

State Responsibility For Historical Injustice

By

Thomas Mason

Submitted to

Central European University

Department of Political Science

In partial fulfilment of the requirements for the degree of Master of Arts

Supervisor: Professor Zoltan Miklosi

Vienna, Austria

2022

ABSTRACT

Past states have committed injustices and then ceased to exist, leaving their victims hurt without means of being compensated. This can trap these populations in a state of perpetual victimhood. It is also unintuitive that states should be able to dodge responsibility by disappearing and reforming. For example, modern Germany should not be able to dodge the responsibility of its forbearers, such as East Germany and the German Empire. Nevertheless, there is no easy way of attaching modern Germany to older Germany without relying on subjective markers such as language and culture. These subjective models require states to recognise the injustices of their past, but they are insufficient for compensating victims. Alternative models of state responsibility focus on the incorporation of the state. The responsibility for an act is carried through the state's institutions. While objective, successor states are naturally different institutions and therefore not responsible for the actions of the forbearing state. Theories that attempt to bridge this gap generally weaken the objectivity of the model or conclude the successor state may not be responsible. This paper argues that by rethinking historical injustice as a duty rather than debt, it is possible to bridge the gap without violating either. Historical injustice is compared with similar issues in the climate change literature to demonstrate how this is the strongest model for overcoming the limitations of corporate state responsibility. Cosmopolitan justice is appropriate and provides many advantages for historical injustice.

ACKNOWLEDGEMENTS

I would like to extend my warmest thanks to Professor Miklosi whose help was invaluable on this work. It would have been impossible to solve this puzzle without his excellent suggestions and ongoing support.

The Political Science Department of Central European University has facilitated this research extensively, and for that, I am grateful.

On a personal level, many individuals have supported this work indirectly and are owed a profound thank you – my grandparents and parents especially.

My fiancée, Julia, is also deserving of not only my sincere appreciation but a huge congratulations for her success in our adventure in Vienna.

TABLE OF CONTENTS

Abstract.....	ii
Acknowledgements.....	iii
Table of Contents.....	iv
Chapter One – The issues of Inherited Responsibility.....	1
1.1 Theoretical Puzzle of Inherited Responsibility.....	1
1.2 Clarificatory Explanations	4
1.2.1 Symbolic vs Material Inequalities	4
1.2.2 Responsibility, Culpability and Liability	4
1.2.3 The Relationship Between Law and State Moral Obligation	5
1.3 Plan for Maintaining Continuity and Justice	5
1.4 State of the Field	7
Chapter Two – What is Historical Injustice and When is it Actionable?	11
2.1 Ambiguities with Compensating Injustices from the Past.....	12
2.1.1 The Issue of Time on Material Compensation.....	12
2.1.2 Issues of Agents	14
2.2 Historical Injustice as Debt or Obligation	16
Chapter Three – How can States be Held Accountable?	18
3.1 When should Individuals in the State be Held Responsible?	19
3.2 State Responsibility as Nationality	19
3.3 States Responsibility as a Corporation	21

3.4 What Happens When the State Cannot Pay?	25
Chapter Four – Successor States and Liability	27
4.1 Successor States relative to the Forebearer States	27
5.2 Issues with Succession and Responsibility in the National Responsibility Model.....	28
5.3 Issues with Succession and Responsibility in the Corporate Responsibility Model	30
5.4 How to Overcome Succession in these Models while Preserving Strengths.....	32
Chapter Five - Alternate models from the Climate Change Literature.....	33
5.1 Climate Change and Historical Injustice as Similar Challenges	33
5.2 Common Climate Change Positions	34
5.2.1 Polluters Pay and Variations	34
5.2.2 Cosmopolitan Justice	36
5.3 Objections to Cosmopolitan Justice.....	37
Conclusion	40

CHAPTER ONE – THE ISSUES OF INHERITED RESPONSIBILITY

How can states be responsible for historical injustices dating before their existence? For example, a historical state commits an unjust act towards a population, then is conquered, suffers a revolution, or is otherwise destroyed. Another state takes the place of the former state and shares many of the demographic qualities of the previous state. Does this new state inherit any obligations to the victims of the destroyed state? This paper argues that various duties do arise to help the victim population while showing how the common models fail to respond to this question appropriately.

1.1 Theoretical Puzzle of Inherited Responsibility

If a group suffers because of an injustice, there are only three possible scenarios:

- I. The culpable agent rectifies the injustice, thereby permitting victims to live in equal conditions to non-victims.
 - II. A non-culpable agent repairs the injustice, thereby permitting victims to live in equal conditions to non-victims.
 - III. The injustice is not rectified. The victims continue to live in unequal conditions.
- Intuitively, it is unfair for a group to suffer injustice and have no means for it to be rectified. This project assumes that inequalities stemming from past injustices are unfair and therefore the mitigation of these inequalities is morally good. Option III is therefore the least moral option of the three because it allows victims to remain affected. It is also preferable for victims to gain justice from the culpable agent culpable rather than the non-culpable agent. It is only fair that a culpable party rectifies their own mistakes if there are no extenuating circumstances. Option I is therefore superior to II. There are circumstances where the culpable agent has ceased to exist or does not have the resources to rectify the injustice. In such cases, only II and III are possible, of which II is clearly the ethically superior option.

In cases where the state committed an injustice towards a group, this aforementioned scenario is demonstrative of obligations that states have towards victims. Assuming a state commits an unjust act towards a population, the victims will suffer an unequal condition unless it or another entity rectifies the injustice. Just states should be concerned with rectifying these unequal conditions because allowing the historical effects to continue would not be just.

In previous models of historical injustice and state responsibility, the rectification of injustice is understood as a moral debt. It is somewhat analogous to how corporations or people experience consequences for their actions. Like a person, a state commits an unjust act and is therefore responsible to rectify it under normal circumstances. This model creates gaps where victims lose their claim to rectification when states cease to exist because debt disappears with the respective debtholder in most circumstances. Having identified this issue, various theories attempt to extend the debt to another entity such as a national group or another state which arises over the same territory. In the former case, subjective, diverse, and often impermanent characteristics are taken as marks of guilt such as language or culture. While it may be appropriate for someone to recognise the unjust deeds of their culture insofar as it is their identity, it would not be appropriate to put debt on them unless they were culpable for the action. Hypothetically, a person might incur a debt for the actions of a country which they had never visited or inhabited if language or culture is taken as a marker. This is intuitively unfair. Alternatively, it allows minorities who did live in the former state to escape debt even if they were active in the culpable state which also seems unfair. It is therefore not sufficiently precise to allow a national group to be the marker of inherited debt.

In the situation where a state ceases to exist and a second state reforms within its territories, it is difficult to find a reason for the debt to be inherited. The new state might be an entirely distinct group of people, especially in cases where a long amount of time has

passed between the previous state and the new one. How can they be indebted for something they did not do? Therefore, it would be inappropriate to see them as a fit inheritor of debt.

Still, the successor state is the second-best target for retribution considering the alternative is that the injustice continues. This creates a puzzle because the successor state is not culpable for the act but still becomes liable. The only theoretically sound way to overcome the issue of inheriting responsibility is to abandon the debt model and have the obligation arise from present conditions. In other words, the state is not responsible for rectifying injustices based on inheriting the debt from the injustice. It is instead responsible because it is the most effective way of creating making most just outcome in the present. It is therefore important to draw a theoretical framework through which a different state can legitimately inherit a duty to reconcile the unjust action of a previous state without using the debt model.

Simon Caney proposes such a model in the form of cosmopolitan justice.¹ Created to address climate change fairness, his theory argues the correction of climate change is a greater good than making polluters pay for their historic emissions, many of which are dead and cannot pay. This has direct parallels with historical injustice because the correction of injustice is also a greater good than holding dead states accountable. Therefore, the model will be applied to historical justice to overcome the puzzle of making states liable for correcting historical injustices.

In practice, cosmopolitan justice needs to be adapted to fit historical injustice in some small but important ways. Climate change is a global issue and therefore it makes sense for responsibility to cross borders. Historical injustice is more relational, i.e., a state committed

¹ Caney, "Cosmopolitan Justice, Responsibility, and Global Climate Change."

something towards a particular group. In these cases, there is no pool of injustice but particular occurrences. The required change is that symbolic actions remain agent-specific whereas the elimination of the effects becomes relational. For example, state A commits an injustice towards population I, and then fails to be able to rectify it. State B has a relationship with population I and is liable to help population I overcome the injustice materially. They are not ethically required to symbolically rectify the injustice as if they were state A. If state A still exists or there is a very similar state, they are the liable entity for symbolic actions. The result is the lowest aggregate amount of injustices and therefore the best theoretical model.

1.2 Clarificatory Explanations

1.2.1 Symbolic vs Material Inequalities

Historical injustice is not uniform but is generally defined as the source of long-lasting inequality. These inequalities can be material, symbolic, or both. Material inequalities are cases where a population suffers inferior economic conditions based on a prior unjust action. It is remedied through compensation of some type including money or property. Symbolic inequalities occur when a population suffers a clear injustice and experiences a drop in dignity. The remedy to the symbolic inequality is an equally symbolic action such as a formal state apology, education programs on the injustice and other recognitions. Material inequalities can be rectified by any entity whereas symbolic ones are agent-specific but also have a lower cost. Therefore, they require distinct treatment in theories of justice.

1.2.2 Responsibility, Culpability and Liability

Responsibility can have multiple meanings such as liability and culpability. In this paper, responsibility encompasses both. The second part of this work argues that state culpability and state liability are two distinct concepts which do not always overlap, although

they often do. The former is analogous to guilt or blameworthiness whereas the latter is analogous to a duty to compensate. It is important to separate the two because they are inherited in meaningfully different ways. To be culpable, an actor needs to have been the cause of the injustice. It is logically impossible to inherit culpability because an entity is not the cause of an act of another entity in the past. Liability can be inherited because it is simply a duty to compensate and not a judgement about causation. For example, person A steals a treasured artefact from a museum and then gives it to person B. Person B eventually learns the artefact was stolen after it was given to them. Person A is culpable of theft and likely liable for punitive damages as well. Person B is not culpable because they did do anything for which they could be blamed. B is however clearly liable to return the item upon learning that it was stolen. The distinction between culpability and liability is therefore crucial for inheriting responsibility.

1.2.3 The Relationship Between Law and State Moral Obligation

This will not aim to explain what is legally strong but what is normatively moral. There are many circumstances where legal means exist to rectify specific injustices from the past. Such laws exist from the Netherlands to America to Japan. However, these laws may or may not match the ethical obligations of the state and some argue they contradict justice more often than maintain it.² The laws surrounding historical injustices are therefore outside the scope of this work.

1.3 Plan for Maintaining Continuity and Justice

Chapter two will show how states ought to act to mitigate injustice while not introducing new injustices. In this part, it will be proven that option II is indeed morally

² Degeling and Barker, “Private Law and Grave Historical Injustice.”

superior to option III. Also, previous injustices are often murky because the required information is often unavailable, and it is difficult to predict what would have occurred had the injustice not occurred. To maximise justice, the response to the injustice ought to be proportional because those compensating will suffer an unfair cost if they overpay. Therefore, Chapter Two will detail the risks of acting on historical injustice, but still argue that justice does often require agents to take these risks. It will also show how much of the base historical injustice work does not require the rectification to be seen as a form of debt.

Chapter Three will aim to explain and critique the common theories of state responsibility. First, it will show that collectives are themselves capable of being held accountable separately to its members. Unlike a person or commercial enterprise, states do not produce their own resources, i.e., they levy taxes on their population. Therefore, any state responsibility translates into redistribution which is justifiable in scenarios where the state can maximise justice. Lastly, it will show how the boundaries of a states population do not always line up with the group which participated in a historical injustice. The chapter will aim to show how these theories have many strengths and ought to be maintained insofar as possible. I will also argue that these theories view compensation for historical as a form of debt occurred by the state.

Chapter Four takes the theories from chapter three and shows how they are deficient for scenarios where the culpable state cannot pay the debt. Symbolic actions to repair injustices are strong in these theories. However, material injustices are not rectified appropriately. In many theories, justice is not maximised because the victims are doomed to their unequal state. Returning to the opening scenario, they aim for option III without considering option II. Other theories ignore the gaps in continuity altogether without sufficient justification. The chapter will argue that these are both insufficient for maximising

justice. An adaptation is needed to allow for material injustices to be dealt with more coherently.

Using analogies to climate change, Chapter Five will argue that cosmopolitan justice is the best approach for compensating injustices materially. In other words, cosmopolitan justice allows for the historical liability to be maintained, not through inherited debt, but through a duty to maximise justice in the present. Cosmopolitan justice can overcome the issues of previous models while maintaining its advantages. Without compromising its strengths, various objections will be addressed to show how the theory must be adjusted to fit its new application.

Ultimately a conclusion will show how previous theories should integrate a concept of cosmopolitan justice to overcome many logical ruptures.

1.4 State of the Field

As a subject of study, state responsibility for historical actions has grown in prevalence beginning in the late 90s and continuing to the present. Originally intended to describe the relations between colonised people and their colonisers, the historical injustice literature is often concerned with addressing the claims of specific populations. The United States and British Commonwealth are the most common examples of responsible states whereas North American, African, and Oceanic Indigenous groups are often used as the typical victim case.³ More recent work has concentrated on Germany's responsibility for a considerable number of state actions during the 20th century.⁴ The former cases are examples of relatively long and stable constitutions whereas the latter has multiple different incarnations. Yet, the model has not changed sufficiently to accommodate the ambiguities

³ Waldron, "Redressing Historic Injustice"; Spinner-Halev, "From Historical to Enduring Injustice."

⁴ Spilotis, "Corporate Responsibility and Historical Injustice."

when tracing the continuity of Germany or any other nations without a consistent stable government. This work responds to this requirement by first showing the requirement exists in the first place and proposing a solution.

Jeremy Waldron's "Superseding Historical Injustice" and "Redressing Historical Injustice" dispels many myths surrounding balancing historical justice and contemporary justice.⁵ He identifies that reparations will struggle to identify how and whom historical injustice has targeted. Waldron is primarily concerned with many indigenous claims which are difficult to mediate because there is no way of ascertaining what they are owed. Still, some forms of reparations are appropriate if they are based on forward-looking principles, meaning, the unequal condition of victims should be rectified if they are still relevant in the present day. The framework provided by Waldron does not answer how states ought to access the responsibility in cases where the culpable state has devolved.

Phillip Pettit's "Responsibility Incorporated" provides the strongest description for thinking of the state as a corporation.⁶ His primary argument is that collectives can have an agency that is distinct from the members which it makes up. This agency is sufficient for collectives to be responsible for an occurrence even when no single member directly caused the event. The state clearly fits Pettit's description of a collective which can be responsible. His model has become a critical basis for how state responsibility is often understood.

Susanne-Sophia Spilotis attached the incorporated states and historical injustice in "Corporate Responsibility and Historical Justice" in the book *Civil Society: Berlin Perspectives*.⁷ The combination of historical injustice with the incorporated state is sensible

⁵ Waldron, "Redressing Historic Injustice"; Waldron, "Superseding Historic Injustice."

⁶ Pettit, "Responsibility Incorporated."

⁷ Spilotis, "Corporate Responsibility and Historical Injustice."

considering it allows for a more objective target for historical injustice liability, namely institutions, It explains the injustice well in states that have breaks in continuity such as Germany, but it does not address if it is relevant. It takes for granted that the Germany of the Second World War is still the Germany of the 1990s. This is a major oversight considering the institutions of the 90s and the second world war are not the same. Therefore, liability must transfer from one institution to another which is puzzling. Normally, it does not transfer in the corporate model, and this should therefore be explained. While forming the basis of the analysis, her theory will be corrected through this thesis.

Avia Pasternak's *Responsible Citizens, Irresponsible States* attaches citizenship, statehood and historical injustice.⁸ She correctly identifies that do not have resources of their own, but instead rely on the taxation of their citizens. It is the citizens who pay the price if their resources go towards rectifying injustices instead of other initiatives. Pasternak asks if this is just and concludes that it is justified in cases where the citizens take part in the state. The citizenry shares in the collective action which creates the policies, thereby also being liable. She also explores the distinctions between culpability and liability. She explicitly does not believe that the agents who may be liable for compensation are necessarily culpable. She explicitly identifies the issue of successor states to the model of incorporated responsibility. She concludes that the entity in possession of the advantages of injustice should be liable for rectifying the injustice. While coherent, this fails to respond well to the demand of historical injustice as often there are no benefits to historical injustice which transfers to the successor state. Hypothetically, a state could commit injustice and gain no benefit. Therefore, they might escape responsibility in Pasternak's model. This will be corrected in this new model.

⁸ Pasternak, *Responsible Citizens, Irresponsible States*.

A combination of the four theories will be reworked to accommodate the breaks in continuity. The goal is to make these theories fit theoretically with what is morally intuitive while maximising justice.

CHAPTER TWO – WHAT IS HISTORICAL INJUSTICE AND WHEN IS IT ACTIONABLE?

Historical injustices are inequalities stemming from historical events. It is well explored in previous literature and there are fields of study dedicated to reconciling historical injustice.⁹ Most of the literature focuses on relations between specific groups who are defined by nationality, culture, language, religion or another demographic characteristic. Often, the literature focuses on European settlers and the cultures which they colonised. The animosities between Muslims, Christians and Jews in the middle east, north Africa and southern Europe also constitute a history of unjust treatment.¹⁰ In each case, a group treated another unjustly based on a demographic characteristic. In many recent cases, the state has become increasingly important to historical injustice because it can resolve issues collectively in ways that a national group or other unorganized collective cannot. It is also subject to the injustices that it has committed itself.

Usually, historical injustice is understood as a moral injustice rather than a legal one. Barker and Degeling even manage to demonstrate how laws can be used to excuse historical injustices.¹¹ For example, historical persecution of black Americans in the United States was often perfectly legal, but highly immoral.¹² The laws could be used by perpetrators of unjust actions to excuse their actions including the enslavement of others. Wars or conquest are often included especially in cases where the dominant military power is also the aggressor. These are also legal but highly immoral depending on circumstance. Pasternak gives the example of the American invasion of Iraq as such a case.¹³ Although the war was *legal* based

⁹ Waldron, “Redressing Historic Injustice”; Spinner-Halev, “From Historical to Enduring Injustice.”

¹⁰ Waldron, “Superseding Historic Injustice”; Spinner-Halev, “From Historical to Enduring Injustice.”

¹¹ Degeling and Barker, “Private Law and Grave Historical Injustice.”

¹² Degeling and Barker.

¹³ Pasternak, *Responsible Citizens, Irresponsible States*.

on American laws, the invasion itself is difficult to justify sufficient to not see the Americans at fault.¹⁴ Historical injustice often struggles because it often predates laws or counters immoral laws. It is entirely based on ethics which are not as objective as laws.

2.1 Ambiguities with Compensating Injustices from the Past

The symbolic and material compensation for victims of historical injustice must necessarily diverge into distinct models. Symbolic compensation merely requires recognizing the unjust act and making connections with the victim group, thereby mitigating the unequal dignity suffered by victims. These efforts may not be cost-free but having a state leader apologize for an unjust act is certainly less costly than creating a complex redistribution system, as with material compensation. There is no need to identify in precise terms who committed what act or to whom. For example, the state must merely agree that entity A committed an unjust act against entity B in the past. There are therefore lower stakes to symbolic actions in theory. By recognising an unjust act, an entity increases the risk that they will face calls for material compensation which can be infinitely more costly and complicated.

2.1.1 The Issue of Time on Material Compensation

Only specific types of historical injustice are actionable because it is impossible to reasonably identify any counterfactual just scenario¹⁵. Usually, atoning for an injustice means attempting to undo the effects of the original act. If someone steals a watch, the natural compensation to the victim would be the return of their watch plus reasonable compensation for the inconvenience. This poses a critical issue for historical injustice as it is impossible to know what would have occurred if not for the injustice. Perhaps without the watch, the victim

¹⁴ Pasternak.

¹⁵ Waldron, "Redressing Historic Injustice."

might have often been late and therefore suffered even greater consequences before the return of the watch. Is the thief liable for the cost of being late while the person did not have their watch? The victim would have a high burden of proof to allege such compensation is appropriate, but that does not mean it can be ruled out. With time comes intervening factors that confuse any attempts to know how to compensate victims.

For states, the example of the watch is especially relevant because, within the definition of historical injustice, there is a strong assumption that a considerable amount of time has passed. Is it appropriate to compensate the cost incurred immediately from the injustice or the indirect costs as well? In cases where a specific commodity can be returned then that is likely the best remedy, ie, allowing displaced people to return to their homeland insofar possible or returning stolen art to the groups who rightfully own them.¹⁶ The cost of living apart from the commodity could only be ascertained on a case-by-case basis. The indirect costs should be compensated if they are sufficiently provable. In cases where that is not possible to return the item or the unjust act was not theft, another method is needed because ascertaining the correct material compensation requires some subjectivity.

In much of the previous literature, the ability to compensate is considerably limited by ambiguity.¹⁷ In these cases, Waldron argues:

The present circumstances are the ones that are real: it is in the actual world that people starve or are hurt or degraded if the demands of justice in relation to their circumstances are not met. Justice, we say, is a matter of the greatest importance. But the importance to be accorded it is relative to what may actually happen if justice is not done, not to what might have happened if injustice in the past had been avoided.¹⁸

The primary idea of rectifying injustice is that modern conditions are those which are unjust.

In the watch case, the lack of a watch is unjust in the present and therefore it is rectified. In

¹⁶ Spinner-Halev, "From Historical to Enduring Injustice."

¹⁷ Waldron, "Redressing Historic Injustice."

¹⁸ Waldron, "Superseding Historic Injustice," 27.

another example, a state implements policies which arbitrarily lessen the wealth of a specific group. The group suffers at the moment but has later recovered to the level of a standard citizen. In this case, it would be unfair to compensate this group because it would there is no present unjust condition to correct. This is especially true when the state would essentially put the compensator into an unequal condition if they are required to compensate someone who is otherwise not in an unequal condition. The equalisation model allows compensation to undo the present effects of historical injustice without diving into murkier and less credible past information. Waldron's model of historical injustice is therefore very logical, has many advantages and is worth maintaining.

2.1.2 Issues of Agents

In typical theories, historical injustices are also only actionable when it is clear that the victim and perpetrator still exist in some form. This paper will attempt to overcome the absence of a clear perpetrator by arguing that states have an obligation to encourage justice. Therefore, states must help supersede historical injustice. However, it is still important to have a clear victim group. Waldron identified how it is often impossible to find the original victims or their descendants.¹⁹ Often, by merit of being victims, many might not have survived to have retribution in the present. Also, some historical injustices go back generations and in such a case, the descendants can be compensated. As time passes, the claim for justice weakens as it becomes more difficult to identify whom to compensate. To illustrate this mechanic, take the example of the Mosque in Seville which requested reparations for the treatment of Muslims during the Reconquista.²⁰ Assuming there is sufficient evidence of persecution (which is in line with the historical record), then how

¹⁹ Waldron, "Superseding Historic Injustice"; Waldron, "Redressing Historic Injustice."

²⁰ "La mezquita Ishbilia de Sevilla exige que el rey Felipe VI pida perdón por la Reconquista."

would the Spanish government be able to identify exactly which people constitute the descendants of victims? Very few records exist to corroborate descendants. Their relationship with the victims of the Reconquista might also be small considering numerous generations have passed. It seems inappropriate for the Spanish king to compensate someone for the injustice suffered by one's 16th great grandfather. The counterfactual issue of the previous paragraph is applicable here as well considering it would be difficult to prove a person's position was harmed due to the Reconquista. Ignoring the counterfactual issue, identifying the victims is also sufficient to rule out this case. It is therefore important that there is an identifiable group which can be compensated.

It is worth considering that rectification for past injustices is almost always out of goodwill.²¹ It is possible to think of a scenario where a government is forced to rectify past injustices if a sufficiently large population descent against them. These types of scenarios occur but are nowhere near as common as people willingly addressing historical injustice. Most rectification is motivated by an attempt to improve the lives of people suffering from historical injustice. Therefore, the enthusiasm and perceptions of the past have a considerable effect on the type of retribution because it is among the few motivations to atone under normal circumstances. Waldron is correct in his claim that:

Repairing historic injustice is, as we have seen, a difficult business and, as a matter of fact, it is almost always undertaken by people of good will. The only thing that can trump that enterprise is an honest and committed resolve to do justice for the future, a resolve to address present circumstances in a way that respects the claims and needs of everyone.²²

²¹ Waldron, "Superseding Historic Injustice."

²² Waldron, 27.

The quote refers to the ethical character of historical justice rectification. Under normal circumstances, states cannot easily be coerced to rectify injustice but ought to do so out of moral obligation towards those who are suffering unjustly.

In sum, historical injustice is actionable when there is a) clear injustice for which retribution is possible and b) a victim class which can be the actual victims or their sufficiently affected and credible descendants. Notably, the existence of the perpetrator is not necessarily required as other actors can help compensate for injustice. While already sufficiently restrictive to rule out most historical injustice claims, it is also important to add that the perpetrator needs to usually exist to be prosecuted. In many scenarios, the perpetrators are institutions with long histories such as religious institutions, universities, and states. The next question of note is: how can these institutions be held accountable for their roles in historical injustice? This paper will limit itself to only focusing on the most common contender, states. The reason why states are the most common will be addressed in Chapter Three.

2.2 Historical Injustice as Debt or Obligation

A common view of historical injustice is a form of debt. For example, Pasternak, Miller and Spilotis all envision the responsibility for historical injustice as conditional on if the state had somehow caused the injustice.²³ If an entity owes something due to its own action, then it would be fair to define the owed thing as a debt. There is not necessarily any reason to believe historical injustice is always a debt. Waldron's model correctly attempts to rectify the injustices of the present without paying much attention to the cause of the

²³ Pasternak, *Responsible Citizens, Irresponsible States*; Miller, "Holding Nations Responsible"; Spilotis, "Corporate Responsibility and Historical Injustice."

injustice.²⁴ There is an obligation to fix injustices separate from debt. As a demonstrative example, two campers are in the bush. Camper A trips camper B by accident. Camper B breaks his leg in the fall. Certainly, camper A should help camper B out of the bush and to safety. In another scenario, Camper B trips on a rock and breaks his leg. In this case, camper A has absolutely no debt to camper B but nobody would argue that camper A does not have an obligation to help camper B to get out of the bush and to safety. This hypothetical shows that under the circumstances that someone cannot escape a poor state themselves, others have an obligation to help them. Therefore, when historical injustice traps people in an unequal condition to others, the state should help them even if the state did not cause the injustice. Not only is this intuitive, but it is also coherent with Waldron's theory of historical injustice.

²⁴ Waldron, "Redressing Historic Injustice."

CHAPTER THREE – HOW CAN STATES BE HELD ACCOUNTABLE?

It should not be taken for granted that a state can be responsible for historical injustice. There are many good reasons to attach historical responsibility to the state instead of other entities. States almost always have a much larger series of resources. They are also the only actors of their size which have a commonly accepted mandate to act to maximise justice. Unfortunately there are multiple arguments against holding states responsible. In the following sections, it will be shown how the following arguments are addressed by models of state responsibility.

Argument I relates to the nature of collectives. Can a collective be culpable when each individual member is innocent? Without allowing a collective to be culpable, many intuitive injustices become unpunishable. For example, how can a state be held responsible when each person controlling it is innocent. This is especially problematic if the people who decided on policies cannot pay the costs of atoning personally due to financial reasons or death.

Argument II is that the state does not have resources of its own and therefore relies on its citizens. This is unethical because many of the citizens might be entirely innocent but still indirectly pay a price. The state could be understood as carrying a transparent responsibility where any attempt to hold it accountable hits the citizens instead.²⁵ Therefore, if the responsibility is attached to the state, it needs to be ethical for citizens to pay.

Argument III is that responsibility needs to have a concrete target that states do not always have inherently. Populations and leaders change meaningfully over time. Assuming a

²⁵ Pasternak, "Limiting States' Corporate Responsibility*."

population is responsible, then there needs to be a theoretical reason why new members who were not members of the culpable state when the injustice occurred should be held liable.

To solve many of these issues, past theories commonly analogize either a nationality or a corporation. This paper aims to explain why these theories are strong in distinct situations.

3.1 When should Individuals in the State be Held Responsible?

It would be an oversight to not address that there are exceptions to holding a state collectively exclusively responsible. If a figure of a government disobeys the rules of their state, then it would only make sense to hold them individually responsible. In the case where an unjust act has occurred using the state but against the rules of the state, it would be appropriate to hold the individual responsible insofar possible. Any additional need to counteract the injustice should be held by the state because the state is complicit in the act. For example, assume a country invades another part of the world under the pretence that they have weapons of mass destruction in revenge for a domestic terror attack. The invading President was aware that the pretence was a lie and decided to perpetuate this lie. Certainly, that President has committed a mass injustice towards both its citizens and the invaded people. In this case, it makes sense to hold the President personally responsible. The President could never afford to rectify his own damage and therefore, the state should pay the rest considering the state ought to have prevented such an unjust act. Therefore, there are many cases where holding individuals is coherent and not always mutually exclusive with holding a state responsible.

3.2 State Responsibility as Nationality

Some theorists overcome the issues by theorising the state as the representative of that nationality.²⁶ Miller argues that national responsibility makes sense insofar as it allows people who imagine themselves as a group to take responsibility together.²⁷ In this context, nationality refers to groups with a language, culture, and practices. Argument I is overcome because the national group shares responsibility for shared decisions which are mainly determined by the state. Inherent in the model, there is an assumption that collective responsibility is not only possible but a natural condition for national groups with states. Argument II is defeated by the same logic. If national groups are responsible, the taxation of citizens to make amends for the state is entirely coherent. Argument III is a considerable issue for this method because national groups are often fluid, causing murkier boundaries around perpetrators. This is especially true considering modern states are not usually one-to-one fits with national groups. For example, Canada has at least four major and recognised national groups, namely Anglophone Canadian, Francophone Canadian, Inuit and Indigenous Canadian (which are often recognised together even if they are sufficiently diverse for such a grouping to not be excusable). It is appropriate for the Canadian government to require new English-speaking immigrants to compensate new French-speaking immigrants? That does not logically capture the responsibility dynamics considering it requires one person to compensate another based on which language they speak and not a historical injustice. Miller acknowledges this is a considerable limitation of national responsibility but argues the issue is sufficiently minor to excuse.²⁸

In some cases, it is likely excusable to use Miller's model provided the stakes are low and the injustice is primarily culturally based. In other words, by identifying with a group,

²⁶ Miller, "Holding Nations Responsible."

²⁷ Miller.

²⁸ Miller.

people are responsible for recognizing the unjust actions of the group's history. For example, assume a group identifies strongly with a war in their history. In the present day, it makes sense to require the group to recognize the consequences of these wars on the conquered people. Many of the state's policies cannot avoid addressing such events in history education or public celebrations. It would be an unjust act for the state to ignore or suppress the injustice suffered by the victims of such a war. A second example returns to the English and French-speaking immigrants to Canada. It would be appropriate to require both immigrants to recognise the history of their societies even if they should not compensate materially. Therefore, national responsibility is a sufficiently strong model to obligate the state to make symbolic actions. However, the ambiguities surrounding agents make it difficult to argue that it obligates the state to compensate victims materially. Argument III effectively counters national responsibility when it comes to material compensation.

3.3 States Responsibility as a Corporation

To overcome these arguments that a state should not be responsible, the state is often analogised to a corporation. This is a total break in methods from Miller's nationality-based model. Argument I is explored extensively in the literature. Phillippe Pettit argues that a corporation can certainly be responsible for an outcome independently from the people it contains.²⁹ He identifies that groups have their own agency which might meaningfully differ from their individuals. He exemplifies this through the example of a boat sinking due to the sloppiness of the entire corporation. No single person acted sufficiently to cause the boat to sink, however, the entire group did. This means the collective is responsible as opposed to the individuals whom it contains. A second example might be a car manufacturer. Assume that a team of engineers each design a part for a car which independently perfect but when put

²⁹ Pettit, "Responsibility Incorporated."

together, the car is dangerous due to small, unexpected imperfections. No single engineer is at fault, but the manufacturer as a whole is certainly liable. The collective is responsible whereas each person who makes it up is innocent. The conditions under which a group can be responsible are

Value relevance.—He or she is an autonomous agent and faces a value relevant choice involving the possibility of doing something good or bad or right or wrong.

Value judgment.—The agent has the understanding and access to evidence required for being able to make judgments about the relative value of such options.

Value sensitivity.—The person has the control necessary for being able to choose between options on the basis of judgments about their value.³⁰

The values can be held by the collective and no member simultaneously. Therefore, it makes sense to hold the collectives responsible for their actions as collectives.

A state is a corporation in many senses. Most basically, a corporation is a group or collective that has an organised structure. It can make decisions which represent the will of the entire collective. In Pettit's language, the state can judge, sense and decide on values. The actions of the incorporated group could represent a will that no particular member possesses. The collective and internal process of decision-making results in actions that no particular member might prefer. An example of this is healthcare in America where the status quo is meaningfully different from what any given member prefers. It would be intuitively unfair to judge decision-makers for outcomes that stem from these types of issues and if one were to judge, it would not be for their motivations but their competence. The collective is culpable whereas no individual who composes it is. This means that argument I is overcome.

The citizens of a corporate state can be held liable for the cost of rectifying injustice insofar as the citizens were civically active, thereby countering argument II conditionally.

³⁰ Pettit, 175.

Pasternak addresses this question extensively and argues that citizens are responsible for their state, especially in democratic systems.³¹ She argues that the incorporated state model includes citizens insofar as they are represented. In her book, she describes the attitudes required for this:

I believe that the intentional-citizenship-based justification of the distributive effect applies only when citizens' participatory intentions are genuine. Genuine participation requires that citizens are not forced against their will to take part in their state. Instead, they are motivated to act in it by their own reasons—for example, because they see their citizenship as constitutive of their self-identity, or they enjoy the various opportunities it provides them with. Citizens who are genuinely participants in their state are liable for the costs of their state's wrongdoings. But citizens who see the state as an alien force in their lives, and who would have left it, if only they could, are not genuine participants in their state, and their membership in it does not suffice, in itself, to justify the distributive effect being applied to them. The justification I develop for an equal distribution of the burden on the population at large relies then, to a great extent, on citizens' internal attitudes.³²

This seems quite logical in a sense but there are major gaps. Assume a group suffers an injustice in the past under a totalitarian dictatorship. The victims would have absolutely no means to have their unequal condition rectified because the state does not have a right to redistribute the resources of their citizens if they had no involvement with the government's decisions. Corporate responsibility is therefore somewhat limited but can overcome argument II under the condition that the citizens are civically active.

It may seem unnatural to think of a state as a corporation, but there are empirical examples of corporations becoming states which reinforce this theory. The East India Trading Companies of England and the Netherlands both took territory in Asia.³³ The Canadian state largely grew out of the Hudson Bay Company. In each case, the initial corporate structure gained territory and was able to generate an income through taxation, thereby becoming de

³¹ Pasternak, *Responsible Citizens, Irresponsible States*.

³² Pasternak, 10.

³³ Stern, "'A Politie of Civill & Military Power.'"

facto states. The Dutch VOC is well studied as early example of a state-like corporation.³⁴ It was able to supplant the legitimate Dutch government once growing large enough.³⁵ The purpose of the analogies is to demonstrate that the line between state and corporation might only be a legitimate authority, motivation and territory. It is unclear why these attributes would affect liability and culpability. These companies were later merged with governments and injustices committed in this time are considered synonymous with the state.

Most states have a founding moment where the system arises and the people belonging to the corporation are defined. This is not important because it separates the state as an institution from the state as a form of arbitrary group. For example, France has been incorporated, unincorporated and reincorporated many times, the most recent of which was in 1958 under the French Fifth Republic. Although it is appropriate to colloquially refer to France as France, it is important to understand the different periods of France as distinct corporations. Many states contained multiple corporations competing for the same status as the legitimate government. For example, Spain had at least two and likely more competing corporations during the Spanish Civil War. It is entirely unclear if the modern Spanish state is responsible for the actions of rival corporations which existed contemporaneously. The government of Hungary was turned into a puppet late in World War II and therefore might not be directly responsible for all occurrences of injustice. Ex-colonial states often have overlapping and rivalling corporations which do not act in tandem. For example, Ireland gained independence from the United Kingdom while also being actively hostile to the U.K. It is unclear which state ought to be responsible for injustices through this period because there is a break in continuity but both states still exist. While these cases are not the primary

³⁴ Weststeijn, "The VOC as a Company-State."

³⁵ Weststeijn.

focus of this paper, any theory ought to avoid contradicting these instances. Many theories of the corporate state often neglect when these corporations were founded or destroyed. Considering responsibility is attached to the institutions, confounding one institution for another undermines the entire theory.³⁶

Argument III is fairly easily overcome because the responsibility lies entirely with the institutional structure of the state. The boundaries of the state are clear as the institution has clear boundaries.³⁷ There are no murky border cases, but people who are or are not being represented by the institution. It makes no difference if citizens change over time because they are not being held responsible directly. Citizens affirmed the institution and the institution can therefore be the only entity which needs to exist. Provided the institution exists, the entity which holds the debt towards victims is easily attributed.

3.4 What Happens When the State Cannot Pay?

There are many reasons why a state might not be able to pay for a historical atrocity. This issue is also underexplored in the literature. One reason for this could be resource-based. As a principle, ethics cannot demand the impossible, but it also seems unethical for victims to go without compensation. This is a considerable issue with both common models of responsibility.

The largest hindrance to state responsibility is likely that most states of history have ceased to exist. Three centuries ago, there were an uncountably large number of states whereas, in 1900, there were fewer than 60. At the present, there are roughly 200. This is important because the changing number of states shows how unreliable it could be to ground

³⁶ Spilotis, "Corporate Responsibility and Historical Injustice."

³⁷ Pasternak, *Responsible Citizens, Irresponsible States*.

historical responsibility without taking successor states into account. The question of successor states is sorely ignored in these models and ought to be addressed.

CHAPTER FOUR – SUCCESSOR STATES AND LIABILITY

Successor States complicate state liability considerably and there is some historical precedent for multiple contradictory arguments. This section will identify how neither theory overcomes this issue fully. Specifically, incorporated state theories fail because the successor state is an entirely distinct corporation in most cases. Nationality based theories are still functional for recognising symbolic issues, but not material. There is still no way of compensating for material injustices through successor states in either of these models. Therefore, this section shows the failures of these theories as stand. The next chapter will then propose a strong adaptation.

4.1 Successor States relative to the Forebearer States

It is useful to begin by understanding how a successor state relates to the previous state. A successor state is defined by how it takes over from the sovereignty of another state. The previous state could have ceased to exist or simply lost control of another territory. The historical state and the successor state are usually understood as distinct entities, but there are considerable complexities. For example, multiple states who participated in the first world war under the Austro-Hungarian Empire were understood as new distinct nations with little responsibility to the Empire. Such nations include Czechoslovakia, Croatia, Bosnia and Slovenia. However, Austria and Hungary were understood as direct successors and liable for compensation. In this case, succession was decided based on ruling status. The Austrians and Hungarians were both ruling classes and therefore their new states were seen as continuations whereas the Czechs or Slovenes were fully new states. Other common factors for determining succession might be a meaningful similar populace, language or shared history such as in France which underwent multiple regime changes between 1871 and 1958. The classifications are generally somewhat ambiguous which causes issues.

There are multiple different types of successor states which have distinct ways of liability. A typical case may be described as case A: states that have their initial state fail and therefore replace it. Such cases include Germany after both world wars and France during its multiple reformations. Case B is somewhat more complicated: an empire falls apart and leaves a rump state. Yugoslavia, the Austro-Hungarian Empire and Russian Empire after the Revolution are such examples. Case C is where a state is controlled by a foreign power and gains independence as in many ex-colonial or break-away states. This is important because it shows how complicated it is to trace a connection between these states when the new state shares very few dynamics and often times, identifies differently from their successor.

The natural issue with successor states is that they are distinct states in a vast majority of cases. For a successor state to have a direct connection, the successor state would have to be substantially the same as the earlier state. While it is entertainable that a state reforms identically to the previous, it begs the question of if it reformed at all. Assume a state reforms with the same institutions and exactly the same population. Is this really a successor state at all? Most people would argue that it is not a successor but just the original state. This might be well-exemplified of the transition between the 4th and 5th French Republics where the creation of the latter was essentially a project of the former. Philosophically, one might theorise there is a concept of specific state identities which underlies each country. France is France because, underneath the superficial state or nationality, there is some normative sense of Frenchness. This normative sense of a state identity is difficult to prove and contradicts the actual existing dynamics of states, i.e., states are everchanging in practice even if they have a historic identity. The connection between an earlier state and a successor is therefore extremely difficult to prove without introducing subjectivity to the concept of the state.

5.2 Issues with Succession and Responsibility in the National Responsibility Model

Usually, a successor state is defined as a state that either occupies the same territory or represents the same national group. It is difficult to identify national groups cleanly and their characteristics are usually in constant flux. The concept of a corporate state attempts to avoid the arbitrary and ambiguous classifications on which successor states are based. Language, culture, ethnicity or shared history are deliberately not definitive of corporations. If corporations were to integrate these factors, distinct entities would become far more ambiguous. For example, if instead of a corporate entity, Germany is understood as a linguistic, cultural and ethnic one, its history would stretch back much further between groups who do not identify with one another. The Prussians and the Bavarians would be understood as the same when they were generally distinct entities. How would one define nations without precedent? Is Brazil the same as Portugal merely because they share a language and were at one point the same political entity? The ability to connect historical nations and successor states is entirely dependent on how one can define the characteristics of a nation.

David Miller offers a solution which many might see as highly instinctive, which is to propose the nation is responsible. The state is only responsible insofar as it represents the responsibility of the nation.³⁸ This is a convenient theory because it would allow for the liability and culpability to transfer cleanly to a successor state, but it is meaningfully flawed for material compensation for the same reason as it does not work in a state normally. First, responsibility for the act is put on the nation which is difficult to identify. For example, he argues that a mob might be held collectively responsible for their damage. The puzzling attribute of this is that legally a mob is not held collectively responsible. Individuals within the mob are held responsible because it is difficult to construct the mob as a collective that

³⁸ Miller, "Holding Nations Responsible."

understands their actions. The critique of Miller's analogy also transfers to his national responsibility. It is not usually understood that a national group acts in perfect tandem with members to have any type of consistent decision-making. Secondly, the national group is also meaningfully diverse politically. It seems wrong to accuse the people who were politically indifferent or opposed to committing an atrocity. Thirdly, the state is understood as value-neutral which is false. Every state aspires to some political ideology which is not one-to-one with the political values of its people. The state can even perform actions that are deeply unpopular with its population. English Canada and French Canada have often been at odds and they both have forbearing states which committed unjust acts against one another. For which nationality is the modern Canadian state liable? This is not fully clear. The Canadian government could, at best, recognise the unjust acts of each group towards one another. Any material compensation would be wildly arbitrary and redistribute material of each group to swap to the other. This model of injustice creates many contradictory issues and is insufficiently concrete.

5.3 Issues with Succession and Responsibility in the Corporate Responsibility Model

Insofar as the state is understood as a corporate entity, it is difficult to explain succession states. A successor state is not the same corporation. A corporate group has a structure, members and identity which immediately changes upon the fall of the historical state. The historical state would not be understood as having ended unless one of these factors has changed. The end of the state marks the end of the corporation by definition. Successor states and historic states should therefore have no attachments from a corporate perspective. It still appears untenable as a position for states to ignore the demands of victims. Pasternak argues that successor states have responsibility based on having benefited from the

injustice.³⁹ The state inherited the results of the injustice and is therefore responsible for rectifying the injustice. While superior to Miller's position, it does not describe scenarios where nobody inherited the result. For example, assume a state commits an unjust act towards a group for which they gain nothing but a group becomes considerably impoverished. In Pasternak's model, the successor state would not inherit any advantage and thereby not be liable to compensate the victim group.⁴⁰ Once again, the victims are left without means of rectification.

Pasternak also argues that the state justification for committing the historical injustice is definitive for how liability transfers to successor states. Specifically, she argues

The context-sensitive approach requires that we examine whether the distribution of the responsibility to the state citizens would have been justified at the time it committed the wrongdoing, in order to determine whether it passes on to a successor state. If it was not, then it is no longer the case that present-day citizens should pay for the crimes committed in the past.⁴¹

She correctly identifies that the transfer of liability and culpability are distinct and only the liability needs to transfer for actionable claims for compensation. While it passes the test to make liability transfer to a successor state, it leaves many of the historical injustice claims unanswered. Her understanding of justice is one where a party must owe another based on liability for historical injustice. It is more useful to understand injustice as something that can be corrected by any party. The demand for justice is solved when the effects of injustice can be reasonably mitigated. All states should not see liability as a call for action rather than a debt. By doing this, it becomes impossible for liability to transfer sufficiently to materially compensate victims.

³⁹ Pasternak, *Responsible Citizens, Irresponsible States*.

⁴⁰ Pasternak.

⁴¹ Pasternak, 198.

5.4 How to Overcome Succession in these Models while Preserving Strengths

A new theory is needed to overcome the issue of material compensation in successor states. The primary issue with all of these models is that historical injustice is viewed as a form of debt that requires successor states to inherit. The only way of doing this is to prove that the successor state is normatively the same entity. Definitionally, this is extremely difficult to prove. It is sufficiently ambiguous to rule out and not supported by much.

Any corrected theory needs to avoid the debt model and embrace the obligation to maximise justice. Obligation to maximise justice is shared by all and therefore is not dependent on the state for its existence. This has the added advantage of capturing the intention of Waldron when he writes about material compensation.

CHAPTER FIVE - ALTERNATE MODELS FROM THE CLIMATE CHANGE

LITERATURE

A strong parallel for historical injustice is climate change. The focus of this body of literature is the establishment of frameworks to fight global warming and pollution. While it may seem inappropriate to compare the two issues, many of the same ethical dynamics apply to both historical injustice and climate change mitigation.

5.1 Climate Change and Historical Injustice as Similar Challenges

Climate change is often described as a wicked problem which is characterised by specifically challenging characteristics based on ambiguities.⁴² First, those causing the problem are charged with solving it. Historical injustice incurred by a state must usually be corrected by states. Second, time is a considerable issue. Historical injustice becomes more difficult to repair over time. The effects of historical injustice become less clear over time but can still result in broad inequalities. Third, there is no authority to force the actor to respond. States are not easily forced to make amends for historical injustice and usually choose to do so out of goodwill. Fourth, the pay-off is largely in the future whereas the costs are immediate. It takes time for the effects of an unjustly treated group to repair from the event. Both climate change and historical injustice have similar dynamics in regard to coordination.

The primary dynamic at play between the two issues is dead actors. Is it just to hold modern people liable for the emissions of their ancestors? It seems unfair to do so but developing nations would argue that is fair because they benefitted from it. In the same vein, victim groups might argue the same about the descendants of their victimisers. This debate

⁴² Levin et al., “Overcoming the Tragedy of Super Wicked Problems.”

has played out extensively in climate change. It ought to therefore be imported into historical injustice literature to understand the shared ethical dynamics.

5.2 Common Climate Change Positions

Common positions for climate change are also applicable to historical injustice. The most popular models are labelled the *polluters pay principle* and the *Cosmopolitan Justice position*. Within the polluters pay principle, there are the individualistic position and the collectivist position.

5.2.1 Polluters Pay and Variations

The polluters pay principle is self-explanatory; if a person pollutes, they ought to pay to offset the pollution. Historical omissions are not actionable because those who omitted can not pay on behalf of being dead. Applying this position to historical injustice, only the direct perpetrator of the historical injustice is responsible. There is no transfer of liability or culpability. Within this category, there are two more sub-variations: the individualistic position and the collectivist position.⁴³

The individualistic position argues that descendants are sufficiently connected to their ancestors to be liable for past emissions by default. It conflicts with the polluters should pay because the descendant did not pollute yet must pay. The model suffers in multiple ways. It is exceptionally difficult to ascertain how much someone's ancestor polluted and then hold them responsible for it. It is also likely impossible to fight climate change through this model because people are insufficiently capable to counter their own emissions. It would be unfair to say that an individual is responsible to pollute sufficiently little to equalise their ancestors' emissions with the emissions of others' ancestors. In terms of historical injustice, it is equally

⁴³ Caney, "Cosmopolitan Justice, Responsibility, and Global Climate Change."

unfair to hold individuals liable for the injustices of their parents when they have no capacity to do so. Imagine person A and person B are identical in all ways except person A's family participated in a historical atrocity. It would be entirely unfair for person A to suffer relative to person B for something neither had any agency over. Caney identifies this when the same principle is used in climate change.⁴⁴ This is an unmaintainable position for historical injustice or climate change.

The collectivist position argues that collectives should take responsibility for the emissions themselves. For example, the U.K. should take responsibility for its own emissions even if that means modern Britons will pay for the emissions of unrelated past Britons. Both Miller and Pasternak embody this argument because their models of state responsibility are focused on attaching responsibility to a collective.⁴⁵ The collectivist position has many faults. The core principle of polluters pay is that it is wrong to hold everyone responsible for the actions of a different group. Culpability equals liability. However, the collectivist position violates this by making an entire collective responsible for the actions of a few within the collective. One might argue that these innocent people benefited from these emissions of others at which point they become responsible. However, people across borders might well have benefitted from these emissions and will not be held responsible. Therefore, it is unfair to measure this way. The position also suffers from defunct collectives where a collective disappears and the collectivist position has no means of attributing responsibility. For example, who is responsible for Yugoslavia's emissions? Any model to find an answer will be extremely contentious. The collectivist position is therefore not ideal for countering climate change.⁴⁶

⁴⁴ Caney.

⁴⁵ Miller, "Holding Nations Responsible"; Pasternak, *Responsible Citizens, Irresponsible States*.

⁴⁶ Caney, "Cosmopolitan Justice, Responsibility, and Global Climate Change."

5.2.2 Cosmopolitan Justice

The Cosmopolitan Justice approach is that climate change should be tackled in a way that the demand for change is answered most effectively.⁴⁷ It is evident that the British will not be able to respond to their historical emissions because it exceeds their capacity. They still might have a particular ethical duty to stick to the climate change agenda which acknowledges their historical emissions, but they do not have a debt for their past emissions. Therefore, other states become responsible for the emission of the British Empire, which although unintuitive, is the most ethical option because it is the only way to solve the issue. The application of this model to historical injustice has many advantages which make it a strong model.

An advantage of the cosmopolitan model applied to historical injustice is that it assumes the most ethical scenario is one in which the injustice is rectified. I assume this is the best scenario for multiple reasons. When the costs are dispersed across a population for compensating historically marginalised groups, it is likely to be considerably less of a burden to each person than it is to the people who have suffered injustice. In other words, the injustice can be overcome more easily even if it means that the innocent population must pay a higher cost.

The puzzle of liability transferring from one state to its successor is solved. The shift from state to a successor is natural because any claim to succession is likely sufficient for establishing a particular call to respond to those injustices even if they are not the direct perpetrator.

⁴⁷ Caney.

As a principle, it allows for effective responses in the case where it is impossible for the directly responsible institution is not capable of correcting all of the injustice. For example, the Hudson Bay Company committed violence against the indigenous population of Canada. In recent times, they are a struggling company which makes most of its money off jeans and blankets. They cannot effectively correct the injustice which they caused. The forward-looking model allows for other institutions to help correct the injustice, thereby effectively countering injustice in ways that the original institution cannot. While preferable that a culpable institution does not escape paying the cost for their unjust act, it is still superior to having no institution compensate the victims at all.

The model also provides states with a rationale to compensate victims living in other states which are not necessarily clear in other models. States have a mandate to create fair policies in their own nations which can often be sufficient to justify compensating for historical injustice without further explanation. It is, however, unclear why states would compensate victims that reside in other states. By making the retribution of historical injustice an ethical demand in itself, an ethical state will compensate residents of other states without the intervening issues. A hypothetical of this would be a state that has caused a victim minority to flee to another nation. The state then ceases to exist and another state takes its place without any of the advantages gained from the victimisation of the minority. As a new state without any marks of injustice, it does not have any debt to the victims. If it chooses to compensate, the state pays a cost to compensate the minority without the pay of equality if it occurred in its own state. Cosmopolitan justice allows the state to compensate the other minority out of a sense of ethical obligation rather than debt.

5.3 Objections to Cosmopolitan Justice

There are many natural objections to the model that relates to climate change and historical injustice having distinctions. The science behind climate change has only been known since the late 20th century whereas historical injustice has likely always been unjust. The cosmopolitan justice responsibility might be excusable for climate change because it is difficult to allege liability for something that was not intended. However, historical injustice was often intentional or reasonably foreseeable. However, there are strong reasons why the model is still applicable. Most living people did not intend for their ancestors to commit injustices similarly to how they did not intend to pollute. In cases where the modern institution is the same as the offending institutions, it would make sense to think of the institution as willingly ignorant. However, in this case, a modern institution has replaced the older one and the only connection is that it performs the same duty in a successor state. They are, therefore, no more complicit than the person whose ancestor polluted without knowledge of omissions.

A second objection might be that climate change is essentially a required policy that affects the planet as a whole whereas historical injustice is region-specific. For example, when a nation pollutes, it affects people on the other side of the planet whereas when they allow a group to live impoverished from a historical injustice, they only affect themselves. Therefore, climate change is more fitting for cosmopolitan justice than historical injustice. This argument ignores that historical injustice is pervasive. There is realistically no state which could claim to not be somehow connected to historical injustice. Also, historical injustice is agent-specific at the symbolic level. It is entirely possible to treat historical injustice as a component of having a relationship with a neglected group in. In this case, it makes sense that modern states can logically participate in a form of cosmopolitan justice.

It might be objectionable to equate climate change and historical injustice because the time frame of climate change policy is extremely tight. The demand for historically non-

polluting nations to take responsibility for other nations might be because lowering emissions is a moral requirement, and it is the only way to do so effectively. In this case, historical injustice could not be equated with climate change sufficiently to adopt cosmopolitan justice. This is flawed because historical injustice is also time-sensitive and insofar as it is not as serious, it also has a lower cost. As time passes, it becomes more difficult to ascertain how or whom to compensate for the unjust act. Although it would be difficult to calculate, the cost to counteract the perpetual suffering of specific people is likely lower than the cost of climate change in many cases.

The claim to cosmopolitan justice does not need to be as strong for historical injustice. Cosmopolitan justice needs to overcome the distinctions between state corporations. In other words, the Federal Republic of Germany needs to be subject to the demand for justice for the actions of the German Empire. The blurring effect of actors in cosmopolitan justice can achieve this even if it does not make Fiji materially liable for the German Empire or Germany materially liable for the actions of South Africa. The goal of climate change literature is to establish that all nations should pay the cost for the actions of only a few. The goal of cosmopolitan justice in this case is considerably more centred on connectedness to the original act and victim population. It is therefore acceptable if historical injustice is fitting for Cosmopolitan justice as climate change. It only needs to be strong enough to justify compensation between related groups and victims.

CONCLUSION

Historical injustice, state responsibility and succession states create various issues which can be overcome theoretically. It is vital for groups suffering from injustices to have the opportunity to escape their unequal status. The ideal circumstance is that the agent who caused the unjust act would also compensate. This is often impossible in cases where the offending party has ceased to exist. The second-best case is where an entity other than the culpable party compensates the group, allowing them to live in an equal condition with others. The least just scenario is one where the victims have no means of rectifying their unequal state. Therefore, the strongest model of historical injustice must intuitively allow for people to achieve a just condition relative to other people.

Jeremy Waldron's model of historical injustice is strong.⁴⁸ The greatest takeaway from Waldron is that the injustice which is most real is present injustice, which may have a historical cause. The correct remedy for clear cases of theft is the return of the stolen item and, if sufficiently provable, the cost of being deprived of the item over the period since it was taken. In most cases, material compensation ought to be focused on restoring equality between the majority and those who are suffering from reduced economic capacity because of a former injustice. Symbolic actions are also appropriate to restore equality of dignity. Symbolic and material injustices are compensated in very different ways. Considering the higher cost of material compensation, it requires a more concrete theory than symbolic ones. Waldron's model is strong because it rectifies injustices relative to making people not suffer arbitrarily.

⁴⁸ Waldron, "Superseding Historic Injustice"; Waldron, "Redressing Historic Injustice."

There are two methods through which it is logical to hold the state accountable, institutionally, or nationally. The latter argues that a national group can be responsible and therefore, it is appropriate to hold the state responsible for injustices as the representative of the nationality. Culture ought to recognise its past unjust. However, the state is not one-to-one the same entity as the nationality. Nationalities can include borderline people such as migrants and people with multinational parent. The murky boundaries of who belongs to a national group weaken the theory considerably. This is especially true considering modern states often represent multiple and competing nationalities and cultures. By confounding the state and national group, the theory could require compensation between people based on nothing but personal culture, which is unjust. Material injustices require a stronger, more objective theory.

When attempting to draw continuity towards a successor state based on nationality, multiple issues arise. The largest issue is that a national group without a state is merely a series of cultural characteristics which taken on their own, do not seem appropriate markers for continuity. This is especially true considering successor states often do not have a one-to-one connection culturally to their forbearing state. What happens if the cultural group is split or assimilated into another nation? This is far from clear in Miller's model. The approach ultimately works for symbolic atrocities because people who identify with the nationality can still compensate. This symbolic compensation would even transfer to successor states because the nationality is maintained even when the state is not. However, the theory does not overcome material issues with states or successor states.

The corporate model argues that state responsibility should be analogous to corporate responsibility. The model correctly identifies that the state is a series of institutions, that can be responsible even if it requires taking the resources of citizens, and it has clear members

through citizenship. The concreteness of this model allows it to be the perfect model for material compensation considering it can legitimately compensate victims of injustice.

This naturally creates the problem that institutions are often changed or destroyed, leaving no entity able to compensate victims. Successor states are not liable for the actions of their forebearer. Pasternak attempts to fix this by making benefitting from the past injustice a marker of an obligation to compensate. However, often no entity benefits from the injustice and the victim group would still find themselves without a means to escape the unequal status. She also believes the state action ought to have been justifiable for it to inherit from the successor. This makes many obvious cases of historical injustice unactionable and is therefore far too limited. Therefore, the corporate state model is worth keeping but it does not fully explain what should occur in situations where the culpable state is unable to compensate.

Climate change provides a model for historical injustice which can overcome the succession puzzle of historical injustice. Cosmopolitan justice argues that climate change mitigation is the duty of historical polluters and non-polluters equally, therefore, prioritising the effectiveness of the action. By rethinking historical injustice correction as an affirmative duty rather than a collected debt, it can transfer from one state corporation to the next without considerable issues. The burden is also lower than with climate change which might lead to some form of particularity. The successor state might therefore have somewhat more of a unique duty to respond to certain claims even if they do not inherit the debt from their forbearer state. Through this theory, the state can compensate victims of historical atrocities, leading to the most ethical scenario outside of holding the direct perpetrators responsible.

Many of the cases where this theory would help already exist. Modern Germany has done excellent work in compensating victims of the World Wars and the Holocaust.

Symbolic compensations are highly visible from the Berlin Holocaust Memorial to the Kaiser Wilhelm Memorial Church. Material compensations have also been given to survivors and descendants of the holocaust. In either of the aforementioned models, there is no strong theoretical reason to explain why these compensations are intuitively good. Modern Germany is a definitively different corporation from those of the early 20th century. The German nationality can be held responsible symbolically, but this would not excuse the material compensation. Cosmopolitan justice works well to explain Germany as one example among many.

The significance of this model change is that historical injustice will lose some of its stigmas as well and make it easier for states to counteract historical injustice. The model avoids the question of culpability altogether. It matters that the group has suffered continuing injustice but does not meaningful matter that they have a claim against the state. Therefore, it only matters to ascertain that the group's injustice is repaired. The establishment of a particular relationship between the state and the victim group also helps to establish a reason for one state to act and not a different one. This is a much lower burden than establishing state culpability. Historical injustice should therefore be mitigated through the most efficient means by default.

Works Cited

- Caney, Simon. "Cosmopolitan Justice, Responsibility, and Global Climate Change." *Leiden Journal of International Law* 18, no. 4 (December 2005): 747–75. <https://doi.org/10.1017/S0922156505002992>.
- Degeling, Simone, and Kit Barker. "Private Law and Grave Historical Injustice: The Role of the Common Law." *Monash University Law Review*, January 2015. <https://search.informit.org/doi/abs/10.3316/ielapa.057760655126017>.
- "La mezquita Ishbilía de Sevilla exige que el rey Felipe VI pida perdón por la Reconquista," March 29, 2019. https://www.lasexta.com/noticias/nacional/mezquita-ishbilía-sevilla-exige-que-rey-felipe-pida-perdon-reconquista_201903295c9e031f0cf221c687040191.html.
- Levin, Kelly, Benjamin Cashore, Steven Bernstein, and Graeme Auld. "Overcoming the Tragedy of Super Wicked Problems: Constraining Our Future Selves to Ameliorate Global Climate Change." *Policy Sciences* 45, no. 2 (June 2012): 123–52. <https://doi.org/10.1007/s11077-012-9151-0>.
- Miller, David. "Holding Nations Responsible." *Ethics* 114, no. 2 (January 2004): 240–68. <https://doi.org/10.1086/379353>.
- Pasternak, Avia. "Limiting States' Corporate Responsibility*." *Journal of Political Philosophy* 21, no. 4 (2013): 361–81. <https://doi.org/10.1111/j.1467-9760.2012.00423.x>.
- . *Responsible Citizens, Irresponsible States: Should Citizens Pay for Their States' Wrongdoings?* 1st ed. Oxford University Press, 2021. <https://doi.org/10.1093/oso/9780197541036.001.0001>.
- Pettit, Philip. "Responsibility Incorporated." *Ethics* 117, no. 2 (January 2007): 171–201. <https://doi.org/10.1086/510695>.
- Spilotis, Susanne-Sophia. "Corporate Responsibility and Historical Injustice." *Civil Society. Berlin Perspectives*. New York, Berghahn Books, 2006, 51–69.
- Spinner-Halev, Jeff. "From Historical to Enduring Injustice." *Political Theory* 35, no. 5 (October 2007): 574–97. <https://doi.org/10.1177/0090591707304585>.
- Stern, Philip J. "'A Politie of Civill & Military Power': Political Thought and the Late Seventeenth-Century Foundations of the East India Company-State." *Journal of British Studies* 47, no. 2 (April 2008): 253–83. <https://doi.org/10.1086/526759>.
- Waldron, Jeremy. "Redressing Historic Injustice." *The University of Toronto Law Journal* 52, no. 1 (2002): 135. <https://doi.org/10.2307/825930>.
- . "Superseding Historic Injustice." *Ethics* 103, no. 1 (1992): 4–28.
- Weststeijn, Arthur. "The VOC as a Company-State: Debating Seventeenth-Century Dutch Colonial Expansion." *Itinerario* 38, no. 1 (April 2014): 13–34. <https://doi.org/10.1017/S0165115314000035>.