

Historic injustice and the inheritance of rights and duties in East Asia

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1. Introduction

This chapter is concerned with the debate over reparations for past wrongdoing in East Asia: specifically, with the claim that present day parties have inherited rectificatory duties and obligations stemming from wrongdoing perpetrated by the Japanese state in the years prior to and during the Second World War. This period in Japan's history witnessed the culmination of a period of rising nationalism, militarism, colonialism and, ultimately, fascism, and was marked by the invasion of Manchuria, the second Sino-Japanese War, and military alliance with Nazi Germany and participation as an Axis power in the Second World War. It ended in defeat, occupation, and the devastation of Hiroshima and Nagasaki. A number of contemporary claims for reparations have been advanced in relation to this period: both in connection with Japan's general foreign policy in relation to countries such as China and Korea, and relating to more specific crimes against humanity, including the Nanking Massacre of 1937, the human experimentation carried out by Unit 731 of the Imperial Japanese Army, and the treatment of prisoners of war. The chapter focuses on one particular range of cases, involving the wartime treatment of women who were coerced into sexual slavery by the Japanese army – the victims of what is sometimes called the “comfort women” system. It puts forward a general model of the inheritability of rectificatory rights and obligations

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applicable to Japanese wartime wrongdoing, while also considering particular problematic features of the sexual slavery case. In focusing on the inheritance of compensatory claims and duties, we are concerned with the situation of individuals who were not the original victims or perpetrators of injustice. Can the existence of past injustice give rise to entitlements and obligations for present day persons possibly not alive at the time of the original wrongdoing? If so, are the relevant conditions for this to be the case met in contemporary Japan? In what follows, I assess the claims that the Japanese people as a whole possess compensatory duties to victims of the sexual slavery system in the present day, and that the class of “victims” can be meaningfully expanded to include not only the immediate victims themselves, but also following their death, their relations, who can plausibly be said to have inherited rights to compensation.

The argument is theoretical rather than historical. I make no precise empirical claim concerning the number of women subjected to coercive sexual enslavement during World War II, but maintain that large numbers of women of diverse nationalities were so treated. Christine Wawrynek summarises the experience of the women as follows:

Women from countries such as China, Taiwan, Borneo, the Philippines, Singapore, Burma, Indonesia, Guam, Malaysia, Japan, and Korea were forced to become sexual slaves for Japan’s Imperial Army during World War II. Approximately 200,000 women were forced or deceived into sexual slavery between 1931 and 1945. These women were imprisoned in military brothels or “comfort stations,” and were used to satiate the sexual cravings of the imperialistic Japanese army. They were repeatedly raped, tortured, beaten, mutilated, and were sometimes murdered at the hands of the men they were allegedly “comforting”. *Jugun Ianfu*, or “comfort women” were forced to have sex with multiple men, often “servicing” an average of thirty to forty men a day. They were treated as mere military supplies and were catalogued on supply lists under the heading of “ammunition”.²

² Christine Wawrynek, "World War II Comfort Women: Japan's Sex Slaves or Hired Prostitutes," *New York Law School Journal of Human Rights*. 19 (2003), 913-22 at p. 913.

I accept that the treatment that the women in question suffered was a serious, grievous injustice – that they were the victims of terrible wrongdoing. This has been a contentious matter in Japan, where both the number of women and the extent to which the system rested upon the use of force are matters of considerable political debate, as evidenced by Prime Minister Shinzo Abe’s 2007 claim that there was no evidence that the system had been coercive.³ The historical evidence against this position is utterly conclusive,⁴ but I simply start from the assumption that we should see the sexual slavery system as an extremely serious act of wrongdoing, and ask what practical implications such a verdict has many years later. I argue that the treatment of the women to date by the Japanese government has been insufficient to fulfill Japan’s rectificatory obligations, and so reject the claim that the issue in relation to Korean survivors was settled by the 1965 bilateral treaty between Japan and South Korea, and regard both the creation of the Asian Women’s Fund, which provides compensation from non-governmental sources by means of voluntary donations from private citizens, and the content of the apologies thus issued by the Japanese government as being insufficient to do justice to the survivors of the system.⁵ The bulk of the paper is concerned with consideration of the following question: is a descendant of a victim of wartime sexual enslavement morally entitled to compensation from the contemporary Japanese government as a result of the historic mistreatment of her forebear? My primary goal is to build a case in favour of an

³ Abe claimed, ““There has been debate over the question of whether there was coercion.. But the fact is, there was no evidence to prove there was coercion as initially suggested.” See <http://news.bbc.co.uk/1/hi/world/asia-pacific/6411471.stm> [accessed 01/06/2012].

⁴ On this, see Yoshiaki Yoshimi , *Comfort Women: Sexual Slavery in the Japanese Military During World War II* (New York: Columbia University Press: 2002); Keith Howard (ed.), *True Stories of the Korean Comfort Women* (New York: Cassell, 1995); George Hicks, *The comfort women: Japan’s brutal regime of enforced prostitution in the Second World War* (New York, NY: Norton, 1997).

⁵ For discussion, see Tong Yu, “Recent Developments: Reparations for Former Comfort Women of World War II” *Harvard Law Journal* 36 (1995); Roy L. Brooks,, *When Sorry Isn’t Enough: The Controversy over Apologies for Human Injustice* (New York: New York University Press. 1999), pp. 81-151; Elazar Barkan, *The Guilt of Nations: Restitution and Negotiating Historic Injustices* (New York: Norton, 2000), pp. 46-64; Shogo Suzuki, “Overcoming Past Wrongs Committed by States: Can Non-state Actors Facilitate Reconciliation?” *Social and Legal Studies* 21 (2012),201-213.

affirmative answer to this question, and so maintain that both rights and duties of compensation are potentially inheritable. In the conclusion, I ask what implications such a claim has in practice.

1. Inheritance and historic injustice

In order to construct a case for the inheritance of compensatory rights and duties stemming from historic injustice, we need to say something about historic injustice, and about the nature of inheritance.

One response to past wrongdoing is forward-looking – it takes consideration of the historic record as a basis for an assessment of current day practices, asking whether lessons from the past have been learned, and focuses on reconciliation. Alternatively, one may take a backward-looking approach, where one asks whether the lasting effects of past wrongdoing give rise to rights and duties in the present. If I burn down your house, justice requires that I apologise and seek to make amends for my actions – paying for your house and its contents, and for associated losses which you have suffered. To suggest that all that is necessary is to forebear from setting other persons' houses alight in the future is clearly to miss the point of both my status as wrongdoer, and your status as victim of wrongdoing. This is relatively straightforward so long as the identity of both victim and offender is clear, though the need to balance justice-based ideals of rectification with the irenic goal of reconciliation poses obvious problems in transitional contexts⁶ But as soon as time passes, so that we are dealing with different generations of persons, things become much less clear. If neither those responsible for, nor harmed by, an act of injustice are still alive, why worry about the past? Does it not make more sense to focus our attention on the future – on reconciliation, rather than what might be thought to be revenge or retribution? Should we not, in short, let bygones be bygones?

It is unsurprising that inheritance comes into the picture at this point. The idea of inheritance is inherently

⁶ Ruti Teitel, *Transitional Justice* (New York: Oxford University Press, 2000).

backward-looking – it aims to link present generations to their predecessors in a morally relevant sense. The paradigm case of inheritance is a bequest of property, whereby a member of one generation transfers their property rights to a member of the next. If we hold that this transfer is legitimate, it seems we have reason to resist the idea that justice should be purely forward-looking. Thus, for historical entitlement theorists such as Robert Nozick, historical principles of justice “hold that past circumstances or actions of people can create differential entitlements or differential deserts to things”.⁷ If we are willing to grant the principle that entitlements can be transferred across generations, it looks as if we are committed to at least a backward-looking element to our theory of distributive justice, which determines the fair allocation of benefits and burdens in our society. This perspective opens the door to certain types of claim for the rectification of historic injustice, most notably those relating to the misappropriation of property. If group A’s ancestors stole a given item of property from group B’s ancestors, and still have it in their possession, group B would seem to have at least a *prima facie* claim to the restitution of the object. It seems to have inherited an entitlement to the object, even though it is in the physical possession of A. This certainly rests upon some claim as to the moral justifiability – or at least legitimacy – of inheritance, and will have to deal with objections stemming from the role that sustained possession may be thought to play in determining property rights. Both of these have been thought by some scholars to be problematic.⁸ Nonetheless, given the prominence of backward-looking accounts of distributive justice in the real world, particularly in international contexts, a defence of the inheritance model in relation to particular items of property is reasonably straightforward.⁹ Thus, for example, many would contend that there is a strong *prima facie* case for the return of misappropriated items of cultural property, such as artworks stolen by Nazi Germany from Jewish families in the 1930s. Things become more complicated when we try to

⁷ Robert Nozick, *Anarchy, State, and Utopia*, (New York: Basic Books, 1974), p. 155.

⁸ In relation to the former, see Janna Thompson, *Taking Responsibility for the Past: Reparations and Historical Injustice* (Cambridge: Polity, 2002), p. 109. For the latter, see Jeremy Waldron, “Superseding historic injustice”, *Ethics* 103 (1992), 4-28 at pp. 18-19.

⁹ See Daniel Butt, *Rectifying International Injustice: Principles of Compensation and Restitution Between Nations* (Oxford: Oxford University Press, 2009), chapter 5; and A. John Simmons, “Historical rights and fair shares”, *Law and Philosophy* 14 (1995), 149-184.

expand the notion of inheritance beyond such cases. It is possible to maintain that both reparative rights and duties can be inherited. Both suggestions, however, are problematic and contested. First, why should we allow that parents' moral responsibilities can be handed down, seemingly involuntarily, to the next generation? To many of an individualistic bent, this seems dangerously close to visiting the sins of the parents upon the children. Second, is an individual's right to compensation sufficiently similar to a property right in an object such that it can be bequeathed to another, just as one might leave a work of art or a sum of money in one's will? Compensation is intended to make up for a loss that a given individual has suffered. When that individual dies, should we not maintain that the entitlement to compensation dies with her? It might be claimed – though even this is contested – that descendants might be deemed entitled to compensation if they can demonstrate that they themselves have been harmed by historic injustice, but in the absence of actual harm, many do not see why they should be said to have inherited a claim to compensation.

In what follows, I seek to address both categories of objections. I argue that there is a sense in which present day generations may be said to have inherited collective responsibility for historic wrongdoing, which can give rise to extensive rectificatory duties in the present. I also argue that if the nature of the non-rectification of historic injustice is properly understood, it is indeed the case that the idea of inheritance can explain how present day parties have rights to compensation – not through having inherited a right to compensation *per se*, but by having been harmed by a failure to pay compensation to their forebears.

3. Inheriting duties of compensation

The direct victims of the sexual slavery system were entitled to compensation at the end of World War II. It is clear that they suffered as a result of horrendous wrongdoing, and so the Japanese government

possessed straightforward rectificatory duties to them, of both apology and compensation. Neither form of rectificatory duty has been adequately fulfilled. While the question of the nature of apology which has been made is complicated, as different Japanese figures have apologized and expressed regret in various ways while falling short of the unambiguous state level apology demanded by some victims,¹⁰ the question of compensation is more straightforward. The Japanese government has resisted calls to pay full compensation directly to survivors. Instead, limited payments have come from the Asian Women's Fund, stemming from donations from private citizens. This is not an adequate response. The particular features of this case demonstrate how important both elements of rectificatory justice –apology and compensation - can be. It is sometimes suggested that compensation following wrongdoing removes the need for apology. This is problematic for a number of reasons. There are certainly instances where the payment of compensation effectively amounts to an apology. Sometimes, the mere fact that a perpetrator has admitted a need to make recompense is itself indication of an acceptance of wrongdoing. Suppose I steal a book from a shop. Five years later, I am wracked with guilt, and, unprompted, send the shopkeeper the price of the book, plus interest. My regret for my wrongful act is self-evident. Other cases, however, are less straightforward. One problem here is that there is frequently more than one way of characterizing an act of injustice. One function which an express apology fulfils is that it makes it clear exactly for what the offender is apologizing. This is crucial in the sexual slavery case, as the the injustice done to the victims can be characterized in two ways. The first is to maintain that they were the victims of institutionally endorsed sexual enslavement, involving multiple instances of rape. The second is to hold that the injustice consisted of a lack of remuneration, and suggest that it was the absence of payment for sexual services, rather than repeated subjection to sexual violence, which was problematic. A simple compensation payment with no express description of the character of the wrong which is supposedly being addressed is

¹⁰ See, for example, Sonia Dechian, "Korea's "Comfort Women" Rally for Apology", *Historical Justice and Memory Research Network*, <http://www.historicaljusticeandmemorynetwork.net/?p=3524>

at best ambiguous between the two.¹¹ The point of this is clear – what was owed to the victims of the sexual slavery system by those morally responsible for their suffering is only partially described by a focus on material compensation. The loss which a victim of injustice suffers is generally not confined to material loss. This is true even in cases where property deprivation is at the heart of the act of injustice in question, such as in cases of theft. A victim of such an act does lose physical property and may suffer associated material losses, but she may also be harmed in any number of different ways, finding the experience itself traumatic, suffering an ongoing loss in her sense of personal security, and so on. Compensation responds to the harm suffered by a victim of injustice by seeking to increase her well-being, ideally counter-balancing the loss caused by the wrongdoing in question. If this cannot be done, justice requires that the victim’s well-being be brought as close to this point as possible. If this harm is to be repaired, the context of a compensation payment is of great importance. Two points follow from this. The first is that compensation alone may not suffice to do all that can be done to rectify injustice – an overt apology may also be necessary to improve the victim’s well being. The second is that the identity of the compensator may matter if injustice is to be rectified.

It is instructive here to look at Onora O’Neill’s account of rights to compensation. She differentiates between the terms “restitution” and “compensation”. For O’Neill, restitution “is a matter of restoring matters to those that obtained before wrong was done. It is a response not so much to offenders and victims as to the ruptured moral relationship between them.”¹² Thus, the identity of the agent seeking to effect restitution is key: “Restitution cannot be vicarious. That which has been lost, or its symbolic equivalent, must be restored by those who did wrong, or by their heirs or representatives.”¹³ For O’Neill, compensation should be understood differently. It looks not to the ruptured moral relationship between offender and victim, but to victims exclusively: “compensation, unlike restitution and punishment, can be

¹¹ See Claudia Card, *The Atrocity Paradigm: A Theory of Evil* (Oxford: Oxford University Press, 2002), 119.

¹² Onora O’Neill, “Rights to compensation”, *Social Philosophy and Policy* 5 (1987), 72-87 at p. 74.

¹³ O’Neill, “Rights to compensation”, p. 74.

vicarious... Victims may be compensated if somebody offers them some equivalent for the loss suffered. Compensation can be done vicariously, in that it need not be provided by wrongdoers or their heirs or representatives.”¹⁴ However some forms of compensation are only realizable when the compensation is not vicarious: when it comes not from a third party, but from a particular agent, typically (though not necessarily) with some connection to the wrongdoing. It might, for example, be that the only thing that will fully compensate a victim (or bring her as close as possible to compensation) is voluntary payment by the wrongdoer. In such a case, compensation, if genuine and uncoerced, serves not only as a payment but also as a form of apology, which can in itself improve the wellbeing of the victim. In other cases, it might be that the only thing that will fully compensate a victim is the involuntary payment of compensation by an offender, if the victim possess a desire to see the offender punished. It may be that the monetary value of the compensation to the victim is largely incidental – what is important is the material loss suffered by the offender. What is clear is that, in the sexual slavery case, the payment of compensation from third parties has failed to satisfy many victims.¹⁵ What they demand is a full apology and compensation from specific agents who bear a particular type of relation to the perpetrators of injustice.

The question of who bore *moral* responsibility for the sexual slavery system is a difficult one. Answering the question would involve detailed consideration of the historical record. We would need to know something of decision-making processes within the Japanese government administration and the Imperial Army – who gave which orders, who knew and acquiesced, who was genuinely ignorant. We would need to consider questions relating to the moral responsibilities of members of the military and of civilians who find themselves involved in serious moral wrongdoing. We would need an account of the conditions

¹⁴ O’Neill, “Rights to compensation”, p. 75.

¹⁵ Suzuki writes, “As the survivors’ paramount demand was for the Japanese *government* to apologize and dispense compensation for their suffering, activists claimed, the use of the AWF amounted to a transfer of this responsibility from the state to citizens, allowing Tokyo to continue to evade its legal obligations.” (“Overcoming Past Wrongs Committed by States”, p. 206).

necessary for collective guilt amongst the people as a whole, and would need to think about ways in which individuals who dissent from particular policies and regimes are able to exculpate themselves in relation to wrongdoing. These are important questions that need to be addressed in relation to questions of criminal justice: they were central, for example, to the deliberations at Nuremberg. But they need not be addressed for current purposes. All that is necessary for the argument in hand is that we hold the Japanese people to be remedially responsible for the actions of their leaders in the Second World War. This is not to say that the Japanese people as a whole was guilty of moral wrongdoing – nor, indeed, need it make a claim about the moral guilt of any individual Japanese citizen. The claim is simply that the Japanese people possessed a collective duty following the end of World War II to seek to put right the wrongful wartime actions of their government.¹⁶ Although the point is contentious, many will agree that the Japanese people possessed such a collective duty at the end of the War. My question is that of what happens to this duty as time passes. Is it possible for this duty to be inherited by subsequent generations?

I have argued elsewhere that in cases of this type, this is indeed possible.¹⁷ This claim rests upon three contentions:

- 1) It is possible, in at least some cases, to hold peoples responsible for the actions of their leaders.
- 2) Peoples are comprised of overlapping, rather than successive, generations.
- 3) The failure to rectify an act of injustice itself constitutes an act of injustice.

The key point here is that the entity which is responsible for redressing the wrongs of the sexual slavery system – the Japanese people – is not the same kind of entity as an individual person. It is, instead, a certain type of collective, a type which has been described by Peter French as a “conglomerate collectivity”:

¹⁶ For discussion, see David Miller, “Holding nations responsible”, *Ethics* 114 (2004), 240-68, pp. 244-245.

¹⁷ Daniel Butt, "Nations, overlapping generations and historic injustice", *American Philosophical Quarterly* 43 (2006), 357-6; Butt, *Rectifying International Injustice*, Chapter 6.

A conglomerate collectivity is an organization of individuals such that its identity is not exhausted by the conjunction of the identities of the parties in the organization. The existence of a conglomerate is compatible with a varying membership. A change in the specific persons associated in a conglomerate does not entail a corresponding change in the identity of the conglomerate.¹⁸

It is wrong to visit the sins of parents onto children, because they are distinct persons. This is not quite the case for a people, however, which slowly changes its identity over time. This, along with the truth that a failure to rectify injustice itself constitutes an act of injustice, allows a people to be collectively responsible for a failure to rectify wrongdoing across a long period of time. The ongoing responsibility binds new members into collective wrongdoing, and gives rise to new claims for compensation from those denied what they are due.

To see how these claims work in practice, let us return to the sexual slavery case. Japan was occupied by the Allied powers between 1945 and 1952, and lacked sovereignty. Let us assume that Japan would not have been able to pay compensation in this period, even had it wished to do so. Does this mean that the obligation to pay compensation lapsed? It is hard to see how this could be. Clearly, “the Japanese people” was not precisely the same entity in 1952 as in 1945. Some existing members of the collective died, other new members were born. However, the majority of the Japanese people in 1952 were alive in 1945. This is all that is needed to make a compelling case for ongoing rectificatory duties. We need not say anything about the ongoing nature of the Japanese state: if we accept that the Japanese possessed a collective rectificatory duty in 1945, then in 1952 we have a situation whereby most members of the 1945 collective are still alive, and form the vast majority of the 1952 collective. The change in the exact composition of the Japanese people does not negate the rectificatory duty – if it did, then the passage of a single day, with

¹⁸ Peter French, *Collective and Corporate Responsibility* (New York: Columbia University Press, 1984), p. 13.

its concomitant births and deaths, would be sufficient for rectificatory duties to lapse. The key point here is that nations are comprised of overlapping, rather than successive, generations. This is often missed in discussions of intergenerational justice, where models are sometimes used which assume that one generation simply replaces another. If that really were the case, then it would be much harder to maintain that collective rectificatory duties can persist across time. As things stand, however, we can hold that the Japanese people is guilty of ongoing wrongdoing in both 2012 and 1952. If a survivor of the sexual slavery system was due compensation in 1952, her claim is not invalidated by the possibility that no one responsible for taking any of the decisions which led to her wartime suffering is now alive. She was not only a victim of injustice during World War II, but has been a victim of ongoing injustice ever since. Each day that the Japanese people's rectificatory duties towards her have not been fulfilled, the injustice has been exacerbated. So even if none of the original wrongdoers are still extant, present day individuals are implicated in ongoing wrongdoing. It is this ongoing failure to compensate which has rolled across the generations. As a result, contemporary Japan has inherited rectificatory duties to the victims of unrectified wartime wrongdoing.

4. Inheriting rights to compensation

Suppose that we grant the argument of the preceding section. It follows that the ongoing refusal of the Japanese government to pay compensation to victims of past wrongdoing constitutes a serious act of injustice. Women who survived their wartime ordeals have been grievously wronged not only by their original treatment, but also by the subsequent actions of the Japanese government. It is clear, however, that many of the direct victims of the sexual slavery system are no longer alive. Many, of course, were killed at the time as a direct result of their wartime treatment, others have died in the intervening years. Does this mean that Japan's rectificatory duties have been superseded by the passage of time? Or might we argue that there are extant parties in the present day who are entitled to compensation, such as the

families of the victims? This section considers three ways in which past and present can be so that rectification may still be called for in relation to surviving family members. These are:

- 1) When other persons have been harmed by the act of injustice itself.
- 2) When it is possible to benefit the dead.
- 3) When other persons have been harmed by the failure to pay compensation.

1) Harm by the original act of injustice

The most straightforward case that can be made for present day compensation rests upon the claim that contemporary parties have themselves been harmed by historic injustice. One could potentially make such a claim in relation to the families of the victims of past wrongdoing: there are many ways in which a contemporary individual could be made worse off, either materially or psychologically, by the fact that their family member was a victim of the sexual slavery system. There are, admittedly, well-known practical and theoretical barriers to advancing claims of this kind, especially insofar as we are concerned with present day parties who were not even born at the time of the original injustice, and so who fall foul of the “non-identity problem”, insofar as their very existence is thought to depend on the act of wrongdoing in question.¹⁹ Demonstrating tangible loss plausibly reflects the direct effects of the original act of injustice will doubtless be at least difficult in a large number of cases. Perhaps more importantly, it seems that such an approach potentially misunderstands the claim of the descendants of the victims of some forms of injustice. Their point is plausibly not that they themselves are victims, but rather that they are, in some sense, the representatives or agents of the original victims. The heir of a victim might insist on reparation without making any kind of argument as to whether they themselves are better off or worse off as a result of the treatment of their ancestor. To ask the children of victims to assess their own level of welfare relative to a counterfactual world where their mother was not forcibly coerced into sexual slavery

¹⁹ For general discussion, see Jeff Spinner-Halev, *Enduring Injustice* (Cambridge: Cambridge University Press, 2012).

seems positively distasteful – this seems to miss the point of the demand for reparation. Is there another way to characterize the demand for contemporary rectificatory justice?

2) *Benefiting the dead*

The idea of this second approach is not that the families are themselves entitled to compensation, but that we benefit the dead victims themselves by conferring benefits upon their families, on the grounds that this is what the victims themselves would have wanted. This is the account put forward by Michael Ridge, who rests his argument on three claims:

- 1) Duties of reparation require us to benefit the victims of our injustices.
- 2) We can benefit the dead by promoting the satisfaction of their desires.
- 3) Most people strongly desire that their descendants flourish.²⁰

It is true, of course, that we cannot say for certain that conferring benefits upon family members is what the victims of past wrongdoing would want, were we able to ask them, but it seems overwhelmingly likely that this would indeed be the case in the vast majority of cases. However, as Ridge acknowledges, the argument is controversial. Some will flatly deny that it is possible to benefit the dead – since they are, after all, dead, and no longer exist. The plausibility of the Ridge position, then, hangs on an acceptance that individuals possess what Loren Lomasky has called “lifetime transcending interests”, and this is much disputed.²¹ In the next section I put forward an argument which does not rest on this metaphysical claim, but one important point should be made in relation to the sexual slavery case. Ridge argues that there is effectively a statute of limitations built into his account:

...the force of reparative duties to the dead diminishes over time because our ability to benefit them by benefiting their descendants diminishes over time. While people care a great deal about their direct descendants, they generally

²⁰ Michael Ridge, “Giving the dead their due”, *Ethics* 14 (2003), 38-59.

²¹ Loren E. Lomasky, *Persons, Rights, and the Moral Community* (New York: Oxford University Press, 1987).

care less about descendants three and four generations down the line. Indeed, after a certain number of generations people usually do not care much more about their descendants than they do about people in general.²²

It does seem right to say that as time passes, it becomes harder to benefit the dead. It may be that in international cases the generational drop-off is less pronounced, as in many cases people with national sentiment can be said to be benefited if one benefits their nation, rather than necessarily their descendants specifically. But the broad point stands. This is significant, since it means that there is a sense in which the perpetrators of injustice can escape the obligations generated by this model by refusing to pay compensation for a sufficiently long period of time. This should not be seen as some kind of “get-out clause”; rather, it is a source of significant moral danger for those responsible for an ongoing failure to rectify injustice. As time goes on, so it will become harder to rectify their wrongdoing. There is a window of opportunity to benefit the deceased victims of injustice, which does, on this account, post-date their death, but which is not infinite. Unless action is taken within this window, the injustice will become unrectifiable. It may well be argued that there is a particular form of moral wrongdoing in play here. It is one thing to act wrongly, it is another to act wrongly in a way which can never be rectified, such that the restoration of the moral equilibrium between offender and victim is irreparably damaged. If we accept the Ridge account, there is only a limited amount of time in those with rectificatory duties can meaningfully act. Rectification of sorts is not impossible, on this account, after the death of the direct victims of injustice, but it does become so relatively soon. I return to this form of argument at the end of the chapter.

3) Harm by failure to pay compensation

Finally, we turn to the argument that families of victims of injustice have been harmed by a failure to pay compensation to the victims of injustice. On this approach, we need not contend that the original act of injustice itself harmed the families of the victims. But what of the subsequent failure to pay

²² Ridge, “Giving the dead their due”, p. 52.

compensation? Might it not be the case that these families would be appreciably better off in the present if compensation had indeed been paid in a timely manner? As both other writers and I have argued elsewhere, a focus on the fact that a failure to pay compensation constitutes an act of injustice seemingly gives us a way out of some of the problems posed by the first argument relating to harm caused by the original act of injustice itself.²³ If, for example, we hold that compensation should have been paid after the birth of descendants, then the non-identity problem is not a problem. It might be thought, however, that we are still firmly in the field of complex counterfactual speculation. Who knows what would have happened if compensation had promptly been paid? Is there any reason to think that this would have been passed on to descendants, or other specific family members? Surely it is more likely to think that in many cases it would have been spent? It is not a given that victims would have chosen to retain their compensation rather than spend it, or that they would have left it to their descendants rather than to others. Janna Thompson, for example, suggests that for descendants to have a right to claim property that was taken from their ancestors, “they have to be in a position to demand what they would have received from their forebears if the injustice had not been done.” The problem is that there is no way of knowing what, if anything, this might be:

If victims of injustice had not been dispossessed, they might have disposed of their possessions in some other way. They might have gambled them away, made a bad investment, given them to someone else, or used them for their own projects. Even immediate descendants of victims have no right to assume that the property of their forebears would have been passed on to them if the injustice had not been done.²⁴

It seems, then, that we need an account of how to discount the real probability that they would not, in fact,

²³ See Bernard R. Boxill, "A Lockean Argument for Black Reparations", *The Journal of Ethics* 7:11, 63-91; Butt, "Nations, Overlapping Generations and Historic Injustice"; Andrew I. Cohen, "Compensation for Historic Injustices: Completing the Boxill and Sher Argument", *Philosophy and Public Affairs* 37 (2008), 81-102; George Sher, "Transgenerational Compensation" *Philosophy and Public Affairs* 33 (2005), 181-200.

²⁴ Thompson, *Taking Responsibility for the Past*, pp. 111-112.

have inherited any compensation at all. I have argued elsewhere, however, that such a perspective is mistaken.²⁵ The reason for this is that it fails to apprehend the significance of the claim that a failure to rectify an act of injustice itself constitutes an act of injustice. The failure to compensate the victim is not a one-off event, which happens only immediately after the act of injustice. Rather, it is an ongoing refusal to act as justice requires – each day that the appropriate action is not taken is a day of unjust agency, where one party acts wrongly in relation to another. The victim who is not paid compensation is wronged at each point where this compensation is not forthcoming, including the point immediately prior to her death. Given that she did not receive compensation throughout her life, this is the appropriate point to assess the effect of non-payment on her heirs, and it is clear that *this* non-payment does indeed leave them significantly worse off than they would have been had rectificatory duties been fulfilled. Insofar as they suffer from this wrongful refusal to compensate, they are themselves the victims of injustice.

Let us put the arguments thus far together. Direct victims of the sexual slavery system were entitled to compensation for the suffering which they endured in the course of World War II. The failure of the Japanese government to pay compensation to these individuals was an ongoing injustice, which itself gave rise to compensatory duties. They were due this compensation right through their lives, including the point just before their deaths. The failure of the Japanese government to pay compensation at this point directly and wrongfully harmed their heirs. This means that the heirs became victims of injustice, and the Japanese government acquired compensatory duties to them. Insofar as this compensation has not been paid, Japan is responsible for serious ongoing injustice.

5. Theory and Practice

According to the theoretical argument of this chapter, it is meaningful and appropriate to maintain that the

²⁵ See Butt, “Can we inherit rights to compensation?”, forthcoming.

heirs of victims of wartime Japanese injustice are entitled to compensation as a result of the past suffering of their forebears. The Japanese people as a whole possess such rectificatory obligations as a result of their membership of a collective that has consistently failed to act in relation to its rectificatory obligations. The entitlements of the direct victims of injustice are straightforward – they were wronged at the time, and have continued to be wronged by the ongoing refusal to rectify the original injustice. This ongoing refusal draws other parties into the equation: not just later generations of the Japanese people, who become members of a collective institution with existing debts, but also the heirs of the original wrongdoing, who are wronged and harmed by the failure to compensate their forebears prior to their death. This theoretical argument is sufficient to make the case for the entitlements of present day family members. It is a general account of the inheritability of rights to compensation which is generally applicable to the other instances of wartime Japanese wrongdoing outlined at the start of the chapter. However, when we seek to apply the model to the real world, complications arise.

The theoretical question has been set up in a particular way: given an extant family member who is the heir of a victim, what should be done? My argument holds that when such a case arises, the family member has a right to compensation, and this is the firm conclusion to which this chapter is committed. But what should be done in the absence of information as to who the heirs are? This is not a question of uncertainty as to who is the appropriate heir of a given, specified victim – the problem is rather that in the vast majority of cases we do not know who the victims were. This is particularly the case in relation to the victims of sexual slavery. Only a tiny percentage of those who were wronged by the sexual slavery system have identified themselves in a way which would allow for compensation to them or their families. This is not some kind of quirk of the historical record, but is part of the deliberate, ongoing refusal of many different parties to acknowledge the suffering of the women in the years following the war. Significantly, blame here lies not only with Japanese society, but also with those in Korea, in China, and elsewhere who shirked their responsibilities to the victims to investigate and acknowledge their

suffering in a way which avoided stigma and social sanction. Tragically, ongoing wrongdoing, on all sides, means that the set of identifiable victims is very small, and in some cases, those who have courageously identified themselves have been shunned and cast out by their own families – the very people upon whom this model confers compensatory entitlements. The particular character of the historical wrongdoing in the sexual slavery case – its gender-based character, its use of sexual violence, and the patriarchal character of the societies and families of which the victims were members, sets it apart from many other cases of grievous wrongdoing. As Elazar Barkan writes, “It is... perhaps the only case in which the ethnic and national identity of the victims is secondary to their gender...the case of the comfort women is the only instance in which gender has been used as the basis for victimization and in which it has become the banner for demands for restitution and apology.”²⁶ In denying and ignoring the suffering of the victims, subsequent post-war governments in East Asia have compounded and aggravated the victims’ suffering, but they have also culpably contributed to making the wrongdoing unrectifiable, at least as far as its direct victims and their families are concerned.

So what should be done in relation to the nameless victims of sexual enslavement, both dead and alive, who cannot now be reached by the family-based rectificatory model outlined above? One possibility, which I have suggested in other contexts is that in such cases entitlements to compensation can be said to pass from individual to group.²⁷ So it might be maintained that, for example, payment should be made in the name of the victims to the South Korean and the Chinese governments, for the benefit of their peoples. There is something problematic about such a conclusion in this case, however, since it has been maintained that these governments were themselves guilty of wrongdoing to the victims, and, indeed, that it is this very wrongdoing which has led to the victims not being identifiable in the present day. There are two further alternatives. One is simply to accept that this is a case of unrectifiable wrongdoing: that the

²⁶ Barkan, *The Guilt of Nations*, 47-9.

²⁷ *Rectifying International Injustice*, 166-7.

original wrongdoing of the Japanese military has been compounded by others in such a way that, in the absence of individual victims and their heirs, there is no one who is entitled to present day compensation. Alternatively, one can insist that there should still be some form of compensatory reckoning. If it is maintained that compensation should be paid in the name of the unknown victims of the sexual slavery system, it may be that we should see the gender, and not the nationality, of the victims as their most relevant characteristic in relation to compensatory justice. The violence which the victims suffered was particular – it was primarily as women that they were wronged, and so we might see their present day heirs not in biological or legal terms, but as being those contemporary persons who find themselves, in the present day, victims of injustice on account of their gender. The appropriate contemporary response, on this view, would be the funding of initiatives which combat gender-based injustice, and particularly, perhaps, sexual violence against women.

One final point. The theoretical argument presented here rests upon one party inheriting resources from another. It was suggested earlier that if one denies the justifiability of inheritance, it might be thought that the argument loses much or all of its force. Imagine, for example, that one is an egalitarian, and believes that each individual should be entitled to some kind of equal share of resources at the start of their life. This would seemingly suggest that inheritance itself is unjust, insofar as it leads to inegalitarian starting shares in the next generation. Such an egalitarian might argue for a compulsory, 100% inheritance tax of all estates, and subsequent egalitarian distribution to all. It is indeed the case that such an approach would invalidate an inheritance-based claim made by a descendant of a victim of injustice. But such a claim can only be blocked on these grounds if it is indeed the case that an egalitarian generational redistribution of resources is taking place. In the case of international compensation claims, we would need to see a cosmopolitan, global egalitarian generational redistribution of resources. The real world does not realize such an ideal. It is not morally permissible for those possessing rectificatory duties to others to deny that they possess such duties by reference to a forward-looking account of distributive justice unless they are

themselves committed to seeking to realize such a distribution. This is not to say that concerns of distributive justice cannot lead us to put rectificatory claims to one side. The question is whether the *prima facie* rectificatory claim causes a conflict with the background account of distributive justice. If one permits the justifiability of inheritance, it seems that it will not do so. If one is genuinely opposed to inheritance, then things are more complicated. We need to consider a range of issues relating to the relation between ideal and non-ideal theory. The key question, however, is whether the putative rectificatory duty will make things better or worse off from the perspective of distributive justice. It can readily be conceded that things are complicated if we believe that fulfilling rectificatory duties will have negative effects from the perspective of distributive justice. So, for example, imagine that we are egalitarians, and are confronted with a situation whereby a group with less than average property holdings possess rectificatory duties to compensate a very wealthy group. There is a genuine, complicated conflict here. But things are much more straightforward if the roles are reversed, and a wealthy group finds itself with compensatory duties to a less well-off group. What is clearly unjustifiable is if the wealthy seek to avoid fulfilling their rectificatory duties and hang on to their wealth by appealing to principles of distributive justice which would not allow them their wealth in the first place. The Japanese government condones the practice of inheritance domestically. It does not seek to promote global egalitarianism. It is also extremely wealthy. It is not clear how the claims of descendants of victims can be denied by reference to an argument relating to tension between distributive and rectificatory justice and the unjustifiability of inheritance. We live in a world where history matters when it comes to the distribution of benefits and burdens. The country of our birth and the identity of our parents makes a massive difference to our life prospects. Insofar as the real world is backward looking, so the events of the past are significant to determining who should have what in the present day. It is the significance of history to present day individuals' life chances that makes it so important that we scrutinize whether we are properly fulfilling our rectificatory duties to others. On the argument of this chapter, Japan has failed to do so in a way that makes it guilty of grievous wrongdoing.

None of this is to say, of course, that the fulfillment of rectificatory justice is all that matters from a moral perspective when we come to think of the relations of countries such as those in East Asia with troubled and conflictual pasts. It is possible that circumstances will arise where policy makers face difficult trade-offs between backward looking concerns of rectification and purportedly forward looking goals of peace and reconciliation. However, the experience of the victims of sexual slavery, and, in particular, the fact that the past neglect of their claims by purportedly forward looking administrations has contributed to making the present day rectification of their wrongdoing impossible, should at least give us pause for thought when we consider how to resolve such trade-offs. At the very least, an acknowledgement of the backward-looking character of the contemporary world helps us to see what sacrifices we ask of victims when we neglect or overlook their suffering in the name of the general good.