

What Structural Injustice Theory Leaves Out

Daniel Butt, Balliol College, Oxford

daniel.butt@politics.ox.ac.uk

***Abstract:** Alasia Nuti's recent book *Injustice and the Reproduction of History: Structural Inequalities, Gender and Redress* puts forward a compelling vision of contemporary duties to redress past wrongdoing, grounded in the idea of "historical-structural-injustice," constituted by the "structural reproduction of an unjust history over time and through changes". Such an approach promises to transcend the familiar scholarly divide between "backward-looking" and "forward-looking" models, and allow for a reparative approach that focuses specifically on those past wrongs that impact the present, while retaining a significant focus on the historical. While Nuti's work is perhaps the most sophisticated treatment of structural injustice to date, this paper argues that an exclusive concentration on historical-structural-injustices neglects some aspects and some acts of wrongdoing that call out for present-day redress. What is needed, therefore, is a pluralist theory that can accept the pressing force in the present of historical-structural-injustices, whilst also making room for past-regarding duties that either do not fit, or are not best conceptualized in terms of, this approach, without being overwhelmed by the sheer scale of historic injustice.*

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Recent years have seen a "structural turn" in contemporary reparative theory. Taking inspiration from Iris Marion Young's work on structural injustice (2011), writers such as Catherine Lu (2017) and Jeff Spinner-Halev (2012) have moved away from backward-looking accounts of reparative justice, with a focus on ideas such as the inheritance of entitlements to compensation, and instead concentrate on the lasting structural effects of historic wrongdoing. For Lu, structural injustice refers "to the institutions, norms, practices, and material conditions that played a causal or conditioning role in producing or reproducing objectionable social positions, conduct, or outcomes." As such, "thinking about the requirements of structural justice takes our view of rendering justice in contexts of political catastrophe beyond victims and perpetrators and toward the institutional, normative, and material conditions in which they interact" (2017, 19). The progressive aspiration of such theorists is that viewing the past through the prism of structural injustice allows us to take history seriously, understanding the myriad ways in which it has shaped the present without getting, as Young puts it, "stuck in the past" (2011, 181). She cites the forward-looking conclusion of *Black Skin, White Masks*, where Frantz Fanon writes: "I am not a prisoner of history. I should not seek there for the meaning of my destiny... I as a man of color, to the extent that it becomes possible for me to exist absolutely, do not have the right to lock myself into a world of retroactive reparations" (Fanon 1967, 229-31). As the literature on structural injustice and reparations has developed, different writers have sought ways to combine a retrospective concern with what happened in the past with a desire to reform social structures in the present to secure the best possible future. At times, this has led to scepticism in relation to avowedly backward-looking approaches to reparative

justice. A range of concerns has been articulated: including worries that such accounts overstate the culpability of specific historic actors, neglecting the broader structural contexts in which they operate; that their focus on issues of blame and liability threaten the goal of political reconciliation; and more broadly, that their preoccupation with the past might stand in the way of progressive political change if it means trying to restore or conserve that which went before rather than striving for a better future. As Jeremy Waldron writes, “why stop there? Why be content merely to bring about the state of affairs that would have ensued if this injustice had not occurred? Why not try to make things even better than they would have been...?” (1992, 13).

It is in this context that Alasia Nuti has produced her powerful new work *Injustice and the Reproduction of History: Structural Inequalities, Gender and Redress* (2019). Nuti seeks to differentiate her approach from those she describes as “backward-looking” and “forward-looking” in terms of the temporal direction of the obligations that they generate (14). She contends that each in turn faces a serious objection, which she labels the “impracticability objection” and the “redundancy objection” respectively. She claims her own account, framed in terms of what she labels historical-structural-injustice (HSI) can avoid the force of each, resulting in an approach to the reform of structural injustice that necessarily engages with historic wrongdoing, but only insofar as it contributes to present-day disadvantage. Thus “history can be seen as embedded (and... reproduced) in the present through long-term structures... focusing on the structural dimension of history immediately prompts us to think about past injustices not only in terms of singular events with a clear beginning and a putative end but also (and especially) as long-term structures” (25). Citing Edward Said, she suggests that endorsing a structural understanding of history compels us to “embrace ‘the uncertainty whether the past really is past, over and concluded, or whether it continues, albeit [perhaps] in different forms’ and to conceive of historical injustices as potentially being present through long term structures” (26-7). Her understanding of structural reproduction leads to a thoughtful and nuanced account of how history matters to those who endorse equality in the present, drawing attention not only to the obvious material consequences of injustice but to its more subtle effects through, for example, the creation and perpetuation of stereotypes. Thus, she argues that the criminalisation of race in the US has its roots in what she terms the “banal radicality of the reproduction of the unjust past”, referring to “the subtle and often difficult-to-tackle ways an unjust history can be reproduced in the present (e.g. the unconscious stereotype of African Americans as criminals), which provide the conditions of possibility for radical injustices to occur (e.g. the systematic shooting of unarmed African American men by the police)” (43-4). Strikingly, this approach allows her to move beyond the conventional framing of work which concentrates on how past wrongdoing causes harm specifically to descendants of the original victims, and instead to consider how particular disadvantaged social groups, such as, notably, women, can be seen to suffer enduring harm through the reproduction of the past in the present. This enriches our understanding of what makes women a collective by means of a historically driven interpretation of intersectionality, and explains how contemporary dimensions of

gender inequality such as intimate-partner violence, the gendered division of domestic labour, and horizontally segregated job markets are “significantly connected to a structurally reproduced unjust history” (179). This leads to a call for far-reaching political action – again, of a different scale and character than is normally assumed in the literature – understood in terms of reparations, transformative policy making, and counter-historical institutional interventions (180).

Nuti’s expansion of our understanding of the way that past wrongs reproduce themselves in the present is timely (indeed, overdue) and exciting. It is clear that the structural turn has led to greater sophistication in our understanding of how the past impacts the present, and consequently of what interventions are necessary to redress its lasting effects. It does not follow, however, that all reparative action need be framed in structural terms. This article argues that there is also a place for an explicitly backward-looking approach to reparative justice, which can give rise to what I term “past-regarding duties”. Such duties do not fit within the HSI model, but need not challenge it. I advocate a pluralist approach to reparative justice, which can draw on the resources of both structural and non-structural understandings of contemporary duties. In what follows, I will support Nuti’s case for the redundancy objection against purely forward-looking models, but resist her arguments against backward-looking approaches grounded in the impracticability objection. Indeed, I argue that some claims that lend the redundancy objection force can point the way to answering concerns raised by the impracticability objection.

The impracticability objection

The basic idea of the impracticability objection is that backward-looking accounts do not distinguish between which of the myriad instances of historic injustice need to be addressed in the present-day. This renders the whole project of seeking to repair past wrongs impractical. Nuti takes the backward-looking view that she is seeking to oppose to claim that it is the past itself, rather than the connection between the present and the past, that triggers present-day duties (or obligations) of historical justice. On this view, she writes, “the connection between past and present injustices is neither a necessary nor a sufficient condition for duties of historical justice to arise”. Such accounts, she argues, consider past injustice as significant *per se*, and so need not speculate about connections between past and present injustices. The problem, however, is that “if all the injustices that occurred in the past are important, redressing historical injustice is an impractical task”. Thus, “If the unjust past *per se* is worth being rectified, as backward-looking approaches suggest, it seems there is no principled reason why we should be more concerned with French colonialism in the Caribbean than with, say, the atrocities committed by Louis IX, king of France during the European crusades against Arabs in Tunis... in 1270... In other words, there is no criterion of distinguishing between the types of past injustices that call for redress and those that do not” (15, see also 157). This impracticability “turns the search for historical justice into a quixotic enterprise as the number of injustices committed over history is obviously incredibly vast.” It also “strengthens a long-

standing worry that many critics of the very idea of historical justice have voiced: redressing past injustices would divert our attention, energy and resources from present injustices” (16). A preoccupation with past injustices might come at the expense of people whose position could be improved in the present. Instead, Nuti’s favoured approach of “de-temporalising” injustice, understanding history in terms of long-term structures and their reproduction across time, avoids impracticality by linking past wrongdoing and present-day disadvantage (29). We have a discrete set of cases to address in the present-day.

The concern that the scale of past wrongdoing means that there is no meaningful start or end to the project of redressing historical injustice is not, of course, a new one. This is probably the most common objection voiced against backward-looking accounts – if we worry about nineteenth century colonialism, should we also worry about the Norman Conquest? The expansion of the Roman Empire? The fall of Troy? It is true that backward-looking accounts need to have a response to such objections. Further, it should be noted that the point need not be made solely in a *reductio ad absurdum* fashion. Backward-looking theorists have themselves, at times, sought to take the idea that even ancient wrongs may give rise to significant contemporary duties seriously. Zofia Stempowska has suggested that, all other things being equal, in prioritising more recent wrongs over historical wrongs, “we might be engaging in a form of ‘presentism’ that is akin to ‘speciesism’ should we privilege things that are closer to us in time than those that are more distant” (2020, 57). Daniel Butt has argued that there is at least a sense in which the ongoing non-rectification of wrongdoing can mean that injustice gets worse, not better, with the passage of time (2013).

In what follows, I argue that while there is a sense in which all the injustices that occurred in the past are important, this does not render redressing historical injustice an impractical task. One can endorse this view and resist Nuti’s conclusion that only historical-structural-injustices give rise to contemporary duties, whilst still taking the effects of structural injustice seriously.

Past wrongdoing and contemporary injustice

On Nuti’s account, “historical-structural-injustices” can be defined as “unjust social-structural processes enabling asymmetries between differently positioned persons, which started in the past and are reproduced in a different fashion, even if the original form of injustice may appear to have ended” (44). There is a necessary connection between the past and the present injustice, so that it makes sense both to say that “historical and present injustices should be regarded as the *same injustice*”, and that the same injustice “can be reproduced over time in different ways”. (45) Nuti seems clear that it is injustices that have this persisting structural character and only these injustices which stand in need of redress, at least in terms of there being contemporary obligations of justice to act. Conceiving of injustices in this way

provides “a criterion of singling out which kind of historical injustices should be of present concern” (46, see also 31).

Undoubtedly, Nuti’s approach significantly increases the range of forms of structural disadvantage that might be thought to emanate from past wrongdoing. Yet she argues that not all past wrongdoing has this kind of persisting effect. In seeking to respond to the idea that her method of de-temporalising injustice might mean that there is no such thing as truly historical justice, she accepts that some injustice might indeed have the character of being truly “past” and so not in need of contemporary redress: “de-temporalizing injustice does not imply that there are not past injustices that are actually past” (51). She argues that cases where the original victims and perpetrators of an injustice are still alive are uncontroversial: perpetrators would be morally responsible for reparation even in the absence of persisting structural effects. But what when both perpetrators and victims are dead? Was, for example, Tony Blair wrong to apologise in 1997 for the Irish potato famine of 1845-1852 “assuming that that injustice – i.e. as long-term structures – had not been reproduced up to then?” Nuti writes that her account “neither criticises nor discourages” such actions: apologising for an injustice, even if it is actually past, may have good effects, such as improving international relations, and talking about non-persisting past injustices may have a positive educational function. However, she writes, “My point is simply that, only when it comes to HSI, addressing them is an obligation of justice and that fulfilling that obligation should have priority over, say, any apology or reparation for injustices that are really ‘past’ and [where neither victims nor perpetrators are alive]” (51n). So it is only when past wrongdoing gives rise to persisting structural injustice that contemporary obligations of justice exist. It is this claim that this article seeks to oppose.

One final point of characterisation is required. There are two ways in which we may think about who counts as the victims and perpetrators of historical injustice. Nuti speaks of whether the victims and perpetrators of the original act of injustice are still alive, but the complication with this is that some backward-looking accounts explicitly argue that we should not see the set of victims and perpetrators as being limited to those who were alive at the point of the commission of the original act of injustice. For example, Maeve McKeown has recently argued that structural injustice theorists should accept the force of backward-looking arguments relating to state liability over time (McKeown, 2021). This can arise by mechanisms other than the straightforward continuation or reproduction of injustice. Take, for example, the claim that a failure to rectify injustice should itself be understood as representing the perpetration of an act of injustice (Boxill 2003, Sher 2005, Butt 2009). One might argue on this basis that a continuing policy of non-rectification of injustice represents an ongoing perpetration of wrongdoing. Insofar as this is done by a collective rather than by a single individual there is potential for this perpetuation to continue across multiple generations, and so bring about a new set of perpetrators, and to have negative effects on individuals who were not alive at the time of the original injustice, and so could be understood as victims.

It is slightly unclear on Nuti's analysis how we should consider such cases, if we deem the original injustice to have, for example, impacted on material holdings in the present, but not in a way that gives rise to egalitarian concern in terms of HSI. If such instances do in fact fall within the scope of Nuti's project, her approach may not in fact answer the Impracticability Objection, as she understands it. I put these issues to one side. My focus instead is what might be thought to be the harder cases for the backward-looking approach, those where there is a much clearer sense that the injustice really is "past".

Let us stipulate, then, that we are dealing with past instances of wrongdoing where both perpetrator and victim are dead, and where there is no good reason, within Nuti's own account, to identify a significant persisting effect on present-day individuals of a harmful kind. It is striking that trying to find real world examples of this kind is not straightforward given the scope of Nuti's conception of HSI. She twice uses the example of past forms of injustice suffered by people of Irish descent, either in Ireland at the time of the Great Famine of 1845-49 or as migrants to the USA, though many would argue that harmful Irish stereotypes still persist in many countries, not least the United Kingdom (Walter 1999, Patterson 2020). But we can construct a stylised case. Suppose that a historian working in the archives finds papers from the nineteenth century which establish, conclusively, that an individual who died more than one hundred years ago was deliberately framed and convicted of a serious crime, such as murder. The individual in question was executed. Framing an innocent person is, obviously, a terrible wrong. Let us imagine that the individual in question had no children, and only distant relatives, whose descendants today are flourishing and know nothing of their historical connection. Memory of the individual in question, however, has persisted: many present-day people know of the crime, and in fact the wrongfully convicted individual's name has become a byword for a kind of gruesome killing. Does justice demand that the individual receives a posthumous pardon, and that the truth about what happened be widely known? Might duties to the deceased victim even go further, extending, for example, to reparative payments to their descendants?

It is helpful at this point to do a little more to unpack the Impracticability Objection. Here are three different ways in which it could be expressed. The first of these disputes whether it is possible to remedy any given instance of historic injustice. The second and third focus on the feasibility and demandingness of seeking to remedy the full set of instances of historic injustice. All three can be framed in terms of impracticality, but their theoretical underpinnings are distinct.

- 1) *Impossibility*: historic forms of injustice cannot give rise to any contemporary duties of reparative justice in the absence of persisting structural effects.
- 2) *Priority*: contemporary duties of reparative justice relating to persisting structural effects will always trump other forms of reparative duties.

- 3) *Triage*: given real world constraints of time and resources, we should prioritise reparative duties relating to persisting structural effects.

The strongest way in which one could argue that justice does not require redressing “actually past” injustice would be via *Impossibility*, if one literally thought that it was impossible to redress any such injustice. (Ought, after all, implies can.) The obvious way to make such a claim would be to point out that the victims and perpetrators in the cases we are discussing are, by definition, dead. If one believes that one cannot owe duties to the dead and that dead people cannot be harmed or benefited by our actions, or their projects or preferences realised or frustrated, then this view evidently has appeal. This perspective on the status of the dead does indeed have prominent theoretical advocates (Callahan 1987; Fabre 2008), and so must be addressed in a pluralist account that seeks to accommodate past-regarding duties.

There are three ways that such pluralists might respond. The most straightforward is to resist the claim that present-day actions cannot affect the dead in a morally relevant way. One might, for example, appeal to ideas of lifetime-transcending interests in such things as our reputation, our life projects, and the wellbeing of our loved ones (see Thompson 2002, 113-17; Stemplowska 2020). Certainly, in an everyday way, people seem to believe that the wishes and reputations of the dead are important, and that an injustice is done *to them* specifically if they are wrongfully transgressed – if the provisions of a will are not respected, for example, or in the aforementioned case of an unrectified wrongful conviction. This is not a knockdown argument, however. Perhaps such beliefs rest on error: perhaps we sentimentalise our affection for the deceased; perhaps we are unwilling to acknowledge the finality of death; perhaps the importance we attach to honouring and respecting the dead can be explained by exclusively forward-looking considerations. This is familiar philosophical terrain and there is no sign of theoretical consensus emerging. Second, one could maintain that there is some kind of impersonal moral value in redressing past injustice even when it does not have contemporary person-affecting consequences. This might follow, for example, if one believed that there was moral value in frustrating the intentions of moral wrongdoers, or in not allowing the consequences of their actions to persist. Philosophically this is (at best) no less controversial than the first response, and again, one can find prominent advocates on either side of the debate. But even if one is convinced by those who deny that it is possible to benefit or otherwise affect the dead, such that we cannot owe them duties, and who maintain that only person-affecting action can have moral value, it does not follow necessarily that such claims have no place in political discourse on reparative justice. The claim here is not that we should exclude such ideas because of their philosophical controversy, but rather that they have a place in public debate precisely because of this controversy. We might point to two characteristics of such claims. First, as stated, they are commonplace, certainly amongst the public and to at least some degree within the academy. Second, they are the sort of thing that people can reasonably disagree about, given what Rawls calls the “burdens of

judgment". This is important given the critical role that Nuti and others believe that public deliberation should have in determining the appropriate response to historic injustice (Amighetti and Nuti, 2015). So the third response is to maintain that past-regarding duties have a role to play in public discourse on account of the fact that so many people believe them to exist. People simply do care about past wrongs and past victims independently of the present-day structural implications of historic injustice, and this fact should be reflected in contemporary deliberation about reparative policy.

Confronting *Impossibility* is important within the wider sphere of structural injustice studies, and the positive case for past-regarding duties does depend on one of these three responses holding. (For what it is worth, my own view is that all three have force.) I will say more about this positive case towards the end of this article. But it does not seem that *Impossibility* is Nuti's view. While it is true that it is impracticable to do that which is impossible, the former does not really convey the full sense of the latter. So let us leave open the possibility that it can make sense to say we owe duties to the dead. Instead, we should look to the further two responses: *Priority* and *Triage*. Both seek to show which of the many apparent duties that arise from the past should be the subject of contemporary redress. *Priority* is the more austere of the two: it holds that we should always prioritise person-affecting reparative duties over non person-affecting reparative duties. *Triage* is more contingent on the particular circumstances of the present-day: given the seriousness of persisting HSI and limited capacity for redress, we should not be concerned with purely past-regarding duties, at least for the time being. Both can be expressed in terms of possibility and impossibility, but not in terms of the impossibility of mitigating *a given* instance of historic injustice, but rather the impossibility, or the undesirability, of seeking to mitigate *all* instances of historic injustice. The thought is that it would either be literally impossible to address all past forms of injustice, as doing so would exceed our powers, or it would be overly demanding to try to do so, as we have more pressing moral reasons to act in different ways. How should the defender of the claim that the past matters *per se* respond to these claims?

First, note that it is possible to assert either claim while accepting that "past" injustices do, or at least can, give rise to duties of justice in the present. Suppose, for the sake of argument, that we accept the (relatively strong) premise of *Priority*, and so agree that the moral importance of person-affecting duties arising from HSI takes up, in some sense, all the available room for contemporary reparative action. It would not follow that there are no contemporary past-regarding duties: just that other more pressing duties of justice have priority. If we accept that the existence of these other more pressing duties means that we should not act on purely past-regarding duties, it does not mean that purely past-regarding duties cease to exist, merely that they are not effective in the sense of compelling us to act, for now, in the present. There are different ways to characterise this situation: one might maintain that such duties persist as duties of justice in a *pro tanto* sense but do not give rise to cause for action in an all-things-considered sense given other more pressing duties of justice, or one might reserve the word "justice" to

describe the final set of obligatory actions. Even if one adopts the latter approach, this does not mean that the duties in question cease to exist, or to have normative importance. The situation where such duties are not fulfilled is less good, from the perspective of justice, than a situation where they can be fulfilled. The fact that they cannot be fulfilled should be a source of moral regret. One way to characterise the situation would be to view the non-fulfilment of these duties as, in Judith Jarvis Thomson's terms, a justifiable rights infringement (Thomson, 1977). Infringing the rights in question is justified in an all-things-considered sense, as a result of the fact that more pressing duties to living persons exist. But this fact is contingent – one could imagine a different world where these other duties did not exist, in which case the past-regarding duties would retain their force. Indeed, if one believes that the reasons why contemporary pressing duties exist are themselves the result of injustice, we might see the situation as representing a worsening of the wrong done to those who are no longer alive (which itself, potentially, gives rise to further reparative duties). One can also imagine future situations where there would no longer be extant pressing duties to contemporaries or to future generations, which would mean that past-regarding duties would come back into play. In summary, the fact that we believe that we have pressing duties to act in relation to contemporaries as a result of the persisting effects of HSI may mean that we should not act here and now to redress certain categories of past wrongs. But it does not follow from this that past-regarding duties of justice cease to exist – rather, they contingently lack action-guiding force.

The redundancy objection

Does any of this matter? It seems as if the advocate of HSI could accept such a line fairly readily, conceding that past-regarding duties are in fact duties of justice, but nonetheless maintain that the impracticability objection means that we should concentrate on those duties of justice which call us to action in the present-day. It might be claimed that the argument also suggests that we could act on past-regarding duties when doing so is literally costless, but it seems, if we accept the force of the impracticability objection, that this should be understood not only in terms of the material act of reparation, but of the opportunity cost of the effort and energy involved in bringing the reparations about, both with regards to political activism and state action. If we are to see past-regarding duties as action-guiding in the present-day, we need to do more to respond to *Priority* and *Triage*. It is now helpful to turn to Nuti's argument against adopting an exclusively forward-looking attitude in relation to historic injustice: the redundancy objection. From this perspective, past injustice is not compelling given a strong commitment to principles of present-day distributive justice. In a world where "opportunities and resources are more equally distributed... the unjust past would lose its significance" (17). Thus "according to the redundancy objection, focusing on the past is not necessary for creating a present and future just world, and it may even neglect other possible ways to address present disadvantages or mistrust issues" (18).

Nuti's response to the redundancy objection stresses the structural effects of some forms of past wrongdoing. "The unjust past (or, better, that remaining structurally present) cannot be superseded by present-based considerations of justice, because its presence (or, better, its new reproduction) deeply undermines the workings of contemporary institutions." (49) So to overcome grave contemporary injustice, such as police mistreatment of African American men, we must "tackle the present-past" (by, for example dissolving the racist stereotype that associates blackness with criminality) because the unjust nature of the past "creates the structural conditions that make systematic radical injustices possible" (50). In essence, Nuti's approach expands the understanding of structural injustice to incorporate far-reaching and often occluded ways in which the past shapes the present, and acknowledges that addressing such contemporary injustices will necessarily entail some kind of reckoning with the past. This is perhaps the most past-regarding account of structural injustice yet developed, yet there is still a real sense in which it is nonetheless forward-looking in its exclusive focus on contemporary and future sources of disadvantage. Really, at its heart, it is still an account of distributive justice – not in the narrow sense often associated with contemporary analytical theory, with a focus on the workings of the basic structure of society, but in a more profound way, incorporating anything that gives rise to social advantage and disadvantage, and with a particular focus on power relations between persons. This reflects a particular cut between distributive and corrective justice. The past certainly matters on Nuti's account, but it matters because of how it affects the present and future. So we do need to focus on the past to build a better future, and for this reason reparative justice is not redundant but essential, but that is because it is necessary to the pursuit of a just society. Corrective justice, then, is seen as instrumental in character – a necessary means to an end, certainly, but a means, rather than an end in itself, nonetheless.

I wholeheartedly endorse the claim that this kind of deep engagement with the past is necessary properly to understand and address the nature of contemporary disadvantage. The work of structural injustice theorists has greatly enhanced our understanding of the lasting depth and lingering hurt of the wounds of the past, and of the urgency of taking such enduring injustice seriously in the present. But this is not the only answer that can be given to the redundancy objection. It is also open to the advocate of backward-looking reparations to claim that the redress of historic injustice has a moral importance of its own, aside from its impact on forward-looking considerations of distributive justice. Crucially, this means that we need not accept that the pursuit of reparative justice in a wider sense, beyond the limits of HSI, must come at the expense of political projects to redress contemporary injustice. Giving a different response to the redundancy objection paves the way for a different response to the impracticability objection, and this, in turn, opens the door to a pluralist understanding of contemporary reparative politics.

To see how this works, consider a recent debate in the literature on reparative justice, concerning the obligations of the beneficiaries of justice. Some authors have argued that those who involuntarily benefit from the wrongdoing of others can come to have rectificatory duties, either to compensate the direct

victims of the wrongdoing in question (Butt 2009), or to disgorge the benefits, voiding their title and enabling redistribution to those most in need (Goodin 2013). This is known as the Beneficiary Pays Principle (BPP). One prominent line of critique of these claims, associated with writers such as Carl Knight (2013) and Robert Huseby (2015), has advanced what is effectively a version of Nuti's redundancy objection. Such authors argue it is a mistake to see the BPP as a distinct principle of backward-looking corrective justice, as it can instead be understood as a particular instance of a broader theory of distributive justice: luck egalitarianism, as developed by the likes of Ronald Dworkin and G.A. Cohen. On this view, advantages that accrue to the beneficiaries of injustice are examples of the workings of brute luck, and as such are subject to legitimate redistribution by the state as it pursues equality. On this account, to focus on benefits arising from wrongdoing specifically is to miss the bigger picture of the diverse ways that circumstances outside their control can affect agents' well-being. Rather than focusing on the victims of wrongdoing specifically, forward-looking egalitarians do better to take the harm caused by injustice into account when determining overall levels of advantage and disadvantage, with a view to compensating those who are disadvantaged for reasons outside their control. Knight, for example, writes that "it becomes less pressing to identify those who have benefited and lost out from... historical and ongoing injustices..., and more pressing to identify those who are advantaged or disadvantaged by differential brute luck, whether it by acts of injustice or natural misfortune" (2013, 598).

There are a number of ways in which advocates of the BPP can respond, but three are relevant here. There are three advantages to advancing political claims under the aegis of the BPP specifically rather than a more general principle of distributive justice, relating to the force of the claims in question, the parsimony of the underlying principles which support the claims, and the character of the agents with responsibility for satisfying the claims (Butt, 2014). The first argument maintains that there is a particular force to claims of corrective justice. On this view, redressing injustice is, all things being equal, more important than pursuing distributive justice: wrongful harms call on our conscience in a particularly pressing fashion, and so there may be a greater degree of moral urgency in seeking to compensate the victims of wrongdoing specifically than in alleviating the effects of luck in a broader sense. The second argument notes that basic principles of reparative justice are less controversial than luck egalitarian principles of distributive justice, which may have significant take-up within the political theory academy, but which are much more controversial in real world contexts where deliberation about political action actually takes place. It is striking to note that recent research based on psychological experimentation seems to support the idea that more people believe that innocent beneficiaries have special duties to victims of injustice than support the claim that this is also true of victims of bad brute luck more broadly (Lindauer and Barry, 2017). The third argument scrutinises the identity of the agents charged with effecting redress. Theoretical arguments about distributive justice are often framed in terms of states: the questions they typically address are those of the legal institutions that should be put in place and the actions that governments should take if progress is to be made towards a just distribution of benefits and

burdens. But not many agents have the kind of capacity that the state does to bring about structural change to effect distributive justice. Many of the situations where the BPP seemingly comes into play concern different kinds of agents, such as individuals, charities, or corporations. It is not at all clear that they have the same responsibility to pursue distributive justice as the demos as a whole, or as the state as the agent of the demos. Taking the three arguments together, what emerges is the idea that there are contexts where the BPP will have more force than broader principles of egalitarianism. Diffuse types of actors, including but not limited to democratic publics, may well be motivated to act on the basis of arguments of corrective justice when they do not take claims of distributive justice to have the same force.

A pluralist approach to reparative justice can make room for past-regarding duties in a similar fashion. The real worry lying at the heart of the impracticability objection is that the pursuit of reparations might come at the expense of the redress of HSI. If one affirms *Priority*, this is a trade-off that one cannot condone: it cannot be right to pursue non person-affecting duties when person-affecting duties go unfulfilled. *Triage* is less stark, but nonetheless holds that given current limited resources and attention, it makes sense to focus attention on enduring injustices that impact the present. But the insight that comes from the debate over the BPP is that such trade-offs are not inevitable, as the reparation of historic injustice is not a zero-sum game. Nuti's concern, recall, is that, without a way to limit the range of historic wrongs that call for contemporary remedy, "redressing past injustices would divert our attention, energy and resources from present injustices". It is not immediately obvious how we should understand "our" here – perhaps we should think of the state, which we might think has duties of justice to the current victims of structural injustice, or of progressive actors within the state (and across different states) who seek to direct the state to act in such a fashion, or who otherwise do what they can to remedy contemporary injustices. We could imagine a governmental agency with a fixed budget and ask how it should deploy its resources, and in such a context it may well make sense to think that its sole focus should be on remedying HSI. But a pluralist account of historical injustice can concede that addressing enduring harm may be the most important job for particular actors, whilst maintaining that there is a role for past-regarding duties in two initial contexts (with a third to follow). The first is when backward-looking concerns of corrective justice have a motivating effect on contemporary actors, meaning that they are more willing to support reparative policies, or to commit more resources to reparative policies, than would otherwise be the case. If, for example, people think that it is important to honour the memory of the dead, or see that the intentions of past wrongdoers do not come to fruition, they may be more willing to support reparative policies than if the issue was framed purely in terms of the past wrong's persisting contemporary effects. The second is when actors who would otherwise not have general duties to address HSI have particular corrective duties to redress past injustices. This might apply, for example, to certain individuals or particular sorts of institutions, such as universities, who might possess contemporary remedial responsibilities owing to their specific pasts, but who would not otherwise be under a general

duty to address general HSI (or for whom such a general duty was significantly limited by, for example, a personal prerogative to pursue their own interests). In the former case, the consequences of fulfilling past-regarding duties and HSI-based duties coincide. In the latter case, past wrongs are being rectified without necessarily having an effect on HSI, but with no deleterious consequences for the political struggle against HSI. In both cases, the set of persons and the range of resources available to pursue reparative projects is expanded, not limited, by including past-regarding duties. There is space to fulfil duties to the dead without having a negative impact on the living.

Such a response suggests that neither *Priority* nor *Triage* need be decisive against the claim that past-regarding duties might in fact be action-guiding in the present, when they can be pursued without cost to the redress of HSI. It also goes some way to addressing Nuti's concern that the sheer scope and variety of historic injustice makes the redress of past wrongs impractical, by maintaining that particular individuals and institutions may possess specific backward-looking duties that are not shared by the wider community as a whole. It was previously claimed, in response to *Impossibility*, that the fact that past wrongdoing has not been rectified is an injustice, and that the world would be a more just place were reparation to occur. It was further suggested, following Stemplowska, that the amount of time that has passed since the wrongdoing in question does not in itself make a difference to the magnitude of the injustice in question. So equivalent past wrongs matter equally from the perspective of justice. It does not follow from this, however, that all past wrongs can be equally easily addressed. It will generally, though not necessarily, be the case that it is easier to redress relatively recent wrongs, given, for example, the plausible claim that people care less about future states of affairs as more time passes after their deaths. We will also likely have better knowledge and understanding of relatively recent people and events (Stemplowska 2020, 57). So if a given agent was determined to seek to redress past wrongdoing, in most cases they would be well advised to focus on the relatively recent rather than the distant past. But it does not follow from the fact that someone could redress past injustice that they have a present-day duty to do so. Any kind of claim about backward-looking duties of reparative justice will need to explain the nature of the particular link between past events and present-day agents which give rise to the duties in question. Different writers have provided different candidates for such a link: as we have seen, some, for example, argue that benefiting from specific instances of past injustice can give rise to contemporary reparative duties. Others have put forward arguments grounded in some idea of ongoing responsibility, often understood in terms of the continuing identity of the corporate agent responsible for the original wrong. Nuti's argument in Chapter 9 of *Injustice and the Reproduction of History* shows that she is sympathetic, under certain conditions, to such a view. But again, it matters if the agent in question is a state, or a different kind of agent. It is at the state level that the most acute dilemmas arise in terms of choosing between worrying about the past or making things better for the future, as many believe that it is the state's job, albeit at the behest of its citizens, to lead the way in creating a just society, by, for example, dismantling structural injustice. Other agents may have various justice-related duties: individuals, for example, surely

have duties not to cause wrongful harm to others, it is commonplace to hold that they have duties to promote and support just institutions, and some believe that they can even have some kind of personal responsibility to promote distributive justice in their day-to-day lives (Cohen, 2000). But we also typically believe that these duties are limited, and that such agents have significant scope to devise and pursue their own projects within the limits of their justice-based duties, rather than thinking that considerations of justice give a determinate answer to how they should act in all cases. It is in this discretionary sphere of action that agents can be said to have distinct past-regarding reparative duties that need not conflict with the aim of redressing historical-structural-injustices.

Past-regarding duties and the integrity of reparation

In making the case for the accommodation of past-regarding duties of reparative justice, I have deliberately engaged with what I take to be the most challenging cases for such duties: those that Nuti characterises as “actually past” in terms of their absence of problematic persisting effects on either victims or perpetrators. As we have also seen, however, finding real world cases where it is uncontroversial to think that the injustice actually is “actually past” is not straightforward, given the richness of Nuti’s account of HSI. The third context where past-regarding duties have force on a pluralist approach is when they are necessary for the integrity of a given reparative project. Let us conclude by considering a real case.

The biography of Alan Turing is well known. A brilliant mathematician and germinal figure in the development of computer science, he played a key role in the codebreaking work of British Intelligence at Bletchley Park in World War II. He was convicted of “gross indecency” in 1952 after acknowledging, in the course of a police investigation into a burglary at his house, that he was involved in a homosexual relationship. He was given a choice between imprisonment, or probation accompanied by a mandatory programme of hormonal injections of synthetic oestrogen, and chose the latter. He was found dead in 1954, having apparently committed suicide. In 2009, following a public petition, the British Prime Minister Gordon Brown issued a government apology. This acknowledged Turing’s contributions to his country, noting, “The debt of gratitude he is owed makes it all the more horrifying... that he was treated so inhumanely.” It concludes by saying, “...on behalf of the British government, and all those who live freely thanks to Alan’s work, I am very proud to say: we’re sorry. You deserved so much better.”¹ In 2013, again following a public campaign, Turing was given a posthumous royal pardon.² Finally, in 2016,

¹ The full text of Brown’s apology is at <https://blog.jgc.org/2011/07/complete-text-of-gordon-browns-apology.html>

² BBC News, 24/12/2013: “Royal pardon for codebreaker Alan Turing”, <https://www.bbc.co.uk/news/technology-25495315>.

65,000 gay and bisexual men convicted of now-abolished sexual offences in England and Wales, 15,000 of whom were still alive, received pardons under a statutory amendment dubbed “Turing’s Law”.³

The way that Turing was treated was deeply wrong: a man’s life was destroyed on account of social attitudes to homosexuality that we now find morally reprehensible. It seems clear that the case for retrospective pardons for men convicted of homosexual activity falls within the remit of Nuti’s account of HSI, given the myriad forms of oppression and disadvantage still faced by members of the LGBTQ community, including, but not limited to, those who were convicted of such crimes but were still alive. So a strong case could have been made within the terms of Nuti’s argument for a reparative policy of retrospective pardons. It seems eminently plausible that this would further the cause of justice in the present and future, and so the promotion of such a policy could be presented as a duty of justice. Something essential is missed out, however, if this is understood as something which is owed only to the present and future members of the LGBTQ community, and not to the particular individuals who were pardoned of their purported crimes. One can think that the original proposal derived at least some of its urgency and force from its potential to further justice in the present, but still maintain that a duty was owed to Turing himself, and that fulfilling this duty was an important – and perhaps the most important – point of the process. Certainly, this claim played an important role in popular discourse around the case. Reparative interventions that seek to redress HSI may be motivated, to some degree, at least, by forward-looking concerns of combatting inequality, but in some cases, if they are to be meaningful and effective, they need to have an explicitly past-regarding dimension. They need to make reference to moral reasons for action that attach not only to present-day individuals, but to actual victims of past injustice – even if they are no longer alive. Indeed, there is a sense in which an approach grounded solely in concerns of HSI instrumentalises the victims, who are employed as means, rather than as ends in their own right. We might even think that this represents a further form of injustice. The integrity of this kind of reparative process, then, necessarily requires the inclusion of past-regarding duties.

Conclusion

In his essay “Race and Global Justice, Charles Mills argues that the pursuit of distributive justice, however extensive, cannot succeed in meeting the requirements of reparative justice in relation to colonialism. He asks us to suppose that, at a global level, governments or international bodies “were won over by egalitarian arguments or a Rawlsian commitment to remedying the situation of the worst-off, and transferred resources to black Americans who are the descendants of slaves, or to Australian Aborigines suffering from their ancestors’ expropriation, or to Third World peoples impoverished because of the historic colonization of their country.” Such people, he suggests, “would have arguably not gotten their

³ BBC News, 20/10/2016: “Alan Turing law’: Thousands of gay men to be pardoned”, <https://www.bbc.co.uk/news/uk-37711518>

due. For reparations to be made, for the wrong against them and their ancestors to be corrected – repaired, made good, rectified – what is required is not merely a physical transfer of resources but a transfer taking place under a description and on a normative foundation that make it a certain kind of action and not another kind of action.” Forward-looking distributive justice approaches, he writes, fail “to target the actual wrong involved”. (117) This article has argued that a proper reckoning with grievous acts of historic injustice requires doing what we can to redress the “actual wrong involved” understood in its full sense, not only insofar as its effects linger or are reproduced in the present-day, but also in terms of what is owed to those who did not survive its perpetration. A pluralist account of reparative justice can prioritise the rectification of historical-structural-injustice but still make room for past-regarding duties when backward-looking concerns of corrective justice have a motivating effect on contemporary actors, when actors who would otherwise not have general duties to address HSI have particular duties to redress past injustices, and when consideration of what is owed to the dead is necessary for the integrity of the reparative project in question. We can accept that our most important duties of justice take the form of striving against present-day oppression and inequality, but nonetheless commit to doing what we can to right the wrongs of the past, for the sake of both the living and the dead. The redress of historic injustice must not leave out the victims themselves.

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