

Reparations and Symbolic Restitution

Lukas H. Meyer

Claims to symbolic restitution and material reparations for historical injustices are based on the moral quality of the deeds of previously living people and the lasting impact of their deeds on the well-being of currently living people, respectively. These grounds for claims to redressing historical injustices differ and raise different questions of interpretation.

Currently living people can claim reparations for being indirect victims of historical injustices owing to their impact on their well-being. Such a justification of reparations raises two main questions of interpretation. First, how can currently living people be understood to be negatively affected by historical injustices even though the past injustices are among the necessary conditions for their very existence and identity? In response to so-called Non-Identity Problem I explicate (section I. 1), first, the idea of people being harmed since conception owing to the lack of (sufficient) compensation to their predecessors who were direct victims of historical injustice and, second, the notion of harm according to which people can be understood to be indirect victims due to their falling below a threshold level of well-being as a consequence of the historical injustice committed against previously living people. We also need to address, second, the question of whether this justification of reparations presupposes an indefensible interpretation of property entitlements—on that basis some have argued that claims owing to the impact of historical injustices should be considered superseded by the passage of time and changes of circumstances. I show that the conditions for the supersession of historical injustices are often not met (I. 2).

Currently living people can claim symbolic reparation on behalf of the direct victims of historical injustice—namely owing to the wrongs they suffered. Such a justification for reparations raises the question of, *inter alia*, the moral status of deceased persons and dead victims of injustice in particular. I explicate—in section II. 1—the notion of surviving duties *vis-à-vis* deceased persons. I defend, in particular, the idea of a general surviving duty to bring about the posthumous reputation that people deserve (II. 2). Commemorative acts of symbolic reparation can be understood as aiming to fulfill this duty *vis-à-vis* dead victims of injustice.

Finally—and in suggesting an answer to the question who might plausibly be thought to stand under the so understood and distinguished duties to provide

For a general and detailed account of my view on the moral, political, and legal significance of historical injustice, see Lukas H. Meyer, *Historische Gerechtigkeit* (Berlin and New York: Walter de Gruyter, 2005).

symbolic restitution and material reparations—I indicate, first, that people as members of ongoing societies can identify with the public inheritance of their society in such a way that they will want to respond to what may be dubbed “inherited public evils” by participating in public acts of symbolic reparation. Second, transgenerational legal persons (usually states) in whose name previous members committed crimes against others can be thought to stand under an obligation to provide indirect victims with compensation. If so, currently living people as members of such entities can stand under a (civic) duty to support their legal person in carrying out its policies of reparation that aim at providing just compensation today in light of both the lack of (sufficient) measures of compensation to the direct victims of historical injustices and their lasting negative impact on the well-being of currently living people.

I. The Lasting Impact of Historical Injustices

First, currently living people can claim reparations for being indirect victims of historical injustice owing to its impact on their well-being. I will comment on two sources of doubt one might have with respect to the validity of this justification of claims to reparations. These doubts reflect the two sets of questions that have defined, at least in part, the philosophical subject of historical injustice. First, addressed shall be the questions arising from the non-identity problem as introduced by Derek Parfit in his work *Reasons and Persons*,¹ and, second, the questions arising from Jeremy Waldron’s supersession thesis as presented in his article “Superseding Historic Injustice.”² My comments are meant to show that the non-identity problem can be of practical significance for assessing the validity of claims to reparation of indirect victims and the same holds true for the supersession thesis. However, the non-identity problem is of no significance for assessing the validity of claims to reparations of direct and surviving victims and of little significance for assessing the claims of their direct descendants. Also, the supersession thesis tends to be of less importance in assessing claims to reparations owing to more recent injustices.

I.1 Responding to the Non-Identity Problem

The non-identity problem gives rise to the following general question: how can individuals today have a just claim to compensation owing to what was done to others in the past when the claimants would not exist today had the latter not suffered these harms?³ For example, do African Americans, whose ancestors were subjected to the terrible injustices of being kidnapped in Africa and subsequently enslaved, have a just claim to compensation?⁴ Let us set aside a host of specifically legal questions concerning, for example, the laws of limitation and liability. To illustrate the point here one need only consider the case of Robert, a modern day descendant of slaves.⁵

People can make claims to compensation for harms they have suffered. As a descendant of slaves, has Robert been harmed owing to the injustices suffered by his ancestors? First, consider briefly the most common interpretation of harm,⁶ which requires that the existence of the harmed person or people *qua* individuals be independent of the harming act or policy. This interpretation of harm can be expressed in the following formula:

(1) Subjunctive-historical: An action (or inaction)⁷ at time t_1 harms someone only if the agent causes (allows) this person to be worse off at some later time t_2 than the person would have been at t_2 had the agent not interacted with (or acted with respect to) this person at all.⁸

Under this interpretation of harm, a person can be understood to be fully compensated for an act or policy (or event)⁹ when he or she is as well off as he or she would be if the act had not been carried out. Under this interpretation of harm, Robert cannot be said to have been harmed by the kidnapping and enslavement of his ancestors, for had his ancestors not been kidnapped and enslaved, he would most likely not exist. His existence is the product of a certain genealogical chain not being broken. Hence, the initial kidnapping in Africa, the transporting to America, and the enslavement of his ancestors are (very likely) necessary conditions for Robert's having come into existence at all. Indeed, he would not have been better off had his ancestors not been badly wronged. Thus, we cannot rely upon this interpretation of harm and its accompanying interpretation of compensation to ground the claim that Robert has been harmed and should be compensated. The required state of affairs implies the non-existence of the person claiming compensation.

To this claim we can respond in a number of ways.¹⁰ The response I find most plausible is to allow for an identity-independent notion of harm in addition to the common identity-dependent notion of harm.¹¹ Such an identity-independent notion of harm can be expressed in the following formula:

(2) Subjunctive-threshold¹²: An action (or inaction) at time t_1 harms someone only if the agent thereby causes (allows) this person's life to fall below some specified threshold.

Under this interpretation of harm, a person can be considered to be fully compensated for an act or policy (or event) if she or he does not fall below the specified standard at a particular time. Robert can be understood as having incurred harm because his ancestors were kidnapped and enslaved. Whether Robert has been harmed due to the way his ancestors were treated depends upon whether the way they were treated has led to Robert's falling below the specified standard of well-being. However, whether or not this is the case will turn on his current state of well-being. Employing this interpretation of harm and its accompanying interpretation of compensation requires an assessment of what others ought to do today in terms of providing measures of compensation.¹³

When we analyze historical claims on the basis of such a subjunctive-threshold interpretation of harm, the normative relevance of past wrongs will depend upon their causal relevance for the well-being of currently living (and

future) people. Fulfilling our duties toward both the latter might well require compensation for the consequences of the fact that their predecessors were badly wronged. However, the fact that their predecessors were wronged does not, in itself, give rise to justified claims to compensation for their descendants today.

Consider the claims of present-day Palestinians living in refugee camps.¹⁴ Do they have claims to reparations—a right of return to their homes and to have their property recovered—namely in virtue of the history of having been forcefully and deliberately expelled from their homeland? The non-identity problem is of little practical significance for assessing the validity of the right of return of the Palestinian refugees—and for two reasons. First, the non-identity problem does not arise with respect to surviving victims of wrongs. Among those present-day Palestinians living in refugee camps are a good number of those individuals who were forcefully and deliberately expelled from their lands by the Israeli fighting forces. The harm done to them can be understood in accordance with the common understanding of harm: the Israeli policy caused these people to be worse off than they would have been in the absence of that policy. These individuals would be fully compensated for the harm done to them were it the case that, as a result of measures of compensation undertaken, they were as well off as they would have been had the policy not been carried out.

Second, for the descendants of those who were expelled from their homeland it might well be true that they would not exist had their parents and (great-) grandparents not been expelled. However, the descendants can be said to be victims of the additional wrong that their parents did not receive compensation for the wrongs inflicted upon them. The individual descendants can be said to have been harmed from conception or birth because of the lack of sufficient compensation to their parents. Again, the harm done to them can be understood in accordance with the common understanding of harm: having refrained from providing sufficient measures of compensation to the first generation of Palestinian refugees, those entities who are under obligation to provide such measures of compensation harmed the descendants of the first generation of Palestinian refugees by causing those descendants to be worse off than they would have been had the relevant entities fulfilled their obligations. And, again, the second generation of Palestinian refugees would be fully compensated for the harm done to them if, as a result of measures of compensation undertaken, they are as well off as they would have been had the first generation of Palestinian refugees received the compensation they were entitled to. And this line of argument can be similarly extended for the third and fourth generations of Palestinian refugees.

Thus understood, the later generations' claims to compensation do not have to contend with the non-identity problem.¹⁵ However, the legitimacy of people's claims can depend upon their actions (and inactions) and the impact these have on their well-being. For these actions can be attributed normatively to people only insofar as they decide to act (not act) and take responsibility therefor. The strength of later generations' claims to compensation—derived from the failure to provide a sufficient measure of compensation to the first generation that suffered the initial

harm—is thus likely to wane over time. The more the descendants' well-being can be attributed to actions or inactions for which they themselves or members of the intermediate generations are responsible, the less the hypothetical state of affairs that would obtain had the direct victims received adequate compensation¹⁶ is relevant for the determination of the claims of the indirect victims.¹⁷ This insight is, however, of little practical significance in assessing the strength of the claims of the descendants of the Palestinians who were expelled from their homeland. Most of them are the children or grandchildren of the direct victims. The harm done to their ancestors is not ancient. Thus, here the descendants' claim to compensation—based on the harm inflicted on them due to the failure to provide adequate compensation so far for the initial harm—is strong.

1.2 Responding to the Supersession Thesis

Let us now turn to the second source of doubts about the validity of indirect victims' claims to reparations. Injustices committed against people in the past may not give rise to claims to reparations today if such claims can be understood to presuppose an indefensible interpretation of property entitlements. David Lyons and Jeremy Waldron argue that the view that once we acquire entitlements they continue until we transfer or relinquish them is indefensible since there are reasons of principle¹⁸ for holding that entitlements and rights are sensitive to the passage of time and changes of circumstances. According to Waldron, entitlement to land is based upon the idea that such entitlement can be an integral part of people's life plans and projects as individuals and as members of groups. Entitlements to land can be important for people being able to autonomously realize particular goods of their way of life.¹⁹ When circumstances change, the entitlement might no longer be important in that sense or may decrease in normative significance. For example, the entitlement of original owners might weaken over time if they are separated from the land. Having been separated from the land, entitlement to the land might no longer be important for those original owners in autonomously realizing their way of life. Thus, generally speaking, entitlements are sensitive to background circumstances and they are vulnerable to prescription. As Waldron argues, property entitlement is a set of claim rights, liberty rights and powers that are "circumstantially sensitive."²⁰

Further, if legitimate entitlement is sensitive to changes in background changes, it is possible that the ongoing effect of an illegitimate acquisition and, more generally, of unjust violations of rights of others can become legitimate when circumstances change. This is Waldron's principal argument for the thesis that historical injustices may be superseded.²¹ He gives an example in which the violation by one group of the legitimate rights of another group to a given waterhole is superseded by ecological catastrophe such that the interlopers acquire a right to share what they had wrongly begun to use. In these circumstances, "they are entitled to share that water hole. Their use of [the waterhole] no longer counts as an injustice; it is now in fact part of what justice now requires. The initial

injustice by [the first group] against [the second] has been superseded by circumstances.”²² Hence, justice may require that original owners of land share their land with others, and they may be required to share even with those who unjustly appropriated the land. However, even if supersession of injustice is possible, the claim that it has occurred in any given situation “depends on which circumstances are taken to be morally significant and how as a matter of fact circumstances have changed.”²³ The argument for the possibility of supersession rests on a hypothetical case of ecological disaster such that the need of others to use of the resource is both extreme and brought about by circumstances beyond their control.

One might doubt that these conditions are fully met even in cases of so-called ancient historical injustice.²⁴ With respect to more recent injustices the conditions for their supersession will often not be met. Consider again the case of the Palestinians. If we assume that the Palestinians were unjustly expelled from their lands by the Israeli fighting forces and that the appropriation of these lands was unjust, it seems implausible that these historical injustices are superseded today so that their ongoing effect—namely, Israeli exclusive sovereign control of the land—is to be considered legitimate.²⁵ Israel cannot plausibly claim either to have an extreme need to exercise exclusive sovereign control over the land or that such a need has been brought about by circumstances beyond their control.²⁶ It is true that Israel acted in 1948 under the immediate impression of the holocaust. However, this cannot justify the measures taken then or the policy of hindering the refugees from returning since then. Further, and according to Waldron’s account of property rights, supersession of the historic injustices will turn on whether for the Palestinian refugees, loss of their homeland and the lost property is of significance for their sense of who they are and who they want to be. In actuality, the loss is highly important to them, namely, to their individual and collective identities. We can explain this in terms of the importance of a shared communal life that allows the members of an ongoing cultural and ethnic group to autonomously participate in the realization of the particular goods of their way of life.²⁷ For a people to realize this value, they typically need a meaningful degree of autonomous control over land, and for the Palestinians, there is no available substitute for their homeland. This is not an atypical situation either.²⁸ Further, and as Andrei Marmor has stressed, in the case of the Palestinian refugees, the claim to a right of return is particularly pressing owing to the miserable conditions under which they live in the refugee camps, with, as Andrei Marmor puts it, “very limited opportunities to escape such a predicament.”²⁹ In the case of the Palestinian refugees it seems clear that their yearning for their lost homes “is not just a sentimental matter,”³⁰ but something which is closely related to the person’s individual or communal sense of identity.³¹

II. Past Victims of Historical Injustice

So, we often should indeed attempt to counteract the negative consequences of past wrongs for the well-being of current and future people. However, such an

interpretation of the relevance of past injustices is incomplete when understood as a statement of how we ought to respond to the *fact* that past people *were* severely wronged. That is true quite independent of whether or not we find in a particular case of historical injustice that currently living people have valid claims to reparations for being indirect victims of historical injustice. Even if we held the view that the non-identity problem excludes the possibility of currently living people being indirect victims of past injustice or that the historical injustice under consideration has been superseded, we will not wish to deny that past people were wronged. The moral significance of past wrongs does not lie in their impact on currently living and future people's well-being only; rather, the significance of past wrongs should also be seen in the fact that *past* people *were* victims of these injustices. We need to enquire into the question of what we owe to the dead victims of historical injustices. The interpretation of the normative significance of the impact of historical injustices on the well-being of currently living people could be misunderstood as suggesting that we owe dead victims nothing—that, in the words of Max Horkheimer, “[p]ast injuries took place in the past and the matter ended there. The slain are truly slain.”³²

One could defend the claim that we are obliged to the past victims of injustices by attributing rights to them. To attribute rights to dead people may seem unproblematic if we assume that people continue to exist after their physical death, that they exist as people who can be affected by the events of this world or that they might even be able to act in ways that have an impact on what happens in the world. These assumptions about the ontological status of previously living people are at least as controversial as the assumption that dead people do not exist as persons.³³

A presupposition that is equally compatible with at least some of the controversial and mutually exclusive presuppositions on the ontological status of dead people can be considered a suitable starting point for a philosophical investigation into the question of whether we can stand under duties to previously living people. In the following discussion I am proceeding on the assumption that dead people either do not exist (a1) or, if they do, that there is no connection between them and currently living (a2). The second assumption (a2) is meant to imply that for currently living people dead people are neither passive nor active subjects. In other words, I am proceeding on the assumption that the end of the physical existence of a human person, that is, his or her death, is the end of the possibility of this person acting in a way that she has an impact on the world as we know it and of events of this world or currently living persons' actions affecting the dead person [presupposition (A), that is: (a1) and (a2)].

II.1 Surviving Duties

Is this presupposition compatible with an interpretation of the claim that the true significance of past wrongs lies in the fact that past people were the victims of these injustices? The position of surviving duties is compatible with presup-

position (A).³⁴ The duties survive the death of the bearer of the right.³⁵ While the bearer of the right does no longer exist, currently living people can stand under the correlative duties. The notion of surviving duties relies on the idea that the reasons for a person's right imply reasons for a duty under which other people stand after the death of the bearer of the right. If it is a moral right, then these reasons will also include general social reasons which are relevant not only for the bearer of the right but also for the bearer of the surviving duty, his contemporaries (and future people). For example, we all have reasons to protect people's trust that promises be kept and that people have the reputation they deserve. The reasons for the surviving duties also include the reasons that are necessary for showing that a particular person had the moral right.

The position under consideration relies upon the following claims: Some rights are future-oriented in the sense that they impose duties in the future. Such rights can impose surviving duties; the rights imply duties that are (also) binding after the death of the bearer of the right if the appropriate bearer of the duty is identified. I would like to comment on these claims by investigating the reasons for surviving duties with the help of an example of a person who wishes to establish posthumously a prize for the sciences. I will call the person Alfred Nobel even though the example and the variations on the example I will use in the following discussion make no claim to resemble the historical person Alfred Nobel to whose bequeathal we owe the Nobel Prize.

"A right implies a duty" means that a proposition about the right's validity implies a proposition that some duty exists. Such an implication relies upon the claim that the reasons for the right contain (some of) the reasons for the duty. In the case of rights that are future-oriented in the sense indicated, the reasons for the rights of people while alive are sufficient for holding currently living people under a duty, that is, a surviving duty. With respect to moral rights, specifically moral reasons are among these reasons. Such reasons are meant to protect the conditions of a, morally speaking, valuable social life.

Suppose Alfred Nobel kept to himself his wish to establish posthumously a prize for the sciences. Although he accumulated the fortune necessary for the purpose, Nobel neglected to write it in his will. Hiking in isolated mountains together with his friend Barbara, Nobel has an accident and both he and his friend realize that he will die before they can call on somebody for help. He asks his friend to promise him that she will make sure that his fortune will be spent for the establishment of a prize for the sciences and that his wish to this effect will be acknowledged as if it had been written in his will.

Why should Barbara keep the promise? The particular strength of the position under consideration is to be seen in its connecting the surviving duty both to the previous right of the deceased person and to those general moral reasons which are relevant for the bearer of the duty and his contemporaries. First, the particular reasons which ground the right of the no longer existing person imply reasons for the validity of the surviving duty. Some of the reasons for a currently living person to stand under the duty toward the deceased person are implied by the reasons for

attributing the corresponding right to the deceased person while alive. This is also the sense in which we stand under surviving duties *toward* the deceased person. For example, the surviving duty to keep a death-bed promise is valid, *inter alia*, for the reason that the promise was given to the deceased person and that is why the latter, while alive, had a moral right that the promise given to him be kept. If the duty is not understood to be binding due to the fact, *inter alia*, that the deceased person had the future-oriented right, surviving duties could not be distinguished from interpretations of, for example, death-bed promises according to which the duty to keep the promise is owed to our contemporaries alone (and possibly to people living in the future). The position under consideration differs from some consequentialist interpretations of, for example, death-bed promises by insisting that a surviving duty necessarily be based upon, *inter alia*, the reasons for the previous future-oriented right and that these reasons contain the specific reasons for the attribution of the previous right to the deceased person.³⁶

So far I have investigated one type of reason for a current person to stand under a duty toward the deceased person. These reasons are implied by the reasons for attributing the corresponding right to the deceased person while alive. However, and second, there are other reasons too. These reasons are general in that they concern the protection or promotion of values important for the quality of social life. With respect to death-bed promises trust and the protection from betrayal are at stake. We all have reasons to protect the value of people having confidence that promises be kept. In so far as people can and do have an interest in future posthumous states of affairs of the world as we know it, and in so far as pursuing such interests can be of high importance to the well-being of people while alive,³⁷ it is important for people that others can bind themselves by promises or contracts to the effect that they will carry out certain actions after the promisee's death, and that when others have done so, that they can be confident that the promise will be kept. For the practice of such promises, trust is of special importance, for the promisee will not be able to determine whether the promise was kept. Thus, the practice of such promises is particularly dependent upon the protection of the value of people having confidence in promises being kept. At the same time, if such promises have often not been kept, this is likely to undermine the confidence in promises being kept generally. The right of the deceased person that the promise given will be kept is based on, among others, these reasons. Although the right and the person who is the bearer of the right has ceased to exist, the moral reasons are still valid and the duty of the person who gave the promise continues to be binding on the basis of these reasons. As these reasons are general moral reasons they are not only relevant for the individual bearer of the right but also for the surviving bearer of the correlative duty and his contemporaries. The death of the bearer of the right leaves these moral reasons unaffected and the surviving duty is based on these reasons in conjunction with the reasons that are implied by the particular reasons for the attribution of the correlative right to the deceased person while alive. Thus, contemporaries of a person who stands under a surviving duty have reason to impose sanctions on the person should he not keep his promise.

One might wonder whether this interpretation of surviving duties as currently living persons' duties toward deceased people is compatible with the presupposition that dead people are bearers of neither interests nor rights and that they cannot be affected by the actions of currently living people. At the very least, the position of surviving duties I am defending presupposes the possibility of the attribution of posthumous properties and, more particularly, of their change—an assumption that can be shown to be rather unproblematic.³⁸

II.2 *Carrying Out Acts of Symbolic Restitution*

Does the position of surviving duties help us in understanding the moral significance of the *fact* that past people *were* severely wronged? I shall propose the idea that since people as members of ongoing societies can be said to have an obligation to compensate surviving and indirect victims of past injustices,³⁹ they may also have an obligation symbolically to compensate dead victims of past injustices, that is people who cannot be affected by our actions.

As I have argued above, we can stand under surviving duties toward past people even though neither can we change the value to them of any moment of their lives since they cannot be affected by what people do after their death nor can they be thought to be bearers of interests or rights. Until now I have discussed duties toward dead people with reference to (variations on) the example of Alfred Nobel and his bequeathal. Currently living people can act in ways that will constitute a violation of the surviving duties under which they stand owing to the rights past people had in the past. We stand under particular surviving duties toward past people owing to their future-oriented projects, the promises we made to them or the contractual obligations we entered with them. However, not all people have the opportunity or the wish to have a specific impact on posthumous states of affairs. Not all people pursue projects that are future-oriented in the relevant way and not all people oblige others to bring about what for them are posthumous states of affairs. Here I want to suggest that we can stand under surviving duties toward dead people owing to the fact that they were victims of historical injustices. For us to show that currently living people can stand under such duties, we will have to assume that people generally have interests with respect to posthumous states of affairs. Indeed, people can be thought to generally have the interest to enjoy a good reputation both during their lifetime and posthumously. When people were violated in their rights and badly so, their posthumous reputation depends upon their being publicly acknowledged as victims of these wrongs and others being identified as the wrongdoers.

In acknowledging past people as victims of egregious wrongs we cannot affect their well-being. Also, such acknowledgement cannot be expressed vis-à-vis the dead victims, but only vis-à-vis currently living people in light of the wrongs past people suffered. However, if it is true that we stand under surviving duties toward past victims of historical injustice owing to the wrongs they suffered, then our fulfilling the duty by publicly acknowledging the past injustices

they suffered will change the relation between us and the dead victims of historical injustice. It will be true of the past victims of these injustices that they have the posthumous property that we fulfilled our surviving duty toward them. To be sure, a change of the relation between a currently living person and a dead person does not bring about or rely upon a real change of the latter person. Rather the relational change is based upon the real change of the person who carries out the act.

For us to bring about the public acknowledgment of past people as victims of historical injustice can require different measures under different circumstances. Currently living people can express their acknowledgment of past people as victims of past wrongs in an indirect way, namely, by providing measures of compensation for those who are worse off than they should be owing to the effects of the past injustices suffered by their predecessors. The message of such measures of compensation can contain the acknowledgment that past people were victims of past wrong. Here I would like to suggest that we can understand efforts at finding appropriate forms of commemoration of today's dead victims as efforts at bringing about measures of symbolic compensation and restitution.

Establishing a memorial is the typical course of action where the effort is made to realize the symbolic value of compensating those victims who are no longer living. A memorial may be a public speech, a day in the official calendar, a conference, a public space or a monument—for example, a sculpture or an installation. Often these memorials are meant to commemorate crimes that previous members committed in the name of a political society whose currently living members now want to carry out actions of public symbolic compensation or restitution for these crimes toward the victims and their descendants. While there is still no established practice for such efforts at public symbolic compensation, such acts of symbolic compensation have been carried out since the 1970s in Germany and we have been observing the beginnings of an international practice of symbolic compensation.⁴⁰

How can we understand this practice of symbolic compensation? Here I can only adumbrate the basic idea:⁴¹ the value of real compensation—the rectification or compensation at which we would aim if only it were possible—is imputed, at least in part, to the act of symbolic compensation.⁴² The imputation of the value of real compensation to the acts of symbolic compensation is partly based upon the expressive value of acts of symbolic compensation. For those who carry out acts of symbolic compensation these acts make it possible to express attitudes toward the past victims—attitudes that are constitutive of acts of compensation. Acts of symbolic compensation make it possible for us to act in such a way as to express an understanding of ourselves as people who wish to, and would, carry out acts of real compensation if this were only possible. If successful we will have firmly expressed an understanding of ourselves as persons who would provide measures of real compensation to the previously living person or people if this were only possible.

Acts of symbolic compensation can be valuable for those who carry out the acts since doing so helps to express attitudes that are important for their self-

understanding and, thus, for their identity. They understand themselves to be persons committed to support the just claims of those who have been injured and to be persons prepared to contribute to the establishment and maintenance of a just political society. Indeed, acts of symbolic compensation will not help us in fulfilling our duties toward the past victims of wrongs and thus in bringing about a change in our relationship to the dead victims unless we succeed in expressing that we are people who wish to, and would, carry out acts of real compensation if this were only possible. Carrying out acts of symbolic compensation can symbolize that one is a person who shares this identity, can be evidence of one's being such a person and, importantly, can have the consequence of helping one to secure the self-understanding of being such a person. The latter is a real consequence of such acts and can be of great importance to the person carrying out the act.⁴³

However, we will not succeed in bringing about these consequences in carrying out acts of symbolic compensation if we aim to bring about these consequences as such. Carrying out an act of symbolic value as a means of bringing about certain consequences will change the character of the act and, thus, the reasons that speak on behalf of carrying out the act in the first place. It is certainly not the case that we will become a person of a certain identity simply in virtue of our carrying out an act in a specific situation in which a person of this identity would have carried out the act. Carrying out acts of symbolic compensation does not by itself cause one to become a person of this identity. While such consequences for the self-understanding of a person can be an important factor in explaining the person's acts, in choosing what to do the person cannot herself explicitly take into account this type of consequence without thereby diminishing or undermining this very effect of her act.

Carrying out acts of symbolic compensation will have consequences for others as well. There will often be surviving and indirect victims of past injustices. Acts of symbolic compensation can have consequences for the surviving victims, for the descendants of victims, and for the group whose previous members were harmed by the injustices. The public acknowledgment of the suffering of past people who were wronged by, say, a genocidal policy cannot be separated from the acknowledgment of those who survived the same policy and suffer as an effect of this policy or from those who suffer as indirect victims of the policy. Those who carry out acts of symbolic compensation will want to provide measures of real compensation to those who currently suffer as a result of the same past wrongs. The reasons for acts of symbolic compensation include the reasons for carrying out measures of real compensation where this is possible. Measures of symbolic compensation belong to the measures likely to have the effect of providing surviving victims with assistance in recovering or regaining the status of membership in their respective societies, such that they are once again able to lead lives under conditions of justice. In so far as people were wronged as members of a group that continues to exist, the public acknowledgment of past victims also provides a measure of acknowledgment for the group whose previous members were wronged.⁴⁴

III. Concluding Remarks

Who can plausibly be said to stand under the so understood duties to attempt at providing measures of symbolic restitution and material reparations? In conclusion, I will only indicate how accepting to stand under these differing duties reflects different aspects of the self-understanding of people as members of ongoing societies.⁴⁵ First, people will accept to stand under the duty of providing measures of symbolic restitution only if as members of ongoing societies they can identify with the public inheritance of their society in such a way that they will want to respond to what may be dubbed “inherited public evils” by participating in public acts of symbolic reparation. People may value their membership in a political community as an end owing to the unique opportunities which that community offers to them. They understand that the options open to them depend largely on practices established in the society to which they belong. Those options are, so to speak, products of the culture of their society, and that culture is unique. More generally speaking, the goods that are available on a public basis can only be understood in terms of that society’s particular history. If people intrinsically value their membership because of that society’s historically unique features, they have good reasons for acknowledging that who they are as members of that society (certain aspects of their social identity) depend in part on what other people as members of that society do and what previous members did in the past. What other people as members of that society did can diminish the value of understanding oneself as a member of this group. Currently living people will have to ask themselves whether—given what others as members of their society did—they are justified in holding their membership in this society to be intrinsically valuable owing to, in part, its historically unique features. Responding to wrongs committed by previous members of their society and in its name, currently living people as members of that society will want to renew the value of their shared social identity. With respect to the wrongdoings of previous members of their society they can acknowledge the direct and indirect victims and make an attempt at providing measures of compensation or reparations. Participating in public acts of symbolic restitution can allow currently living people as members of ongoing societies to express such acknowledgment toward deceased victims of wrongs committed in the name of their society.

Second, the duties of providing measures of compensation and reparations to (indirect) victims owing to the lasting impact of historical injustices can be understood as specifications of more general duties of justice under which all persons stand. People as members of ongoing societies can contribute to the realization of general values within their societies and, in particular, to the realization of the value of living under just societal conditions. If we have good reasons for holding transgenerational legal persons (usually states) in whose name previous members committed crimes against others to be legally responsible to provide (indirect) victims with measures of compensation and reparations, currently living people as members of such entities can stand under a (civic) duty to

support such measures. In order to succeed in their attempt to establish a just order, they will have to support measures of reparation that aim at providing just compensation today in light of both the lack of (sufficient) measures of compensation to the direct victims of historical injustices and their lasting negative impact on the well-being of currently living people.

Notes

¹Derek Parfit, *Reasons and Persons* (Oxford: Clarendon Press, 1984), pt. iv.

²Jeremy Waldron, "Superseding Historic Injustice," *Ethics* 103 (1992): 4–28; Waldron, "Redressing Historic Injustice," in *Justice in Time: Responding to Historical Injustice*, ed. Lukas H. Meyer (Baden-Baden: Nomos, 2004), 55–77. Waldron's "Superseding Historic Injustice" is likely the most often discussed and cited paper in the debate about the moral validity of claims to reparation owing to historical injustices. David Lyons holds a similar view on historical entitlements. See David Lyons, "The New Indian Claims and Original Rights to Land," *Social Theory and Practice* 4 (1977): 249–72, reprinted in *Reading Nozick: Essays on Anarchy, State, and Utopia*, ed. Jeffrey Paul (Totowa, NJ: Rowman & Littlefield, 1981), 355–79.

³See Christopher W. Morris, "Existential Limits to the Rectification of Past Wrongs," *American Philosophy Quarterly* 21 (1984): 175–82; Rahul Kumar and David Silver, "The Legacy of Injustice: Wronging the Future, Responsibility for the Past," in *Justice in Time: Responding to Historical Injustice*, ed. Lukas H. Meyer (Baden-Baden: Nomos, 2004), 145–58: 148–49.

⁴For the claims of descendants of slaves in the United States, see, e.g., Hugo Adam Bedau, "Compensatory Justice and the Black Manifesto," *The Monist* 56 (1972): 20–42; Bernard R. Boxill, *Blacks and Social Justice* (Totowa, NJ: Rowman und Allanheld, 1984; rev. ed., 1992); Roy L. Brooks, ed., *When Sorry Isn't Enough: The Controversy over Apologies and Reparations for Human Injustice* (New York and London: New York University Press, 1999), pts. 6 and 7; Wole Soyinka, *The Burden of Memory, the Muse of Forgiveness* (New York: Oxford University Press, 1999), 44; Robert Fullinwider, "The Case for Reparations," *Report from the Institute for Philosophy and Public Policy* 20 (2000) (http://www.puaf.umd.edu/IPPP/report_index.htm); David Lyons, "Unfinished Business: Racial Junctures in US History and Their Legacy," in *Justice in Time: Responding to Historical Injustice*, ed. Lukas H. Meyer (Baden-Baden: Nomos, 2004), 271–98.

⁵See James S. Fishkin, "Justice between Generations: Compensation, Identity, and Group Membership," in *Compensatory Justice* (Nomos 33), ed. John W. Chapman (New York und London: New York University Press, 1991), 85–96: 91.

⁶For a discussion of different notions of harm in the intergenerational context see Parfit, *Reasons and Persons*, 487; James S. Fishkin, "The Limits of Intergenerational Justice," in *Justice between Age Groups and Generations*, eds. Peter Laslett and James S. Fishkin (New Haven und London: Yale University Press, 1992), 62–83: 63; Sheana Shiffrin, "Wrongful Life, Procreative Responsibility, and the Significance of Harm," *Legal Theory* 5 (1999): 117–48.

⁷For a defence of the view that certain types of inactions, namely omissions, can be harmful, see, e.g., Joel Feinberg, *The Moral Limits of the Criminal Law. Vol. 1. Harm to Others* (New York: Oxford University Press, 1984), chap. 4.

⁸"Acted with respect to this person" is meant to include the act that is the cause of this person's existence. It is difficult to interpret such acts as interactions. We prefer "had we not interacted with (or acted with respect to) this person at all" to David Gauthier's "in our absence" (David Gauthier, *Morals by Agreement* [Oxford: Clarendon Press, 1986], 203). Both formulations are problematic and it is beyond the scope of this entry to discuss their respective problems at length. Gauthier himself points out that his formulation runs into difficulty in dealing with situations in which a person has assumed a certain social role, e.g., the role of a lifeguard that is, in part, defined by

positive duties vis-à-vis others. If a person assumes such a role her “absence” in a situation where she is duty-bound to intervene can render the situation of others worse (*ibid.*, 205). For the purpose of the formulation we prefer it seems plausible to suggest that assuming such a role does constitute an “interaction” of the then duty-bound person with those to whom she is bound where fulfilling the duties of her role is concerned.

⁹ People can be harmed by events, say, by a natural catastrophe. The following reasoning applies when such an event occurs before the person who makes the claim to being compensated owing to the event comes into existence.

¹⁰ Currently living African Americans might well have just claims to compensation based on the subjunctive-historical reading of harm because of harm done to them or to their more recent ancestors. See my discussion of the claims of the Palestinian refugees, below, and Lyons’ analysis of continuing discrimination against African Americans in “Unfinished Business: Racial Junctures in US History and Their Legacy.”

¹¹ See Lukas H. Meyer, “Past and Future: The Case for an Identity-Independent Notion of Harm,” in *Rights, Culture, and the Law: Themes from the Legal and Political Philosophy of Joseph Raz*, eds. L. H. Meyer, S. L. Paulson, and T. W. Pogge (Oxford: Oxford University Press, 2003), 143–59. A different type of response relies on a nonconsequentialist interpretation of the relation of wronging a person and harming a person. If we can wrong a person without harming the person, a person can have a claim to rectification without having incurred any harm. A claim to rectification for past wrongs may not give rise to the non-identity problem—as Rahul Kumar argues in “Who Can Be Wronged?,” *Philosophy and Public Affairs* 31 (2003): 99–118.

¹² For the wording of these notions of harm see Thomas W. Pogge, “‘Assisting’ the Global Poor,” in *The Ethics of Assistance: Morality and the Distant Needy*, ed. Deen K. Chatterjee (Cambridge: Cambridge University Press 2004), 260–88.

¹³ The relevance and importance of such an assessment of the normative significance of the lasting impact of past wrongs has been stressed by, e.g., Lyons, “Unfinished Business: Racial Junctures in US History and Their Legacy”; Waldron, “Superseding Historic Injustice”; Bruce A. Ackerman, *The Future of Liberal Revolution* (New Haven, CT: Yale University Press, 1992), 72; Ackerman, “Temporal Horizons of Justice,” *Journal of Philosophy* 94 (1997): 299–31. For a theory of justice that grounds our obligations for rectification in violations of principles of just acquisition of property and the just transmission of the resulting entitlements see Robert Nozick, *Anarchy, State, and Utopia* (Oxford: Blackwell, 1974), 152. The theory relies upon counterfactual reasoning. For critiques of this theory, see Lyons, “The New Indian Claims and Original Rights to Land”; George Sher, “Ancient Wrongs and Modern Rights,” *Justice between Age Groups and Generations*, eds. Peter Laslett and James S. Fishkin (New Haven and London: Yale University Press, 1992), 48–61; Waldron, “Superseding Historic Injustice.” For epistemic reasons only, Nozick proposes Rawls’s difference principle—a forward-looking principle, specifying what the future should be like—as a “rough rule of thumb for rectifying” historical injustice (*Anarchy, State, and Utopia*, 231). This idea does not address the problem of the inapplicability of a non-comparative notion of harm as discussed in the text. For alternative *impersonal* interpretations of how the past matters normatively, see Peter Vallentyne, “Teleology, Consequentialism, and the Past,” *Journal of Value Inquiry* 22 (1988): 89–101; Thomas Hill, “The Message of Affirmative Action,” *Social Philosophy & Policy* 8 (1990/91): 108–29; Fred Feldman, *Utilitarianism, Hedonism, and Desert* (Cambridge: Cambridge University Press, 1997), chaps. 1 and 4.

¹⁴ I follow Andrei Marmor in assuming that the needs of these refugees are particularly urgent and compelling and in stressing that the argument is not restricted to the refugees in the camps. See Andrei Marmor, “Entitlement to Land and the Right of Return: An Embarrassing Challenge for Liberal Zionism,” in *Justice in Time: Responding to Historical Injustice*, ed. Lukas H. Meyer (Baden-Baden: Nomos, 2004), 319–33: 325, note 13.

¹⁵ See George Sher, “Transgenerational Compensation,” *Philosophy & Public Affairs* 33 (2005): 181–200.

¹⁶ Assuming we could know what that state of affairs would be.

¹⁷ See, e.g., Sher, "Transgenerational Compensation."

¹⁸ Here we are not concerned with pragmatic reasons for, e.g., statutes of limitations and the doctrine of adverse possession. Marmor, "Entitlement to Land and the Right of Return," 325.

¹⁹ See, e.g., Lukas H. Meyer, "Transnational Autonomy: Responding to Historical Injustice in the Case of the Saami and Roma Peoples," *International Journal on Minority and Group Rights* 8 (2001): 263–301, sec. 10 (discussing the normative significance of sub-sovereign transnational control over their homeland for the political and cultural autonomy of the Saami people) and 11 (discussing the non-territorial claims of the Roma people to securing the status of a minority in the countries in which they reside and to recognition as a transnational minority for protecting a group identity that transcends national borders).

²⁰ Or as Lyons, "The New Indian Claims and Original Rights to Land," 370, puts it: "property rights themselves, and not just their exercise or contents, are relative to circumstances."

²¹ See Waldron, "Superseding Historic Injustice," 24; and Waldron, "Redressing Historic Injustice," sec. 7. The supersession thesis concerns the ongoing effect of past injustices only. Claiming that injustices are superseded implies neither that the past unjust violations of rights were not unjust nor that they should no longer be considered unjust. Even if certain injustices are superseded, we may well stand under obligations to publicly acknowledge the wrongs committed and to provide, say, measures of symbolic reparation toward the victims. See next section, below.

²² Waldron, "Redressing Historic Injustice," sec. 7.

²³ Ibid.

²⁴ See Paul Patton's critique of the claim that colonial injustices in Australia and New Zealand are superseded. P. Patton, "Colonization and Historical Injustice—The Australian Experience," in *Justice in Time: Responding to Historical Injustice*, ed. Lukas H. Meyer (Baden-Baden: Nomos, 2004), 159–72, secs. 4 and 5.

²⁵ I do not mean to imply that Jeremy Waldron or David Lyons hold that these more recent injustices are superseded. Both claim that some colonial injustices committed two hundred years ago can plausibly be said to be superseded given dramatic changes that have taken place.

²⁶ See Chaim Gans' subtly nuanced analysis of the just claims to self-determination of both the Jewish and the Palestinian peoples. Gans, *The Limits of Nationalism* (Cambridge: Cambridge University Press, 2003), chap. 4.

²⁷ Marmor, "Entitlement to Land and the Right of Return," 328.

²⁸ See, e.g., Siegfried Wiessner, "Rights and Status of Indigenous Peoples: A Global Comparative and International Legal Analysis," *Harvard Human Rights Journal* 12 (1999): 57–128; Benedict Kingsbury, "'Indigenous Peoples' in International Law. A Constructivist Approach to the Asian Controversy," *American Journal of International Law* 92 (1998): 414–57; Meyer, "Transnational Autonomy."

²⁹ Marmor, "Entitlement to Land and the Right of Return," 328.

³⁰ Ibid.

³¹ This is not to deny the Jewish right to self-determination (see Gans, *The Limits of Nationalism*). Also, changes of circumstances do matter: a number of considerations can be distinguished that are relevant for specifying the contents of the Palestinian right of return and to how that right ought to be exercised or whether (the) Palestinians have good or even compelling reasons to waive their right of return as a measure of political strategy (see Marmor, "Entitlement to Land and the Right of Return," sec. 3.3; Andreas Føllesdal, "The Special Claims of Indigenous Minorities to Corrective Justice," in *Justice in Time: Responding to Historical Injustice*, ed. Lukas H. Meyer (Baden-Baden: Nomos, 2004), 339–53, sec. 4; Hurst Hannum, *Autonomy, Sovereignty, and Self-Determination: The Accommodation of Conflicting Rights* (Philadelphia: University of Pennsylvania Press, 1990). These considerations reflect, first, how best to serve the interests underlying the Palestinians' right of return; second, how to respect and to accommodate the legitimate interests and rights of others who might be affected by recognition of that right; and, third, pragmatic or strategic concerns of how best to serve the goal of establishing a legitimate and stable political order in the region.

- ³²“Das vergangene Unrecht ist geschehen und abgeschlossen. Die Erschlagenen sind wirklich erschlagen.” In a letter to Walter Benjamin 1937, as quoted in Rolf Tiedemann, *Dialektik im Stillstand. Versuche zum Spätwerk Walter Benjamins* (Frankfurt/M: Suhrkamp, 1983), 107.
- ³³See Tim Mulgan, “The Place of the Dead in Liberal Political Philosophy,” *Journal of Political Philosophy* 7 (1999): 52–70, 54 f.
- ³⁴See Carl Wellman, *Real Rights* (New York and Oxford: Oxford University Press, 1995), 155–57. For a critique of positions on “posthumous harm” that are compatible with presupposition (A) but do not support the claim under consideration, see Axel Gosseries, “Intergenerational Justice: Probing the Assumptions, Exploring the Implications,” manuscript, PhD thesis, University of Louvain (2000), chap. iv, “The Dead End of Intergenerational Justice: What Do We Owe Our Ancestors?” (on file with author).
- ³⁵Or of a person’s legitimate claim. In the following I will speak of moral rights rather than moral claims, but nothing hinges on this as long as it is understood that people can stand under a duty to respond to the legitimate claims of others.
- ³⁶Ernest Partridge discusses the example of Alfred Nobel and defends a rule-utilitarian reading of death-bed promises in his “Posthumous Interests and Posthumous Respect,” *Ethics* 91 (1981): 243–64, at 259–61.
- ³⁷See also Lukas H. Meyer, “More Than They Have a Right to,” in *Contingent Future Persons*, eds. Nick Fotion and Jan C. Heller (Dordrecht, Boston and London: Kluwer Academic Publishers, 1997), 137–56: 141–43.
- ³⁸See David-Hillel Ruben, “A Puzzle about Posthumous Predication,” *Philosophical Review* 97 (1988): 211–36, at 223–31. See also Lukas H. Meyer, “Obligations Persistantes et Réparation Symbolique,” *Revue Philosophique de Louvain* 101 (2003): 105–22, at 110–14.
- ³⁹See Meyer, “Transnational Autonomy,” sec. 8.
- ⁴⁰For a comparison of the memorials for the victims of the Shoa in Poland, Germany, and Israel, see James E. Young, “The Texture of Memory: Holocaust Memorials and Meaning,” *Remembering for the Future: Jews and Christians during and after the Holocaust* (Oxford: Pergamon Press, 1988), 1799–1811.
- ⁴¹For a detailed interpretation see L. H. Meyer, *Historische Gerechtigkeit*, chap. III, secs. 8 and 9.
- ⁴²See Robert Nozick’s analysis of symbolic value in chaps. 1 and 2 of his *The Nature of Rationality* (Princeton, NJ: Princeton University Press, 1993).
- ⁴³Elizabeth Anderson provides a theory of expressive reasoning and the relation between expressive reasoning and consequentialist reasoning in *Value in Ethics and Economics* (Cambridge, MA: Harvard University Press, 1993). I would need to say a good bit more if I were going to bring what I say here to bear on Anderson’s theory.
- ⁴⁴The Roma (Gypsies) were victims of a racially motivated genocide committed by the Nazis—a truth that has been long denied with the result that most surviving victims as well as the descendants of those murdered were excluded from compensation and restitution. See Meyer, “Transnational Autonomy,” 269.
- ⁴⁵For a detailed discussion see my *Historical Justice*, chaps. IV and V.