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Supersession-Proof Reparations: Harms, Wrongs, and Historical Injustice

Abstract:

There is widespread intuition that historical injustices require some form of redress. Yet despite this intuition, redress for historical injustice encounters significant philosophical problems. In this paper, I defend the possibility of redress from one particular philosophical problem: The Supersession Thesis (ST). According to ST, circumstances may have changed between the historical injustice and the present such that present demands of justice override or “supersede” demands of redress for the historical injustice. I argue that the ways we can respond to ST inform the kind of model of redress that we ought to adopt in cases of historical injustice. A recent strategy to defend the possibility of redress from ST is to distinguish between claims of *restitution* and *reparation*. However, if we use a popular model of redress that makes *injuries* a necessary condition to generate a claim to redress, using this distinction to avoid ST encounters two further problems: the *nonidentity problem* and the *causal problem*. I argue that if we instead adopt a model on which claims to redress are generated by the wrong of the injustice, then we avoid these problems *and* can overcome ST. This means that if we want a model of redress that overcomes ST it must be one based on wrongs and not injuries.

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There is widespread intuition that historical injustices require some form of redress. Yet despite this intuition, redress for historical injustice encounters significant philosophical problems. In this paper, I defend the possibility of redress from one particular philosophical problem: The Supersession Thesis (ST). According to ST, circumstances may have changed between the historical injustice and the present such that present demands of justice override or “supersede” demands of redress for the historical injustice (Waldron 1992).¹

ST challenges the possibility of redress for historical injustice. However, I argue that the way ST challenges redress helpfully informs the model of redress for historical injustice that we should adopt. There are two models of how an injustice generates a claim to redress:

- (1) The *Wrongful Injury Claim* (WIC): Agent *A* has a claim to redress for wrongful action Φ iff *A* experiences an injury *I* that is the result of Φ .²
- (2) The *Wrongful Action Claim* (WAC): Agent *A* has a claim to redress for wrongful action Φ iff *A* is wronged by Φ .³

In this paper, I argue that WIC is vulnerable to ST, while WAC is not. Thus, if we want an account of redress for historical injustice that overcomes ST, we must prefer WAC to WIC.

¹ ST is originally presented by Waldron (1992) and has been frequently discussed in the historical injustice literature. A representative sample of these discussion include: Nine 2009, Sanderson 2011, Meyer and Waligore 2022, Song 2022, Montero 2022, Christie 2022, Harrison 2021.

² A representative sample of discussions which use WIC include Sher 1981 and 2005, Boxill 2003, Wenar 2006, Harrison 2021.

³ A representative sample of discussions which use WAC include Butt 2006, Shiffrin 2009, Sanderson 2011, Kumar 2014, and Lambrecht 2024c.

I proceed as follows. I begin (Section 1), by explaining ST and showing how it challenges the possibility of redress for historical injustice. Then (Section 2), I present WIC in greater detail. Next (Section 3), I consider a recent argument by Caleb Harrison (2021) that offers the best version of WIC that is meant to overcome ST. However, I argue (Section 4) that even this best version of WIC overcomes ST only at the expense of significant further objections. WIC overcomes ST by relying on injuries that causally result from the wrongs of the historical injustice. I argue that this reliance on injuries makes WIC vulnerable to the *nonidentity problem* and the *causal problem*. Finally (Section 5), I demonstrate how WAC can harness the insights of WIC to overcome ST, while at the same time avoiding the nonidentity and causal problems.

A few clarificatory comments about the goals of this paper before I begin. First, both WIC and WAC are models of *what generates* a claim to redress. Neither tells us *how much* redress should be or what it ought to be made up of. The question of what generates the claim is separate from the question of *how much* redress ought to be (see Goodin 1989, Sher 1981, Simmons 1995 and Lazar 2008 for answers to this second question). My focus here is about the possibility of *any* redress for historical injustice. Second, my goal in this paper is not to develop WAC. Many others have developed versions of this model before (including Kumar 2014, Shiffrin 2009, Sanderson 2011, Simmons 1995, and myself in other work Lambrecht 2024c). My contribution here is to demonstrate how WAC overcomes ST by showing how it can incorporate the insights from the best version of WIC while avoiding its shortcomings. Thus, I will only explain the details WAC that are necessary to illustrate it and how it can overcome ST. Third, philosophers have provided many recent arguments meant to overcome ST. The majority of these arguments, however, aim to challenge the idea that circumstances can change what justice requires in the way ST says or to

demonstrate that ST does not arise in particular cases.⁴ My argument tries to overcome ST *on its own terms*. I aim to vindicate the possibility of redress for historical injustice even if we accept the claim in ST that changes in present circumstances change what justice demands. That is, my goal is to show that even if we accept ST's parameters for the sake of argument, claims to redress for historical injustices are possible. Fourth, there are many arguments that groups *qua group* have claims to redress for historical injustice (for instance, the claims of Indigenous nations).⁵ However, group claims face significant complications. And, the majority of the arguments I discuss here concern claims that individuals have. I, thus, restrict my discussion to claims individuals may have. Finally, my topic in this paper is *backwards-looking* redress. Recently, the literature on historical injustice has taken a “structural turn” which emphasizes the importance of forward-looking measures to repair unjust distributions or structures that have resulted from the historical injustice (e.g., Nuti 2019; Lu 2017; Butt 2021). My focus here is on backwards-looking redress. The structural turn is welcome and I have defended it elsewhere (Lambrecht 2024a and 2024b)]. Yet, as I and others have argued, an *optimal* account of redress for historical injustice will *also* include backwards-looking redress ([Lambrecht 2024a, Lambrecht 2024b]; see also Song 2021, Butt 2021, and McKeown 2021). ST challenges backwards-looking redress. And so, part of vindicating an optimal account of redress requires demonstrating that backwards-looking redress is not vulnerable to ST. For the remainder of this paper, when I say “redress” or “claims to redress” I am referring to backwards-looking redress unless otherwise specified.

⁴ For instance, Meyer and Waligore (2022 and 2024) distinguish between “partial” and “full” supersession to argue that in many cases of historical injustice the circumstances have not changed such that demands of present justice supersede claims of redress. Montero (2022) challenges the range of cases in which ST would apply by suggesting that it only applies if agents do not experience the minimum requirements of justice. Nine (2008) and Christie (2022) argue that some kinds of wrongs (eg., land expropriations) cannot be superseded. Song (2022) and Lu (2017, 200) argue that ST does not apply because historical injustices are structural and enduring and so circumstances have not sufficiently changed.

⁵ E.g., Butt 2006, Thompson 2022.

1.0 Introducing Supersession

ST states that when circumstances change, claims to redress some historical injustice no longer apply because present claims of justice “supersede” historical claims (Waldron 1992, 24). Jeremy Waldron’s influential argument for ST is as follows. Suppose, at t_1 , one group of individuals (As) have rights to a piece of land. Another group (Bs) wrongfully expropriate this land. At t_1 this was an injustice. But now, many generations later at t_2 , the Bs have made a life on this land and depend on this land for survival. Bs have acquired a right to this land (18). At t_1 , As had claims to redress for the injustice (in the form of return of the land). But at t_2 , Bs have presents claim to this land. Taking the land would constitute a serious wrong and violate the Bs ’ rights to it in the present. Present demands of justice, in other words, make it such that demands for redress cannot be met. Thus, the As ’ claims to redress for historical injustice have been “superseded” by the Bs ’ claims to the land now.

ST seems to challenge redress in many (if not most) cases of historical injustice. Typically, philosophers treat historical injustices as collections of unjust actions, where many of these initial unjust actions occurred generations ago between individual wrongdoers and victims are no longer alive.⁶ While there is a sense in which any unjust action committed in the past is “historical”, philosophers typically are concerned with a particular understanding of “historical injustice”. Historical injustices are philosophically challenging because we cannot apply a standard model of

⁶ Many philosophers define historical injustice in this way: Butt (2006, 358), Thompson (2001, 116), Waldron (1992, 6-8) and Wenar (2006, 399-401). In Lambrecht 2024a I offer a detailed explanation of this understanding of “historical injustice”. Thanks to an anonymous reviewer for encouraging me to expand upon this point.

redress for them. The individuals involved no longer exist and the circumstances have now changed since the injustice. Wrongs that occur relatively recently are not philosophically challenging in this same way. So, when philosophers talk of “historical injustices” they typically understand them as these *philosophically challenging* injustices committed generations ago between individual wrongdoers and victims who are no longer alive. This understanding does not preclude *also* understanding the wrongs of historical injustice as enduring or ongoing (as I argue in [Lambrecht 2024a]). The central point is that to be philosophically interesting, *some of the actions* of the historical injustice must occur in the distant past. The standard examples of such historical injustices are chattel slavery in the United States or the land expropriations of Indigenous peoples in North America, Australia, and New Zealand. I’ll restrict my discussion to such wrongs, not because I think they are the only possible historical injustices, but, rather, because they are the central examples that the literature uses, they helpfully illustrate the philosophical problem with claims to redress, and my main interlocutors in this paper use them.

Understanding historical injustice in this way is also consistent with ST. ST seems to most plausibly apply to injustices occurring in the distant past. This is because ST seems to require quite a lot of time to pass for the circumstances to change in the relevant way. Consider Waldron’s case of land expropriation. For the *Bs* to have acquired a right to the land, Waldron argues that they must have spent considerable time on this land and made it central to their families’ identity through generations (23-4). In other words, for the land to belong the *Bs* such that taking it away would cause a problem of present injustice, a lot of time must have passed. So, to *fairly* defend the possibility of redress from the challenge of ST we need to use the same kinds of cases that best serve ST (i.e., injustices in the distant past). I’ll restrict my discussion to such cases. For the

remainder of this paper, when I say “historical injustices” I mean wrongful actions committed generations ago between individual wrongdoers and victims who are no longer alive.

ST seems to challenge many claims to redress for historical injustice. For the purposes of this paper and for the sake of argument, I will accept the idea that changes to circumstances can create present demands of justice in the way ST states (for instance, by changing property right). And, for the sake of argument I will accept that these present demands of justice may change what claims to redress might require. I’ll now turn to a plausible argument that seems to vindicate claims to redress. While I ultimately show that this argument fails, it does so instructively and in a way that gives us resources for a successful defense against ST.

2.0 The *Wrongful Injury Claim*

Recall from above that there are two main models that explain how wrongs generate claims to redress. One of these is the Wrongful Injury Claim (WIC). Recently, Caleb Harrison (2021) has offered a strong defense of the possibility of redress for historical injustice against the challenge of ST using WIC. Let’s consider WIC in detail.

Recall, WIC is as follows:

The *Wrongful Injury Claim* (WIC): Agent A has a claim to redress for wrongful action Φ iff A experiences an injury I that is the result of Φ .

WIC is widely adopted.⁷ It has a few important features to make note of. First, proponents of WIC typically define “injury” as an agent’s wellbeing departing from a baseline. Usually this baseline is put in counterfactual terms, such that an agent is injured when that agent is worse off than she would have been had the injustice not occurred.⁸ I will discuss differences in the baseline in Section 4.1.2 below. For now, the point is that we can follow WIC and define injury in terms of a drop in wellbeing below some (typically counterfactual) baseline.

Second, not every action which results in an injury is a wrong and not every wrong necessarily results in injury. An injury occurs when an action drops an agent’s wellbeing. A *wrong* or *wrongful action* (I’ll use these terms interchangeably here) is an action that is *impermissible*. Different accounts may vary in the reasons that make an action impermissible. An action may be impermissible when it violates a right (Ripstein 2009 and 2016; Weinrib 2012; Hurley and Weinberg 2016), when is contrary to normative expectations (Kumar 2003 and 2014; Thompson 2002), when it expresses something about the victim (Anderson and Pildes 2000), when it inflicts a particular kind of injury on a victim, or when it violates a duty owed to a victim for some other reason (Garnder 2011). I’ll remain neutral about what makes an action wrong. The crucial point is that injuries and wrongs can come apart. An action can inflict an injury and not be wrong (e.g., when I step on your foot in order to save a child’s life) and can be wrong without inflicting an injury (e.g., when I scroll through your phone when you leave the room and you never find out). This allows for the possibility of “harmless wrongdoing”.⁹ A famous example is offered by Arthur Ripstein in which a man trespasses into a house and sleeps in the owner’s bed while the owner is

⁷ Eg., Boxill 2003, Sher 1981 and 2005, Wenar 2006, Harrison 2021.

⁸ See Boxill (2003, 67), Sher (2005, 181-3), Harrison (2021, 7-8, fn. 17).

⁹ For a representative sample of discussion of harmless wrongdoing see Feinberg 1990; Ripstein 2009; Weinrib 2012; Hurley and Weinberg 2015; Kumar 2003 and 2014; Slavny and Parr 2014.

away without the owner ever finding out (2009, 125). These cases of “harmless wrongdoing” involve actions that are intuitively wrong, but their wrongfulness cannot be (fully) explained in terms of the injuries they cause (since they cause none). There is something else that makes these actions wrong. WIC insists that an action Φ generates a claim to redress if and only if Φ is a wrong *and* Φ causally results in an injury.

Third, WIC is neutral about the agent who must provide redress. Most philosophers who adopt WIC argue that *the wrongdoer* needs to provide redress (Boxill 2003, 64-6; Harrison 2021, 9-10; Boxill and Corlett 2022). This is what makes it “redress” and not merely third-party compensation. For simplicity I will be assuming that the agent who is required to provide redress is the wrongdoer. But this does not make a difference to my argument.

3.0 Can WIC Overcome ST?

We can now understand how WIC can be used to overcome ST. The best attempt to do so is offered by Harrison (2021).¹⁰ I’ll now present his argument.

Harrison does not dispute that ST might challenge *some form* of redress for historical injustice. Rather, Harrison argues that ST does not challenge redress *entirely*. He distinguishes between two forms of redress: *restitution* and *reparation*. Restitution is the return of the precise thing lost in the injustice (8). For instance, restitution would be the return of the expropriated land.

¹⁰ Meyer and Waligore (2024) offer a similar argument. Their concern is more on an external critique of Waldron’s argument and so I focus on Harrison’s argument. Importantly, Meyer and Waligore’s argument also uses WIC and so is vulnerable to the same problems that I raise for Harrison’s argument (see, eg., p. 21).

Reparation, in contrast, consists in payments or measures that a wrongdoer must provide for the victim to address the wrong. Reparations could include material payments or practices of symbolic repair (7-9). An injustice could require some combination of restitution and reparation. For instance, when I steal your bicycle and keep it for a month, I owe you restitution (the return of the bicycle) and reparations (payments for money you spent on public transit instead of riding your bicycle to work). Crucially, restitution and reparation come apart. Redress for a wrong might call for one but not the other and we can exercise them independently. This might occur when restitution is no longer possible. Suppose I steal your bicycle and destroy it. Restitution is now impossible. But I still owe you reparations to address the injustice in some way, for instance, with money and an apology.

Harrison argues that while ST might challenge claims to *restitution* it does not challenge claims to *reparation*. And, since restitution and reparation come apart, ST does not entirely challenge the possibility of claims to redress. Recall the example of land expropriation. When *B* expropriates *A*'s land and then *B* makes a life on it, *A*'s claim to *restitution* may be superseded by *B*'s claim to the land. That is, as ST says, at t_2 (the present) *B* may indeed have acquired legitimate title and made a life on this land such that returning the land to *A* may cause a greater injustice to *B*. However, even if we cannot return the land and thus *A* may not have a claim to restitution, *A* may still have a claim to *reparation* for *B*'s wrong. While *B* does not have to give the land back, *B* may still have to pay *B* for use of the land, apologize for taking it, and reinstate institutions of self-governance that *B* had on this land (12-13).

Harrison's argument gives us an important tool. By distinguishing between restitution and reparations as kinds of redress we may be able to overcome ST. While demands of present justice may supersede the possibility of some kinds of redress (e.g., restitution), they may not supersede *all* kinds of redress (e.g., reparation). However, in making this argument, Harrison explicitly uses WIC (7-10). That is, on his argument, what generates the claim to reparations and redress are *injuries*. In using WIC to overcome ST, Harrison's solution opens itself up to two further problems that ultimately challenge the possibility of redress entirely.

4. Problems for WIC

WIC can overcome ST because it makes *injury* a necessary condition for a claim to redress: If a party is injured the agent is owed redress *at least* in the form of reparation to address this injury *even if* restitution is impossible. However, by making an injury a necessary condition for redress (and reparation), this solution opens itself up to two problems: The *Nonidentity Objection* and the *causal problem*.

4.1 The Nonidentity Objection

The nonidentity problem is a general philosophical puzzle developed by Derek Parfit (1984) that runs as follows. When an event is a necessary condition for an agent coming to exist, that agent does not have a moral claim against this event because, if the event had not happened, the agent would not have come to exist. Assuming the agent lives a life worth living (which I assume for the rest of this paper), the agent cannot be said to be made worse off by the event.

The nonidentity problem challenges claims to redress for historical injustice generated by WIC.¹¹ WIC says that a necessary condition for any agent to have a claim to redress for a wrong is that that agent experiences an injury resulting from that wrong. But, according to the nonidentity problem, no agent in the present is made worse off by the historical injustice because historical injustices are necessary conditions for every present agent having come to exist. So, no present agent is injured by the injustice, and, thus, no present agent is owed redress for historical injustices. Call this the “Nonidentity Objection” to redress for historical injustices. Put precisely:

P1. An agent has a claim to redress for a wrong iff the agent is injured by that wrong [WIC].

P2. If an event is a necessary condition for an agent coming to exist, then this agent cannot be said to be injured by this event [nonidentity problem].

P3. Historical injustices are necessary conditions for all present agents having come to exist [empirical observation].

P4. No present agent is injured by any historical injustice [P2, P3, modus ponens].

C. No present agent is owed redress justice for historical injustices [P1, P4, modus ponens].

I’ll now defend each of these premises.

4.1.1 Defense of P1

P1 simply assumes WIC explained above.

¹¹ The nonidentity problem was first raised in the context of historical injustice by Morris (1984).

4.1.2 Defense of P2

P2 says that an action does not injure an agent if that agent would not have existed without this action. P2 seems to assume a *counterfactual account* of injury, and most proponents of WIC assume this theory of injury.¹² The counterfactual account of injury says that an action makes an agent worse off (injures an agent) only if that agent is worse off than that agent would have been had the action not occurred.¹³ P2 seems to assume this account: If an event is a necessary condition for an agent coming to exist, this agent is not made worse off than the agent would have been by the action, since the agent would not have come to exist without this action.

It might be thought, then, that one way to object to P2 is to reject the counterfactual account of injury. However, we cannot reject P2 simply by rejecting the counterfactual account and replacing it with an alternative plausible account of injury. To reject P2 by providing an alternative account of injury, an objector must also demonstrate that this alternative account of injury does better than the counterfactual account and can generate claims to redress for the historical injustice. I will now argue that no account of injury can do this. My argument in this section is not about whether any of the accounts of injury I consider are the correct general account of injury. Rather, my argument is that alternative accounts of injury either cannot be incorporated into a plausible account of WIC or cannot generate claims to redress in cases of historical injustice in a way that fares any better than the counterfactual account implied by P2.

¹² E.g., Boxill (2003, 67), Sher (2005, 181-3), Wenar (2006, 397-9), Harrison (2021, 7-8, fn. 17).

¹³ See Boonin 2014; Purves 2019; Johansson and Risberg 2022; Carlson, Johansson and Risberg 2023.

The counterfactual account is a *comparative* account of injury. It says that an agent is injured by an action when the agent is made worse off by this action *compared to a baseline* where this action would not have occurred. The nonidentity problem arises because of this comparative baseline. If the action had not occurred, then the agent would not exist. The agent cannot be said to be worse off compared to the baseline in which the action had not occurred. There is no comparative baseline where the victim would have both existed and been better off. Any other comparative account of injury will have this problem (see Boonin 2014, 60-64). Take, for instance the *temporal account* of injury. On the temporal account an agent is injured by an action if and only if the action makes the agent worse off than the agent was before the action was committed. However, even though this account does not need to appeal to a counterfactual baseline, it still appeals to the temporal baseline (the wellbeing at the time right before the action was committed). As with the counterfactual account, the comparative baseline is not possible. Before the action was committed, the agent did not exist. And so, we cannot say that this agent is worse off than at any time before the action was committed.

One might suggest a *moralized* comparative account of injury. A moralized account says that an action injures an agent when the action makes the agent worse off than the agent *ought* to be or ought to have been. This appears to be a comparative account of injury that does not rely on a baseline that is vulnerable to the nonidentity problem. Even if an agent is not better off than the agent would have been had the action not been committed, it seems as though we can say that the agent ought to have been *even better* off. But this moralized “worse off than one ought to have been” is ambiguous between two understandings. On the first understanding, an agent is made worse off than the agent ought to have been, where “ought” is understood *in comparative terms to*

a different action that could have been committed. On the second understanding, an agent is made worse off than the agent ought to have been, where “ought” is understood in terms of *independent moral reasons*. The first, comparative understanding is still vulnerable to the nonidentity problem. Since the agent would not exist had this specific action not occurred, there is no comparative action that the wrongdoer ought to have taken that would have made the agent any better off. There is no other action that could have been done that would also result in the existence of the victim. So only the second understanding – when “worse off than one ought to have been” is understood in terms of independent moral reasons – stands a chance to overcome the Objection. I’ll consider this view below. For now, the point is that any comparative account of injury will fall victim to the Objection in the same way as the counterfactual account, regardless of the baseline that is being compared.

So to avoid the same problem as any comparative account, we need an alternative account of injury that is *noncomparative*. I’ll consider two prominent examples of such accounts: The *bad state account* (see, e.g., Harman 2004, Johansson and Risberg 2022) and the *threshold account* (e.g., Meyer 2003 and 2021).¹⁴ To challenge P2 we need to show that one of these accounts can do better than the counterfactual account in a way that generates claims to redress on WIC in cases of historical injustice.

¹⁴ See also Purves 2019, Johansson and Risberg 2022, Carlson et al. 2023. A kind of account I do not consider here that is similar to the bad state account is Pitcovski’s *intrinsic explanation account* (Pitcovski 2022). This account says (roughly) that an event injures an agent when the totality of states that can be explained by this event are intrinsically bad for the agent. However plausible Pitcovski’s account might be, it does not help WIC in the case of the nonidentity problem. The nonidentity problem assumes that agents live lives worth living. By assumption, then, the event that causes their birth explains a totality of states that are intrinsically good for the agent. So the agent cannot be said to be injured by the event. This problem will apply to any similar “causation” account of injury when applied to WIC in order to overcome the nonidentity problem (see Pitcovski for the similarity between his and causation accounts).

The bad state account says that an action injures someone when it puts them in a bad state (Harman 2004). For instance, on Elizabeth Harman's version, an action puts an agent in a bad state when the action "causes pain, early death, bodily damage, or deformity to [the agent]" (2004, 93). Crucially, an agent can be in a bad state even if that agent is also benefitted by the action (91-5). So, the bad state account seems to overcome the nonidentity problem. Agents can be put into a bad state by actions even if they would not exist without these actions.

However, the bad state account cannot be used by WIC in a way that plausibly generates claims to redress. Here's why. Any version of WIC says that experiencing an injury is a necessary condition to generate a claim to redress. However, if injury is defined in terms of the sorts of bad states that Harman specifies (pain, early death, bodily damage, or deformity), then this model would under-generate claims to redress if used in a theory of redress. Consider some basic wrongs like property theft. If I steal your bicycle and use it while you are away on vacation, I wrong you and seem to owe you redress. Yet I do not necessarily put you in pain, cause an early death, or so on. Moreover, imagine cases in which an agent obviously wrongs someone (e.g. assault) but due to the victim's neurological condition, do not happen to cause pain (or deform, etc.). Assault obviously would require redress even if it does not put the victim in a bad state. So, these basic bad states are obviously bad, yet seem to under-generate claims to redress.

One might try to amend the bad state account to overcome this shortcoming by expanding the list of what counts as bad states (and therefore injuries). Perhaps not only these extreme states but *any state that goes against a victim's interests* might count as a bad state (and therefore an

injury). However, if we expand what counts as a bad state in this way, then, if used by WIC, this account would *over-generate* claims to redress. Imagine:

Low-cost Rescue: Suppose you are drowning in your backyard pond. I'm walking by your house and hear you. I trespass on your lawn and rush to save you. I save your life but trample your prizewinning manicured lawn in the process.

In *Low-cost Rescue*, I save your life (benefit you) and yet go against your interest in your prizewinning manicured lawn. If WIC incorporated the expanded bad state account, I would owe you redress for my action because it required going against back your interest. This seems counterintuitive.

The crux of the issue with the bad state account is this. Harman restricts what counts as a bad state to extreme states (pain, deformity, death, and so on) to avoid tricky cases like nonidentity cases. If we keep the account restricted to such extreme cases, the account under-generates in WIC as a general theory of redress. If we expand the idea of bad state beyond its intended set of cases, however, then we have an unintuitive account of injury that would *over-generate* claims to redress. So, the bad state account cannot overcome the Nonidentity Objection using the WIC since it cannot satisfyingly generate claims to redress.¹⁵

¹⁵ It might be pointed out that the unintuitive result in this example (saying that you are injured by my rescuing you) could be avoided if we consider the bad state as the conjunction of the lawn being trampled *and* being alive. This should not be considered a bad state when compared to the relevant counterfactual state in question, namely, the conjunctive state of your lawn not being trampled *and* being dead. If we take the relevant state to be the conjunctive and compare it to the relevant counterfactual, then the bad state account does not unintuitively over-generate. However, to do this we need to turn it into a comparative account. Thanks to an anonymous reviewer for encouraging me to point this out.

A second alternative account of injury is the *threshold account*, developed by Lukas Meyer (2003 and 2021). The threshold account says that an action injures an agent iff that agent is made worse off than they ought to have been, where “ought to have been” is understood in terms of a *noncomparative* wellbeing threshold. The threshold account needs to specify this threshold non-arbitrarily. Meyer develops the threshold account to overcome nonidentity worries in the context of obligations to future generations. So, he specifies the threshold using a sufficientarian standard: The wellbeing threshold is set at whatever is required to enjoy a minimally good life (Meyer 2021). When an action makes an agent drop below this threshold required for a minimally good life, the action injures that agent.

As before, my goal is not to assess the threshold account as a general account of injury, nor whether it successfully overcomes the nonidentity problem generally. However, like the bad state account, the threshold account cannot provide a plausible alternative to WIC when it comes to generating claims to redress. Indeed, it creates the same result as the Nonidentity Objection for cases of historical injustice and says that redress for many historical injustices is not possible.

The threshold account’s problem is as follows. Many wrongs and injuries that intuitively require redress would not count as injuries on the threshold account. Again, consider a simple bicycle theft. Intuitively this is a wrong and results in an injury. This theft, however, does not drop the victim below the threshold of wellbeing sufficient to achieve a minimally good life. The threshold account would not say that the victim is injured by the wrong. To address this worry, one might amend the account to use a different threshold. But notice that the problem will persist regardless of where the account specifies the threshold. No matter where the threshold is, we will

be able to find a case in which someone is made worse off generally, but not worse off at the threshold at which something counts as an injury. This problem will persist until we set the threshold low enough that any action that goes against the agent's interests will count as making that agent worse off than the agent ought to have been. But then the threshold account collapses into the expanded version of the bad state account above. And, as we just saw, this expanded idea of injury over-generates claims to redress.

The threshold account faces a second problem. Even if the threshold account overcomes the nonidentity problem in some cases of intergenerational justice, it does not necessarily overcome the Nonidentity Objection to redress for historical injustices. If present agents do not fall below the relevant threshold, then they are not injured and, thus, would not have claims to redress. However, on this picture many historical injustices would not require redress because they do not injure anyone in the present. Imagine, for instance, descendants of Jewish victims of pogroms who were forced to flee to North America. Many of these descendants now enjoy lives above a minimally good threshold. The threshold account would say that these descendants are not injured by the historical injustice and, thus, have no claim to redress. Similar arguments would apply to any other historical injustice (including, for instance, land thefts or slavery) if the present agents have wellbeing sufficiently above the minimal threshold. However, this seems to be a counterintuitive result and would rule out many of the claims to redress in the same way the Nonidentity Objection does.¹⁶

¹⁶ Notice that this problem also arises for the bad state account. If present agents are not in pain, deformed, etc., because of the historical injustice, then present agents are not injured by it and cannot have a claim to redress. No doubt the past victims of historical injustice were put into bad states by the injustice. But not all present agents who plausibly have claims to redress are in these sorts of bad states.

So, even if there are alternative accounts of injury, we cannot appeal to them to reject P2. In cases of historical injustice, none of these accounts result in us saying that present agents are injured by the historical injustice. They either result in the same problem that individuals would not exist and are thus not injured. Or, they result in us saying that agents are not injured because they are not in a sufficiently bad state or under a relevant threshold of wellbeing. This means that any account of injury we use will face the same result as the counterfactual account: Present individuals whose existence depends on the historical injustice are not owed redress for the historical injustice. More importantly, these alternative theories are not compatible with WIC to create general theories of redress. So, on any account of injury that is compatible with WIC, P2 holds, and no alternative account of injury can overcome the Nonidentity Objection.

4.1.3 Defense of P3

P3 says that for all present agents and most (if not all) historical injustices, historical injustices are necessary conditions for these agents having come to exist.¹⁷ Whoever is alive in the present is a function of their parents having met and conceived them at a specific time. Historical injustices are so largescale, affect so many people, and have dramatically changed the course of history such that they are necessary conditions for the particular people who are alive in the present having come to exist. It is impossible that the parents of the people alive in the present would have met and conceived their children at the same time if the injustice had not occurred.

¹⁷ For a detailed argument for this point see Sher (2005).

To illustrate, let's again take the example of chattel slavery. The slave trade was such a monumental series of events that shaped the world profoundly such that the current present individuals would not have existed had the injustices not occurred. Yet, any individuals in the present we might take to be injured by the slave trade – say, Black Americans – exist only because the trans-Atlantic slave trade happened. The web of causal effects is such that had slavery not occurred, no individual alive would have been conceived at the precise moment they were such that *this particular individual* exists. This point applies to anyone who might claim to be injured by any historical injustice. For any individual in the present, their ancestors would not have met and conceived their children at the time they did had the historical injustice not occurred.

4.1.4 Defense of P4

P4 follows from modus ponens. If (P2) an event is a necessary condition for an agent coming to exist, then this agent cannot be said to be injured by this event, and (P3), for any historical injustice, that historical injustice is a necessary condition for any present agents having come to exist, then, no present agent is injured by any historical injustice. P4 does not deny that *past* individuals are injured by the historical injustice. And P4 does not rule out that subsequent wrongs related to the wrongs of the historical injustice committed after the actions of the historical injustice may injure present agents. This may allow for a “chain” of wrongs leading from the past injustice to the present, the most recent of which injures present individuals (see Boxill 2002, Sher 2005, Butt 2006). All P4 says is that the *past actions* of the historical injustice do not injure any present agents.

4.1.5 Conclusion and challenge to WIC

The conclusion follows from modus ponens. No present agent experiences injuries as a result of a historical injustice (P4). So if experiencing an injury is a necessary condition for a present agent to have a claim to redress (P1), no present agent has a claim to redress for a past action of historical injustice.

The conclusion to the Nonidentity Objection, then, challenges WIC. We want a model of redress for historical injustice that generates claims to redress. And, if we want to overcome ST with this model, we need it to generate redress based on there being agents who experience injuries so we can apply the strategy of distinguishing between restitution and reparation for these injuries. However, the Nonidentity Objection challenges WIC. No present agents experience injuries, so no present agents have claims to redress. Thus, WIC cannot overcome ST by saying that claims to reparations for injuries avoid ST. Present agents are not injured by the historical injustice and so cannot have claims to reparations.

I'll now consider a second independent objection that challenges WIC.

4.2 The Causal Problem

On WIC, a necessary condition of any agent having a claim to redress is that that agent experiences an injury that is *the result of* a wrongful action Φ . This requirement that the injury is the result of

Φ creates a *causal problem*. Here is the general structure of the problem.¹⁸ Between the past wrongs committed at the time of the historical injustice and the present, there have been nearly infinite actions, potential actions, or omissions. Each of these actions, potential actions, and omissions might have produced injury *I* that present agent *A* experiences. Put another way, because of the amount of time that has passed between the historical injustice and the present, any present injury *I* is *overdetermined*. Accordingly, we cannot say that the wrong of the historical injustice Φ is *the cause* of the present injury *I* that generates claims to redress. Some other action between the past and the present could have also been the cause of *I* or would have caused *I* even if Φ had not. And, thus, many cases of historical injustice cannot meet the necessary condition of WIC.

This version of the causal problem relies on a *counterfactual theory* or “difference making” theory of causation. On the counterfactual theory, cause *c* causes effect *e* when, had *c* not occurred, *e* would not have occurred. So, on the counterfactual theory, action Φ causes *I* when, had *B* not committed Φ , *A* would not have experienced *I*. The counterfactual theory is philosophically popular (e.g., Lewis 1973, Sher 1981, Boxill 2003). On the counterfactual theory, the causal problem is clear. There are so many intermediate actions, potential actions, or omissions between the historical injustice Φ and the present. Each of these potential actions *could have* produced *I*. That is, there are so many other potential causes that could have lowered *A*’s wellbeing in a similar way to Φ ; *A* in the present might have experienced *I* anyway had *B* not done Φ . Take the example of chattel slavery in the United States. Suppose that a present Black individual *A* experiences a bad state that would intuitively count as an injury *I* (e.g., lower wellbeing than white individuals, lower wellbeing than *A* ought to experience, a state that goes against *A*’s interests, or the like) and we

¹⁸ For versions of this problem see Waldron 1992, 5-8; Sher 1981, 13; Kershnar 1999; Boxill 2003, 66-7.

want to say that I is the result of slavery such that A is owed redress for slavery. However, there are many potential actions that did and could have occurred between the time of chattel slavery and the present such that A would have experienced I anyway. For instance, the government of the United States might have instituted some other policy that would have injured A (e.g., Jim Crow laws, racist redlining policies, etc.). So, according to the counterfactual theory, we cannot say that Φ is the cause of I since it does not make a difference to whether or not I came about.¹⁹

While popular, the counterfactual theory faces some well-known problems.²⁰ One might, therefore, object that we can avoid the causal problem if we adopt an alternative theory of causation. One prominent alternative to counterfactual theories are *regularity theories of causation*.²¹ On regularity theories, c causes e when e is the sort of thing that regularly occurs with c . A sophisticated regularity theory is Richard Wright’s “NESS causation” (1985). On NESS causation, c causes e when c is a *necessary element of a sufficient set* that could cause e . A sufficient set is a set of events that if they together occur, e also occurs. The difference between NESS causation and the counterfactual theory is that NESS causation says that *any element in any sufficient set* is a cause. But, we do not need to say that without c , e would not have occurred for us to say that c is a cause of e . If c causes e in the way regularity theories specify then c is a “causal contribution” to e (see Nefsky 2019; Hindriks 2024).

¹⁹ The causal problem is a metaphysical problem about whether historical injustice Φ is the cause of injury I . It is, thus, not an epistemological question about whether we can *know* whether Φ is the cause of I . Thanks to an anonymous associate editor for pointing this out.

²⁰ See Paul and Hall 2013.

²¹ See Mackie 1974, Wright 1985, Andreas and Guenther 2021. Mackie’s (1974) “INUS” theory is very similar to Mackie’s theory I consider here, but I restrict my discussion here to Wright’s NESS due to space constraints.

Regularity theories might seem to naturally solve the causal problem for cases of historical injustice. While Φ does not make a difference to bringing about I , in most cases of historical injustice Φ is involved in a *sufficient* cause to bring about I . Accordingly, on a regularity theory of causation such as NESS causation, historical injustice Φ would cause an injury I that present agent A experiences. For instance, while chattel slavery was not the *only* possible cause of present Black individuals' lower wellbeing, it was a necessary element of a set *sufficient* to bring this lower wellbeing about.

However, regularity theories face a problem when incorporated into WIC and using them to explain redress for historical injustice. As Frank Hindriks (2024) argues in the context of overdetermination and the problem of collective harm, regularity theories would *over-generate* responsibility (214-225).²² Suppose we say WIC adopts regularity causation as its account of causation. This means that A would be owed redress for Φ iff Φ is wrong and A experiences an injury I where Φ is a causal contribution to I , understood as Φ being a necessary element of a sufficient set, though not necessarily a difference-maker, to produce Φ . However, wrongs may causally contribute to injuries in ways that intuitively should not result in claims to redress for these injuries. Consider the following example:

²² Thanks to an associate editor for the helpful suggestion to consider overdetermination and collective harm. There is an important difference between overdetermination in the collective harm context and cases of redress I consider here. In collective harm cases, part of what is at issue is whether the contribution to the collective harm makes the action wrongful (Nefky 2019). The idea is that in such cases, the action would be wrong only if it contributes to the collective harm. So then the challenge becomes determining if the agent did contribute to the collective harm. However, this is different from how overdetermination plays a role in redress. In cases of redress, we already *assume* that the action is wrong. The question that now arises is whether this action *causes injury I*. At issue is not whether that action is wrong, but whether that action *caused the injury* that present individuals experienced. So, whereas in cases of collective harm there is pressure to say that the action did contribute to the collective harm to explain why the action is wrong, this same pressure does not occur in cases of redress because we have already assumed that the action is wrong.

Bicycle and Bahamas: Suppose *A* steals *B*'s bicycle, which was *B*'s primary form of transportation. *B* must now take the bus to work and catches a cold. *B* spreads this cold to colleague *C*. *C* was scheduled to go on a vacation to the Bahamas where *C* would have stayed in a resort owned by *D*. *C* is forced to cancel the vacation and *D* loses income. *D* lashes out at their partner *E* who experiences psychological harms.

In this example, *A*'s bicycle theft is wrong. And this wrong is a necessary element of a sufficient set to cause the injuries that *D* and *E* experience. However, it seems incorrect to say that *A* owes *D* or *E* redress for the injury. Note further, we cannot even avoid this problem by insisting that *someone other* than *A* owes redress to *D* and *E*. Many injuries we experience will have wrongs that are causal contributors. For instance, when I stub my toe on my desk this is something for which (*ceteris paribus*) no one owes me redress. This is true even if it turns out that the person who sold me the desk stole the wood he used to make this desk. Even though a necessary element of a sufficient set needed to result in my injury is a wrong, it seems intuitively incorrect to say that I am owed redress for this injury. The more general point is that wrongful actions often will causally contribute to injuries that will be intuitively distant from the wrong (Hindriks 2024, 214-225). If WIC took causal contribution (regularity) as its version of cause, then we would implausibly over-generate claims to redress.

It might be objected here. Perhaps we must amend WIC. In *Bicycle and Bahamas*, *D* and *E* are not wronged by *A*'s theft. The theft is a wrong done to *B*. So, perhaps, we must say that WIC generates reparations iff Φ results in *I*, *A* experiences *I*, Φ is a wrong, and Φ wrongs *A*. Then we would not say that *D* or *E* is owed redress, nor am I owed redress when I stub my toe.

However, this move does not avoid the overgeneration problem (see Perry (1992, 462-7) for a similar argument). We can still imagine cases in which *A* is wronged by *B*, *A* experiences an injury as a result of the wrong in the NESS sense, but, intuitively, this injury should not be among redress for *B*'s wrong against *A*. Consider the following case:

Trespass and Terrorism: Suppose *B* trespasses and parks in *A*'s driveway, blocking *A*'s car from getting out. *A* must take the bus to get to work. This bus is targeted by a terrorist attack in which *A* sustains serious injuries that result in long-term physical disabilities and psychological traumas.

In this case, *A* is wronged by *B* and this wrong is a causal contribution to *A* experiencing a significant injury *I*. However, it seems implausible that *B* should be responsible for redressing *A*'s injuries. *B* owes some redress *for the trespass*. But this redress seems not to be needed *for the injuries sustained in the terrorist attack*. An account that would require this seems to over-generate redress. So, mere causal contribution as specified by regularity theories like NESS does not seem to help WIC.

My aim here is not to adjudicate between different theories of causation. Rather, I consider these versions of causation to point to a common problem with WIC when it comes to redress for historical injustice. Different theories of causation will specify different conditions under which we can say that injury *I* is the result of historical injustice Φ . However, regardless of the theory of causation WIC incorporates, there is a common problem. There is a clear wrong (Φ). But WIC

says that the claim to reparations is not generated by Φ . Rather it is generated by being able to draw a causal line from that wrong to some injury I . But this means that once it is difficult to draw a clear causal line from Φ to I , the possibility of redress is called into question *even though* Φ occurred and was wrong. This is counterintuitive. Put another way, regardless of the theory of causation WIC incorporates, it seems that the possibility of redress can always be called into question *simply* by raising worries about the causal connection between Φ and I . However, this seems counterintuitive when we are certain that Φ occurred and present agent A is a victim of Φ . Something is going wrong here. The possibility of reparations should not be able to be called into question simply by questioning the relation of the wrong to certain injuries. However, since WIC makes the fact that Φ results in injuries a necessary condition of redress, WIC allows for redress to be challenged in this way. This suggests we should turn to a different theory of redress that cannot be challenged in the same way.

4.2.1 Response: The Structural Turn

One might try to resist the causal problem by appealing to *structural redress*. Perhaps we can accept that any injury a present individual experiences is not the causal result of any particular discrete historical injustice. However, we can still insist that *present structures* are the result of the *aggregate* of historical injustices. For instance, racial inequality and injustice in the United States would not have occurred had all the historical injustices involved in slavery and Jim Crow not occurred. Proponents of *structural reparations* argue that reparations are about addressing the unjust structures that have resulted from historical injustice (Lu 2017; Nuti 2019; Song 2020; Butt 2021; [Lambrecht 2024a])). We have reasons of structural or distributive justice to address unjust

structures, and so there are claims to redress historical injustices when historical injustices have created unjust structures. This avoids the causal problem. We can insist that present unjust structures would not have resulted had the *aggregate* of historical injustices not occurred. And, since these unjust structures require repair, there are claims to redress even if the causal problem challenges the possibility of redress for discrete injustices.²³

The structural turn is an important development in the historical injustice literature. I have defended its importance in other work ([Lambrecht 2024a and Lambrecht 2024b]). However, appealing to it does not solve the causal problem WIC faces when it comes to overcoming ST. While structural reparations might generate redress for historical injustice, they do not generate the kind of redress we are trying to vindicate. Recall that ST challenges the possibility of redress for particular injustices. In Waldron’s original example, for instance, ST challenges the possibility of redress for *B*’s land expropriation from *A*. ST, therefore, challenges the possibility of *interactional redress*. Interactional redress concerns what one agent is owed because that agent has been a victim of an injustice. Interactional redress is different than structural reparations (see Lu 2017, Nuti 2019; Butt 2021). Structural reparations concern what is required by justice to ameliorate or repair unjust structures and unjust distributions for reasons of structural justice. This means that structural reparations for historical injustice are required for reasons of justice that appeal to the *structure* and not the fact of the past wrongs. Where interactional redress is owed *for the past wrong*, structural reparations are owed *for the fact that the structure is unjust* (see [Lambrecht 2024a and Lambrecht 2024b]). For this reason, interactional redress is often referred to as “backwards-looking”, while structural reparations are often referred to as “forward-looking”

²³ Thanks to an anonymous reviewer for encouraging me to consider the structural turn here.

(Butt 2021; Song 2021). In many cases, the *cause* of the unjust structure is the historical injustice. But the *normative reason* that generates redress is the unjust structure. The unjust structure would require repair for forward-looking reasons regardless of what created it. In contrast, in interactional redress, the reasons that generate redress are the past wrongs themselves for backwards-looking reasons. Thus, structural reparations and interactional redress are different.

This difference is significant when it comes to using the structural turn to overcome the causal problem. Suppose we say that redress is owed for reasons of structural justice because the historical injustice resulted in the unjust structure. This vindicates the possibility of *structural* reparations. However, this still does not vindicate the possibility of *interactional* redress. This is significant for two reasons. First, ST challenges the possibility of interactional redress. And so, the target we are trying to vindicate here is the possibility of redress for the interaction itself. Structural reparations do not vindicate this; they vindicate the possibility of *some* redress, but not of the particular redress that ST challenges. Any present agent would have a claim that the unjust structure they are disadvantaged by ought to be repaired but *not* a claim to the particular wrong that may have wronged or injured them being repaired. So, structural reparations do not vindicate the kind of redress that ST challenges. Moreover, not only do structural reparations struggle to vindicate interactional redress, but they might actually *challenge* the possibility of redress in a very similar way to ST. ST challenges the possibility of redress for a particular past wrong when reasons of present justice supersede redressing the past wrong. The structural approach to historical injustice might do something similar. Structural reparations require repairing an unjust structure for reasons of structural justice. If the *only* reparations that were required were structural reparations, then structural reparations might actually say that discrete wrongful interactions ought

not be repaired for reasons of structural justice. For instance, Alasia Nuti (2019) argues that addressing discrete interactional wrongs is redundant and may even distract from the more important structural concerns (15-16, 157). Accordingly, redress for discrete wrongs that are truly in the past, she argues, ought to sometimes be ignored for reasons of present structural justice (51). Catherine Lu (2017) makes similar arguments in her defense of the structural model over the interactional model (e.g., 114-144). This starts to look like the challenge ST poses for redress. There are reasons of structural (present) justice that might supersede the reasons of backwards-looking interactional justice to address a past wrong. So, appealing to reasons of structural justice might not vindicate the kind of interactional redress from ST in the way we are aiming to do here and might even pose a similar problem as ST.

Second, structural reparations and interactional redress might differ in terms of the *content* of reparations. Accordingly, even if appealing to the structural model generates *some* redress, something is lost if structural reparations are all we have. One important difference concerns *who owes* the reparations. Many have argued that interactional reparations are owed by the wrongdoer of the injustice while structural reparations are owed by every member of society (see Weinrib 2012; Ripstein 2016; Lu 2017). In many cases, there is a powerful intuition that we want redress for past wrongs to come from the particular wrongdoers of the injustice. This seems to require vindicating interactional redress. Similarly, because structural reparations are owed *to improve the structure*, they might not be particularized to the historical injustices that causally brought about the structure. Suppose structure *S* is unjust because individuals *A, B, C* experiences an insufficient amount of good *x*. Suppose structure *S* was brought about by a historical injustice. Structural reparations would require repairing *S* to bring *A, B, C* up to a sufficient amount of good *x*. But

good x might have nothing to do with the historical injustice; the historical injustice might have been wrong because it interfered with a different good y . In other words, nothing in the structural reparations would be *particularized* to the historical injustice. However, in many cases, it seems that a desideratum of reparations is that reparative measures reflect the *particular reasons* that an action was wrong (Hull 2022, 5; Ripstein 2016, 125; Weinrib 2012, 60-90). Finally, there might be kinds of redress that are primarily backwards- rather than forward-looking. For instance, apologies and acknowledgements of wrongdoing are often among the most demanded and symbolically important elements of reparations for a wrong. These practices are importantly backward-looking (Song 2021). Even if they also have a forward-looking purpose, it seems that *part* of their goal is backward-looking and concerns what the wrongdoer *did*, rather than what would be good for the society going forward (Helmreich 2015; Song 2021; McKeown 2020; [Lambrecht 2024b]). If we only had structural reparations for historical injustice, then we might lose the important things that interactional redress provide that structural reparations might struggle to.

For these reasons, I and others have argued that reparations for historical injustice must involve *both* structural *and* interactional elements ([Lambrecht 2024a and Lambrecht 2024b]; McKeown 2021; Butt 2021). To be clear, my argument here is not that structural accounts of reparations are not helpful. Indeed, in other work I argue extensively that they are indispensable ([Lambrecht 2024a and Lambrecht 2024b]). Nor do I deny that historical injustices have resulted in unjust structures. I think they have. My point here is that even if structural reparations are also required, they do not achieve all the same things that interactional reparations do. An *optimal account* of redress for historical injustice will explain how *both* structural *and* interactional redress

is required. ST and the causal problem for WIC challenge the possibility of interactional redress. So, if we want to vindicate an optimal account that includes both interactional and structural redress, we still need to overcome the causal problem.²⁴

5. WAC to the Rescue

WAC, the other model of redress, can overcome ST without encountering the problems that WIC faces. I'll begin this section by presenting WAC. I'll then show how it avoids the nonidentity and causal problems. Finally, I'll demonstrate how WAC can incorporate Harrison's insights about the distinction between restitution and reparation to overcome ST.

My goal here is to demonstrate that WAC can overcome ST without facing the nonidentity and causal problems that WIC faces. WAC has been widely developed outside the context of

²⁴ There is a second way someone might appeal to structures to overcome the causal problem. Perhaps historical injustices (in the aggregate) caused present unjust structures and these unjust structures disadvantage some present agents. We might say that these present agents the unjust structure disadvantages are injured by the historical injustice. For reasons of backwards-looking justice these present agents might be owed redress for the historical injustices since they experience an injury as a result of the injustices in the way WIC requires. This might be an *interactional* version of a structural model: Redress is owed because present agents who are disadvantaged by the unjust structure are injured by the historical injustice and on these grounds are owed redress for the historical injustice. However, this argument does not vindicate WIC. This is for two reasons. First, the same causal problem applies here. While we may unquestioningly say that the historical injustices together caused *the unjust structure*, it is not clear that they caused *any present agent's injuries*. Even if we allow with certainty that the historical injustices in the aggregate were *the cause* of the unjust structure, this does not show that the historical injustices were *the cause* of the contemporary agent's injury. The structure might have just been *one way* that the injury would have come about. So, the historical injustices (by way of the structure) might not be *the difference-making* cause of any present agent's injury. Once again, the general causal problem shows up: Once we can question whether a present injury really is the result of historical injustices, we can question the possibility of (interactional) redress. As I have argued above, this is counterintuitive. If the present agent is wronged by the injustice, the causal line from the injustice to the injury should not make us question the possibility of redress. Second, this argument encounters the nonidentity problem once again. To be interactional rather than structural, this argument needs to say that present agents are injured by the historical injustice and on these grounds are owed reparations. However, as we have seen, the non-identity problem challenges this claim. Present individuals cannot be injured by the historical injustice because without the historical injustice they would not have existed. Even if this injury comes by way of the structure, if the reasons that generate reparations are the backwards-looking injuries themselves, then the nonidentity problem challenges the argument.

historical injustice.²⁵ Others have developed WAC in the context of historical injustice.²⁶ I also develop the model in detail elsewhere (Lambrecht 2024c). Therefore, my purpose here is not to develop this model in detail. Rather, my purpose is to demonstrate that we ought to prefer it over WIC because it can overcome ST and the problems WIC faces. Accordingly, I will only present WAC as needed for this purpose.

5.1 Presenting WAC

Recall WAC:

The *Wrongful Action Claim* (WAC): Agent *A* has a claim to redress for wrongful action Φ iff *A* is wronged by Φ .

The most important difference between WAC and WIC is that, unlike WIC, WAC does not make experiencing an injury a necessary condition of generating a claim to redress. Instead, WAC says that the fact that a victim was wronged is sufficient to generate a claim. There is variation between versions of WAC in what counts as a “wrongful action”. Some versions focus on rights violations (e.g., Ripstein 2016, Weinrib 2012, Gardner 2011). Others, take a contractualist approach and say that *B* wrongs *A* when *B* does an action that violates *A*’s normative expectations (Kumar 2014). The differences between what counts as a wrong do not matter for my purposes here. On any plausible theory of a wrong, the actions involved in historical injustices are certainly wrongs. Moreover, as we have seen, an action need not result in an injury to be a wrong. Of course, WAC

²⁵ E.g., Ripstein 2016, Weinrib 2012, Gardner 2011, Hull 2022.

²⁶ E.g., Kumar 2014, Shiffrin 2009, Thompson 2002, Sanderson 2011, Lambrecht 2024c.

does not deny that wrongs often also involve injuries. But even when they do not, the *normatively significant feature* that made the action wrong is what generates the claim to redress *independent* of any injuries that result from the wrong. This means that what generates the claim to reparations is the fact that the action violates a right (Ripstein 2009 and 2016; Weinrib 2012), expresses something about the victim (Anderson and Pildes 2000), violates contractualist normative expectations (Kumar 2003 and 2014; Helmreich 2016), or violates a duty the wrongdoer had to the victim for some other reason (Gardner 2011).

WAC determines what redress consists of by looking at these normatively significant features of the wrong (Kumar 2014, Thompson 2002, 118). The normatively significant features of the wrong correspond to the moral reasons the wrongdoer ought not to have done the action to the victim (see Hurley and Weinberg 2015). Redress can include *material compensation* and *moral repair*. Let's look first at compensation. Consider a simple bicycle theft. The reason the theft is wrongful is because I interfered with an object of your property that should have been yours to control. Redress for this theft will require re-establishing the situation that ought to have occurred in which you can use the property as you see fit. This most straightforwardly includes the return of the bicycle. But it might also include compensating you for losses that you sustained while without the bicycle. If I do not compensate those losses and you continue to bear them, I continue to interfere with what you can do with the property. Those who develop WAC offer different ways we can determine material compensation owed for a wrong. One approach, for instance, is that material compensation is required to restore the means that were interfered with by the wrong (Ripstein (2016, 233-244)). Another approach is to say that any injury a victim experiences will continue to interfere with them in the way the wrong originally did, and so should be viewed as

part of the wrong that reparations must repair (Gardner 2011). Another approach argues that compensation ought to be determined by way of substantive moral argument based on the kind of injury that accompanies the wrong (Kumar (2014, 203)). The crucial point is that WAC does not simply say that the precise good that was interfered with must be returned. Reparations will likely also require material compensation. However, unlike WIC, the *reason* material compensation is owed is not because the victim experiences an injury that results from the wrong. Rather, for WAC the reason compensation is owed is because this compensation is necessary to establish the situation that ought to have occurred. Fully establishing a situation in which a victim is not wrongly interfered with by a wrongdoer requires that the victim is also compensated for the ways the wrong interfered with her.

Adequate redress also often includes moral repair (such as apologies or acknowledgments of wrongdoing). Like the other elements of redress, moral repair responds to the normatively significant features that made the action wrongful by demonstrating that the wrongdoer ought not have treated the victim in the particular way the wrongdoer did (see, e.g., Helmreich 2015). The content of redress on WAC is determined by looking at whatever about the action made it wrongful and will, thus, vary based on the particular wrong in question. One popular way the WAC might do this is by appeal to “the continuity thesis” (Gardner 2011; Weinrib 2012; Ripstein 2016). The continuity thesis states that the reasons that generate redress are the same reasons that made the action wrong in the first place. For instance, *A* might violate *B*’s right by stealing *B*’s bicycle. The reasons that the action was wrong is because *A* violated *B*’s right. This means that reparations must now respond to the same reasons that made the action wrongful. *A* must now restore *B*’s right by restoring *B*’s control over the bicycle and compensating injuries that resulted from the theft. The

continuity thesis gives WAC clear way to determine what reparations require by looking at the reasons the action was wrongful in the first place.

In the context of historical injustice, WAC must demonstrate how present agents can be wronged by historical injustices. There are various versions of this (see Kumar 2014, Thompson 2002, Shiffrin 2009; Lambrecht 2024c). To illustrate WAC, I'll sketch two versions of an argument about how historical injustices wrong present individuals. My purpose here is not to endorse the specifics of either argument. Rather, my goal is to sketch different versions that can be used to demonstrate how WAC overcomes the problems WIC faces.

First, consider an argument offered by Rahul Kumar (2014) about redress for the wrongs of slavery. Kumar argues that historical injustices not only wrong individuals alive at the time of the injustice but *also* wrong individuals not yet born. Past wrongs of the historical injustice wrong future individuals. When a past wrong is done against a "type" of person and when the present individual is a token of this type, the past wrong wrongs a present individuals (208). Kumar argues that *one* of the wrongs of chattel slavery was committed against Black Americans as a "type". In particular, the past actions of chattel slavery were (partly) wrong in that they treated Black individuals as having "inferior status" in "public reason" (205, 209). At the time of the historical injustice, this inferiority was legally codified by chattel slavery laws. But, because these wrongs treated every member of the type as inferior, these wrongs also wrong present Black individuals. Thus, present individuals are wronged by this past wrong. Redress for this wrong requires making Black individuals equal to others. This might be achieved by legislation that establishes that Black individuals have equal status. But, as Kumar (210-11) argues, redress will also likely include

material compensation. WAC requires material compensation when it is needed to restore the situation that ought to have occurred that the wrong prevented. Establishing Black individuals' equal moral status very likely requires material compensation. Years of inferior treatment have produced large material inequalities that reinforce unequal moral status. And so, to establish equal moral status, reparations must include some material compensation. Unlike WIC, the reason that generates this material compensation is not that Black individuals experience an injury that results from the wrong. Rather, the reason is that they are wronged, and restoring the situation that ought to have occurred that this wrong disrupted requires material compensation.

A similar argument for how past injustices wrong present agents is offered by Douglas Sanderson (2011). Sanderson argues that the injustices involved in colonial wrongs in North American wronged Indigenous peoples by violating their rights to develop their social and political institutions (e.g., 126-135). These actions continue into the present. For instance, actions which made Indigenous governance subordinate to federal governments of colonial states (as in the Canadian context in which Sanderson writes) started in the past and continue to make Indigenous governance subordinate. Plausibly, present Indigenous individuals continue to have a right to develop their social and political institutions. Accordingly, these past actions also wrong present Indigenous individuals by violating *their right* to develop their political institutions.

Again, my discussion here is not meant to endorse either of these arguments. The point is to illustrate how a past action may wrong present individuals. When an argument does this, it can say that present individuals are wronged without necessarily also needing to say that present individuals experience an injury that is the result of the wrong.

I'll now turn to demonstrating how WAC overcomes the problems WIC faces.

5.2 The Nonidentity and Causal Problems

5.2.1 Nonidentity

Unlike WIC, WAC does not make experiencing an injury that results from the wrong a necessary condition of a claim to redress. Instead, when an agent is wronged, the agent has a claim to redress regardless of whether or not that agent is also injured as a result of the wrong. This allows WAC to avoid the Nonidentity Objection. We can accept that the historical injustice does not injure any present individuals. But present individuals can still have claims to redress. If present individuals are wronged by the historical injustice, they have claims to redress for it.²⁷ Recall Kumar's argument to see this. The historical injustices involved in slavery were wrong because they treated Black Americans as inferior and disrespected their fundamental equality as fellow agents. This action has this significance even if it just so happens to not result in any harms to Black Americans. Thus, we do not need to say that Black Americans experience injuries that they would not have had the wrong not occurred. Rather, we can simply say that the wrong treats them as inferior *regardless* of any effects they experience. And so, present individuals have a claim to redress regardless of whether they experience any injuries as a result of the wrong.

²⁷ For more details on this argument see Shiffrin 2009 and Kumar 2014 and Lambrecht 2024c).

WAC overcomes the nonidentity problem by insisting that present individuals are wronged by the historical injustice. This is a wrong-based solution to the nonidentity problem (see Parfit 1984, 375; Boonin 2014, 120-124). However, there is main objection to wrong-based solutions to the nonidentity problem (see Parfit 1984, 375; Boonin 2014, 120-124). The objection runs as follows. A moral agent is not wronged if that moral agent waives a right that an action would normally violate. In some cases, it seems that an agent's right is not violated if that agent is *unable* to waive the right and we can reasonably conclude that the agent *would have* waived the right. Consider an unconscious patient who cannot consent to a life-saving surgery. The patient cannot waive his right to bodily integrity. But, given that he has a prudential reason to waive his right, he *would* waive this right, and, it is argued, the surgeon does not violate his right by operating (123). More generally, whenever an agent has a moral or prudential reason in favour of waiving a right, we can reasonably conclude that the agent *would* waive the right. And, when an agent *would* waive the right and the agent cannot actually do so, it is argued, we can conclude that the agent *does* waive the right. In nonidentity cases, individuals would be choosing between a situation in which they would have a right violated and a situation in which they would not come into existence at all (122). Individuals have a strong prudential reason to waive their right. Since we can conclude that they *would* waive their right, we can conclude that they *do* waive their right. Therefore, individuals in nonidentity cases are not wronged by the action.

This hypothetical rights-waiver argument would challenge my argument that WAC avoids the nonidentity problem. I consider this argument in greater detail elsewhere (Lambrecht 2024c). However, for the purposes of my argument in this paper, it suffices to reply in two ways.

First, we can question the rights-waiver argument itself (see Hurley and Weinberg (2015)). The point of rights is that it is *up to the rightsholder* whether or not to waive the right. The rights-waiver argument seems to ignore this. In particular, the move from “we could reasonably conclude that the agent would waive the right” to “so the agent *does* waive the right” seems to ignore that the whole point of rights is that they protect things that others are not permitted to decide for you.²⁸

But second, even if the rights-wavier argument does challenge wrong-based solutions to the nonidentity problem generally, it does not challenge wrong-based solutions to historical injustices *in particular*. Historical injustices are *one particular kind* of nonidentity case. Central to the rights-waiver argument is that we can reasonably conclude that an agent would waive the right if the agent has strong moral and prudential reasons to do so. In cases of historical injustices, present individuals might have prudential reasons to waive their rights: Had the action not been done, the present individual would not exist. However, present individuals have strong *moral reasons against* waiving their rights. The past actions of the historical injustice were terrible wrongs done not only to present individuals, but *also* to the past individuals who were victims of the injustice at the time of the injustice. Present individuals have strong moral reasons not to consent to these actions being done since these actions wrong past individuals. So, we cannot reasonably conclude that present individuals would waive their rights, and, thus, cannot say that they *do* waive their rights.²⁹

²⁸ Note, even if you adopt an interest theory of rights, the hypothetical rights waiver argument still misunderstands rights. Even if rights function to further the interests of the rightsholder, this does not mean that if a particular instance of a right fails to further the interest of the rightsholder it ceases to be a right or that the rightsholder automatically waives it. Rather, on the interest theory, rights (or particular kinds of rights) must *generally* promote rightsholders interests.

²⁹ Boonin’s version of the rights-waiver argument even admits the point I make here (266-7).

So, in cases of historical injustice, the rights-waiver argument does not apply. Accordingly, the main objection that threatens wrong-based solutions to the nonidentity problem does not threaten WAC in the context of historical injustices. And so, WAC can overcome the Nonidentity Objection.

5.2.2 The Causal Problem

The causal problem challenges WIC because it says that the injuries that present individuals appear to experience might not be the result of the wrong. WAC does not have this problem. On WAC, a victim experiencing injuries that result from the wrong is not a necessary condition to generate redress for the historical injustice. So, we can admit that any injuries present individuals experience might just be the result of something else. But, if present individuals are wronged by the historical injustice, then present individuals have claims to redress. Again, consider Kumar's argument. We do not need to say that any harms that Black Americans experience are *the result* of historical injustices. Instead, we can simply say that Black Americans are wronged historical injustices since these injustices treated them as inferior. Accordingly, the possibility that any injury in the present is not the result of the historical injustice does not challenge the possibility of redress. This vindicates our intuition: We *know* that the historical injustice wronged a present agent. And so, the mere fact that an injury's cause can be questioned should not challenge the possibility of redress.

5.3 Supersession

WAC avoids the problems WIC faces. We can now incorporate Harrison's strategy to overcome ST into WAC. This will yield a model of redress that can overcome ST while not being vulnerable to the nonidentity and causal problems. WAC can incorporate the same move Harrison makes by distinguishing between restitution and reparation as two forms of redress. While ST might prevent restitution, it does not prevent reparation. WAC can incorporate this distinction as follows.

Step one is to determine whether there is a claim to redress at all. This is the step where WIC falters because of the nonidentity and causal problems. WAC succeeds where WIC fails. If present individuals are wronged by the historical injustice, then present individuals have a claim to redress.

Step two is to determine what *kind* of redress is possible. Either restitution or reparation is possible. In some cases, ST might make it such that restitution is not possible. However, even in these cases, reparation may still be possible. Whether restitution or reparation, WAC determines the content of redress by the normatively significant features of the wrong. For instance, in a property theft, the normatively significant feature is the interference with the victim's right to use property as the victim chooses. So, redress must in some way address the interference with this right. Restitution might do this by returning the precise object that was stolen. However, even if this is not possible, reparation can still address the normatively significant feature of the interference with the right. For instance, reparation might include compensation for the right being violated (e.g., Ripstein 2016, 125-45). More importantly, it might include restoring the victim's ability to exclude the wrongdoer from interfering with the victim's rights *generally*, even it cannot return the precise object that was stolen because of ST. There are plenty of arguments for how

reparations can respond to the normatively significant features of a wrong in this way without returning the precise content of a wrong. For instance, Sanderson (2011) provides a compelling argument for how restoring the right like this might be possible in cases of Indigenous land expropriations. Sanderson argues that land expropriations violated Indigenous peoples' right to self-determination through political institutions. So, even if returning the land (restitution) is not possible because of ST, restoring the ability to develop political institutions may still be possible. A.J. Simmons (1995) provides a similar argument by distinguishing between returning the precise object of a right and the right itself. Finally, Harrison (2021) points to a number of possible reparative measures that are not restitution but would address the normatively significant features of the wrong. My goal here is not to develop the way WAC determines the content of redress or reparation. I, along with others, do this elsewhere (Kumar 2014, Sanderson 2011, Simmons 1995, Gardner 2011; Weinrib 2012; Ripstein 2016; Hull 2022; Lambrecht 2024a, Lambrecht 2024c). Instead, my goal has been to show that WAC can apply the same strategy of distinguishing between restitution and reparation. This can overcome ST. Even if ST challenges restitution, it may not challenge reparation. Thus, on WAC, ST does not challenge the possibility of claims to redress for historical injustices.

6. Conclusion

In this paper, I have set out to develop an account of redress for historical injustice that is not vulnerable to ST. By distinguishing between two forms of redress – restitution and reparations – an account of redress can overcome ST. However, I have argued that a model that says claims to redress are generated by injuries resulting from the historical injustice (WIC) is vulnerable to the

nonidentity and causal problems. In contrast, a model that says claims to redress are generated by the wrong of the historical injustice (WAC) does not face these problems. This means that if we want an account of redress for historical injustice that can overcome ST, we must adopt WAC.

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