

## **Responsibility for Historic Wrongdoing: Three Approaches to the Transmission Problem<sup>1</sup>** **Nicholas Murphy *Western University***

The question of why contemporary non-Indigenous citizens of settler states should carry the burden of redress for crimes committed against Indigenous peoples in the distant past raises a tricky philosophical problem. Intergenerational contexts confound the conceptual frameworks available in the traditional philosophical toolbox. The operating intuition of this paper – one which I endorse without argument – is that redress is owed to victimized Indigenous peoples regardless of the passage of time. But the strength of this intuition does nothing to tell us from whom it should come and why. The philosophical obstacle is sometimes called the ‘transmission’ problem: if the perpetrators of historic injustices are no longer around, then it is not obvious why later generations should be responsible for redress.

The most common way to assign responsibility for wrongdoing is by way of the ‘liability model’ (Young 2011: 95, 97-99). The ‘fault principle’ inherent in the model holds that one should only be held responsible in a forward-looking way if one was (directly or indirectly) causally responsible in a backward-looking way (Butt 2007: 138; Feinberg 1970: 222; Kukathas 2003: 168). To be responsible, one must be culpable. But since current generations cannot reasonably be considered guilty of historic wrongs it might seem that nothing can be done without transgressing liberal societies’ received model of liability. In this context, traditional paradigms of liberal justice do not appear to attend to history in a manner that meets the needs and demands of Indigenous peoples (Iverson 2000: 361; Thompson 2009: 196-197; Spinner-Halev 2007: 579). Traditional liberal justice forgets the importance of things like acknowledgement and apology (ibid.). But for justice to be served, history and its relevance to the identity and dignity of Indigenous peoples cannot be ignored (see Royal Commission: 7).

This paper will first consider two promising solutions to the transmission problem: the ‘benefits’ approach and an application of the theory of ‘associative obligations.’ The purpose will not be to definitively reject these frameworks but rather to draw attention to their shortcomings to reveal desiderata for a responsive solution to the transmission problem; a solution which promises to satisfy the demands of Indigenous peoples for holistic redress. The paper will then propose an alternative framework for exploration, one that answers to the identified desiderata. The ‘complicity’ view holds that contemporary citizens of settler states characterized by historic injustice are complicit in the perpetuation of enduring injustices that are non-contingently related to historic injustice. While not directly responsible for historic wrongs, citizens are responsible for the perpetuation of their effects and are thus connected to the past in a meaningful way. By demonstrating the complicity of contemporary non-Indigenous citizens in the perpetuation of enduring injustices that stem from historic wrongs the paper will solve the transmission problem by providing normative reasons that ground the duty of these citizens to help redress historic injustices. This framework will thus make a credible case for the imposition of reparative burdens on non-Indigenous citizens. Such measures include – but are not limited to – participation in things associated with national reconciliation processes in settler states such as: structural reforms; re-distributive taxation; or the issuing of political apologies.

In what follows, I assume a conceptual framework that takes transgenerational states, not

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individuals, as the point of departure for investigations into how to right historic wrongs. That certain types of organized collectives can constitute enduring entities with an identity, agency and moral autonomy of their own is a view espoused by scholars interested in solving problems of collective accountability. Advocates argue that to presume only individuals capable of moral agency is to assume an unwarranted “anthropocentric bias” (French 1979: 207). After all, organized collectives exhibit the moral features necessary for paradigmatic individual moral autonomy. In virtue of the fact that states can act and have intentions based on reasons, they too should be recognized as morally autonomous agents. As such, they can be held responsible for their intentional actions or omissions.

Although specific arguments vary, scholars generally agree that organized collectives (such as states) have intentionality distinct from the intentions of their members as a result of structures of decision-making and authority, avowed policies, procedures and stipulated roles (for example French, 1979: 212; Kukathas 2003: 181; Pettit 2007: 187; Isaacs 2011: 27). In virtue of these features a collective can theoretically form an intention that none of its members share. This is why “the more structure a collective has, the easier it is to dissociate its identity from any particular cohort of members” (24). Collective actions then flow from collective intentions. Like a collective intention, a collective action is distinct from the actions of any individual actions that comprise it; a collective action, like a collective intention, supervenes on individual actions (50). The fact that intentional collective action flows from collective intention warrants the description of this action as irreducibly ‘collective.’ Neither collective intentions nor collective actions are reducible to individual ones; that is why they are ‘collective’.

Notwithstanding the metaphysical concerns of some skeptics, the virtues of this framework are enough to make an exploration of its resources valuable. From this vantage point, not only can we say that backward-looking responsibility subsists over generations in concert with a collective, we can also allow that this responsibility need not translate into individual responsibility of the same genus. This observation may alleviate concerns over holding people responsible for something they did not do.

While responsibility can attach to a subsisting state, this does not answer the question of why it might be justified in imposing burdens on its members. That is, it does not answer the transmission problem. Since the state and its constituent members are conceptually distinct, it follows that their moral duties may not emerge from the same source. Why, then, should contemporary non-Indigenous citizens shoulder the burden of redress?

### **Canvassing Solutions**

**II** At first glance, it is tempting to suggest that contemporary citizens ought to be held responsible for forward-looking redress simply in virtue of their membership in a morally culpable state. Thus stated the notion begs the question. One cannot be held responsible simply because one is a member of the convenient category ‘citizen’ (Kukathas 2003: 169).

Perhaps, though, there is something to the thought that membership in a group creates moral obligations after all. This is the guiding intuition of scholars who promote the theory of ‘associative obligations’ (AOs). The foundational idea behind AOs is that, in addition to general moral duties and obligations incurred voluntarily, there are other sorts of moral obligation agents have in virtue of the value of (non-voluntary) membership in an appropriately meaningful association (Van der Vossen 2011: 478). These obligations are irreducible in that they do not

derive from the foregoing types of obligation (ibid. 479; Sheffler 1997: 195-200). While AO theorists typically focus their attention on small, identity-forming communities or relationships – churches, cultural groups, families, friendships – AO theory can also ground arguments for political obligation in the context of a state. For our purposes, associative political obligations (APOs), considered as a subset of AOs, could be thought to extend to the duty to play one’s part in the fulfilment of the moral obligations of the state in virtue of membership. If AOs can ground political obligations, and if one of our (imperfect) duties is to play a role in the fulfilment of the state’s moral obligations, an argument for APOs could solve the transmission problem by demonstrating that contemporaries are connected to historic wrongs in virtue of membership. Given that APOs are a subset of AOs, the success of any argument for the former will be contingent on the intelligibility of the latter, so a brief exposition of the broader theoretical framework is in order.

Many people who find themselves members of a group have some unreflective sense of obligation to other members, or indeed to the group itself. The intuition is that the demands of membership have independent reason-giving force. This intuition is analogous to that felt in the context of a family: although not voluntarily entered, familial roles are nevertheless thought to be accompanied by duties to other members (for example Dworkin 1986: 196). These duties are not arbitrary encumbrances, though. Members do not incur obligations simply by virtue of filling a node in the lattice of a group structure, but (on the most convincing accounts) because of the non-instrumental value they derive from membership in the association itself. If I value my membership in a group for non-instrumental reasons, then my membership gives me reasons for acting in its interest (Sheffler 2018: 6-9). AO theorists insist that, given appropriate conditions and respecting certain caveats, the demands of membership amount to moral obligations regardless of whether one consents to membership. These obligations stem from the intrinsic value of the relations between members (Sheffler 1997: 7); indeed, some go so far as to say that these obligations are part of what the intrinsically valuable relations between members consist in, and so cannot be separated from them (Pasternak 2011: 196). Less convincingly, some theorists argue that being a member of a group entails having obligations in an analytical sense (Gilbert 1993: 121-122). Echoing this conceptual argument, theorists of the communitarian persuasion argue that “if one admits the existence of the community, and if one acknowledges that the community constitutes one’s identity, then it is absurd at the same time to deny any obligation to the community and its members” (De-Shalit 1994: 15). Denying these obligations, then, amounts to a sort of denial of one’s identity (Simmons 1996: 261). For our purposes, an associative obligation should be understood as a “special moral requirement [...] whose content is determined by what local practice specifies as required for those who fill that role or position” (253).

Because it is so widely shared, the political version of the intuition that AOs have independent reason-giving force is what Vernon (2007) calls the “jewel in the crown” of the associative view (868). Much discussion of APOs begins by defending the view that this sense of obligation points to genuine obligation; indeed, some scholars’ attempts to ground these intuitions are best described as “interpretive” given that they presuppose the genuine nature of the feeling (Van der Vossen 2011: 479). The strength of the intuition is bolstered by the fact that meaningful relationships seem to engender duties in practice: “[i]ndeed, we would be hard

pressed to find any type of human relationship to which people have attached value or significance but which has never been seen as generating such responsibilities” (Scheffler 1997: 190). If membership in the state is non-instrumentally valuable, it is thought, then citizens have APOs.

With this framework APOs arguably fill in the question-begging air of the idea that citizens should shoulder the burdens of redress simply because they are members of a morally responsible state. But while the approach offers an apparently promising avenue for a solution to the transmission problem, I see two problems, one relating to its persuasiveness, the other to its appropriateness for our context.

The first problem is in the characterization of the bonds of membership and the obligations thought to be intrinsic to these bonds. The APO approach holds that relations among citizens are intrinsically valuable. This is because citizens have non-instrumental reasons for valuing their membership in an appropriately meaningful polity, and furthermore, because the obligations attendant upon membership are an important element of these relationships. But what if the citizen neither identifies with nor values the polity or its members? While it is eminently reasonable that they might, or even should, it is not necessary that they must – nor, it should be added, that they *do*. If they do not, then the putative APO to play a role in redress has no action-guiding force. This objection is termed the ‘voluntarism’ problem, or the idea that there is a subjective element to APO theory wherein at least some conscious feeling of belonging is necessary for political obligation to obtain (Renzo 2012: 117). A citizen may not identify with the polity, and thus need not respond to putative APOs. Since APOs are based on the value of membership, if there are citizens who do not acknowledge that value then putative APOs will not convince them otherwise.

There is a second and more fatal issue with the APO framework in this context, one that brings to light a key desideratum of any solution to the transmission problem. This shortcoming is found in the apparent normative motivation for citizens to fulfill their APOs. Namely, the problem is that from a meta-ethical perspective the approach locates the reasons for participation in redress in a totally misguided normative area. Recall that we are seeking a responsive solution to the transmission problem. This means that in any approach to connecting present people to past injustices it is desirable that those injustices take centre stage with respect to the motivations for why contemporaries should address them. After all, Indigenous calls for redress feature the demand that appropriate attention be paid to history. Non-Indigenous citizens should address what was done not to protect some other thing they value, but because they recognize what was done as unjust. The APO approach, extended to our context, offers a motivation for playing one’s part in redress that is found in the value of membership. But if this is the motivation for citizens, the injustice falls out of the picture. It is no longer necessary that they even care about what happened. This is plainly insufficient, if not disrespectful, and is surely not responsive to the demands of Indigenous peoples. While eminently reasonable, the application of the AO theory fails in this context. The normative location of the motivation is on the wrong track.

Despite these shortcomings, the APO approach has some features which, through their failures and virtues, suggest desiderata for a successful solution to the transmission problem. Firstly (a), like the APO approach, the solution must particularize the duty of repair to one set of people and not another – a people connected in some appropriate way to the historic wrong.

Secondly (b), unlike the APO approach it must offer widely acceptable normative motivations for individuals to play their part in redress that do not include voluntary identification with the responsible state: a voluntarist aspect to a solution risks leaving behind those most in need of convincing. Thirdly (c), it must show why despite being personally innocent of historic wrongdoing, contemporaries still have a moral duty to play their part. The AO approach offers a way to do this but falls short. Finally (d), any successful approach must locate the motivation for repair in the correct moral arena: historic injustices and their significance to victimized communities. Recall that a concern raised at the outset is that liberal approaches tend to leave history out of the picture. A solution that ignores history is just what we are trying to avoid.

**I.II** If political obligations won't work to motivate non-Indigenous citizens, perhaps the insight that they are the beneficiaries of injustice will. An oft-cited, intuitively appealing strategy for grounding the duties of contemporaries to play their part in redress lies in the thought that the involuntary receipt of benefits stemming from historic injustice can ground rectificatory duties on the part of beneficiaries, be they individuals or organized collectives. Variants of these views are best defended by Daniel Butt (2007; 2013; 2014) and Chandran Kukathas (2003). The rectificatory duties in question are generally held to consist in the moral requirement that beneficiaries give up some or all of the benefits in question. The intuition here is that benefiting from injustice is wrong in itself, for we should not take advantage of wrongdoing (Anwander 2005: 39). The violation of the duty not to benefit from injustice entails a duty to make up for it in the interest of those who lost out. In this way the receipt of benefits creates a moral relationship between beneficiary and victim.

Before filling in the source of the intuition that benefits entail reparative duties, let me first examine the view on its own merits considering the desiderata identified thus far. One virtue is that given that unjustly acquired benefits subsist over generations, so too might reparative duties, thereby (a) particularizing the duty of repair to one set of people and not another. Wrongfully held benefits could (b) suggest agent-centred motivations for citizens to participate in redress despite (c) their innocence in historic wrongdoing. A further virtue is that the particularly heinous source of the benefits might be able to draw appropriate attention to *how* benefits were obtained, and not just *that* they were, thereby arguably (d) locating the normative motivation for redress in the correct moral arena.

Notwithstanding its intuitive appeal, the benefits approach faces some obstacles. Objections can be raised to the widely shared intuition that the receipt of benefits entails duties of redress on both practical and theoretical grounds. Practically, the approach has difficulty in even the simplest of cases, wherein the benefits considered are things that can actually be pointed to: lands or objects known to have been wrongfully obtained in the past. Being informationally less demanding than the contemplation of complicated counterfactuals, the disgorgement of things to which one clearly does not have just title seems an easy route to take (Goodin 2013: 478; Vernon 2016: 72). If someone is in possession of something because of another's wrongdoing, the mere possession of that thing does not magically imbue the innocent beneficiary with just title. Stolen goods remain stolen goods through transfer from one person to another. Although innocent, the beneficiary is morally required to give up her holdings in the name of corrective justice (Goodin 2013: 484).

However, this approach means that the sphere of what can count as 'redress' will be

severely limited and fail to address many of the broader concerns of the descendants of victims of historic injustice. Indeed, the disgorgement of goods to descendants would here constitute something more akin to simple restitution on grounds of unjust enrichment than meaningful redress. This is an area where the benefits approach faces a potential shortcoming: since we are trying to do more than give back what was taken – since we are trying to make amends for historic wrongs through redress – restitution of this kind would fail to fully address them (Thomson 2001: 120). Restitution of property alone draws undue attention to the economic aspects of dispossession and not the singular wrongness of historic crimes. That is, a focus on property distracts from how the property was wrested from its rightful owners, proper acknowledgement of which is called for in all claims for redress. Material considerations threaten to neglect the moral wrong that initiated the discussion in the first place (Vernon 2016: 219).

But maybe the above offers only a caricature of the benefits approach. Surely we can expand the sphere of what counts as reparations in the context of redress by going further and conceiving of benefits not just as lands and objects, but also as things like: returns on earlier investments made possible by past wrongs; opportunities available to inheritors of benefits that are unavailable to descendants of victims; structural advantages; and, indeed, contemporary quality of life in general. After all, many of the features of modern life in state contexts are non-contingently related to the wrongs of the past. For example, Kukathas (2003) argues that the lower tax rates enjoyed by present day Australians – arguably a factor in judging overall quality of life – are a result of the existence of infrastructure built by previous generations partly through the exploitation of Aboriginal Australians and the expropriation of their lands (184). In this way, contemporaries can be said to benefit from injustice. Thus, these more abstract things – opportunities and structures, lower taxes and so forth – are plausible candidates for being called ‘benefits’ even though they are not easily pointed to. They also allow us to better understand the scope of benefits: they’re not just property, but things whose value mushroomed from an initial injustice and whose existence is, as matter of fact, contingent on it. By giving up some of these things, contemporaries could go beyond restitution or disgorgement and more fully address the concerns of descendants by seeking to make the world look more like it would have had the injustice never taken place.

However, there are further practical problems with the justification for redistributions of this kind using the benefits approach.<sup>2</sup> Importantly, disentangling what counts as a direct benefit of past wrongs will be problematic to the point of being unfeasible. While it is not wrong to say that contemporary quality of life is related to what happened in the past, sorting out how exactly this is so is no easy task. Over time, as the fruits of injustice diffuse throughout society, the things they make possible – structures and opportunities, for example – become tainted insofar as some of their (sometimes non-economic) value derives from those fruits. But to be ‘tainted’ is not to be ‘entirely resulting from’. Since the benefits-received approach depends on the identification of certain benefits as a class of resources that can be redistributed, the problem seriously undermines the appeal of the strategy. The notable difficulty would be the determination of how much the past wrong contributed to the current benefit. Is it entirely

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<sup>2</sup> Because of space constraints I leave aside for now the issue of counterfactuals. See Waldron 1992: 7-14.

responsible? Somewhat? A third? Such causal disentangling seems impracticable.

Despite practical issues the intuition remains that benefits create some sort of moral relationship between winners and losers. What is the source of this intuition? Here we see the theoretical weakness of the benefits approach. Some scholars have argued that it cannot without moral acrobatics be argued that the innocent receipt of benefits creates anything more than a weak duty of gratitude (for example Vernon 2016: 55). Innocent receipt is *innocent*, and the situation is analogous to a gift that merits some form of reciprocation. But the intuition is supposed to point to something stronger, less defeasible, than gratitude – something that must stem from *doing* rather than passively receiving. And indeed, the only plausible reading of the intuition that benefits entail duties of redress stems not from the mere fact of innocent receipt, but rather from the wrongful retention and use of unjust holdings (Anwander 2005: 41-43). It is not the innocent receipt of benefits that is the problem, nor is it the location for the motivation to participate in redress. Instead, the wrong lies in both actively taking advantage of and in failing to disgorge benefits. Though related, these are distinct groundings for a duty of redress. As such, it is not the receipt of benefits alone that matters.

The key to this line of thought is the idea that individuals should not actively take advantage of wrongdoing, and that if one condemns the source of the benefits one cannot simultaneously withhold those benefits from those harmed by the injustice. To do so would be to exhibit reprehensible moral inconsistency (Sparrow 2000: 357; Butt 2014: 339). Refusing to give up wrongly obtained goods or advantage, no matter how innocently obtained by a third party, is a voluntary act that puts that agent firmly in the camp of the morally blameworthy (340). From a moral perspective, then, it is incumbent on innocent beneficiaries to give up what they wrongly possess. Failure to do so is to *perpetuate* injustice. But if the perpetuation of injustice is the source of the intuition, it is no longer the receipt of benefits that is doing the moral legwork. This is why we are no longer talking about the ‘benefits’ approach simpliciter. The wrongness lies not in their receipt, but in the failure to give them back. Granted, the subsistence of benefits draws our attention to enduring injustice, but this is why we think – wrongly – that it is the receipt of benefits alone that engenders reparative duties (Anwander 2005, 41). As such, the benefits view transmutes into something that merits another name.

The basic intuition that innocently-received benefits can create a moral relationship is correct, just not for the reasons one might think. Herein lies the virtue of the benefits-received approach: it draws attention to the fact that there are injustices that are non-contingently related to historic crimes which subsist in the present, injustices which contemporaries may be complicit in perpetuating. Considering that we are seeking a responsive solution to the transmission problem, the fact of these enduring injustices should not be left out of this solution. These cannot be understood without reference to historic injustice and are fruitfully thought of as its tenacious legacies. If we are to address historic injustice holistically, its legacy cannot be ignored. This is especially true when we consider that addressing a historic injustice in isolation, ignoring the broader social context in which it arose and in which its effects linger, threatens to miss the forest for the trees (Dorell 2009). We have, therefore, a further desideratum for an answer to the transmission problem: namely, (e) that enduring injustices must be addressed in concert with the historic injustice which engendered them.

The above demand, far from complicating matters, allows us to approach the

transmission problem from a new angle. This is because it highlights a causal link between the present and the past which offers a jumping-off point for showing how contemporaries are connected to historic wrongs. Simultaneously, the connection of these enduring injustices to the past promises to (d) draw appropriate attention to the importance of history when considering the claims for redress brought forward by Indigenous peoples.

### **The Complicity Approach**

**II** By drawing attention to the importance of enduring injustices rooted in the past, this section will outline a framework that answers to all the identified desiderata for a successful solution to the transmission problem. Contemporary members of a culpable state have normative reasons for playing their part in redress for historic wrongs despite being personally innocent of those wrongs. These normative reasons offer provisional justification for the imposition of burdens on contemporaries by the state. Failure to play one's part in fulfilling the obligations of the state renders one complicit in ongoing wrongdoing in a blameworthy way. It is thus incumbent upon non-Indigenous citizens to participate in the collective project of redress.

**II.I** 'Enduring injustices'<sup>3</sup> are a result of the intentional acts or omissions of the state. Scholars emphasize the ongoing agency of the wrongdoer in actively refusing redress (for example Butt 2006: 359). In this context, state acts and omissions should be characterized as intentional in virtue of both the state's intentional structure of decision making and the recognition of the fact that it is not the case that the denial of redress has taken place in the context of ignorance: Indigenous calls for justice have been consistent and ongoing for generations (Newton 1999: 261). The duty-engendering fiduciary relationship thought to have been established between governments and Indigenous peoples via treaty-making has similarly been consistently flouted (Royal Commission 8; 659). As such, the refusal to undertake redress should be understood as intentional exercises of the agency of the state.

There are two types of enduring injustice to consider. The first is that which, though not a direct causal effect of a historic wrong, is nonetheless non-contingently related to that wrong. As an example, and as the analysis of the benefits approach makes clear, the failure to make reparations for a historic injustice constitutes a distinct wrong; a wrong that, though not a direct effect of a historic wrong, is nonetheless an outgrowth of it (Butt 2013; Sher 2005). Though distinct, it compounds and worsens the original wrong. In addition to suffering at the hands of a morally responsible state, victims suffer a further injustice when the collective fails to fulfil its duty to provide reparations. When not provided with reparations, the interests of victims are affected. This failure negatively impacts descendants of original victims in material and psychological ways (Cohen 2009: 84; Sher 2005: 191; Butt 2006: 359). As the current constituents of an identifiable community, descendants of victims are actively wronged by the state's ongoing failure to address the damage done to that community by a historic injustice.

The second type of enduring injustice to consider concerns those injustices which are direct (causal) results of a discrete, historic injustice. The term 'automatic effect' is apposite (Sher, 1981). Automatic injustices are those which cannot be attributed to any cause other than a historic crime (Thompson 2001: 118). The historic injustice is, if you like, their *sine qua non*.

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<sup>3</sup> The term is from Spinner-Halev's (2007), though I understand it a bit differently.



One example of an automatic effect of historic injustice is the seemingly inexorable structural injustice which tends to follow (Royal Commission: 15). Structural injustices stem from widely held beliefs and attitudes in a society, embodied in institutions, and which manifest

when social processes put large categories of persons under a systematic threat of domination or deprivation of the means to develop and exercise their capacities, at the same time as these processes enable others to dominate or have a wide range of opportunities for developing and exercising their capacities (Young 2006:114).

The dispossession of a collective, to cite just one example, can lead to enduring, unjust societal structures that unfairly disadvantage direct victims and, subsequently, their descendants. Evidence for structural injustice of this kind is widespread: Indigenous peoples in Canada, for instance, experience higher incarceration rates, greater unemployment, poorer health and more violence when compared to the non-Indigenous population (Statistics Canada 2018). Forced relocation leads to inaccessibility of services, opportunities, and a widespread discounting of the interests of the community. The expressive message of disregard intrinsic to the act of dispossession is reproduced over generations and validated both by the initial transgression of that collective's rights, and the denial of those things necessary to its integrity, such as sacred lands (Vrdoljak 2008: 203; 219). Acknowledging structural injustices has the added advantage of drawing attention not just to the historic wrongs that engendered them, but also to the broader continuities of the ongoing colonial project of subordination that are of central concern to Indigenous peoples (Sparrow 2000: 351-353).

There is a further automatic effect of historic injustice that merits special attention. This injustice is best understood as the dignity-affecting impact of historic injustice on contemporary descendants of direct victims. As many scholars have noted in the context of Indigenous calls for redress, collective memory matters to victimized communities (for example Murphy 2011: 63; Ivison 2000: 362; Spinner-Halev 2007: 576). Past wrongs have an impact on the well-being of descendants (Thompson 2001: 134). I refer here to the psychological impacts of the social meaning of a historic injustice. Long denied acknowledgement, group members may feel anger, mistrust or a sense that they are not afforded proper respect; they may justifiably feel that they are not considered full members of the moral community. Such effects represent unjust harms to victimized communities, harms that arise directly from the disrespectful message sent by the perpetration of historic crimes and the subsequent failure to redress them.

**II.II** The injustices described above are a result of the intentional acts or omissions of the state. Given the distinction between the state and its citizens outlined in the introduction, one could be forgiven for thinking that citizens therefore bear no responsibility for them. However, this is to misunderstand the interconnection of state acts or omissions and the activities of its citizens. That these injustices are the product of collective action or inaction does not absolve individuals of responsibility of all kinds, for there is a dependence relation between the acts and intentions of the state and those of its constituents. Indeed, since the state derives its very legitimacy from the (often) passive endorsement of its members (Vernon 2016: 46), individual actors are essential for the "operationalization" of collective injustices (Lu 2011: 271).

While the framework I espouse respects a conceptual distinction between the state and its

citizens, this does not mean that the agency of the state is not exercised through its citizens. Indeed, logically it must be. We have already seen how distinct collective intentions arise from the decision-making structures, rules, hierarchies of authority and policies of a state. The intentions of the state, which lead to its acts or omissions, likewise derive from the diverse actions and intentions of its citizens acting in their various roles. While the state has moral autonomy, this autonomy is a function of the activities of citizens. This means that if the state is intentionally committing a wrong, its citizens are implicated. Since citizens may pursue their activities without sharing in the intentions of the state, it follows that being implicated in this wrong does not always entail blameworthiness. But it cannot be denied that the everyday activities of citizenship – paying taxes, abiding by the law, participating in the economy, voting – support the state in all its functions. The activities of citizens, pursued for diverse reasons, result in the wrongful collective acts and omissions described above. These ordinary activities of citizens amount to what Vernon (2016) calls ‘civic complicity’ (37). This sort of ‘complicity’ is not always morally blameworthy, but it can “transform minute quanta of power into the capacity for great violence” (54). Without the ordinary activities of citizens, the state would not be possible. Nor would its actions or intentions supervene on those of its citizens. Importantly, then, without the actions of citizens, the enduring injustices for which the state is responsible would not persist in the world. Thus, the ordinary activities of citizens make a difference to the world. If the state is failing its victims, then so are those citizens that do not fall within the victimized community. Recalling now our desiderata, we can see how this observation serves to (a) particularize the duty of repair to contemporary non-Indigenous citizens.

**II.III** The state is the agent with ultimate responsibility for historic and enduring injustices. As a collective agent is factually guilty, even if it cannot know it (Isaacs 2011: 71-72). The state, if you like, is the ‘principal’ in these crimes. However, non-Indigenous citizens of the state also bear responsibility. They are responsible for forward-looking redress in virtue of the fact that if they do not participate in redress for enduring injustices they become complicit in their perpetuation in a blameworthy way.

Standard discussions in criminal and tort law hold that participatory intent and causal contribution are necessary for ascriptions of paradigmatic complicity (Feinberg 1970: 222). Accomplice liability derives from a secondary party’s knowing causal contribution to the wrongful actions of a principal when both parties share the same goal (Kadish 1985: 337-338). Not all scholars agree. Indeed, some suggest only participatory intent, and not causal contribution, is necessary for complicity (Kutz 2007; 2011; Lawson 2013: 234). However, both understandings of complicity derive from analysis of law. Our context is a moral one, and the bar for blameworthiness is consequently lower. Whatever its merits in other domains, the requirement of participatory intent is not appropriate in our context because of the nature of the individual acts in question: *unsought* perpetuation of unjust collective acts or omissions. Instead, my approach requires that to be ‘complicit’ in a blameworthy way one, quite simply, contributes knowingly to a wrong. That is, this view of ‘causal complicity’ holds that one’s actions, made in conditions of knowledge, must make a difference to the world (Gardner 2007: 137, 140; Anwander 2005: 45). This sort of complicity is, of course, “all the more blameworthy” if the participant shares in the purposes of the principle, but “one can contribute causally and knowingly and hence be complicit with [the principal’s] wrongdoing without sharing the

wrongdoer's purposes at all" (Goodin and Lepora 2017: 269). Blameworthiness hinges on the requirement of knowledge, not intent.

This view of complicity suggests that once made aware of the effects of their actions in the perpetuation of injustice, an individual's failure to participate in redress transmutes into a sort of complicity that is morally blameworthy. To avoid morally compromising complicity, an agent must actively participate in state redress. This is because the actions of the state are dependent on those of its citizens. Therefore, the omissions of citizens – that is, the failure to participate in collective redress – make a difference to the world: they perpetuate injustice. When these omissions are made in conditions of knowledge, they are blameworthy insofar as they are expressions of agency. In this context, "letting something happen is to participate in producing it" (Vernon 2016: 47). As such, though not acts per se, citizens' omissions meet the definition of complicity outlined above. Since lack of rectification on the part of the state effects the perpetuation of injustice, so too will an individual's lack of participation in state redress effect this perpetuation, albeit to a far lesser degree. Since it is only active change that can extirpate enduring injustices, not acting is enough to perpetuate them (Celermejer 2013: 52). Recalling again our desiderata, we can now see why contemporary citizens of a morally responsible state have (b) normative motivations to participate in redress; and why (c) these contemporaries, while innocent of historic wrongs, nonetheless have some liability for their righting.

While the complicity approach has identified an agent-centred motivation to participate in redress in the avoidance of complicity, the focus has been on dealing with injustices of the present, not the past. Isn't that missing the whole point? Since, per desideratum (d), we want redress to deal with a historic injustice and its significance to victims, and not just its effects, the complicity approach arguably falls short. Importantly for the detractor, the motivation of the citizens does not seem to come from the right place. While the distinct motivations of state and citizen coincide at a place where the independent reasons for redress in practice result in both agents addressing ongoing injustice, that the citizens aim to redress only the effects of a historic injustice is problematic.

To answer this objection, we must expand our lens to consider what a historic injustice can represent to a victimized people. Scholars emphasize that the significance of a historic injustice can have profound effects on a community's dignity and identity. The memory of a historic injustice impacts members and communal memory in dignity-affecting ways: "[t]hose whose family lines were in the past attacked, exploited, suppressed, or denigrated are likely to suffer from feelings of anger, regret, sadness or insecurity [...]" (Thompson 2001: 134). As argued above, these psychological effects should be considered automatic effects of historic injustice, for there is no other cause to which they can be attributed. What an injustice represents can become intertwined with identity, and this is why "[i]t is the remembering which is important for many people; and it is the forgetting which is most offensive" (Kukathas 2003: 173). Neglecting the historical record is damaging to a victimized community's identity (Waldron 1992: 6).

Part of the legacy of a historic injustice is that victimized communities, long denied reparations, apology or acknowledgment, feel anger, despair, and that their grievances are unjustly ignored. Disregard for their claims leads to mistrust and a sense that their community is not afforded proper respect (Spinner-Halev 2007: 579-580). The failure of the state to take

seriously a historic injustice thus comes to represent all that is wrong with their treatment, past and present (see Royal Commission: 16). This expressive message of disregard is part of the meaning of a historic injustice in the collective memory of a victimized community. What the historic injustice means to a community, and how it impacts its identity, arises as a function of the disrespectful expressive message attendant upon the state's erasure of history and the failure to do anything to redress what it has done. If the victimized community cares about its history, and if meaningful redress is to be pursued, so too should the inheritors of the polity that so impacted it.

The complicity approach provides resources for dealing with the dignity-affecting aspects of a historic injustice, ones which are finally able to locate a motivation for individuals to participate in redress in history and its significance to Indigenous peoples. These resources lie in the recognition that the meaning of a historic injustice (and the consequent psychological harms that accompany it) does not arise out of a vacuum. The ongoing failure to address this meaning on the part of a responsible state through collective redress reinforces a victimized community's sense that they are ignored, that their claims are discounted, that they count for less. The meaning of the injustice arises from long-established attitudes, the political traditions of the state, the unjust structure of its social institutions, and the cultural ambivalence of its citizens living their everyday lives. Together, these reproduce and reinforce the erroneous social meaning of historic injustice. The historic injustice stands as an affront to the dignity of descendants. We are thus confronted with an important injustice that arises from civic complicity, one that is the result of the contingencies of a state's evolution from a historic injustice until now: an ingrained disregard for the claims of a victimized community's calls for justice, a disregard for what the victims see as the true significance of the injustice. Citizens of a culpable state are thus complicit in the production of the damaging social meaning of historic injustice and, consequently, the perpetuation of the dignity-affecting disregard for calls for redress.

Unlike other practices that render individuals complicit in ongoing wrongdoing, combatting the social meaning and significance of a historic injustice requires that citizens first acknowledge that what was done historically was wrong and that the perspectives of victimized communities with respect to the injustice matter. One who focuses only on the present would not be getting the point. It is not just about the effects of historic wrongdoing and the recognition that they are unjust, but about what the historic injustice means in the collective memory of the victimized community. Acknowledging the impact of injustice on collective memory requires that non-victim citizens put the interests of victims first, and that they focus on the latter's needs and not their own. It requires empathy and an acknowledgement of the validity of that community's understanding of the injustice. This means that contemporaries must first (d) understand history and its significance. Only in this way can the false narratives that contributed to generations of perpetuated injustice begin to be dismantled. A commitment to dismantling these narratives cannot really come with the desire to avoid complicity alone but must begin with a recognition that a historic injustice was indeed wrong, that victims are deserving of respect, and that their perspective matters. Given the passage of time, how else are we to address a historic injustice directly but through its meaning? The complicity approach gives individuals reason to do this.

## **Conclusion**

By embracing a two-level distinction between the state and its citizens, and by drawing attention to the fact that there are distinct, enduring injustices that result from historic wrongs, the complicity approach answers to the desiderata for a responsive solution to the transmission problem in a way that grounds a justification for the imposition of reparative burdens on non-Indigenous contemporaries. Taken together, the elements of the complicity approach provide a defensible framework that will convince skeptics to begin to approach redress in a manner that is responsive to the needs and demands of victimized communities.

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