

JEFF SPINNER-HALEV

Enduring Injustice



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JEFF SPINNER-HALEV

*Kenan Eminent Professor of Political Ethics
University of North Carolina at Chapel Hill*



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Governments today often apologize for past injustices and scholars increasingly debate the issue, with many calling for apologies and reparations. Others suggest that what matters is victims of injustice today, not injustices in the past. Spinner-Halev argues that the problem facing some peoples is not only the injustice of the past, but that they still suffer from injustice today. They experience what he calls enduring injustices, and it is likely that these will persist without action to address them. The history of these injustices matters, not as a way to assign responsibility or because we need to remember more, but in order to understand the nature of the injustice and to help us think of possible ways to overcome it. Suggesting that enduring injustices fall outside the framework of liberal theory, Spinner-Halev spells out the implications of his arguments for conceptions of liberal justice and progress, reparations, apologies, state legitimacy, and post-nationalism.

JEFF SPINNER-HALEV is the Kenan Eminent Professor of Political Ethics at the University of North Carolina at Chapel Hill. He is the author of *The Boundaries of Citizenship: Race, Ethnicity and Nationality in the Liberal State* (1994) and *Surviving Diversity: Religion and Democratic Citizenship* (2000), and co-editor of *Minorities within Minorities: Equality, Rights and Diversity* (Cambridge, 2005).

*I dedicate this book to the memory of George Rabinowitz,
a model colleague and friend, and Professor and mentor.
George was a gentle man, full of wisdom and grace,
and he is missed by many.*

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1 *Radical injustice*

In 1829 gold was discovered on the land that the Cherokee Indians lived on and called home. The state of Georgia wanted the land for its own residents. Congress passed laws allowing for the removal of Indians, which President Andrew Jackson and later President Martin van Buren supported. The Cherokee, however, who declared themselves a sovereign and independent nation and established a written constitution, went to the US Supreme Court to protest the state of Georgia's attempt to impose its laws on them. The court ruled that it had no jurisdiction in the case; while the Cherokees won an indirect victory in another case, it didn't matter much, as the federal and Georgia government were intent on expelling the Cherokee and would not allow a judicial ruling to prevent them from taking the Cherokee's land. Soon enough the US government expelled the Cherokee from their land in Georgia. Forced to walk from Georgia to Oklahoma in the middle of winter, about four thousand tribal members died (approximately a quarter of the tribe) because of the inadequate food and clothing supplied by the US government on what is now called the Trail of Tears.¹

In 1944 Stalin accused the Crimean Tatars of collaborating with Hitler (a few had, but most did not, and many Tatar men served in the Soviet army) and expelled the Tatars from their homeland in the Ukraine, sending them to exile in Soviet Asia. Estimates vary, but perhaps nearly half of the population died en route to exile or shortly afterwards. Some returned to the Crimea after the collapse of the Soviet Union, though they have done so in the face of some resistance from those who now live in the Crimea, and many are now impoverished; many other Tatars still live in exile, waiting for a propitious moment to return.²

¹ Theda Perdue and Michael Green, *The Cherokee Nation and the Trail of Tears* (New York: Viking Press, 2007).

² Greta Lynn Uehling, *Beyond Memory: The Crimean Tatars' Deportation and Return* (New York: Palgrave Macmillan, 2004).

Between 1869 and 1969, the Australian government routinely took Aboriginal children from their homes, or allowed churches to do so, and placed them with white families. Estimates suggest that between 10 and 30 percent of Aboriginal children were taken from their families. The intention of some of the lawmakers involved was benevolent, to help these children assimilate into a “superior” culture, but the policy was disastrous, and that it lasted until at least 1969 is surely testimony as to how colonialism can powerfully shape perceptions, convincing people that an obviously unjust policy is actually justifiable.³

The US federal government assured the Lakota Sioux rights to the Black Hills in 1850s by treaty. The Black Hills were and are considered particularly sacred to the Lakota, and special ceremonies were performed there. After gold was found on the land, the US convinced a few of the Sioux to sign another treaty to limit the amount of protected land. This second treaty, however, was made contrary to the stipulations in the previous treaty about treaty revisions, and so was illegal. This land too was, and still is, mined. The Sioux eventually sued, and won in the US Supreme Court, which found the treaties giving the land away to be fraudulent. But what the Lakota Sioux won was compensation (over \$700 million today, including interest), not the return of the land. The Sioux have refused to accept the money, as they maintain that this sacred land cannot be bought.⁴

Hindu nationalism, present from India’s birth, has often fueled violence against the Muslim community, sometimes with the backing of the local government. In 1992, Hindu militants tore down a mosque, the Babri Masjid, which sat on a site that the militants claimed contained an important Hindu temple, while Indian police watched passively, sending ripples of fear throughout the Muslim community, and leading to riots that killed up to 2,000 people, mostly Muslims, throughout India.⁵ In 2002, Hindu militants accused

³ Australian Human Rights Commission, “Report of the National Inquiry into the Separation of Aboriginal and Torres Strait Islander Children from Their Families, Bringing Them Home,” www.hreoc.gov.au/social_justice/bth_report/report/index.html (accessed August 10, 2010). One story from this chapter in history is illustrated in the film *Rabbit Proof Fence*.

⁴ Edward Lazarus, *Black Hills/White Justice: The Sioux Nation Versus the United States: 1775 to the Present* (New York: HarperCollins, 1991).

⁵ www.bbc.co.uk/news/world-south-asia-11435240.

Muslims of setting a train full of Hindu pilgrims alight in the Indian state of Gujarat (the train was almost certainly accidentally lit by the pilgrims themselves), setting off a several-day-long pogrom which resulted in over 2,000 Muslim deaths with thousands more injured. Many Muslim women were raped before being burned to death, the latter fate befalling many Muslim men as well. The Gujarat police and government were not only idle during the pogrom, but actively encouraged the Hindu mobs in their rampages. This pogrom hangs over India, unsettled, a reminder of the place of Muslims in India.⁶

Some of these injustices – and others like them – have recently and prominently surfaced in the political consciousness in the Western world, resulting in a spate, or perhaps a flood, of apologies. Here are but a few: in 1998, National Sorry Day emerged in Australia, after a government report entitled “Bringing them Home” about the stolen generations of Aboriginal children in Australia was published. In 2008 the Australian Prime Minister apologized to Aborigines for past injustices inflicted upon them, including the “stolen generations.” Shortly afterward, the Canadian Prime Minister apologized to indigenous peoples for past government actions that placed some of their children in Christian boarding schools with the intent to assimilate them. The US House of Representatives passed a resolution apologizing for slavery and Jim Crow in the summer of 2008, while state legislatures in Alabama, Maryland, and North Carolina all issued apologies for slavery. In 1993 the US Congress apologized for the overthrow of the Hawaiian monarchy one hundred years earlier.

The academy and the politicians are moving in tandem on this issue, as scholars have increasingly addressed the issue of past injustices, calling for more remembering, apologies, and reparations. While a few scattered articles on the topic appeared in the 1970s, since 2000 a spate of scholarly literature on historical injustice has emerged. In many of the most recent publications, scholars have revealed their perspectives and politics in the very titles of their works: “History and Collective Responsibility”; “Coming to Terms with Our Past”; “Taking Responsibility for the Past”; “Sins of the Parents”; and “Sins of the Nation.”⁷ Political communities need to take responsibility for

⁶ Martha C. Nussbaum, *The Clash Within: Democracy, Religious Violence, and India's Future* (Cambridge, MA: Harvard University Press, 2009).

⁷ Thomas McCarthy, “Coming to Terms With Our Past, Part II: On the Morality and Politics of Reparations for Slavery,” *Political Theory* 32, no. 6 (2004): 750–72;

their past, this literature charges, by which they mean that apologies and reparations are due to the injured communities. These arguments typically suggest that if political communities are to be moral, then they must remember the past – and not just the past they are proud of, but parts of the past that are shameful. Many of these arguments suggest, for example, that if the United States (or Australia, Canada, and so on) is to successfully confront racism, it must confront its racist past. If we – the dominant political communities in the New World, for example – are to treat indigenous peoples properly, then we must have a better understanding and accounting of the past. An apology is often part of the solution to past injustices, while reparations, compensation, and other remedies are also put forward. The path to a better future, these arguments contend, lies in a better understanding and appreciation of how the injustices of the past affect patterns of oppression today.

Why, however, should the history of an injustice matter? The advocates of repairing historical injustices have not adequately answered this pointed question. Many critics of taking past injustices into account say what should matter is current injustices, not past ones; others argue that they did not own any slaves or commit any atrocities, that they are not responsible for what others did long ago; and still others have argued that once we begin speaking about reparations or apologies for one or two past injustices, then we are open to many similar claims for many other injustices, which we can find aplenty throughout history. If an injustice exists now, the political community should be concerned, but why is the history of the injustice important? The usual answers have focused on the importance of remembering, or on responsibility; since certain current injustices are caused by past injustices, this argument maintains, they cannot be solved without taking responsibility for the past. Yet the examples used by the advocates of correcting historical injustices – typically indigenous peoples and African Americans – suffer from injustices now, and so they leave

Janna Thompson, *Taking Responsibility for the Past: Reparation and Historical Injustice* (Cambridge: Polity, 2002); Robert Sparrow, "History and Collective Responsibility," *Australasian Journal of Philosophy* 78, no. 3 (2000): 346–59; Danielle Celermajer, *The Sins of the Nation and the Ritual of Apologies* (Cambridge University Press, 2009); Brian A. Weiner, *Sins of the Parents: The Politics of National Apologies in the United States* (Philadelphia: Temple University Press, 2005).

the challenge of the critics unanswered: if an injustice exists today, members of the political community are responsible for helping to end it. What is gained by focusing on the history of an injustice? Indeed, since the past is littered with so many injustices, isn't a focus on historical injustice a recipe for paralysis? A plea for remembering past injustices does not help answer a key question: *which* injustices should a political community remember?

Too often these advocates of repairing past injustices focus on one historical injustice (occasionally they will look at two), and take it as obvious that it should be repaired. Most of these arguments turn on the importance of memory: if only the community would better remember the history of a particular injustice, it would be moved to do something about it.⁸ Yet this sort of argument says little about which historical injustices should be of concern today; it says little about why the past matters today for some injustices, but why others should be ignored; it says little about why certain injustices persist. Oddly, few arguments by political theorists and political philosophers about historical injustice actually present a theory of historical injustice. Many arguments about past injustice focus on one case. The problem with this approach is that flaws in your argument may appear when you move from one case to several, something I hope to show in the following two chapters. An argument that works in one case, but not in several comparable cases, is not theoretical but simply ad hoc.

Instead of focusing on one or two cases, I want to reframe the issue of past or historical injustice and explain the relationship between injustice and liberal democratic theory and practice. To do this, I argue for the need to shift the conceptual ground away from historical injustice; the challenge for some peoples is not just the injustice of the past but that they *still* suffer from injustice. Together, they experience what I call enduring injustice. The injustice they endure today is

⁸ Lawrie Balfour, "Unreconstructed Democracy: W. E. B. Du Bois and the Case for Reparations," *American Political Science Review* 97, no. 1 (2003): 33–44; William James Booth, *Communities of Memory: On Witness, Identity, and Justice* (Ithaca, NY: Cornell University Press, 2006); Burke A. Hendrix, "Memory in Native American Land Claims," *Political Theory* 33, no. 6 (2005): 763–85; Thomas McCarthy, "Vergangenheitsbewältigung in the USA: On the Politics of the Memory of Slavery," *Political Theory* 30, no. 5 (2002): 623–48; McCarthy, "Coming to Terms With Our Past"; Gregory W. Streich, "Is There a Right to Forget? Historical Injustices, Race, Memory, and Identity," *New Political Science* 24, no. 4 (2002): 525–42.

connected to past injustices. Instead of urging citizens and governments to take responsibility for the past, I ask instead: which injustices from the past persist today and cry out for remedy? Why are these injustices the ones that call for the attention of the political community, but not others? Most arguments about historical injustice assume that if citizens in liberal states had more understanding of the past, these injustices would disappear. But I ask instead: liberal democracies have so successfully conquered many injustices, so why have these particular injustices persisted?

Reframing the issue as enduring injustice, instead of past or historical injustice, shows that certain past injustices matter because of current injustices. By showing that the past matters because of its connection to current injustice, my arguments need not grapple with historical injustice in itself. This new framework of enduring injustice has many implications for arguments about past injustice. It better explains why some injustices endure than do arguments that focus on the past. Enduring injustice is less interested in who caused the injustice than are arguments about past injustice; these latter arguments tie causality to responsibility, but I aim to separate the two. Reframing historical injustice as enduring injustice leads me to argue that the idea of reparations for past injustices is mistaken. I will also argue that many apologies for enduring injustices are often misguided and not very meaningful, since the injustice is in fact ongoing. I argue instead for acknowledging the injustice, which is a process, and not a single act. Acknowledgement can lead to apology, but usually only after a long process of overcoming the injustice. My argument is also a response to many of the critics of repairing past injustices. These critics contend that what matters is current injustice, not the pedigree of the injustice. While I will argue that contemporary injustice should drive a political community's concern with injustice, the past matters for enduring injustice; it matters for how we should conceive of injustices, and how we should think of solutions to them. I argue that enduring injustices cannot be understood without recourse to their history. Some injustices – like exile – only make sense if the history of the injustice matters. If an injustice persists, this begs an important question: why has it persisted? To answer this question, I will revise some settled considerations about liberal justice, since liberal justice has not been able to solve the problem. This leads to another way in which history matters: I argue too that taking enduring injustice

seriously means that the history of liberal states will matter when it comes to the legitimacy of the state enforcing its own sense of justice on certain groups. When the history of a liberal state has sordid aspects, causing or contributing to an enduring injustice, it should not always readily be ignored when we argue about the legitimacy of the state implementing liberal justice.

1.1 Injustice

Enduring injustices have roots in what I call radical injustice. The origins of radical injustice can be many; I will broadly discuss three kinds here, though there may be others. One kind of radical injustice is the case of exile and dispossession. Sometimes return to the ancestral land is possible, other times it is not. Exile and dispossession cause radical and nearly always harmful changes in a community. While a common case that arises is indigenous peoples, there are other examples: the Crimean Tatars, Jews before the creation of Israel, and Palestinians, among others. Exile is a harm since the culture of so many peoples is tied to a particular land. It is not just that the Tatars do not want to be scattered across several Asian states, it is that their stories, their myths, their architecture, and clothing, and their sense of peoplehood, are tied to their ancestral land.

Second is the case of pointed and harsh attempts to undermine the culture of a people, which can be called cultural dispossession. Exile can undermine a culture, so exile and cultural dispossession can be connected, but need not be. A case today of a culture being undermined is Tibet, where the Chinese government is sending many Han Chinese to settle in a short period of time. (In a different way, for a long time the Turkish government tried to stamp out a Kurdish identity.⁹) The result is that many Tibetans are losing recognition of their homeland; some are becoming disorientated, and many fear that they are losing control of the changes that every culture undergoes.

Third is when a community lives under pervasive discrimination, or even terror. The example of Indian Muslims that I mentioned above fits this description; so do Israeli Muslims and African Americans, and

⁹ There has not been a flood of Turks moving to Kurdish areas, but for many years there were severe restrictions on speaking and teaching in Kurdish.

the many Roma (gypsies) in Europe, although members of all these groups are victims of terror less frequently these days than previously. These cases are often straightforwardly violations of liberal principles, but when deep-seated discrimination persists over time, the mistrust that results is often hard for liberal principles to account for.

A radical injustice makes it hard for people to feel in Thomas Christiano's words "at home in the world."¹⁰ Christiano borrows the term from Hegel, who argues that nearly all people in the modern world are not at home in the world, since we are alienated from the institutions of modernity, an alienation he thinks can be overcome.¹¹ Following Christiano, however, I use the phrase in a narrower way: to be at home, to live at ease is to "have a sense of fit, connection and meaning in the world one lives in." We all want to live in a society governed by principles that we see as our own, at least partly, otherwise we feel like we are living in someone else's home. "Living in a world that corresponds in no way to one's own judgment of how the world ought to be arranged is to live in a world that is opaque and perhaps even hostile to one's interests. It is to live in a world where one does not see how legitimately to make it responsive to one's interests. One is at a loss."¹² When one is part of a group where all feel that the world is a foreign place, run by other people for other people, and where there is no or little chance to make it responsive to one's needs, then it is likely that a radical injustice has occurred.

One might respond that American progressives did not feel at home when George W. Bush was president; it seems like some white Americans feel quite ill at ease with a Black man as President. To be at home in the world does not mean that one's political ideology governs the ruling bodies. The view I put forward means that if the political procedures make it so one feels like one's interests matter, and that one has a voice; or that if your particular voice is not heard, then the voices of people similar to yours are heard, then this is a sign that you are at home in the world. The disruption caused in one's life by an election is caused by a process that one believes in, that one is a part of. By contrast, those who do not feel at home in the world do not feel

¹⁰ Thomas Christiano, *The Constitution of Equality: Democratic Authority and Its Limits* (Oxford University Press, 2008), 60–62.

¹¹ Michael O. Hardimon, "The Project of Reconciliation: Hegel's Social Philosophy," *Philosophy and Public Affairs* 21, no. 2 (1992): 165–95.

¹² Christiano, *Constitution of Equality*, 62.