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Source: *Ethics*, Vol. 112, No. 1 (October 2001), pp. 114-135

Published by: The University of Chicago Press

Stable URL: <http://www.jstor.org/stable/10.1086/339139>

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# Historical Injustice and Reparation: Justifying Claims of Descendants\*

*Janna Thompson*

I

The history of humankind is a tale of unrequited injustice. People have been killed, tortured, cheated, enslaved, exploited, and dispossessed, and no reparation has ever been made either to them or their descendants. The fact that there has been no redress for so many historical injustices is a disturbing or even terrible fact about our world. But what, if anything, is owed to those now living for wrongs committed long ago?

Claims for reparation for historical injustices can be put into three main categories. The first consists of claims of individuals who were victims of an injustice committed many years ago. The compensation claims now being made by Aboriginal Australians who were abducted from their families when they were children come into this category. So do requests for compensation of American and Canadian Japanese who were interned during World War II and the demands for the return of their possessions of those dispossessed by communist regimes in Eastern Europe.<sup>1</sup> That individuals ought to be recompensed for the injustices they have suffered is a basic moral and legal idea. If an injustice was done long ago then it may be difficult to find an appropriate remedy or to determine who is responsible for reparation. Nevertheless, it seems

\* I am grateful for the critical comments of philosophers at La Trobe and Melbourne Universities, especially Robert Young and John Campbell, and of the editors and reviewers of *Ethics*.

1. For discussions of claims made by indigenous Australians for compensation for the injuries they received as the result of the governmental policy of removing half caste children from Aboriginal parents, see Elliott Johnston, Martin Hinton, and Daryle Rigney, *Indigenous Australians and the Law* (Sydney: Cavendish, 1997). The case for reparations for Japanese Americans is argued by Shirley Castelnovo, "With Liberty and Justice for Some: The Case for Compensation to Japanese Americans Imprisoned during World War II," in *Japanese Americans: From Relocation to Redress*, ed. Roger Daniels, Sandra Taylor, and Harry Kitano (Seattle: University of Washington Press, 1991). Both the U.S. and Canadian governments did offer token compensation to those actually interned, but not to their heirs.

*Ethics* 112 (October 2001): 114–135

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reasonable that individuals should be able to make reparative claims for injustices done to them long ago, particularly if political or social circumstances have prevented them from doing so at an earlier time.

In the second category are reparative claims made by members of communities—tribes, nations, states, corporations, and other intergenerational associations—for injustices done to the community itself, such as seizing communal lands, breaking agreements, or undermining communal life. The land claims of indigenous communities in Australia, New Zealand, Canada, and the United States belong to this category, as do the historical grievances of nations, or the claims made by states for territory that was taken from them by an act of aggression.<sup>2</sup> Particular demands made by communities may be disputed, and we may be uncertain what compensation would be appropriate. Nevertheless, claims of this kind seem to be perfectly legitimate so long as we accept that states, tribes, and corporations should, like individuals, be able to demand reparation for wrongs done to them.<sup>3</sup>

In the third category are claims for restitution or compensation made by individuals who are the descendants of victims of injustice. In law these claims may take the form of a class action of people whose forebears were done a similar injustice. But people in this class are not representing a community or making demands on behalf of a community. They are making demands on their own behalf as people whose forebears suffered injustice. Bernard Boxill argues that descendants of slaves are entitled to receive reparation for the exploitation of their ancestors.<sup>4</sup> Boris Bittker's consideration of Black reparations begins with the question of what is now owed to African Americans for the unpaid labor of their ancestors.<sup>5</sup> Anthony Gifford argues that continental Af-

2. For particular examples, see Johnston; Andrew Sharp, *Justice and the Maori: The Philosophy and Practice of Maori Claims in New Zealand Since the 1970s*, 2d ed. (Oxford: Oxford University Press, 1997); Wilcombe E. Washburn, *Red Man's Land/White Man's Law: A Study of the Past and Present Status of American Indians* (New York: Scribner's, 1971).

3. States and other such associations are not real individuals, and their members sometimes object to being burdened with the responsibility for making recompense for injustices committed by past generations. I discuss this issue in "Historical Obligations," *Australasian Journal of Philosophy* 78 (2000): 334–45.

4. Bernard Boxill, "Morality of Reparation," *Social Theory and Practice* 2 (1972): 113–20. In 1969 James Forman, a Black Panther leader, demanded that Christian churches and Jewish synagogues pay \$500 million in reparation to African Americans for the historical role these organizations played in exploiting their forebears. This action gave rise to a discussion about Black reparations to which a number of philosophers contributed. The Black reparations movement has not disappeared. The awarding of damages to Japanese Americans has resulted in renewed demands from African Americans. For an account of these developments and a defense of reparation for slavery, see Rhonda V. Magee, "The Master's Tools, from the Bottom Up: Responses to African-American Reparations Theory in Mainstream and Outsider Remedies Discourse," *Virginia Law Review* 79 (1993): 876–92.

5. Boris Bittker, *The Case for Black Reparations* (New York: Random House, 1973), p. 8.

ricans, as well as the descendants of African slaves, can make a good case for reparations for the injuries flowing from “the 400-years-long atrocity of the slave system.”<sup>6</sup> Heirs as well as victims are making claims against institutions which benefited from Nazi persecution.<sup>7</sup>

The problem with claims of this third kind is that the individuals to whom injustice was done are different from those who are now demanding reparation. It is a principle basic to reparative justice—one that I will call the “Exclusion Principle”—that individuals or collectives are entitled to reparation only if they were the ones to whom the injustice was done.<sup>8</sup> Sarah cannot be recompensed for an injury done to Sam. If Sam is beyond the reach of reparation then no one is entitled to demand reparation for the wrong done to him. So if descendants are to make a legitimate claim for reparation for a historical injustice then they must demonstrate that it has violated their rights or harmed their interests. There are two ways in which they might do this. The first is to claim that they have themselves been injured by the injustice—that they suffer from its effects. The second is to argue that their status as heirs of the victims gives them an entitlement to claim possessions that were wrongly expropriated from their forebears. In the next section I will examine these strategies showing that common defenses of historical entitlements of descendants are weak or unsatisfactory. This does not mean that claims of descendants should be rejected. I will introduce in the remaining sections a perspective from which these strategies can be more successfully pursued.

## II

Injustice can cast a long shadow. It injures not only the victims. Descendants of victims are likely to lack resources or opportunities that

6. Lord Anthony Gifford, “African Reparations Movement: The Legal Basis of the Claim for Reparations” (a paper presented to the First Pan-African Congress on Reparations, 1993, <http://the.arc.co.uk/arm/legalBasis.html#3>).

7. For example, Swiss banks have agreed to settle legal claims relating to World War II era conduct of Swiss banks, businesses, and government agencies, and heirs as well as victims of Nazi persecution who may have claims are invited to apply for settlement. See <http://www.swissbankclaims.com>. For details of the accusations against Swiss banks, see “Court TV Library: Miscellaneous Cases—Survivors of the Nazi Regime Sue Swiss Banks for Seized Assets,” 1999, <http://www.courttv.com/legaldocs/misc/naziswiss.html>.

8. It is also part of the Exclusion Principle that only perpetrators, whether these are groups or individuals, should be punished for injustice or required to make recompense. Demands for reparation for historic injustices are often thought to raise the issue of how individuals now living can be made responsible for the acts of their ancestors or predecessors. However, most demands for reparation, including those for reparation for slavery (discussed below) are directed to intergenerational groups like churches or national societies. I will argue in Sec. IV that there is good reason for assigning responsibility for reparation to such groups rather than to individuals who happen to be descendants of perpetrators or beneficiaries of injustice.

they probably would have had if the injustice had not been done or they are adversely affected in other ways by the suffering of their parents or grandparents. Justice as equity might require that they be compensated for being born into a disadvantageous social position. Humanitarian feelings may motivate us to try to alleviate their suffering. The issue is whether they are owed reparation.

Reparative claims that hinge upon a causal relation between an injustice and injuries to descendants face serious difficulties. One of these is that injustice not only affects how people fare. It can also determine what people there are. African Americans who presently exist would never have been born if their ancestors had not been abducted and forced into slavery. But it doesn't seem to make sense for a person to demand what she would have obtained if the injustice had not been done if, in this contrary to fact circumstance, she would not have existed at all. George Sher deals with the problem by saying that descendants of victims of injustice ought to be restored to the level of well-being that a related group of persons would have had if the injustice had not been done.<sup>9</sup> The descendants of slaves would presumably be compared with those who would have been the present descendants of these ancestors in a world where they had not been enslaved. The problem is not merely that it is impossible to determine the level of well-being of these possible descendants. Since many things would have happened to these alternative family lines between then and now, it is difficult to understand how these possible people could be related in a relevant way to actual descendants.

Even if this difficulty is resolved, or simply put aside, further problems await those who appeal to the causal relation between a past injustice and present harms to justify claims of descendants. The disadvantages that descendants presently suffer are the result of a long chain of causes reaching back to, and through, more than one historical injustice. The causes include the choices and deeds of existing individuals and those of people who existed between the time of the injustice and the present. Sher thinks for this reason that the claims of descendants of victims of more recent historical injustices have more validity than claims based upon ancient injustices. Claims become more plausible the more that present disadvantages can be seen to be the "automatic effect of the initial wrong act."<sup>10</sup> This criterion, when more closely ex-

9. George Sher, "Compensation and Transworld Personal Identity," *Monist* 62 (1979): 378–91. He has in mind cases where the injustice was done not long before an individual was conceived. It seems plausible to compare the well-being of the child born with that of a child that would have been born to these parents in a world where the injustice had not been done.

10. George Sher, "Ancient Wrongs and Modern Rights," *Philosophy & Public Affairs* 10 (1981): 3–17, p. 13.

amined, threatens to undermine many of the reparative claims of descendants of victims of injustice.

Sher does not tell us what counts as an “automatic effect,” but two conditions seem necessary and jointly sufficient. An automatic effect of an injustice is, first of all, a causal effect for which the perpetrator can reasonably be held responsible. It is an inevitable, natural, or difficult to avoid result of the injustice. Either the perpetrator intended his or her act to have this effect or he should have been able to foresee that the effect would result from his act or failure to act. The second condition is that there is no independent action or failure to act to which the effect should be attributed. An act fails to be independent when its intent or meaning cannot be understood without reference to the injustice. The scope of an injustice consists of those harms and disadvantages that are its “automatic effects.” If a factory worker is killed as the result of the negligence of his employer the grief and the economic disadvantages the death causes to his wife and children are within the scope of the injustice. These injuries, though not something the employer intended, are the foreseeable effects of the death. The family’s economic loss is made inevitable by the death. The widow’s grief is a natural response to the tragedy. The harms are not attributable to the independent actions or omissions of any other agent. The action of the person who told the widow that her husband had been killed was the more immediate cause of her grief, but her grief cannot be attributed to it. Bringing this message was not an independent action. Its intent was to tell her about the killing, and it had its effect because that’s what it did.

Not all of the harms caused by the injustice are within its scope. Suppose that the son of the family, angered by his father’s death, rebels against authority, joins a gang and cripples a shopkeeper while robbing a liquor store. This harm is an effect of the unjust killing of his father—and it probably wouldn’t have happened if the injustice had not been done—but it is not within its scope. It is not an effect that the employer or anyone else could have foreseen. Even if it had been predicted that the son would commit some antisocial action, the harm he did is more plausibly attributed to his choices and actions, or perhaps to the failure of teachers or family members to curb his destructive behavior.

Demands for reparation for an injustice become less plausible when injuries are outside its scope. The problem is illustrated by Bittker’s case for Black reparations. Bittker thinks that it is not plausible for African Americans to demand reparation for slavery because slavery, he says, is not the injustice responsible for the present disadvantages suffered by African Americans. After the Civil War, reforms in the Southern states, he thinks, were starting to bring about a society in which former slaves

could take their place as free and equal citizens. If these reforms had been allowed to continue the harms caused by slavery would eventually have been undone and there would not now be any case for reparation. However, history did not follow this course. White supremacists and conniving governments brought the reforms to an end and introduced a system of oppression and segregation. It is this system, Bittker argues, to which present (for him, the early 1970s) disadvantages suffered by African Americans should be attributed.

However, driven by this reasoning, he cannot stop short of assigning the blame to present or recently discontinued policies of discrimination or segregation. The system of oppression adopted by Southern states after the Civil War could have been discontinued by later generations or by earlier actions of the federal government. If this is so, then the harm caused by the continuation of policies that suppressed Black Americans in the 1950s and 1960s cannot be regarded as an automatic effect of their introduction. The injustice for which African Americans deserve reparation is the persistence of segregation policies into recent times. Bittker ends by advocating compensation for individuals who themselves have been harmed by segregation. Historical injustices like slavery or the actions of Southern white politicians after the Civil War have dropped out of the picture as far as his defense of reparative claims is concerned, and with it the idea that people are owed reparation as descendants of victims of injustice.

The collapse of demands for reparation for harm done by historical injustices to demands for reparation for present or recent injustices seems inevitable. For once we recognize that present harms are outside the scope of more ancient injustices then it seems that only later links in the chain of injustices are going to be a suitable focus for reparative demands—those wrongs to which present injuries can be attributed. Almost inevitably those will be the injustices that were done by and to existing people. It is true that a person may be deeply affected by the unjust treatment of her forebears. Thinking about what they suffered may cause her to suffer. But the connection between the injustice and her suffering seems more like the relation between the employer's negligence and the son's angry actions than between the unjust killing and the widow's grief. If we are to attribute such psychological suffering to a historical injustice then we have to explain how it can be regarded as the automatic effect of this injustice—rather than the result of an individual's psychological susceptibilities or her particular upbringing.

The second strategy for justifying reparative claims of descendants of victims of injustice looks more promising because it makes entitlement depend on inheritance rather than causation of harm. What I have called the Exclusion Principle prevents individuals from inheriting an entitlement to reparation from their forebears. However, they can

have an entitlement by virtue of being heirs to possessions that would have been theirs if the injustice had not been done. By being deprived of their inheritance the injustice has violated their right to possession. This approach not only allows individuals to make claims for reparation for historical injustices. It allows them to do so even if they have not been harmed in any other way than by being deprived of their inheritance. Moreover, it provides a simple way of solving the problem of existence. Their claims depend on their being the heirs of their forebears—not on being the particular individuals that they are. The fact that they might not have existed if the injustice had not been done does not seem to undermine their claim.<sup>11</sup>

However, the approach puts limits on what kinds of injustice can be the subject of claims and on what can be demanded. Claims have to be confined to demands for what Robert Nozick calls “rectification”—the restoration of expropriated possessions or the provision of an equivalent for these possessions. Descendants can claim nothing in reparation for the murder, torture, abduction, or maltreatment of their forebears, for the disrespect shown to them as persons, however large these injustices may loom in their thoughts about the past. Indeed reparation as rectification makes no distinction between dispossession caused by injustice and dispossession that results from a mistake—a belief that something was unowned when this was not so. Rectification misses what Boxill claims is an important part of reparation—“an acknowledgment on the part of the transgressor that what he is doing is required of him because of his prior error.”<sup>12</sup> The demand for acknowledgment of injustice or apology that is so central to many demands for reparation cannot be justified by an appeal to rectification.

Nevertheless, many reparative claims do involve a demand for the return of possessions expropriated from forebears or compensation for expropriation. As Bittker suggests, the demand for reparation for slavery can be interpreted as a demand for compensation for wrongful expropriation of the fruits of labor. So if descendants can obtain rectification for past injustices most would regard this as a good, if not ideal, result. The difficulty is establishing that they do have a right to rectification. To do this we not only have to defend rights of possession and inheritance but also establish in particular cases that the forebears rightly possessed the property being claimed and that the descendants would have inherited it if the injustice had not been done.

Let us assume for the sake of argument that individuals have a right of possession over goods rightly acquired, a right to transfer their pos-

11. Stephen Kershnar makes this point in “Are the Descendants of Slaves Owed Compensation for Slavery?” *Journal of Applied Philosophy* 16 (1999): 95–101.

12. Boxill, p. 118.

sessions to others, and a right of rectification for unjust expropriation. We need not suppose that right of possession gives an individual an unlimited right to use his or her property as she pleases, excluding all others, or that it makes her immune to redistributive requirements. We need not suppose that right of transfer exists for everything she possesses or that it cannot be constrained by other moral considerations, or that the right of rectification requires that her heirs receive, or be compensated for, everything that she would have given them. We do need to suppose that these entitlements, whatever they turn out to be, resist extinction—in particular that heirs retain a right to at least some part of what they would have received if the injustice had not been done, despite the passage of time, changes of circumstance, and requirements of distributive justice.

The problem is that if these rights are completely resistant to extinction then many of the claims of descendants of victims of injustice will be undermined. For in many cases forebears possessed what they did only because of a previous injustice—the dispossession of earlier owners and the developments that occurred because these owners were dispossessed. Nozick, who makes right of possession and transfer relatively immune from extinction, throws up his hands at this problem and suggests cleaning the slate by organizing society to provide benefits to the least well off.<sup>13</sup> This is no help to descendants of victims who are not among the least well off or who think that they ought to receive reparation for injustices done to their forebears and not merely compensation for their poverty. On the other hand, if entitlements are not all that immune to extinction, if we allow that they can be extinguished by time or change, then this may also undermine reparative claims.

Jeremy Waldron argues that historical injustices are indeed superseded by time and change and that reparative entitlements are liable to wither away. This contention is supported, first of all, by what he thinks is the reason for recognizing a right of possession in the first place. The most plausible basis for a right of property, he says, is the role possessions play in an individual's life—the way in which our projects and plans depend upon them. Expropriation is unjust because it undermines our activities and plans. But descendants of victims cannot have built their life or plans around a possession that they don't have.<sup>14</sup> Their claim seems inherently more tenuous.

However, Waldron's primary reason for thinking that historical injustices are superseded by time is that descendants who demand what they would have received from their forebears if the injustice had not

13. Robert Nozick, *Anarchy, State, and Utopia* (New York: Basic, 1974), p. 231.

14. Jeremy Waldron, "Superseding Historical Injustice," *Ethics* 103 (1992): 4–28, pp. 18–19.

been done have no way of establishing what this is—if anything at all. The difficulty, he thinks, is not merely epistemological. Where human choice is involved there is no fact of the matter. If victims of injustice had not been dispossessed they may have disposed of their possessions in some other way. They may have gambled them away, given them to someone else, or used them for their own projects. The more time passes, the more choices that could have been made, the greater the uncertainty.<sup>15</sup>

There are two ways of interpreting Waldron's indeterminacy thesis. According to the first, there is no answer to the question of what descendants would have got if the injustice had not been done, and thus nothing on which they can base their claims. Guesses, he says, have no moral authority.<sup>16</sup> The thesis would apply as much to claims for rectification of more recent historical injustices as to more ancient ones—indeed it is likely to apply to the demands of an individual for rectification for injustices done to him in an earlier part of his life. The second more plausible interpretation allows that we can assert counterfactuals about human actions and choices on the basis of evidence but insists that as time passes and possibilities for choice multiply, our evidence becomes less conclusive.<sup>17</sup> The issue then becomes one of onus of proof. Does it rest on those who make a claim for rectification or those who oppose the claim? Waldron seems to accept that it rests on those who make the claim—perhaps because of what he calls the “contagion of injustice”—the ramifications over time of the effect of an injustice on people's lives, especially the lives of innocent third parties. His reasons for supporting a right of possession count against claims that threaten to undermine the projects and plans of those who are not to blame for historical injustice.

These difficulties encountered by claims for rectification by descendants of victims of injustice do not necessarily defeat all of them. However, they put substantial barriers in the way of reparation for historical injustices of the third kind. Those who want to support the claims of descendants need to find a way in which this can be done. The position that I will present and defend interprets the reparative claims of descendants as being more like claims of the second kind—the claims of communities—than they first appear.

15. *Ibid.*, pp. 8–9.

16. *Ibid.*, p. 10.

17. A. J. Simmons, “Historical Rights and Fair Shares,” *Law and Philosophy* 14 (1995): 149–84, p. 178, argues that it is reasonable to make conservative judgments about what would have happened if an injustice had not been done.

## III

Those who claim reparations for historical injustice are not merely individuals who happened to have been harmed or who might have been the recipients of possessions or benefits. They are the descendants of the victims of injustice. They are in a special relation to those to whom the wrong was done. Highlighting this relationship, I suggest, will enable us to understand why they have a right to an inheritance and, in so doing, will justify some of their reparative claims. By emphasizing the relation between individuals—in this case, descendants and their forebears—rather than the relation between individuals and their property, it may also be able to take us beyond the limits of a theory of reparation as rectification.

John Rawls, in *A Theory of Justice*, adopts a perspective that can, with some modifications, provide a starting point for such a theory. He says that those in the original position who are determining principles of justice for their society could be thought of not simply as individuals but as representatives of “family lines”: “The parties are thought of as representing continuing lines of claims, as being so to speak deputies for a kind of everlasting moral agent or institution. They need not take into account its entire life span in perpetuity, but their goodwill stretches over at least two generations.”<sup>18</sup>

There are two justifications for this perspective. One is that a theory of justice for an intergenerational society must encompass relations between generations as well as relations between contemporaries. Rawls makes use of the perspective of representatives of family lines when he reasons about the obligations of members of a society to future generations. Because such individuals care about their children and grandchildren they will be predisposed to accept a collective obligation to save and pass on resources to their descendants.<sup>19</sup> Rawls is here grounding an inheritance right possessed by individuals by virtue of their being members of a political society—one that in this case imposes an obligation on their forebears to pass on to them a share of socially created resources. The second reason (though not presented by Rawls) is the central role played by the family in the moral and psychological development of children and, thus, in the perpetuation of just institutions.<sup>20</sup> Insisting that principles of justice must be approved by representatives of family lines is a way of ensuring that a respect for relationships that perform this vital function is built into the basic structure of a just society.

A reading of Rawls that emphasizes the role of representatives of

18. John Rawls, *A Theory of Justice* (Cambridge, Mass.: Harvard University Press, 1971), p. 128.

19. *Ibid.*, pp. 284 ff.

20. See Rawls's discussion of moral development, pp. 462–67.

family lines may seem perverse, even retrograde. It departs from the usual assumption that Rawls bases his theory of justice on the reasoning of disinterested individuals who have no essential social ties and no knowledge of their idea of the good, and it seems to take for granted relations that ought to be subjected to criticism. However, ideas of the good are not absolutely excluded from Rawls's original position, and the above considerations provide reasons for including values possessed by representatives of family lines. We do not have to suppose that these representatives are "fathers of families," as Rawls has it. They can be parents or even uncles and aunts. We do not have to assume that families are nuclear families, or even that families, as we know them, have to exist. But we do have to assume the value of loving and authoritative relations between adults and children that perpetuate themselves through the generations. I will simply assume in my application of the Rawlsian perspective that parent-child relations in existing families ought to be valued—at least until better arrangements come along.

Establishing from the perspective of representatives of the family lines that inheritance should be accepted seems like a straightforward task. Consider the impassioned declaration of Loren Lomasky: "Confiscatory inheritance taxation runs roughshod over the deceased's interest in the ends his property will serve. . . . It is an especially cruel injury because it deprives the dead of one of their last opportunities for securing the goods that they value. The dead can no longer offer loved ones their advice, their encouragement, sympathy in times of hardship, and joy when things go well; all they can do is pass on worldly goods to intended beneficiaries. To be robbed of that opportunity is to have one's ability to exercise agency sharply curtailed."<sup>21</sup> Lomasky is concerned with individuals as project pursuers. But the interests of these agents are likely to overlap with the interests of representatives of family lines who would surely make the same kind of case for being allowed to benefit their descendants.

However, reasoning behind the veil of ignorance may give them second thoughts. Why should someone who thinks that she and her family may be among the least well off support the ability of the wealthy to keep their resources in the family? There are several ways of answering this question.

"The unequal inheritance of wealth is no more inherently unjust than the unequal inheritance of intelligence," says Rawls. The important thing is that these inequalities satisfy the Difference Principle—that they

21. Loren Lomasky, *Persons, Rights, and the Moral Community* (New York: Oxford University Press, 1987), p. 270. Lomasky implies that the dead have interests. One of the advantages of the approach to inheritance and reparation that I adopt is that it does not ascribe interests to the dead.

are to the advantage of the least well off.<sup>22</sup> Allowing people to provide some benefits for their descendants seems likely to satisfy this principle. For the sake of their families people work hard, save, invest and protect their assets, and thus benefit others in their society. If they were not allowed to provide any inheritance to their descendants they would have less reason for doing these things. A society might adopt other means of achieving socially desirable results—tax incentives to encourage investment, for example. But as a general rule it is likely to be more efficient, and less restrictive of individual liberty, for a society to make use of motivations that most people already possess—especially since inequalities that go beyond what can be justified by the Difference Principle could be remedied by inheritance (or other) taxes.

This familiar reason for favoring inheritance is not, it seems to me, the most important. The perspective of representatives of family lines resists treating individuals as units of production who just happen to have particular motivations (and might be induced to have different ones). It takes family relations as central to the reproduction of relations of justice and requires that a just state maintains, or at least does not undermine, arrangements that enable family members to carry out their responsibilities and to express their love and concern for each other. For this reason it is important to consider why family relations are so valuable to family members and thus able to play the role that Rawls and others assign to them.

Family relations are, first of all, personal relations of love and care—they embody the special regard that members are supposed to have for each other and their willingness to benefit each other. Family relations are in this respect like friendships. A just state should allow participants in personal relationships to provide benefits to each other that they don't provide to others. Family relations are special in that parents are likely to regard themselves as having responsibilities that go beyond friendship—even to their grown children. They have had a significant influence on their children's character, on the particular needs and interests that they now possess. Moreover, their concern is not merely for their children as individuals. They also want their children to be capable of providing a good life for children of their own. Being able to provide their children and grandchildren with benefits, particularly lasting benefits, is a way of expressing the love and concern that is supposed to be central to family relations. In a just state where Rawlsian requirements of distributive justice apply, children and grandchildren will not need an inheritance in order to have good lives. Such a society is justified in putting limits on the value of what can be transferred as a gift from parents to children. But it would be a gross inter-

22. Rawls, p. 278.

ference with family relations to prevent parents from giving gifts to their children and grandchildren. Inheritance taxes are justifiable, but not taxes so high as to negate the value, and thus the point, of the gift.

Families are, second, associations that provide individuals with recognition. Family members are predisposed to understand and value each other's activities. The memory of individuals and their accomplishments is often preserved by families, and in many cases children and grandchildren are the ones most likely to carry on the projects and maintain the values of their forebears. Moreover, the projects of individuals are often inseparably connected with their family life and their hopes for their children. A person who builds up a family business is likely to regard himself as laboring for the sake of his descendants as well as himself. An art lover may regard it as of central importance that her children will be able to maintain the collection of paintings that she taught them to appreciate. Such "life-time transcending interests" are of great importance to many individuals, and a just society ought to respect them (other things being equal). As Lomasky says, it seems a cruelty to deny people the possibility of passing on things that have a personal significance to those for whom they have labored or who are most likely to appreciate, value, and keep alive what they have done. It would not be unjust to impose taxes on those who benefit from inheritance, but it would be wrong to impose confiscatory taxes or other measures that have the effect of preventing individuals from passing on to their heirs goods so intimately connected to themselves and their lifetime activities.

The values of family membership considered above provide a defense, though a limited one, of the right of bequest—the entitlement of individuals to leave their possessions to whomever they choose. The right to inherit is the entitlement of those chosen as heirs to receive these possessions. These heirs are usually, but not necessarily, family members. The right of bequest is a liberty right possessed by the person who makes the bequest. It does not entitle family members to claim an inheritance as their right. A. J. Simmons, criticizing the idea that entitlement to inherit can be superseded by time, notes that if individuals have an obligation to provide their descendants with certain resources, then these heirs have a right to inherit that cannot be thrown into doubt by the possibility that their forebears might have done something else with their possessions.<sup>23</sup> The right of children to inherit is a right to claim an inheritance, and it would exist regardless of whether parents wanted to leave them their possessions, regardless of whether they in fact did so. Are there any reasons why representatives of family lines

23. Simmons, p. 179.

should support, or at least take seriously, this stronger, unconditional right of inheritance?

Locke insisted that children have a right to a share of their parents' resources and, thus, that parents should not be free to transfer their possessions in any way they please. However, he also believed that the responsibility of parents ends when children reach maturity. The law underwrites this idea of parental responsibility and its limits in those countries influenced by the British Common Law tradition. In countries influenced by Napoleonic Law parental freedom has traditionally been more limited. Even in societies where freedom of bequest is protected few would agree that parents have a moral right to disinherit their children whenever they please, and there are some cases where doing so seems particularly unjust.

A son who has been led by his parents to expect that he will inherit the family business would be wronged if they exercise their freedom of bequest by giving it to someone else. But even in cases where no explicit or implicit promise has been made, children may have a rightful expectation of benefits. There is no consensus about the duties that members of families have to each other, but most parents seem predisposed to think that they retain some kind of responsibility for their grown children—the obligation to come to their aid in times of need, if nothing else. They are also likely to think that they bear some responsibility for ensuring that their grandchildren can live good lives. That is, they accept a duty to share their resources with members of their family that goes beyond the duty they have to their children when dependent. To the extent that these obligations exist, children and grandchildren have a moral right, at least in some circumstances, to their expectations.

Moreover, descendants also have a claim to those objects that count as family heirlooms. This right arises from the third value associated with families. Family relationships play an important role in determining the identity of individuals. They give individuals a sense of belonging, of being a part of a history that began before their own life and will continue after their death. They provide them with a legacy. This could consist of memories, stories, but also memorabilia: possessions that have historical significance for a family or a meaning to its present members. For reasons discussed above it seems right for a just society to allow parents to pass these heirlooms on to their children. People should be able to give gifts of special significance to those they love or endow them with things that have played a special role in their lives. But there is also reason to insist that the children have an independent claim to those things that can be considered, because of the meaning invested in them, to be possessions of the family. A mother who gives away an heirloom to a friend rather than maintaining the family tradition of passing it on to her eldest daughter may not be doing anything illegal,

but the daughter is justified in thinking that her rightful expectations have been disappointed.

A confiscatory inheritance tax would not only interfere with a parental right of bequest. It would also violate the independent right of children or grandchildren to receive something that has a special relation to their family and thus a special meaning to them. It would undermine the ability of families to maintain a heritage. For example, the suggestion of D. W. Haslett that heirs should be required to purchase their family heirlooms at market value or the idea of compensating those who do not have heirlooms with goods of equal value treats family treasures as if their market value is their only significant value.<sup>24</sup> Doing so puts at a relative disadvantage those who think that their family heritage should not be treated as a marketable asset. Families would be able to keep their heirlooms only by using up some of their other resources (if they have them in the first place). Their society would be making it more difficult for them to maintain the values and historical connections that are important to their identity as family members.

Haslett, it could be argued, is merely applying a requirement basic to a theory of justice that treats individuals as equals.<sup>25</sup> If no individual or family is entitled to special treatment because of attachments or tastes, then why should a society subsidize a family that chooses to keep its heirlooms? However, a strict insistence on equality of resources can have results that seem obviously unfair. Suppose your friend, a famous painter, paints your portrait and gives it to you as a mark of his friendship. You treasure it accordingly and know that selling it would violate the spirit behind the gift. However, it is worth hundreds of thousands of dollars, and if you are required to compensate those who do not possess expensive paintings you will either have to sell it or use up money you have saved for other projects. Or suppose that land treasured by an Aboriginal tribe as its spiritual heritage is found by prospectors to contain rich deposits of gold. The Aborigines have no intention of mining the gold. Indeed they regard mining as a desecration. But the equality of resources principle, strictly applied, would require them to compensate those who do not have rich deposits of gold.

To determine how an equality of resources principle should deal with cases like these would require a lengthy discussion. However, it seems obvious that a society should exempt individuals and groups in

24. D. W. Haslett, "Is Inheritance Justified?" *Philosophy & Public Affairs* 15 (1986): 121–55.

25. Ronald Dworkin, "What Is Equality, Part 2: Equality of Resources," *Philosophy & Public Affairs* 10 (1981): 283–345, thinks that an economic market as a device for setting prices for goods and services must be central to any account of what equality of resources means. However, he admits that inheritance is a matter that requires more consideration (p. 334).

those cases where its application subverts or does not allow expression of values or attitudes that are intrinsic to relationships that a society ought to protect or even promote. Individuals ought to be able to give each other gifts as gestures of friendship providing the gifts are relatively small (as I argued above) or are not intended or used for economic advantage. Groups ought to be able to protect those things that are important to their spiritual life. And representatives of family lines are likely to insist that members of families ought to be able to maintain and enhance the bonds that unite the generations by passing down heirlooms to their descendants. Those who want to bring about a greater equality of resources (and thus approach what a Rawlsian could accept as just) would want to put restrictions on how valuable heirlooms can be used. They might insist that heirs cannot use them as commodities or capital (without attracting a full rate of taxation). They might require that families with valuable collections of paintings or jewelry put them on public display occasionally so that everyone can enjoy them. They will want restrictions on what can be regarded as a family heirloom. A family with aristocratic forebears is not likely to be allowed to keep its wealth and land however important these things were in the history of the family. But this does not mean that the family is not entitled to keep anything at all. It does not mean that families should never be allowed to treat as heirlooms possessions that have considerable market value—like paintings, jewelry, or even houses.

A just society will stipulate that heirlooms are held in trust, that they cannot be used or disposed of as individuals please. Descendants must be presumed to have an unconditional right to inherit possessions whose status depends on them being an expression of family identity and intergenerational connections. Even if the laws of a society do not directly protect this right, its existence will affect our reasoning about reparation.

#### IV

Reparative justice only gets on the agenda if injustice has occurred or if people at least believe that it could occur. We have to drop Rawls's assumption that there is strict compliance with principles of justice in order to consider how representatives of family lines would regard claims for reparation for historic injustices. I have argued that these representatives will insist that members of families are entitled to make and receive bequests, and that in those cases where possessions have a special meaning to family members descendants can claim an unconditional right to inheritance. These representatives will think that future members of their society ought to protect these entitlements, and by so insisting they commit themselves to honoring and protecting the entitlements of descendants of past members of their society. Protecting

these entitlements means not only trying to prevent violations but also ensuring that the violations that have occurred, in the past as well as the present, are remedied. Representatives of family lines will be moved to support a principle of reparation that makes it possible for descendants of victims of injustice to claim their inheritance—even if their society is now just in all other respects.

The approach I am defending is able to resist Waldron's contention that the reparative claims of descendants are undermined by there being no way of determining what they would have received if the injustice had not been done. His argument, I have contended, is best understood as a view about where the burden of proof belongs. From the perspective of representatives of family lines there is good reason to shift this burden from those who defend reparative claims to those who oppose them. This is most obviously so in those cases where descendants can claim an unconditional right to a family possession. What their forebears might have done with this possession if the injustice had not been done is of little or no relevance. But even when right of inheritance is predicated on the right of bequest, as in the case of gifts, representatives of family lines will want the claims of descendants of victims of injustice to be viewed in a favorable light. Entitlements that result from expressions of love and concern intrinsic to family relationships ought to be regarded with great respect. A society that wants to protect and promote these relations should give the claims of descendants the benefit of the doubt.

Suppose an injustice stripped a man and his wife of a small family property. Circumstances prevented them making a reparative claim, but long after their deaths their children are able to do so. If the parents had retained the property they might not have given it to their children. They may have gambled it away (as Waldron reminds us). But if there is no reason to believe that they were feckless or lacked concern for the well-being of their children, it should be accepted that the children's claim is legitimate. Should we so generously assume that descendants of victims would have been favored by fortune if the injustice had not occurred? Those whose forebears were not done an injustice are forced to accept the results of outrageous fortune—of fires that destroy treasured possessions, of parents who make unwise investments. But giving descendants of victims of injustice the benefit of the doubt is the right way of responding to their claims. It would be mean-minded to question the claims of descendants of the victims of Nazis on the grounds that their parents or grandparents might have lost their possessions in some other way if the Nazis had not stolen them. The perspective of representatives of family lines can explain why we think a generous response is more appropriate. The importance of doing something to alleviate

an injustice destructive of family relationships outweighs quibbles about contingencies.

Nor should we think that the entitlements of descendants depend on whether they suffer because of their loss of their inheritance. Children who are prevented from receiving their inheritance must, as Waldron says, learn to live without it. They may not even miss what they never had. But from the perspective of representatives of family lines, this does not make the situation any less unjust. In the case of bequests children are being prevented from enjoying or learning to appreciate something that their parents out of love and concern, or because of their own values and projects, wanted them to possess. If an injustice prevents them from obtaining the heirlooms to which they have a claim then they are not able to enjoy a meaningful connection with a part of their family's heritage. The fact that families are usually able to survive a loss of heritage is not likely to obliterate the requirement of reparation from the point of view of representatives of family lines.<sup>26</sup>

Right to reparation is, however, a right all things being equal. The possibility remains that representatives of family lines will not think that satisfying reparative claims is just, all things considered, when they consider that the possessions of their descendants could be subject to reparation claims. They have, it seems, reasons similar to Waldron's for wanting entitlements to reparation to be superseded by time. What justice requires all things considered needs further discussion, especially when making judgments about actual cases in a world that is far from just. Nevertheless, the importance of inheritance rights of both kinds for maintaining family relations prevents an endorsement of the supersession thesis. Concern for the entitlements of blameless descendants of perpetrators or others who have benefited from injustice may affect views about what form reparation should take and who should be responsible for bearing the burden. In some cases just reparation might take the form of compensation paid by the society as a whole for lost possessions rather than the return of possessions that might now be in the hands of blameless people. Or blameless people might be compensated for being forced to meet claims for reparation.

How far down the generations does the entitlement to reparation extend? Rawls thinks that the just savings principle encompasses two generations—children and grandchildren. The justification I have offered for the entitlements of descendants of victims of injustice suggests that they are similarly limited, at least in the case of bequests. Parents mean to express their love or connection to their children or grand-

26. If an heirloom has been destroyed, then descendants have no right to reparation. Their loss is tragic, but there can be no duty of justice to give them what no longer exists, and monetary compensation is clearly not appropriate.

children and think that their society ought to ensure that these individuals obtain their inheritance. They are not likely to be so much disturbed by the possibility that their distant descendants may fail to receive these things (at least in a society where individuals are not likely to be disadvantaged by injustices that happened many generations ago). Family heirlooms are another matter. They belong to families, not to particular individuals, so if they have been passed down from one generation to another for a very long time and have become important to family history or tradition, then descendants are likely to have a claim on them even if more than two generations have passed since the injustice was done.<sup>27</sup> However, family relations change, connections between existing people and distant generations become tenuous, ideas about what is meaningful to the family do not stay the same, and so as time passes even these claims will become less plausible.

My defense of the right of reparation is unlikely to support the claims of descendants of slaves for this and other reasons. To claim a lost inheritance descendants must be able to specify what possessions they should have received from their forebears. They must be able to establish that they are the ones entitled to make a claim. In most cases descendants of slaves will not be able to satisfy these conditions either because there is no way of establishing what possessions their forebears had, or would have had if they had not been enslaved, or no way of determining who their slave forebears were.

## V

The approach discussed in the last sections leaves many historical injustices beyond the range of reparation. Like other accounts focusing on inheritance, it confines itself to providing a basis for “rectification”—for reparative claims to property. So it can be criticized not only by those who think that more ancient injustices, like slavery, require reparation but also for ignoring injustices that seem to require reparation of another kind. I will argue in this section that the perspective of representatives of family lines can be used to defend reparative claims for harms caused to descendants by historic injustices—that it can escape the difficulties associated with such claims.

Rawls says that the representatives of family lines are deputies for a kind of everlasting moral agent and that their goodwill stretches over at least two generations. There is a tension in this description. How can a deputy for an everlasting agent be concerned only with a few generations of it? Let us allow that our responsibility for providing resources for our descendants is limited. Nevertheless, the concerns of represen-

27. Waldron, pp. 19–20, makes a similar point about the survival of entitlements in some cases.

tatives of families for their descendants do not remain within these limitations. Parents not only care about the well-being of their children and grandchildren. They also want their children and children's children to be in the position to care and provide benefits for their own children. They can assume that these children will have the same concern, and so on down through the generations. Though responsibility for the well-being of members of more distant generations may be limited or nonexistent, representatives of families are likely to think it morally important that social relations, institutions, and practices that enable members of families to care for their children and grandchildren and discharge their obligations to them are "everlastingly" maintained. This will motivate them to assign to future members of their society a duty to maintain these institutions and practices and ensure that failures to do so are rectified.

Policies or actions that undermine the ability of individuals to maintain family relations, carry out their obligations and obtain their entitlements as members of families are not merely injustices that harm individuals. They are "injustices against family lines." An injustice is directed against family lines when the perpetrators seek to wipe out family lines, keep them in perpetual slavery or submission, or attempt to prevent individuals of certain kinds from maintaining family relations, carrying out family obligations, or receiving entitlements as members of a family. Perpetrators may not have the objective of persecuting families. Their attacks may be aimed at a religious, ethnic, or racial group. However, the intention to attack such groups necessarily involves an intention to undermine, wipe out, or subjugate families. Slavery, for example, is an injustice directed against family lines. Not only do perpetrators aim to perpetuate slavery down through family lines. They also systematically undermine the ability of individuals to care for their children and maintain family relations.

From the perspective of representatives of family lines such attacks on families count as serious injustices. They will think that their society ought to protect their families from such an attack and that the harm caused by injustices against family lines ought to be repaired or alleviated. This responsibility, it might be thought, is simply a requirement of justice as equity. If past persecution of their families has put individuals among the least well off then they can reasonably expect to receive a fairer share of social resources according to the principles that Rawls supports. To make a case for reparation we have to show that some of the harms suffered by present members of persecuted families are in the scope of the injustice in question—that they are among its automatic effects.

In the case of injustices against family lines the case can be made even when an injustice was committed a long time ago. A family line,

as I have indicated, is not merely a succession of generations. A family, like a community, has a history—a narrative that connects past and present members and gives individuals a place and role in an intergenerational story of birth, death, marriage, family relationships, loss, and renewal. The story may be detailed and well documented or vague and based on surmise. Whatever form it takes, it is part of the legacy that is passed on from one generation to another and influences how people think about themselves, their lives, and their place in society. The history of their family or community, says Waldron, is important to its members. Collective remembrance plays an important role in forging individual identity, and what happened in the past thus makes a difference to the well-being of people of the present.<sup>28</sup> It matters to representatives of family lines what their family history contains—injustice and loss, or reconciliation and renewal. Those whose family lines were in the past attacked, exploited, suppressed, or denigrated are likely to suffer from feelings of anger, regret, sadness, or insecurity, at least in those cases where the damage done has not been alleviated by more recent social developments.<sup>29</sup>

These effects of the injustice are within its scope and should be regarded as its automatic effects. Like the widow's grief they are a natural, appropriate, even proper, response to the injustice, given the kind of injury it is. The long period of time between the injustice and the effects—with its many intervening causes and effects—does not disqualify these responses from counting as automatic effects. For it is the meaning of the injustice to descendants, not the immediacy of the causal relationship, which is crucial. Their sadness and anger are effects that are attributable to the injustice and not to other actions or failures to act. They are not psychological states that some overly sensitive or obsessive people happen to feel when thinking about past injustice. Descendants suffer because what happened to their family is important to their identity as individuals. It is true that this harm would have been alleviated if appropriate reparation had been made in the past. But the

28. Waldron, p. 6. He also stresses the importance to people of their historical record and suggests that apology and token compensation is a way of acknowledging and dealing with this history. However, it is not clear whether he regards these symbolic actions as required by reparative justice or by considerations of humanity—whether they should be thought of as a form of recompense for historical injustice or as a way of making people feel better about their present.

29. How people feel about a past injustice done to their family will depend on what has happened in the meantime. If their society now treats them fairly and they have as a result been able to better the position of themselves and their family, the past injustice is not so likely to rankle. Anger or sadness is more likely to be the result of a whole history of injustice which continues up to the present time. However, this does not mean that the original injustice is no longer relevant, as I explain below.

failure of past governments to make reparation does not replace the original injustice as the wrong to which present suffering should be attributed, any more than the failure of the employer to offer compensation to the widow replaces the injustice to which her suffering should be attributed. Apologizing and compensating are acts logically tied to what is apologized or compensated for. They are not independent actions. Failure to make repair is an additional cause of suffering.

The harmful effects of injustices against family lines are not merely, or even primarily, such things as loss of property. They are psychological effects that arise from the meaning possessed by a particular history. The most appropriate way for people of a society to make reparation for such injustice may be to acknowledge that the deed or policy was a serious injustice and to make an apology. An approach to reparation which emphasizes the perspective of representatives of family lines thus makes intelligible, and provides a justification for, a common demand made by descendants of victims of injustice. To demonstrate that apology is sincerely meant it may be appropriate to offer symbolic compensation that could take the form of benefits to descendants, a public ceremony, or an appropriate change to the official history of the nation. An injustice to family lines does not entitle disadvantaged descendants to more social resources than members of any other group of disadvantaged people. Nevertheless, it creates a special obligation that should be fulfilled by a society that aims to be just.