living in the country when the injustice took place, so they are not responsible for any costs incurred. Some advocates note that members of the dominant community in the United States benefited (and benefit) from the forced labor of slaves: “Our national inheritance was to a large degree unjustly acquired at the expense of African Americans. The issue is not whether someone has personally benefited from slavery, but if they share in and benefit from an unjustly acquired and unfairly distributed national inheritance. This is not a matter of collective guilt but of collective responsibility” (McCarthy 2004, 758; see also Robinson 2001; Butt 2007). The symmetry between unjust acquisition and responsibility is attractive, but not all past injustices caused economic gain. It is not clear that the Ottoman Empire (or Turkey) gained economically from the Armenian genocide, or that the expulsion of the Tatars from the Crimea was economically beneficial. In other cases, it may simply be impossible to determine the economic gains or losses. It may also be the case that the ancestors of both the perpetrators and victims gained economically from the historical injustice. The economic gain argument also sidesteps the fundamental reason for the injustice. If African American slaves were found to have contributed little to the overall American economy, would that make slavery any less just? The radical injustice of slavery, of snatching people away from their families in Africa, of sending them on a journey to the United States, where many were killed, of selling people to others who had complete control of them—these radical injustices remain apart from whatever economic gains were received from slaves.

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A different reparations argument focuses on the original injustice. Robert Nozick argues that if a holding is originally just, and is transferred by just means, then under most circumstances its current owner has a just claim to the property. If the original holding is unjust, or if a transfer is unjust, then reparations are called for. In Nozick’s account, justice and agency are closely intertwined. If you have less than others—if you live under conditions of inequality—that in itself is not a matter ↴ of (in)justice. Only if someone wrongly took some of your or your ancestor’s holding has an injustice occurred. A welfare baseline is usually not a concern for Nozick. Yet how reparations are calculated, or what to do when nearly all holdings in a country

are unjust—as most are in nearly every country in the world—is not addressed by Nozick in his remarkably brief comments on the subject, given how little property is justly held in the world today according to his theory. Nozick does say that in the case of large injustices the principle of rectification might call for transfer payments from rich to poor, but then he leaves the issue dangling, calling it complex and the proper subject for a full principle of rectification, which he does not offer (Nozick 1974, 152, 231). One of the few interpretations of Nozick's rectification principles argues that given the ubiquity of injustice in the world, Nozickean rectification most likely leads to an egalitarian redistribution of entitlements (Litan 1977).

Other compensation arguments are more specific than Nozick's. In one of his arguments for reparations, Bernard Boxill states that compensation for the unpaid labor of slaves deserves to be repaid; if the original victims are now dead, the right to compensation is inherited by their descendants. It does not matter, Boxill argues, if the descendants are now well off: "The inheritance argument, however, would be unaffected if slavery's long reach had ended some time ago and it no longer harmed the black population. It relies on the assumption that the U.S. Government owes the present black population a debt for an unjust loss it helped to cause, and such a debt is not revoked just because the creditor has recovered from the loss and is prosperous" (Boxill 2003, 69; see also Westley 1998, 465; Hill 2002, 411–12). This argument is about unpaid labor; the labor stolen from slaves is owed to their descendants. If the slaves die with a debt owed to them, their descendants inherit that debt.

Yet the labor of many people other than African Americans was exploited during the nineteenth century. Many people were appalled at the working conditions in the industrializing world. With the backing of the American state, sweatshops thrived, and unions were treated harshly and sometimes violently (Foner 1977; Savage 1990; Papke 1999; Stowell 2008). This is not to compare the injustice inflicted on slaves to workers but to say the wealth of all developed countries was built on the backs of many different people and through many different kinds of oppression. The problem with the debt argument is similar to the problem that besets the argument about the importance of memory and taking responsibility for the past: No attempt is made to determine if the general principle of compensation for exploited labor is actually generalizable. In a world full of past injustices, any argument that suggests the importance of historical injustice must have an account of which injustices from the past should be of concern today. Given the scarcity of resources and the large numbers of past injustices, attempts to pay reparations for all past injustices could quickly detract from society's ability to address current injustices. Yet why should dead victims of injustice be given a priority over living victims of injustice (Perez 2011)? In fact, no advocate of repairing historical injustice actually makes such an argument, probably because it is present injustices that motivate much of their argument, as discussed below.

3. Time and Injustice

A common argument against rectifying historical injustices is that the passage of time changes how we should think of older injustices. These arguments suggest that the world changes over time in ways that either make the consequences of past injustices hard to determine or that undoing these injustices results in a new set of injustices. Land changes hands in the normal and just course of events, and for different reasons. David Lyons argues, for example, argues that the Lockean proviso invoked by Robert Nozick means that Native Americans would have had to share their land with the Europeans that came across the ocean (Lyons 1977). Lyons does not excuse the way Native Americans were expelled from their land, but he does argue that the need Europeans had for more space, and the considerable land used by the relatively small population of Native Americans, does suggest that justice means the latter had an obligation to share their land with Europeans. When Native Americans press claims for the loss of their land, however, some presume that they have a just claim to all of their land. Lyons's argument suggests that it is hard to determine what their just claims to land would be today. We cannot assume that a just holding centuries ago would be, absent an unjust taking in the interim, a just holding today. Intervening factors might mean that justice would compel the land to be distributed differently than the just holdings of centuries ago.

Similarly, Jeremy Waldron argues that there is no reason to think if certain historical injustices did not occur that we would now be living in conditions of justice: "Are we so sure that a smooth transition, untainted by particular injustice, from some early nineteenth-century status quo ante would leave us now where we actually want to be? Quite apart from particular frauds and expropriations, things were not marvelous in the nineteenth century.... Why take all that as the baseline for our present reconstruction?" (Waldron 1992, 14). Further, many indigenous peoples took land from one another in unjust ways. The Aztecs, for example, excelled in warfare, and they conquered many peoples and forced them to pay tribute. They did not rule with modern conceptions of justice in mind. Focusing on particular historical injustices overlooks the ubiquity of (past) injustice. Waldron also argues that there is no fact of the matter when it comes to land that was unjustly taken. We do not know what would have happened if land was not taken unjustly from indigenous people. We cannot know how free people will use (or would have used) their freedom: "Would they have hung on to the land and passed it on to future generations of the tribe? Or would they have sold it—but this time for a fair price—to the first honest settler who came along?" (Waldron 1992, 14). Also, who knows what the settler would have done with the land? In other words, we do not know what would have happened if this particular injustice did not occur. Similarly, George Sher argues that the case for compensation fades over time because the epistemological indeterminacy of the counterfactual becomes greater as time passes (Sher 1981). If an injustice occurs, the relevant comparison for compensation is not how well off the person would have been if the injustice did not occur compared to having \hookrightarrow nothing. Rather, just as we would expect that the person would work to make the most of his or her life without the injustice, we should expect the same with the injustice occurring. Although an injustice may be a setback, the effects of this setback may become smaller over time, to the point that it no longer exists. Sher is clear that his argument applies to ancient wrongs; he is more sympathetic to more recent claims—which apparently means three or four centuries—for compensation for historical injustice.²

Waldron also argues that some injustices cannot be reversed without committing another injustice. If people are forcibly expelled from their land, for example, those who immediately occupy it may be committing an injustice. Over time their children and grandchildren (and so on) may very well develop deep attachments to the land; their liberty and identity may be intertwined with this land. To take away someone's land because of an injustice committed decades or centuries earlier is to commit another injustice no more defensible than the first (Waldron 1992, 14–19). Daniel Butt responds to this argument by questioning why we should assume that the severity of a past injustice fades with time (Waldron 1992, 14–

19). While Waldron argues that over time people's lives adjust to the circumstances created by an injustice, perhaps the injustice has lasting effects—so people have adjusted, but badly.

Still, these arguments point to the difficulty in determining how to repair past injustices. Given the ubiquity of past injustice, one could say that everyone has adjusted to living in a world affected by injustice. Given this, one can easily accept the idea that what should matter are current injustices; after all, there are plenty enough of those to worry about.

4. Enduring Injustice

The problem with arguments that focus on past injustices is that they do not explain why the history of the injustice matters. Unsurprisingly, many reparations arguments speak about the present as motivating their arguments. The typical reparations arguments begin with a list of the current inequalities between black and white Americans—the large differences in income, wealth, living conditions, and educational opportunities (Magee 1993; Westley 1998; Brophy 2008). The argument then moves to an explanation of these gaps, which is found in history: “It is impossible not to link the continuing economic disparity between the races to our history of race-based economic exploitation begun in slavery and continued through discrimination” (Magee 1993, 876). Another typical argument suggests that until the racial gaps on the measures of education, health, income, and wealth close, the debt from the past injustice of slavery and racism has not been paid (Valls 2007; see also Brooks 2004). If the racial gap did not exist, the implication is, then the past injustice would not matter. If black Americans did not suffer from current injustice, there would be little call for reparations. Reparations are called for because of *current* conditions, not because of the past, though this issue remains confused in many reparation arguments.³

As Leif Wener correctly points out, if there is not a current injustice, the advocates of reparations would not make their case (Wenar 2006). Wenar's observation may very well explain Lawrie Balfour's argument that “reparations could create a basis for attacking the deep economic inequality Du Bois understands to be incompatible with democracy” (Balfour 2003, 41; also see McCarthy 2002, 641). There are few calls for reparations for the Huguenots, who were alternatively massacred, left alone, and then drastically oppressed in France, until most fled to neighboring countries. There are few calls for reparations to Chinese Americans, who were also victims of great oppression: “No variety of anti-European sentiment has every approached the violent extremes to which Chinese agitation went in the 1870s and 1880s” (Higham 1963, 25). Lynchings, riots, massacres—Chinese Americans faced these and more. “Decades of anti-Chinese violence, segregation, and discrimination” culminated in the Chinese Exclusion Act of 1882, which outlawed most Chinese immigration and made it impossible for Chinese immigrants to become naturalized citizens (Chen 1980, 129; see also Pfaelzer 2007). Because these groups do not suffer from any injustice today, few think of them—or the many other groups that suffered from injustice in years past but no longer do—when the topic turns to historical injustice.

I have argued here that past injustices alone cannot be the reason why an historical injustice is a problem today, but it is also not right to say the history of an injustice never matters. Instead of using the past as a way to determine causality when thinking about historical injustice, we need to refocus the issue, in part by stitching together some assumptions made in the historical injustice literature as a springboard to reconceptualize the issue. There are no arguments that suggest *all* historical injustices are a challenge for a political community to solve; the historical injustice literature has focused on current injustices that have a long history that connects to the present. These arguments focus on groups that were victims of an injustice long ago and that still suffer from injustice. This suggests that the issue is not just past injustice but rather one of enduring injustice. Enduring injustice has an historical and a contemporary component. All enduring injustices are also historical injustices, but the reverse is not true, because some historical injustices no

longer persist today. The Chinese Americans are victims of historical injustice but not enduring injustice. The reason why the examples of indigenous peoples and African Americans are so powerful is not only that they have suffered from injustice in the past but also that these historical injustices continue in the present.

p. 329 Four criteria define an enduring injustice. First, there is good reason to think the present injustice is in important ways connected to past injustices. Causality arguments that stretch through decades or centuries are often hard to prove, but we can make reasonable suppositions. One could argue that the misery of Native Americans was caused by American policies that pushed indigenous peoples aside, shamelessly broke treaties with them, treated them harshly, and so on. Yet we do not know what would have happened if Americans treated indigenous peoples with more respect and decency; it is hard to imagine that the traditional indigenous way of life would have survived once whites took to industrialization. It is likely that if indigenous peoples were treated with more respect, they would have had more control (not complete control) of the transformative process they encountered, and they would have wrestled with modernity from a position of cultural coherence and not decimation. This almost surely would mean that their position today would be much different and better. Many indigenous peoples are suffering in many ways, and it seems likely that if they were treated better by the colonialists and then the Americans, they would be better off today.

Second, it seems that without a change of course of action, the injustice will persist. Nearly all the arguments on historical injustice share this assumption, although this does not mean this assumption is correct. There is no way to know the future with certainty—it is possible that imprisonment rates for black Americans will suddenly plummet, while their educational attainment and income will begin to rise, but given past patterns, this seems unlikely.

Third, the pattern of past and current injustice will typically lead, in some cases, to a problem of trust. Trust correctly looms large in the literature on historical injustice. Leif Wenar argues, perhaps with some exaggeration, “Justice, taken as relations of mutual recognition and trust, cannot now go forward in these contexts because of the lingering presence of the past in the minds” of groups that are victims of historical injustice (Wenar 2006, 403; see also Williams 1998; Ivison 2002; Thompson 2002). Mistrust may not be quite the barricade that Wenar suggests, but it surely makes it harder to achieve justice. Many black Americans are suspicious of government attempts to ensure that many children receive routine vaccinations because of their memories of the infamous Tuskegee experiment, in which black men with syphilis had treatment withheld by the U.S. government in order for researchers to follow the course of the disease (which they did even after penicillin, an effective treatment, became widely available). Similarly, the Tuskegee experiment has apparently led many blacks to believe that AIDS is actually a plot devised by the U.S. government to harm the black population. It may be that the government will have to work to overcome the mistrust. (Trust may be less of an issue when the current government is not recognizably the descendent of the past government that caused the injustice.)

p. 330 Fourth, the problem of enduring injustice raises an important question: Why is the injustice enduring? We can locate this problem within liberal justice, or rather a failure of liberal justice. Most views of liberalism see justice (and injustice) through the lenses of fair procedures, individual rights, equal respect and regard, and the redistribution of wealth. While this last aspect is rather controversial, I use here the framework of egalitarian liberalism, which sees large gaps in income and wealth as violating liberal principles. Many liberals see one important solution to unjust inequities in terms of wealth and money, whereas trying to ensure a good education for all is often seen as another important way to improve the conditions of the poor (Kymlicka 2001, 83–84). Many forms of injustice are remedied with the protection of individual rights and a fair system of justice. Many immigrants, for example, face discrimination when they first arrive in the United States, but this discrimination typically lessens over time. Discrimination against women and many religious groups has, over time, faded in the Western democracies. One view is that, in the history of liberalism, the idea of religious toleration came to be seen as a right, and the idea of rights expanded beyond

religious freedom with the rise of the idea of human rights (Zagorin 2003). What some of these examples show is that it is not just that the idea of individual rights has spread, but that many groups no longer face discrimination (or they face less discrimination than in the past) from their fellow citizens and from nonpublic institutions. Chinese Americans may still face some discrimination today, but few doubt their humanity—few think that they deserve less respect as others—and the discrimination they face is considerably less than that of their ancestors, while their economic achievement is much greater.

Yet in cases of enduring injustice, most observers do not think that the injustice will fade, at least not with the normal liberal remedies. It may be that the pattern of injustice that began decades or centuries ago feeds into injustice today. Perhaps the exact form of injustice is not the same, but one can recognize the injustice today as beginning some time ago. The origins of the poverty of many Native Americans can be traced back to pushing them onto reservations, but U.S. government policies affecting reservations impacted (and impact) Native American poverty. For example, the policy of ending communal ownership land worked out badly and probably did more to deepen than to alleviate Native American poverty.⁴ Some people argue that the racism that was built into the American state long ago still exists and that many of these patterns of racial inequality persist not only as a vestige of the past but also because institutions perpetuate them, sometimes wittingly and sometimes unwittingly. More than forty-five years after the Civil Rights Act, many black Americans were still impoverished; the incarceration rate of black men is six times the rate for whites. The issue is not only the continuation of poverty and the alarmingly high rate of imprisonment but society's lack of good solutions to these problems.

In other, less frequent cases, one might say that the injustice against some groups is an effect of past injustice, even if no one is perpetuating the injustice today. The Tatars, who live in exile, may have their individual rights respected, and even if no one perpetuates an injustice against them now, they may still see exile as leaving them in a state of injustice. Similarly, some peoples view certain land as sacred. Hills, stones, and mountains are sometimes sacred ground to indigenous peoples, such as Ayers Rock in Australia or the Black Hills in the United States. The Black Hills, where special ceremonies were performed, are considered sacred to the Lakota Sioux. The U.S. Federal government agreed to the Sioux rights to the land in 1850s by treaty; however, after gold was discovered there, the United States broke the treaty to seize the land. This land was, and still is, mined. The Sioux eventually sued and won in the U.S. Supreme Court, which found the treaties that gave away the land fraudulent. The Sioux were awarded compensation (\$700 million today, including interest) but not the return of the land. The Sioux have refused to accept the money, as they maintain that this sacred land cannot be bought.

p. 331 Liberal courts have a hard time seeing why money is insufficient compensation for lost land, which is echoed in liberal theory. In his skeptical argument about historical injustice, Jeremy Waldron talks about tribal owners of land, wondering if they might have sold it if it had not been wrongly taken from them. His examples include his aunt's inheritance and a stolen car (Waldron 1992, 20). Lost land, in this view, can be compensated with either money or different land. What can be lost can be replaced: This is certainly true for money and cars. Waldron does say that his argument may not apply to cases "where the dispossessed subject is a tribe or a community, rather than an individual, where the holding of which it has been dispossessed is particularly important for its sense of identity as a community," but it is hard to put much stock in this caveat, because the main subjects of Waldron's essay are tribes (indigenous peoples) whose identity is very much tied to land (Waldron 1992, 19). Waldron's brief caveat is overwhelmed by the rest of the argument, which is devoted to showing that the land claims of indigenous peoples have faded over time.

The idea of sacred land also highlights why the history of an injustice can matter. This is not just about learning from past failures; the only way to make sense of a group's attachment to land that they no longer occupy is through an understanding of history (or, at least, the group's understanding of history). The Crimean Tatars want to return to their land. This normal-sounding sentence, however, is wrought with moral implications, because many of the people who want to return never lived in the Crimea. They look at

the Crimea as their ancestral homeland. The idea of sacred land makes sense only if the idea of collective memory (or narrative) and historical attachments have meaning.⁵ If the Lakota had no collective narrative, if the past did not matter to them, the Black Hills would be just another place, and there would be little problem about selling it. Standard accounts of egalitarian liberal justice would ask if the Tatars receive unequal treatment where they live or if their rights are violated. These questions, though, do not capture the injustice of exile or of separation from a sacred place. The Tatar homeland is kept alive in exile by connecting the past to the present (Uehling 2004).

One partial solution to the problem of enduring injustice is offered by Burke Hendrix, who agrees with Waldron that the land of indigenous peoples cannot simply be returned to them but then argues that indigenous peoples should be given the right of first refusal when their now-occupied lands go up for sale (Hendrix 2008, 49). This insightful idea makes sense only if injustices done long ago by and to people who are now dead have some moral weight today. Of course, one might say that all injustices have a past—if I stole your bicycle, it is now a matter of history. But if my grandfather stole your grandfather's bicycle, it is doubtful that I owe you compensation for the theft. Yet land stolen from a people has a different character, which highlights that victims of enduring injustice are groups (and their members) and not individuals apart from group attachments. The injustice to individual Tatars and families was their forcible eviction from their homes. An unjust eviction from one's home is an injustice but not a challenge to liberalism or even an enduring injustice. The collective eviction of a people, however, poses a more fundamental challenge to liberalism and begs for a group solution. The injustice to the Tatars as a people is their exile from their ancestral homeland, and so overcoming it means facilitating their return in a general way, in ways that do not cause another injustice.

If the state gives the right of first refusal to a particular tribe, it may do so without knowing if the ancestors of a particular Native American family lived on that land. If the past did not matter for current injustice, if justice is only about the redistribution of wealth and the protection of rights, then Hendrix's idea of the right of first refusal would not make sense. Similarly, when mistrust arises and becomes a political problem, it is because members of a particular group feel this mistrust.

The history of an enduring injustice is important because it can help inform us about the nature of the injustice, particularly when the issue lies outside the bounds of liberal justice. Mistrust between a government and a group that is a victim of injustice is often comprehensible only by taking the history of the injustice into account. The ideas of sacred land and exile also make sense only if the history and memory (or collective narrative) of a group matters. Still, the contemporary focus on injustice by those skeptical of repairing historical injustice supplies an important corrective to the idea of historical injustice. What should drive our concern about repairing injustice are today's injustices. Of course, there are many injustices today, and my argument does not insist that enduring injustices are more important to address than other kinds of contemporary injustices; how to prioritize the injustices a political community faces depends on many factors, and I cannot address that issue here. Yet certainly injustices that have endured for a long time should, *prima facie*, be of concern to the political community. To turn away from a group that has suffered for decades or centuries, or to tell them that the injustices they face are of low priority, is not something that should be done lightly. What the advocates of repairing historical injustice remind us is that while it may be easy to pass over long-standing injustices because many of us have become accustomed to them, it is cold-hearted and unjust for a responsible political community to do so without very good reason. None of this means that people alive today are responsible for the past. Some injustices may have their roots in the past, yet if they are present today, then the issue regards who can help alleviate them now, not who caused them at their origin. The idea of taking responsibility for the past too readily invites the response that people alive today are not responsible for the past; but they are responsible for the present, and that is reason enough for them to care about injustices that endure in their midst.⁶

Much of my argument here is expanded upon in my contemporaneously published book, *Enduring Injustice* (Cambridge, UK: Cambridge University Press, 2012).

Notes

1. I leave aside here the possibility of global responsibility.
- p. 333 2. ↳ Sher does not explicitly state the time frame for an ancient wrong versus a compensable past injustice. The main example in his work justifying compensation for historical injustice is American slavery, which reaches back to the seventeenth century.
3. Other backward-looking arguments include Hendrix 2005, 775 and McCarthy 2004, 751.
4. The Dawes Act in the late nineteenth century forced most tribes to divide their communal land into individual plots, which was part of a policy to try to make Indians more like white citizens (Hoxie 1984; Parker 1989; Banner 2005). This policy ended in 1934, only to begin again with the unfortunately named Termination policy in the 1950s, which strove to break up (“terminate”) indigenous tribes by ending their communal control of land; plots of land were given to some individuals, while others were given money and encouraged to move to urban areas. Like the Dawes Act, Termination was widely considered a failure (though it took the U.S. government less time to realize this the second time around), partly because the cultural structure of some tribes was destroyed (Prucha 1986, 344).
5. I prefer the term “collective narrative” to “collective memory.” This is explained in Spinner-Halev 2007.
6. I do not have space here to pursue the argument about responsibility.

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