

The Problem of Historical Rectification for Rawlsian Theory

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Abstract In this paper we claim that Rawls's theory is compatible with the absence of rectification of extremely important historical injustices within a given society. We hold that adding a new principle to justice-as-fairness may amend this problem. There are four possible objections to our claim: First, that historical rectification is not required by justice. Second, that, even when historical rectification is a matter of justice, it is not a matter of distributive justice, so that Rawls's theory is justified in leaving it unaddressed. Third, that dealing with historical injustice is outside of the scope of ideal theory, so that even when historical rectification is required by justice, Rawls's theory starts with the assumption that no such historical injustice has occurred. Fourth, that while historical injustice is within the scope of Rawls's theory, there is no need for further principles of justice to deal with it, so that the correct regulation of the principles of justice-as-fairness would ensure the rectification of all relevant historical injustices of a particular society. While we offer several arguments against the first and second objections, we address the last two at length and show that both fail.

Keywords Historical injustice · Ideal/non-ideal theory · Rawlsian theory · Fair equality of opportunity · Transitional justice

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Introduction

Consider two deceptively simple scenarios. In scenario 1 we have two countries respectively called Argentina and Uruguay. Both nations have been ruled for several years by military dictatorships that systematically violate human rights. After long transitional processes, Argentine and Uruguayan societies become ‘well-ordered’ in Rawls’s sense (see Rawls 2005, p. 35). First, every citizen accepts—and knows that the rest accept—the principles of justices-as-fairness. Second, citizens possess a sense of justice that allows them to comply with the directives of their social institutions. And, third, no *present* injustice occurs in either one of these societies. That is, the institutions of the basic structures of these societies are almost perfectly regulated by the principles of justice-as-fairness: every citizen has a guaranteed social-minimum; all political and civil liberties are equally distributed amongst all citizens; there is fair equality of opportunity in the competition for social positions of advantage; and, finally, the fact that certain citizens obtain the best social positions benefits the worse-off in society.

Now suppose that in both of these well-ordered societies some victims or their descendants raise the issue of past injustice committed during the dictatorships. Argentina undertakes several initiatives: it establishes a truth commission; it allocates some of its budget or calls for donations to build memorials and museums in honour of past victims and for the purpose of historical clarification; it compensates relatives of citizens abducted and assassinated during the military regime; and it even rescinds the self-amnesties that former perpetrators enacted before leaving office. By contrast, Uruguay simply decides to draw a line under the past: ‘let bygones be bygones’ is the spirit of its policies towards the past.

Now consider scenario 2. After a long transitional process, Mexico, a former colony, becomes a well-ordered society. Its basic institutions are fully regulated by Rawls’s principles of justice-as-fairness, and all citizens know, accept, and are motivated by this fact. Suppose further that local activists demand that the state acknowledges that during the early stages of its long struggle to become a well-ordered society, it tolerated the extreme exploitation of indigenous persons. There is no direct relation between the activists and the indigenous population (the complainers may not even be of indigenous ancestry) and yet the former think there is something wrong in not openly recognising such an atrocious past.

Should the Uruguayan state in scenario 1 acknowledge the terrible atrocities committed against their citizens? Should Mexico in scenario 2 acknowledge the gross exploitation of thousands of indigenous persons more than a century ago? The answer must be positive if we acknowledge the normative significance of rectifying these past injustices. By contrast, we claim that Rawls’s theory as it stands right now is consistent with a negative answer to these questions. If our claim is correct and Rawls’s theory as it is written is compatible with non-rectification in these cases, then the theory has a significant shortcoming in delivering the correct understanding of what justice requires for our societies. We hold that one way in which this shortcoming can be amended is by adding a further principle ensuring that the institutions of a well-ordered society grant historical rectification.

Rawlsians might raise four objections to our central claim. We call them, respectively, *the scope of justice objection*, *the scope of distributive justice objection*, *the ideal-theory objection*, and *the redundancy objection*. In this paper we develop only the last two of these potential criticisms at greater length, but the first two deserve some consideration, since they rest on widely extended (albeit we believe reductive) interpretations of Rawlsian theory and the domain of justice more generally.

The *scope of justice objection* holds that we are mistaken in taking historical rectification to be a matter of justice. There is a heated debate regarding this issue in transitional justice scholarship. Throughout the paper we will provide several arguments in favour of the idea that historical rectification is a matter of justice, but due to space constraints we cannot offer a very elaborate defence of it. Ultimately, if the reader does not find this particular idea fully convincing, we ask her to take our main thesis as a conditional: *if* historical rectification is a matter of justice, then Rawls's theory might require a further principle ensuring that the institutions of a well-ordered society grant historical rectification.

Rawlsians could also raise the *scope of distributive justice objection*: the idea that, even when historical rectification is a matter of justice, it is not a matter of *distributive* justice, so that Rawls's theory is justified in leaving it unaddressed. This objection is fuelled by the fact that—as we will defend—the rectification of historical wrongs requires the institutional implementation of *retributive*, *compensatory*, and *recognition*-driven measures aimed at victims. These measures might seem alien to the purposes and concerns of distributive justice. However, this objection misrepresents the way Rawls himself understands distributive justice. We must recall that according to (Rawls 2001, p. 50) the problem of (distributive) justice must be addressed by implementing an appropriate distribution of primary goods. At least one of such goods is of fundamental importance for our purposes: the social bases of self-respect (see Rawls 2001, p. 59). Rawls (1999a, pp. 54, 386) even refers to such bases as ‘perhaps the most important primary good’—see Shue (1975) for a paradigmatic defence of the importance of this primary good in Rawls's theory. As we will argue, a non-rectified historical injustice has amongst other effects a tremendous negative impact on the self-respect of its victims and their descendants. Accordingly, there could never be a just distribution of the social bases of self-respect in an otherwise well-ordered society unless the required measures to achieve historical rectification are in place. So we simply deny *the scope of distributive justice objection*: if historical rectification is a matter of justice, then it is a matter of distributive justice as Rawls understands it.

The next two objections are the focus of our paper. Rawlsians could object that historical injustice is outside of the scope of *ideal* theory. Admittedly, so this objection would run, rectification would be a requirement of distributive justice in the real world, but Rawls's theory starts off with the assumption that no such historical injustice has occurred; hence the ideal character of his theory. We call this *the ideal-theory objection*. In the second section we will address it at length. We hold that Rawls's theory cannot simply presuppose that gross historical injustices did not occur in a society that is to be eventually regulated by his conception of justice.

Finally, Rawlsians could raise *the redundancy objection*. They could argue that while historical injustice *is* within the scope of Rawls's ideal theory of distributive justice, there is no need for further principles to address it. In particular, they could argue that the correct regulation of the principle of fair equality of opportunity would ensure the rectification of all the effects of historical injustice in a particular society. The third section will address this objection at length. We grant that *some* of the effects of historical injustice would be rectified by the correct regulation of the fair equality of opportunity principle, but not all of them.

In the final section we briefly suggest a different approach for dealing with the normative significance of historical injustice within Rawlsian theory: the inclusion of a new principle for the regulation of liberal institutions, one that recognises the importance of rectifying all relevant past injustices. This new principle would posit that institutions must implement *retribution*, *compensation*, or *recognition*-driven measures to rectify historical wrongs, as each case requires. The principle could also take into account an important division of labour regarding the normative assessment of the past: it might offer guidance as how to rectify historical injustices committed in the *recent past*, on the one hand, and how to deal with the broader role of history in liberal societies, on the other. We emphasise, nevertheless, that it is up to Rawlsians either to fully develop the stated principle, and how it is to be accommodated within the framework of Rawls's theory more generally; or, alternatively, to explain how Rawls's theory does address the normative significance of historical rectification without such a principle.

The Ideal-Theory Objection

Why is historical injustice beyond the concern of Rawls's theory? One answer is that addressing an unjust past is outside of the scope of what an *ideal* theory of justice is to provide. We call this the *ideal-theory objection*. According to this objection, dealing with historical injustice belongs to the realm of *non-ideal* theory. Even defenders of the normative significance of past wrongs for present justice share this opinion. Janna Thompson (2001, p. 129), for example, argues that we should '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 historical injustice'. Sher (1997) and Butt (2009) argue along similar lines. In fact, all of these authors follow the spirit of Rawls's first remarks on ideal theory in *A Theory of Justice* (Rawls 1999a, pp. 7–8), where Rawls lists compensatory justice (in our case, specific acts of reparation of injustices committed in the past) as part of non-ideal theory. In other places (e.g. Rawls 1999b, pp. 89–90) he claims that transitional justice (i.e. *how* to arrive from contemporary societies to well-ordered societies) is also part of non-ideal theory.

We agree with Rawls in that both compensatory and transitional justice fall outside of the scope of what an ideal theory is to provide. In fact, our claim is not a direct criticism of the way Rawls draws the distinction between ideal and non-ideal theory, or of the importance that he ascribes to ideal theory. These are the concerns of Mills (2005), Robeyns (2008), Boettcher (2009), Sen (2009), Mason (2010) and

Wiens (2012) (questioning the importance of ideal theory), as well as of Stemplowska (2008), Valentini (2009), Lawford-Smith (2010), Simmons (2010), and Gledhill (2012) (defending the importance of ideal theory). Likewise, our claim should not be interpreted as a proposal for improving a non-ideal Rawlsian theory of justice—as in Taylor (2009) and Fuller (2012). Rather, we claim that given the way in which Rawls distinguishes between these two forms of theorising, historical injustice is also of the competence of the ideal part of a theory of liberal justice. *For so long as a theory of liberal justice is to offer an ideal we should aim at in our current social proceedings, such an ideal must encompass the historical rectification of past political violence.* To see why this must be the case, let us consider in detail the two senses in which Rawls's theory is ideal.

Ideal Theory in a Non-technical Sense

To begin with, notice that Rawls's theory seems to be 'ideal' in a non-technical sense (see Valentini 2009, p. 6; Lawford-Smith 2010, p. 361): it proposes an *ideal* society we should strive towards. This non-technical sense is captured by Rawls's famous characterisation of his theory as presenting a 'realistic utopia' (Rawls 1999b, pp. 5–6). It is to this non-technical sense that we appeal to when we claim that historical rectification must be clearly endorsed by the correct theory of liberal justice. That is, our theory must make it clear that a well-ordered society has already embarked, as a matter of justice, on processes of full historical rectification.

There are two types of reasons for supporting this claim. The first one has to do with the importance of rectification for citizens' psychology and self-respect. Countless studies detail how historical injustice has a tremendous effect on victims' lives. More surprisingly, studies also document the inverse effect: the beneficial impact of public rectification of historical injustice on victims' lives (Lykes and Mersky 2006, pp. 590–591). Rectification serves the purposes of victim retribution, compensation, or recognition. For instance, bringing wrongdoers to justice serves the purpose of retribution. Restitutions, pensions or monetary allowances serve the purpose of compensation. Testimony, apologies, commemorations and truth-seeking processes serve the purpose of recognition. These three types of strategies are now well regarded as highly effective on victims' mental health and self-respect more generally (see Martin-Baró 1994; Backer 1995; Agger and Jensen 1996; Hamber 2010). In fact, this evidence suggests that the aspiration to come to terms with an unjust past is a permanent feature of normal human psychology. A person that has been the victim of political terror has a great interest in having both the state and society recognise the gravity of the injustice that has occurred to her.

Similar psychological considerations are central to Rawls's theory. For instance, they play a fundamental role in justifying the need for a government with coercive powers even in a well-ordered society. Rawls is clear that, despite the fact that his description of a well-ordered society presupposes both strict-compliance with the principles of justice and favourable conditions (features that, as we will see, make such a description ideal in a technical sense), the 'normal conditions of human life' (Rawls 1999a, p. 212) render the coercive powers of government and an account of penal sanctions necessary. As Rawls puts it:

It is reasonable to assume that even in a well-ordered society the coercive powers of government are to some degree necessary [...] *[e]ven under reasonable ideal conditions*, it is hard to imagine, for example, a successful income tax scheme on voluntary basis. (Rawls 1999a, p. 211. Italics added).

The idea behind this claim is that the ‘normal conditions of human life’ include the psychological fact that moral considerations alone cannot motivate ordinary persons to endorse and comply with a conception of justice. Citizens are also motivated by what might be called positive stimuli (complying with the conception of justice will benefit them) and negative stimuli (not complying with the conception of justice will lead to punishment). Rawls acknowledges that these three elements (moral reasons, positive stimuli, and negative stimuli) are the normal sources of motivation to endorse and comply with a conception of justice, and an ideal theory must take this into account when proposing such a conception:

It is clear from the preceding remarks that we need an account of penal sanctions however limited *even for ideal theory*. *Given the normal conditions of human life, some such arrangements are necessary*. (Rawls 1999a, p. 212. Italics added).

Thus, in order to include in his description of an ideally just society the claim that the government is to have coercive powers to impose the directives of the principles of justice, Rawls’s theory takes into account a psychological fact about human motivation. Our suggestion is, precisely, that *the interest in coming to terms with the past is similar to other human psychological regularities that Rawls’s ideal theory is sensitive to*. We do not see any reason for Rawls to include *some* psychological regularities in his theory *but not* others, namely those related to the aspiration to come to terms with an unjust past. In fact, as we anticipated in the introduction, this psychological evidence seems to offer sufficient reasons for concluding that public provisions to come to terms with an unjust past are one of the social bases of citizens’ self-respect.

The second type of reasons that would favour addressing historical injustice from the perspective of an ideal theory of liberal justice is social rather than psychological. Several authors have documented the tendency of almost all transitional liberal societies to embark on processes of historical clarification with respect to recent unjust violence. Ever since the reestablishment of civil government in Argentina in 1983, the world has seen a wave of truth and reconciliation commissions dealing with past injustices in all continents (see Zalaquett 1999; Grandin and Miller 2007). Thus, there seems to be a political regularity in liberal societies to eventually engage in processes of coming to terms with a past shaped by recent political injustice.

Moreover, aside from cases of clarification of recent political violence, there is the further regularity of every liberal society of embarking on processes of creating a historical narrative for itself. *Official* history is always told and taught in a specific way: certain facts are highlighted and others omitted. Although there is of course a plurality of competing versions of a nation’s history, some of which have been produced for instance by academic institutions, no liberal society leaves this job

exclusively on private hands, for important goals are associated with it (see Abdel-Nour 2003, pp. 712–713; Abizadeh 2004, p. 309; Kutz 2004, pp. 279–285). Considering this we believe that, as part of the recognition-driven measures adopted by the state to rectify historical injustices, the unavoidable institutional exercise of promoting a view of history should meet a normative standard: the narrative promoted by the state must be, as we will call it, *critical*. A critical historical narrative is a particular understanding of the past that is sensitive to the relevant historical injustices that occurred within the temporal span that the narrative comprehends.

These well-documented social facts about liberal societies make it clear that unjust historical interactions, and the need to assess them morally, are permanent features of all liberal societies. Previous historical interactions will not go away once a well-ordered society is formed and sustained. But notice that by making this statement we are not suggesting that injustices will always persist in a well-ordered society: by definition, a well-ordered society is a society in which no injustice occurs. Rather, what we claim is that *a well-ordered society will always count severe injustices as part of its pre-ordered history*. In fact, the urgency of trying to arrive at well-ordered societies is precisely that right now severe injustices are taking place in our societies and terrible wrongs have occurred in their past. Once societies are well-ordered, those injustices and wrongs will be part of their history and *that will always be the case*.

Ideal Theory in a Technical Sense

So far we have argued that full historical rectification must be part of the Rawlsian ideal we should try to achieve in our current social proceedings—at least from the point of view of justice. However, some scholars have appealed to the ideal character in the technical sense of Rawls's theory to hold that such a theory starts off by assuming that no historical injustice has occurred in a society that would eventually be regulated by justice-as-fairness, so that the question of whether or not the state must engage on processes of historical rectification *does not even arise within the Rawlsian framework*. This technical sense consists of the theory's assumptions of *strict-compliance* with the principles of justice and *favourable conditions* (see Rawls 1999a, pp. 8, 214, 308–309; 1999b, pp. 4–10; 2001, pp. 13, 66; Simmons 2010, p. 8; Valentini 2009, p. 1). Let us consider each of these assumptions in turn.

It could be argued that in his theory Rawls has presupposed *historical* strict-compliance all along. This seems to be the spirit of Thompson's passage, mentioned at the beginning of this section, that 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 historical injustice.' Thompson thinks that the Rawlsian clause of strict-compliance does away with any concern for historical injustice within the proceedings of ideal theory. Call this interpretation of the ideal character of Rawls's theory the *historical strict-compliance reading* (for short, *HSCR*). If this reading of Rawls's theory is adopted, then of course the normative question of whether the state must engage on processes

of historical rectification does not arise within the Rawlsian framework. We challenge this claim on three grounds.

First, notice the oddness of *HSCR*. The reading states that Rawls's theory wants to offer principles to regulate the basic structure of a society that, by definition (according to the assumption of *historical strict-compliance*), has always been just. Thus, it portrays Rawls's theoretical exercise as committed to something like the following: 'Let us assume that a society has been well-ordered from its origin up to the present. Now I will tell you which principles will make it well-ordered from the present on.' This is an infelicitous implication of *HSCR*. Furthermore, there is a second theoretical problem: this reading is unable to explain the origin of a well-ordered society. It simply assumes that before the society was well ordered, such a society did not exist, since, by definition, it never had a disordered (unjust) past. *HSCR* thus assumes that a well-ordered society comes into existence out of nowhere, as it were.

Finally, there is a third important reason for rejecting *HSCR*: Rawls's emphasis on the historicity of his conception of justice. This is clearly expressed in Rawls's *Political Liberalism*, and it is indeed one of its major themes. Rawls (2005) holds that just as liberalism itself, his political conception of justice is an attempt to solve a particular problem that has an historical origin in the 'Reformation and its aftermath, with the long controversies over religious toleration in the sixteenth and seventeenth centuries'. This makes his conception of justice only proper to the societies that have evolved from this past. Thus, Rawls clearly states that he wants to offer a conception of justice for *our* liberal societies, for societies having *our* shared political culture. But think what makes these societies *ours*. Rawls himself appeals to their past. It is because of the historical interactions that allowed the free exercise of practical reason that our societies today have the political culture that they do. However, such historical interactions are replete with violations to the principles that are to regulate social cooperation as well (that is, replete with injustices). In fact, it is precisely for this reason that solving the problem of political liberalism—'what are the fair terms of cooperation between citizens characterised as free and equal yet divide by profound doctrinal conflict?' (Rawls 2005, p. xxv)—is so pressing. Put simply, aside from its intriguing theoretical problems, *HSCR* rubs against some of the most salient theses of Rawls's political liberalism.

Let us now turn to the favourable conditions clause. The argument could be made that this clause grants the supposition that no major historical injustice has occurred in a society that is to be well-ordered at a given time by the principles of justice-as-fairness. Christine Korsgaard offers this interpretation:

Ideal theory is worked out under certain assumptions. One is strict compliance: it is assumed that everyone *will* [i.e., in the present and future—not in the past] act justly. The other, a little harder to specify, is that *historical*, economic, and natural conditions are such that realization of the ideal is feasible. [...] We also assume in ideal theory that *there are no massive historic injustices, such as the oppression of blacks and women, to be corrected*. The point is to work out our ideal view of justice on the assumption that people, nature, and *history will behave* themselves so that the ideal can be

realized, and then to determine—in light of that ideal—what is to be done in actual circumstances when they do not (Korsgaard 1996, pp. 147–148. *Italics added*).

Korsgaard thinks that the Rawlsian clause of favourable conditions dispels any concern for historical injustice within the proceedings of ideal theory. Call this interpretation of the ideal character of Rawls's theory the *favourable historical conditions reading* (for short, *FHCR*). If this reading of Rawls's theory is adopted, then again the normative question of whether the state must engage on processes of historical rectification does not arise within the Rawlsian framework. We challenge this reading on two grounds.

First, it is a matter of interpretative dispute whether the clause of favourable conditions is in place to grant the assumption that no major historical injustice has occurred in a society that is to be governed by principles of justice-as-fairness. Some passages of Rawls's theoretical corpus may seem to suggest that (in particular Rawls 2001, pp. 64–65). However, we believe that for the most part, the favourable conditions clause is concerned with ensuring that, *once a well-ordered society is established*, contingent natural and social conditions from that point in time on would favour the stable continuation of such society from one generation to the next—see, in particular, Rawls (2001, pp. 4, 13); (2005, p. 336); James (2005, p. 282) offers independent support for this reading of the favourable condition clause.

Moreover, other passages in Rawls's corpus suggest the complete rejection of *FHCR*. Consider the following:

In addition, the veil of ignorance (§24) is interpreted to mean not only that the parties have no knowledge of their particular aims and ends (except what is contained in the thin theory of the good), but also that the *historical record is closed to them*. They do not know, and cannot enumerate the social circumstances in which they may find themselves. (Rawls 1999b, p. 160. *Italics added*)

Here Rawls states that the course of history is closed to the parties in the original position. Another passage states the same claim (Rawls 1999b, p. 175). By reiterating that knowledge about the history of their society is closed to the parties, Rawls stipulates that the parties in the original position cannot make assumptions regarding the course of the past of their society. Thus, just as the parties do not know whether they or the citizens they represent would adopt this or that religion once a well-ordered society is established, *so too they do not know whether their well-ordered society would include severe historical injustices as part of its pre-ordered history*. In fact, this is a very good reason for the parties to ensure provisions for coming to terms with the past: for all they know, it *may be the case* that their well-ordered society includes historical injustices as part of its past.

The second reason why we challenge Korsgaard's reading is that we do not think that, as she claims, the ideal (in the non-technical sense) of a well-ordered society cannot be realised unless we suppose that history has 'behaved' itself. Rather, just as we as *theorists* need to show that it is still a practical possibility that a well-ordered

society would be stable over time given the fact of citizens' normal sources of motivation and the fact of reasonable pluralism, we also need to show that it is still a practical possibility that such a society would be stable even if it includes severe injustices as part of its past. For all of what Korsgaard has stated, we could also have supposed that nature has 'behaved' in a way that citizens do not feel a normal tendency to take advantage of social cooperation sometimes, or that the normal exercise of practical reason under free institutions does not give rise to a plurality of competing comprehensive doctrines. The putative realisation of the ideal of a well-ordered society would be easier under these suppositions. However, it is a remarkable virtue of Rawls's theory that it does not eschew normal psychology and thus confronts the challenge of showing that the ideal of a well-ordered society is possible for normal human beings and their institutions. Similarly, we need to show that a past marked by gross injustice does not hinder the possibility of arriving at that ideal.

In sum, for all of the aforementioned reasons, the interest in coming to terms with an unjust past must be conceptualised as part of ideal theory. As we have seen, this interest is analogous to other psychological regularities that are already central to Rawls's ideal theory and, furthermore, its importance in human life justifies its inclusion as one of the social bases of self-respect. Likewise, an unjust past and the need to assess it morally is a permanent social feature of liberal societies. Remember that we are not asking ideal theory to flesh out *how* we can arrive from our contemporary liberal societies (in which most relevant historical injustices remain un-rectified) to a well-ordered liberal society (a society in which no relevant historical injustice remains un-rectified). That will always be the job of non-ideal theory. For we have agreed all along that transitional justice is out of the scope of an ideal theory. Also, we have agreed all along that compensatory justice (stating *specific acts of reparation* for injustices committed in the past) is outside of the scope of what an ideal theory is to provide. What we are asking is for ideal theory to be a guide for non-ideal theory—as defenders of the divide claim that it should be (see Rawls 2001, p. 66; Buchanan 2004, p. 60; Valentini 2009; Simmons 2010)—in cases of past injustice, by offering the correct ideal of how a just society would look like in this regard.

The Redundancy Objection

We have seen how the conventional position holding that historical injustice is outside of the scope of Rawlsian theory is mistaken. The fact that Rawls's theory is *ideal* does not excuse its lack of concern for past injustice in the description of a just society. Let us now consider a further objection: the idea that, although historical injustice is within the scope of Rawls's theory, the effective fulfilment of the principles of justice-as-fairness is enough to ensure its rectification. We call this *the redundancy objection*. In fact, against default assumptions in current political philosophy, we find this objection more promising than *the ideal theory objection*. However, we believe it misses the target as well.

To see this objection in full force, let us come back to the hypothetical scenarios we presented in the introduction. Scenario 1 is such that Argentina and Uruguay, after long transitional processes, become well-ordered societies—their institutions are regulated by the principles of justice-as-fairness and all citizens know, accept and are motivated by this fact (see Rawls 2005, p. 35). However, while Argentina starts a process of rectification with regard to the crimes committed in the 1970s including strong retributive, compensation and recognition-driven measures, Uruguay simply refrains from even officially referring to the military regime in power from 1973 to 1985 as a ‘dictatorship’. Now, according to *the redundancy objection*, it must be the case that basic institutions in Uruguay do not fully realise at least one of Rawls’s principles. A promising candidate in this regard is the principle of fair equality of opportunity. Non-rectified historical injustices may have had a tremendous effect on the capacity of Uruguayan victims to pursue their life plan; these effects may have introduced unfairness in the competition for social positions of advantage, affecting victims’ prospects but not those of the rest of the citizenry. Accordingly, so long as such injustices have not been rectified in Uruguay, the fair equality of opportunity principle does not perfectly regulate the basic structure of such society.

We grant the preceding point. Psychological disadvantages and other obstacles to a healthy self-respect produced by non-rectified historical injustices can highly affect the prospects of fair competition of victims with regard to the rest of the citizenry. *However, this problem—psychologically disadvantaged citizens do not compete on an equal basis—is not the only normatively significant consequence of non-rectified historical injustices.* For such injustices not only affect citizens’ psychology and self-respect, but also their moral relations to one another. To see this, let us present scenario 1.1.

Scenario 1.1 is just as scenario 1 but with one difference. Most victims of past injustice are highly resilient psychologically speaking. In fact, a former political dissident, call him José Mujica, even becomes president of the well-ordered Uruguay. Mujica had been imprisoned for 14 years and tortured by the repressive forces of the dictatorial regime. After the consolidation of democracy in the Uruguayan transition and the establishment of a well-ordered society, he gained his liberty, and his ability and his willingness to compete for public office turned out not to be affected by his past experience. Suppose, however, that he says something along the following lines: ‘You see, after democracy was re-established, I really had no disadvantage in my struggle to eventually become President. My society offered all opportunities and I took them as they were coming. I did not resent my past while in such process. However, I still think there is something wrong with what was done to me during the dictatorship, and I believe that my society should officially acknowledge that. I think it is the prerogative of persons like me to stake this claim to recognition.’

The point to underscore in scenario 1.1 is that Mujica is entitled to pursue his grievance that an injustice is still taking place as long as his past remains unrecognised, even if such past did not affect his opportunities in well-ordered Uruguayan society. Such injustice is related to the moral relations between victims like him and the rest of the citizenry. By pursuing his grievance, Mujica underscores

the importance of acknowledging past injustice for fully restoring the moral status of victims in society—beyond the fair opportunities they must enjoy in the present. Put succinctly, Mujica is demanding what Borneman (2005, p. 60) calls a ‘retroactive recognition of dignity’.

In this sense, Walker (2006, p. 191) has stressed how public recognition of the wrong inflicted on citizens in the past is a necessary condition for *rebalancing the moral relations* between them and the rest of the citizenry. She contends that restoring the moral relations between victims, perpetrators, and the rest of society, what she calls *moral repair*, requires practices of amends. The notion of moral repair highlights the fact that there cannot be a community with balanced moral relations in which relevant past harms are not acknowledged and addressed as such. This underlines one aspect of moral integrity that is usually overlooked: i.e., its relational character. Only by acknowledging the wrong done to victims as a *wrong*, as something that should not have occurred, a society and its institutions make it clear that they *reject* a non-liberal form of social interaction; that is, that they reject a social context in which persons are not treated as equals due to characteristics such as their political preference or their cultural, ethnic or religious identities (characteristics that usually trigger political violence). Since victims are entitled to hold equal status in a liberal society, the institutions of a liberal state are required (on pain of compromising their liberal moral integrity) to make public their condemnation of victims’ deprivation of such a status in the past. Without the public expression of such condemnation, it is simply not clear whether such society in fact respects the status of victims as equal citizens; if it did, why would it remain silent about acts that undermine that status? Failing to acknowledge recent past wrongdoing amounts to suggesting that there are major and sensitive parts of the shared life of victims and the rest of society that are irrelevant to the moral interactions of the present. The idea of reconciliation itself should be seen from this perspective. As Verdeja (2009, p. 3) claims, reconciliation should be understood as ‘a condition of mutual respect among former enemies, which requires the reciprocal recognition of the moral worth and dignity of others.’ This is closely tied to the concept of victim recognition (see Verdeja 2009, p. 24).

Evidently, Mujica’s case in scenario 1.1 might seem like an exceptional one in that it exploits his rather uncommon psychological strength. But notice that Mujica can still say something similar *even if his non-rectified past did affect his opportunities in well-ordered Uruguay*. He could say that rectification is *not only* owed to him (and others like him) because his chances of becoming president could be affected. This is just one aspect of his moral status as a person that should be protected by the prerogatives of justice. Another aspect of his moral status as a fully equal person, which should also be protected by such prerogatives, has to do with the dignity of his life as a whole. The official act of recognition of his terrible past mistreatment restores this other aspect of his moral status within the Uruguayan citizenry.

Our point will be made clearer if we consider scenario 2. To repeat, after a long transitional process Mexico becomes a well-ordered society (basic institutions are fully regulated by Rawls’s principles of justice-as-fairness and all citizens know, accept, and are motivated by this fact). Despite this fact, some citizens demand that

the state acknowledges its complicity (by commission and omission) in the extreme exploitation of thousands indigenous persons during the nineteenth-century. As was mentioned before, there is no direct relation between these citizens and the indigenous persons that were exploited in the past. Yet the former think that something is amiss in not recognising this unjust past. Notice that since in this scenario we are assuming that Mexico is a well-ordered society, all indigenous persons in the present, as citizens of the Mexican state, are now effectively protected by the prerogatives of justice-as-fairness, including the fact that *they can compete in fair equality of opportunity* for social positions of advantage. Nonetheless, some citizens further demand that the state publicly offers what we call a *critical historical narrative*: a narrative that celebrates the putative remarkable facts about the origins of the Mexican state in its long struggle to become a just society, but also one that takes responsibility for the past deeds of Mexican society as cultural and political continuum over time.

With these scenarios in mind, let us rephrase our initial questions: should the Uruguayan state in scenario 1.1 acknowledge the terrible atrocities committed to Mujica, even if he already benefits from fair equality of opportunity? Should the Mexican state in scenario 2 acknowledge and include in its national historical narrative the gross exploitation of indigenous persons during the nineteenth-century, even if in the present indigenous people also benefit from fair equality of opportunity? Without a further principle, Rawls's theory would be compatible with the view that these forms of past injustice may remain unacknowledged. In the previous section we argued that Rawls's theory cannot correctly presuppose that historical injustices simply did not occur in societies that are to be well-ordered by his conception of justice at a given time. Now we have just seen that as it stands right now his theory offers no guidance to deal with central questions regarding some historical rectifications. By combining these two insights we obtain a disconcerting result: it seems that, according to Rawls's theory as it stands right now, from the point of view of what justice requires, it is a matter of choice whether a society rectifies past injustice in cases such as scenarios 1, 1.1 and 2. On this view rectification might be a good thing, a supererogatory (a charitable, compassionate, or generous) act, but not an act required by justice, for *all of what justice requires according to Rawls is already present in the imagined Uruguay and Mexico—as they are perfectly regulated by the principles of justice-as-fairness*. We hold that this result is disconcerting because we strongly believe that historical rectification in these scenarios and similar ones is not optional, at least not from the point of view of justice.

Scenarios 1.1 and 2 make it clear that what is a stake in many cases of historical rectification is the possibility of restoring the moral relations between citizens or, alternatively, their *mutual respect* or *equal status*. This transcends the importance of granting fair equality of opportunity to all citizens. Restoring the correct interactions between citizens in a liberal society also relates to the importance of accepting the dignity of all, the importance of taking responsibility for society's past, and the repudiation of the previous unjust forms of social interaction—see Meyer (2006), pp. 412ff) for a defense of similar ideas along different lines.

Towards a Principle of Historical Rectification for Ideal Theory

As scenarios 1 and 2 exemplify, a society can make incredible improvements on important liberal-democratic scores *without* directly rectifying past injustices. This possibility generates the following theoretical positions:

1. Ideal liberal justice requires ensuring the prerogatives of justice from the present on.
2. Ideal liberal justice requires ensuring the prerogatives of justice from the present on *and* providing means for historical rectification—such as *retribution*, *compensation*, and *recognition*-driven measures on behalf of victims of past political violence, as well as the institutional promotion of a critical historical narrative.
3. Ideal liberal justice requires ensuring the prerogatives of justice from the present on. It does not require providing means for historical rectification.

In this paper we have defended (2) by underscoring the normative significance of coming to terms with a past shaped by political violence regarding (1) citizens' psychology and self-respect; (2) their mutual respect; and (3) society's liberal integrity. One way of expressing commitment to (2) is by holding that the basic institutions of a well-ordered liberal society are also regulated by a specific *backward-looking* principle ensuring that processes of historical rectification take place. This makes it clear that, from the point of view of justice, historical rectification is not optional even when most liberal-egalitarian goals have already been fulfilled.

As we also showed, while it is clear that Rawls's description of a well-ordered society is an expression of (1), it is not so clear whether it can also be a robust expression of (2). Let us summarize the three related points that make the case for including a specific principle of historical rectification to justice-as-fairness. First, the three considerations on which we based the normative significance of historical rectification—(1) citizens' psychology and self-respect, (2) citizens' mutual respect, and (3) society's liberal integrity—are of incredible importance for Rawls's theory. Second, the inclusion of this principle could be helpful in creating theoretical balance within justice-as-fairness, in the sense that the importance of fulfilling the prerogatives of justice in the past, present, and future of a well-ordered society would be fully addressed—considering that such a society is a cultural and social continuum with an intergenerational span, and that the just-savings principle already deals with the future (see Rawls 1999b, p. 260). And third, as we argued before, including such a principle within justice-as-fairness is *not* a violation of the Rawlsian division of labour between ideal and non-ideal theory. This principle would simply clarify the commitment of Rawls's theory to (2)—that is, to the idea that *no liberal society is fully just until historical rectification has taken place*. In fact, Simmons's recently offered some remarks supporting this third point:

Rawls's ideal theory, it is said, pays no attention to the long histories of injustice [...] But the kind of 'oversights' with which such criticism charge Rawls are not in any way essential to Rawls's characterisation of ideal theory

or its relationship to non-ideal theory; they are rather simply a function of the specific approach that Rawls employs to derive the content of ideal theory, to argue for his particular, favoured conception of ‘justice as fairness’. Historical injustice goes unaddressed in Rawls’s theory because the derived principles of justice are purely ‘forward-looking’, because the choice problem given to Rawls’s original position contractors requires their choice of forward-looking principles. A quite different content to ideal theory (for instance, one that was more sensitive to the need to redress historical injustice) could be defended while still subscribing wholeheartedly to the Rawlsian version of the ideal-non-ideal distinction (Simmons 2010, pp. 32–33).

While we believe that Simmons is mistaken in holding that the choice problem in the original position grants the election of exclusive forward-looking principles, we think he is right in arguing that a liberal theory of justice *can* show concern for historical injustice *without* thereby violating Rawls’s distinction between ideal and non-ideal theory. Such a theory would subscribe to (2) as the correct ideal of liberal justice at which we should aim in our actual social proceedings. Once such a commitment is established, different specific approaches to the *transition* to the fulfilment of that ideal can be provided. Of course, we should expect countless variations of appropriate rectificatory measures depending on the society in question. Some of the contextual elements that make the institutional responses vary are the following: how many people were wronged; for what arbitrary reason; how grave was the wrong inflicted on them; how distant in time; and so on. A theory of justice on a philosophical level of generality cannot offer concrete stipulations in this regard (see Elster 2004, p. 78; de Greiff 2006, p. 466). That would be the job of non-ideal theory: to inform us *how* we can realise here and now our ideal of justice regarding historical rectification.

It is nevertheless worth mentioning that specific rectificatory frameworks of recent-past political violence usually require a coherent set of policies including instances of each of the three measures outlined in (2). For instance, when only *retribution*-driven measures are undertaken, victims might think that the state is merely focusing on a struggle *against* perpetrators and is making no effort on *victims’ behalf* directly (see de Greiff 2006, p. 2). Likewise, if the state focuses exclusively on economic *compensation*, victims might perceive this as a form of ‘blood money’, that is, as a way of silencing their claims for justice in exchange of economic advantage (see Elster 2004, p. 166n). If the state implements only *recognition*-driven measures, such as public apologies, commemoration days and memorials, victims might perceive this as a *façade* for covering up the lack of real accountability of past wrongdoers (see Verdeja 2006, pp. 130–31). Accordingly, regardless of the contextual variations expected in different liberal societies, effective programs of recent-past rectification must include a coherent set of retribution, compensation, and recognition-driven measures. When one of these measures is absent, this is in need of justification.

Likewise, it is important to note that, in general, the more recent the historical injustice is, the more relevant it becomes and the more negative effects it has on the society in question (see Sher 1981, p. 6; Elster 2004, pp. 222–229). In light of this, a

principle of historical rectification within ideal theory could state that while recent cases of historical injustice call for strong retribution, compensation and recognition-driven measures as appropriate, other cases involving distant past wrongs only call for recognition within the critical historical narrative promoted by the institutional means of the state (see Thompson 2001, pp. 132–135). For retribution-driven measures rectifying the course of history are simply impossible—the great majority of past aggressors are dead. Likewise, compensation-driven measures going all the way to the accepted historical origins of a liberal society make little sense—if any sense at all (see Waldron 1992). However, as we have seen, this does not mean that history as such is outside of the scope of institutions' moral assessment—for all liberal societies create and promote historical narratives using institutional means.

In sum, the main reason for including a specific backward-looking principle within a liberal ideal theory of justice is the capital importance of stating that (2) represents the ideal we should aim for in our actual social proceedings. In Rawlsian fashion, this idea can be formulated by saying that a liberal well-ordered society is also regulated by a principle of historical rectification.

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