

IS RAWLS'S THEORY OF JUSTICE EXCLUSIVELY *FORWARD-LOOKING?*

ON THE IMPORTANCE OF RECTIFYING PAST POLITICAL VIOLENCE*

Moisés Vaca

Instituto de Investigaciones Filosóficas, UNAM
moisesvacap@gmail.com

Abstract

In this paper I address an objection to the claim that Rawls's theory is to show concern for historical injustice. This objection states that such a theory is justified in avoiding concern for historical injustice because of its putative *forward-looking character*. The objection takes two forms: first, it is argued that there are reasons internal to Rawls's own theory, such as the choice problem modelled by the original position as well as the fact that justice-as-fairness is thought of to be a non-comprehensive conception of justice, which warrant such a putative forward-looking character. Second, it also claimed that there are reasons external to Rawls's theory, having to do with the putative existence of the so-called *non-identity problem*, which warrant an exclusive forward-looking character not only to Rawls's principles of justice but to any other conception of distributive justice. I will try to show that the stated objection, both in its internal and external presentations, fails.

Key words: Historical Injustice, Rawls, Liberal Theory, Ideal Theory, Parfit, Non-Identity Problem.

*This paper was written while I was a DGAPA Postdoctoral Fellow at the Institute of Philosophical Research, UNAM. I thank the program for the incredible research support.

Recibido: 25 - 10 - 2012. Aceptado: 04 - 04 - 2013.

Resumen

En este trabajo respondo una objeción a la tesis de que la teoría de Rawls debe atender problemas relacionados a la injusticia histórica. Esta objeción sostiene que dicha teoría está justificada en no considerar problemas de injusticia histórica debido a su supuesto carácter exclusivamente prospectivo. La objeción tiene dos presentaciones diferentes. Primero, como la idea de que hay razones internas a la propia teoría de Rawls que justifican dicho carácter exclusivamente prospectivo —tales como el problema de elección modelado en la posición original y el hecho de que la justicia-como-equidad debe ser una concepción de justicia no-comprehensiva. Segundo, como la idea de que hay razones externas a la teoría de Rawls —en concreto, la supuesta existencia del así llamado problema de la no-identidad, que justifican el carácter exclusivamente prospectivo no sólo de los principios de justicia rawlsianos sino de cualquier otra concepción de justicia distributiva. Trataré de mostrar que esta objeción, tanto en su presentación interna como externa, es equivocada.

Palabras clave: Injusticia histórica, Rawls, teoría liberal, teoría ideal, Parfit, problema de la no identidad.

1. Introduction

Political violence is an institutional way of undermining the equal moral worth of persons. A person is selected as the target of this form of wrongdoing because of her ethnicity, religion, culture, or political beliefs and actions. She can also be targeted for more than one of these characteristics at once (see Jones 2004: 2-10 and Verdeja 2006: 123). Through the lens of the aggressor, the victim is not worthy of equal moral consideration —if worthy of any moral consideration at all. The infliction of harm against her is an expression of this.

This form of wrongdoing is always directed, promoted or facilitated institutionally. Just as human rights cannot be violated by a single individual (see Pogge 2000: 47), a person committing an isolated hate crime is not thereby bringing about political violence. However, if the State fails to sanction several instances of similar hate crimes, this further failure does constitute political violence. In this case, while the State is not targeting wrongdoing against specific citizens directly,

it is nevertheless allowing those citizens to be targeted without any consequences for aggressors.

Recent history provides a bulk of examples of *past* political violence. The exploitation of indigenous peoples by most Latin American states in the nineteenth-century, the segregation of African-Americans in the United States up to the seventies in the twenty-century, and the extermination of Mayan persons by the Guatemalan State from 1970 up to 2000 are all examples of different degrees of political violence in virtue of ethnic or cultural belonging. Likewise, the imprisonment and abduction of individuals considered political dissidents or 'subversive' elements by some Latin American states (most notably Argentina, Chile and Uruguay) in the second half of the twenty-century, are all instances of political violence in virtue of political beliefs and actions.

An immense amount of evidence in psychology, moral philosophy and the social sciences supports the idea that coming to terms with a past shaped by political violence bears an extremely high significance for citizens and liberal societies. This evidence testifies to the normative significance of historical rectification with regard to (1) citizens' psychology and self-respect, (2) citizens' mutual respect, and (3) social stability for the right reasons.

In light of this normative significance, in previous works¹ I have defended an interpretation of John Rawls's theory of justice according to which the *perfect* regulation of the very principles of justice-as-fairness ensures that the State has adopted a coherent set of rectificatory measures (at the *legislative* stage, that is, at the third level in Rawls's four-stage sequence —see Rawls 1999a: 171-176) as the context of the given society requires. These include *retribution*-driven measures (i.e., when penal sanctions are elicited against perpetrators of past political violence), *compensation*-driven measures (i.e., when economic and restitution schemes in support of victims of past political violence are set in place), and *recognition*-driven measures (i.e., when State apologies, monuments, museums, days of commemoration, critical education regarding society's own past, etc., are promoted by the State).

I advanced this reading of Rawls's theory against the extended claim that, due to its *ideal character*, such a theory starts-off by assuming that no historical injustice has occurred in a society that would eventually be

¹ See Vaca (2012) and Espíndola & Vaca (2013).

regulated by justice-as-fairness. Rather, I defended that Rawls's justice-as-fairness provides a basis for determining the extent to which justice requires rectification of past wrongs. For we as theorists need to show that even under historical conditions marked by gross injustice — as is the case in all current liberal societies — the Rawlsian utopia of a stable well-ordered society is still realistic.

In this paper I want to address a further objection to my claim that Rawls's theory is to show concern for historical injustice. The objection states that such a theory is justified in avoiding concern for historical injustice, not due to its *ideal character*, but because of its putative *forward-looking character*. This objection takes two forms: first, it is argued that there are reasons internal to Rawls's own theory, such as the choice problem modelled by the original position as well as the fact that justice-as-fairness is thought of to be a non-comprehensive conception of justice, which warrant such a putative forward-looking character. Second, it also claimed that there are reasons external to Rawls's theory, having to do with the putative existence of the so-called *non-identity problem*, which warrant an exclusive forward-looking character not only to Rawls's principles of justice but to any other conception of distributive justice. I will try to show that the stated objection, both in its internal and external presentations, fails. To that effect, I will very briefly present in section 2 the reasons conferring normative significance to the historical rectification of past political violence. In sections 3 and 4 I will address the objection as in its internal form. In section 5 I will address the objection as in its external form.

2. The Normative Significance of Historical Rectification

Since political violence is an institutional way of undermining the equal moral worth of persons, it disrupts the most fundamental moral premises behind a liberal democracy. Regardless of the different theoretical approaches available to understand and justify such a political system, all of them agree that liberal-democratic institutions must guarantee that citizens are treated as persons with equal moral worth. Rawls's theory of justice, for instance, begins by affirming this claim without further defence (see 2005: 18-19, 2001: 5). According to Rawls, a liberal democracy must be understood as a system of social cooperation between free and *equal* persons. Respect for citizens' moral

equality is thus assumed as one of the intrinsic features of a system of cooperation in order for it to count as liberal and democratic.

It is my belief that non-rectified cases of *past* political violence (or, as I will alternatively refer to them, *historical injustices*) also disrupt the fundamental moral premises behind a liberal democracy.² Although I cannot expand on the importance of historical rectification of this type of violence in this paper, let me very briefly mention its normative significance in relation to three aspects: (1) citizens' psychology and self-respect, (2) citizens' mutual respect, and (3) society's stability for the right reasons.³

1. *Citizens' psychology and self-respect.* Not surprisingly, being a victim of political violence has severe effects on persons' capacity to achieve a healthy psychological adjustment as well as to develop successfully a plan of life. This is vastly documented by psychological studies. Studies also document the inverse effect: the beneficial impact of public rectification of historical injustice on victims' lives. During the 1990s, many psychologists and mental health workers thought that the positive effect of historical rectification was mainly due to the powerful therapeutic impact of testimony (see Agger & Jenssen 1996 — whose fieldwork took place during the Chilean transition to democracy in 1989–1991 — and Weine 2006 — whose fieldwork took place in the aftermath of political violence in the Balkans as a result of the collapse of Yugoslavia).

However, further field studies have revealed that testimony is but one of many elements that help in the process of psychological recovery from 'political trauma'. Psychologist Brandon Hamber (2006: 564, 2010: 97) —by focusing on post-*apartheid* cases in South Africa— stresses the positive effect that programs, objects, and actions of reparation in general (what he calls *reparations* in plural) have on citizens' capacity for achieving a healthy psychological adjustment (what he calls *reparation* in singular) in the aftermath of political violence. These *reparations* go beyond the use of testimony:

² Note that by focusing exclusively on cases of past political violence, the theory of moral assessment of the past that I support holds that *at least* cases of past political violence are in need of rectification. My proposal is thus compatible with the idea that less stringent rectificatory measures might be undertaken (if any at all) regarding other types of historical injustice, but also with a stronger theory of rectification for other historical wrongs defended on a different basis.

³ In this section I will make use of some arguments defended elsewhere.

The integral importance of reparations, remorse, restitutions, truth and acknowledgement to victims [...] I have found that participation by victims and survivors in processes aimed at achieving such elusive goals as truth and justice is an important component of healing —many survivors want to feel they are taking some action, even if they know it will not deliver complete justice or absolute truth. This gives survivors some control over their environment, something which political trauma normally overrides. (Hamber 2010: 194)

Each of these acts of rectification serves the purposes of *retribution*, *compensation*, or *recognition* for the victim of a past wrong. Bringing aggressors to justice may serve the purpose of retribution. Restitutions may serve the purpose of compensation. Testimony, remorse, and truth-seeking may serve the purpose of recognition. These three types of measures are now well regarded as highly effective on victims' mental health. Socio-psychologists Brinton Lykes and Marcie Mersky state:

There is a general sense among mental health workers, psychosocial researchers and practitioners that all of these forms, including those that focus on material well-being, restoration of legal rights and property, judicial associations, truth-seeking processes, apologies, or institutional reform, can have important effects on psychosocial conditions at the individual and national or collective levels. (Lykes & Mersky 2006: 590-591)

It is essential to stress the public nature of all these strategies of historical rectification. Hamber (2006: 567) even states: 'from an individual perspective, reparations for human rights violations are trying to repair the irreparable'. But Hamber is not the first one to underscore the importance of active participation of society for the process of psychological healing. Many other studies now suggest that these public strategies to rectify historical injustice tend to have a good effect on victims' healing process *precisely* because political trauma itself has a social dimension —see Backer *et. al.* (1995), Angger & Jensen (1996), Minow (2002), and Lykes & Mersky (2006). From all these psychological studies, we can extract the following basic thesis: both

the *social acknowledgement* of the terrible wrongs infringed upon victims as well as victims' *mere participation* in public processes of retribution, compensation, and recognition of such wrongs tend to be strongly beneficial to them in the struggle for achieving a healthy psychological adjustment.

By considering the importance of the rectification of historical injustice at this descriptive level, there are sufficient reasons for taking some public provisions to come to terms with an unjust past as one the social bases of citizens' self-respect that the State must supply. As is well known, Rawls (1999a: 54, 386) refers to the social bases of self-respect as 'perhaps the most important primary good'. This is so due to the fact that without self-respect a citizen cannot successfully pursue her plan of life and be a fully cooperating member of society. This grants the importance of the State's provision of the social bases of self-respect. Although the State cannot guarantee that every single citizen will respect herself, it can nevertheless provide the necessary means for achieving that goal. This is particularly clear with regard to the social basis I am proposing: even if the state were to engage in a process of public rectification of past injustices and harms, that would not guarantee a complete recovery of the victims of such injustices (see Hamber 2006 and Menow 2002).⁴

2. *Citizens' mutual respect.* Aside from the more personal benefits already mentioned, processes aimed at coming to terms with an unjust past also accomplish important *public* goals. For example, Lykes & Mersky (2006: 591-592) hold that "repair from political violence must be distinguished from repair from the psychological distresses caused by

⁴ Notice also that I am not claiming that there is no single victim who may achieve a healthy psychological adjustment and live a meaningful and cooperative life in society without coming to terms with the past. This is already documented in Hamber (2006: 568): 'Degrees of dealing with the consequences of extreme political violence and trauma are possible. Many victims are indeed survivors and highly resilient'. An incredible example in this regard is that of the current president of Uruguay, José Mujica, who during the 1970s and 1980s spent a total of fourteen years in prison, eleven of them in constant torture and strict seclusion as one of the chief guerrilla 'hostages' of the military junta that governed Uruguay from 1973 to 1985. Despite this past shaped by extreme brutality, Mujica managed to become president of his country about twenty years later and has repeatedly stated that it is not his personal goal to open processes of retribution, compensation, and recognition for such and similar past injustices.

severe natural disasters or even as the result of an individual criminal action. The former has a singular moral dimension.” The singular moral dimension of repair from political violence has to do with two things: contrary to natural disasters and individual criminal action, political violence is always institutionally targeted. As we have seen, a person is selected as the target of this form of wrongdoing because of her ethnicity, religion, culture, or political beliefs and actions. Also, and very important for the social dimension of rectification, contrary to individual criminal action, political violence affects the moral standing of the victim not only with regards to her aggressor, but also with regards to the rest of her community.

Considering these two elements, the normative significance of rectifying past political violence can be framed in terms of the respect that society owes to its victims. Showing respect for a person requires acknowledging her equal moral worth; that is, recognising that her life and system of ends is due equal consideration because of the simple fact that she is a person. Since, as we have seen, political violence is an institutional way of undermining victims’ equal moral worth, full respect for such victims can only be restored by the adoption of institutional measures directed to rectify this past failure (see Kutz 2004: 284). In this sense, all rectificatory measures are primarily a way of acknowledging that institutions have failed to show respect for some of their citizens in the past. The first thing needed to achieve this goal is to assert publicly and with no reservation that what victims suffered was wrong and should not have occurred (see Walker 2006: 191).

3. *Stability for the right reasons.* Several authors have documented a tendency of almost all transitional liberal societies to embark on processes of recent past clarification. 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. Truth commissions or similar institutional bodies have been formed in Bolivia, Brazil, Chile, East Timor, Ecuador, El Salvador, Fiji, Ghana, Greece, Guatemala, Haiti, Liberia, Mexico, Morocco, Panama, Peru, Philippines, Sierra Leone, Solomon Islands, South Africa, South Korea, Sri Lanka, and Uganda (see Zalaquett 1998, 1999, Grandin & Miller 2007). There thus 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.

Likewise, 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 (that is, one that is publicised with shared institutional means) 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 them created for instance at academic institutions or political think tanks, no liberal society abandons this task *exclusively* to private hands, for important goals —having to do with unity and solidarity— are associated with it (see Miller 1995: 35ff, Abdel-Nour 2003: 712-713, Abizadeh 2004: 309, Kutz 2004: 279-285, and Kymlicka 2002: 365).

Since liberal societies observe both pluralism of reasonable comprehensive doctrines (as Rawls 2005 *passim* has influentially defended) and pluralism of cultural groups (as Kymlicka 1989: 206-220, 1995: 10-26 has influentially defended), an official history that does not reflect *facts* about the past interactions of these different groups might damage the social bonds between them. Likewise, public trust in social institutions might also be shattered (see de Greiff 2006b: 460). Victims might refrain from depositing trust in a social arrangement that does not condemn its own failure to safeguard their equal moral worth. Furthermore, non-victims can develop this attitude as well. So long as no explicit disapproval is expressed regarding the previous deprivations conducted or facilitated by the State, citizens in general might believe that their institutions do not hold a real commitment to the fundamental moral premises of liberal justice. The acknowledgement of past mistreatment according to liberal standards thus becomes central to the possibility of an endured stable society from one generation to the next.

Considering the normative significance of historical rectification with regards to (1), (2), and (3), in previous works I have defended that a preferable reading of Rawls's description of a well-ordered society is one in which historical rectification of the relevant past injustices has already taken place. That is, that the *ideal* of justice portrayed by such a theory is one in which full historical rectification occurs and is commanded by each of the principles of justice-as-fairness (at the level of *legislation*, that is, at the third stage in Rawls's four-stage sequence —see Rawls 1999a:

171-176). Consider the perfect regulation of the *first principle of justice*.⁵ According to Rawls, one of the liberties that must be equally distributed by the institutions of the basic structure is the ‘freedom of the person, which includes freedom from psychological oppression’ (Rawls 1999a: 53 –see also 2001: 44, 2005: 291). Because of the tremendous effects of non-rectified past political violence on victims’ psychological life, it is hard to see how such a liberty would be distributed equally amongst victims and non-victims without institutional provisions to come to terms with the past. Likewise, so long as relevant past wrongs have present effects on the opportunities of victims to compete for positions of social advantage, it is hard to see how the *fair equality of opportunity principle*⁶ would perfectly regulate the basic structure without the institutional rectification of such wrongs.

Of course, which specific set of rectificatory measures is to be adopted depends on contextual factors that will vary in each society. How grave the given injustice is, how far back in history was perpetrated, and which specific group of citizens was targeted by it, are all contextual factors that will merit different institutional and legislative responses. The more abstract philosophical approach adopted by a theory of justice will always fall short in offering more specific directives in this regard (see Elster 2004: 78 and de Greiff 2006b: 466).⁷ It is nevertheless worth mentioning that specific rectificatory frameworks of recent-past political violence usually require of a coherent set of policies including instances of each of the three measures outlined here. For instance, when only *retribution*-driven measures are undertaken, victims might think that the State is merely focusing on a struggle *against* aggressors and is making no effort on *victims’ behalf* directly (see de Greiff 2006a: 2). Likewise, if

⁵ Rawls’s final formulation of this principle reads: ‘Each person has the same inalienable claim to a fully adequate scheme of equal basic liberties, which scheme is compatible with the same scheme of liberties for all’ (Rawls 2001: 42).

⁶ Rawls’s final formulation of this principle, in conjunction with the difference principle, reads: ‘Social and economic inequalities are to satisfy two conditions: first, they are to be attached to offices and positions open to all under conditions of fair equality of opportunity; and second, they are to be to the greatest benefit of the least-advantaged members of society’ (Rawls 2001: 42-43).

⁷ Elster states: ‘I do not aim at presenting a “theory of transitional justice”. As in my earlier work on local justice, I have found that context-dependence to be an insuperable obstacle to generalizations.’ (Elster 2004: 78).

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: 166n). If the State implements only *recognition*-driven measures, victims might perceive this as a *facade* for covering aggressors' lack of real accountability for their past wrongdoing (see Verdeja 2006: 130-31).

Also, 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: 6 and Elster 2004: 222-229). Considering this, specific programs of historical rectification must ponder that, while recent cases of historical injustice call for strong *retribution*, *compensation* and *recognition*-driven measures as appropriate, other cases involving distant past wrongs call for *recognition* within the historical narrative promoted by the institutional means of the State (see Thompson 2001: 132-135). For *retribution*-driven measures rectifying the course of history are simply impossible. 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. However, this does not mean that history as such is out of the scope of liberal institutions' moral assessment.

Accordingly, what Elster calls the 'most fundamental decision' should always be resolved in the same way:

The dependent variables [of historical rectification] may be conceptualized as a series of *decisions*. The most fundamental is the decision whether to address the wrongdoings of the past at all, or rather draw "a thick line" through the past. (Elster 2006: 6. Italics added)

Elster makes this remark in the context of rectification within post-conflict societies. However, every new government that comes into power in all liberal societies confronts such a fundamental decision —since every society counts historical injustices within its recent and distant past. Here I have tried to argue that, at least from the point of view of justice, drawing 'a thick line' through the past or 'closing the books' is not an option for any liberal society.

3. The Choice Problem Modelled by the Original Position

Contrary to what I have stated in the previous section (i.e., that the normative significance of coming to terms with the past prompts

a reading of Rawls's theory according to which historical rectification has taken place in a perfectly just society), most authors working on historical injustice claim that we would do better by abandoning Rawls's *ideal theory* all together (see Korsgaard 1996: 147-148, Sher 1997, Thompson 2001: 129, Butt 2009: 6-7). Against this widely held view, I have previously defended three claims. First, that since Rawls's theory depicts an ideal society to which we should try to arrive in our current proceedings (what sometimes Rawls calls a 'realistic utopia' —see Rawls 1999b: 5-6, Valentini 2009: 6, Lawford-Smith 2010: 361, Gledhill 2012: 65-70), such an ideal society must be one in which the institutional rectification of relevant historical injustices is guaranteed. Second, that Rawls's clause stipulating *strict compliance* with the principles of justice cannot be correctly interpreted as stipulating *historical strict compliance*. Third, that it is a mistake to think that Rawls's clause stipulating *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 justice-as-fairness' principles.

For reasons of space, I cannot reproduce the arguments for these claims here. However, even if it is accepted that the *ideal character* of Rawls's theory does not justify a lack of concern for historical injustice, the argument could be made that justice-as-fairness is justified in having an exclusive *forward-looking character*. Something similar to this consideration is expressed by John Simmons:

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.* (Simmons 2010: 32-33. Italics added)

Unlike Korsgaard (1996: 147-148), Sher (1997), Thompson (2001: 129), Butt (2009: 6-7), and many others, Simmons does not believe that the *ideal character* of Rawls's theory excludes concern for historical injustice. Rather, Simmons thinks that the choice problem presented to the parties in the original position imposes the selection of purely forward-looking principles.

I believe Simmons is mistaken. For Rawls is quite clear in stating that the parties in the original position must know all relevant psychological and social facts regarding human nature and social regularities:

It is taken for granted, however, that they [the parties] know the general facts about human society. They understand political affairs and the principles of economic theory; they know the basis of social organization and the laws of human psychology. Indeed, the parties are presumed to know whatever general facts affect the choice of principles of justice. (Rawls 1999a: 119)

The psychological and social evidence cited in section 2 seems sufficient for stating that coming to terms with the past is of the greatest relevance for human beings and liberal societies. As such, this phenomenon must be one of the facts available to the parties in the original position. This is especially important considering that Rawls himself stipulates that *society's past is closed to the parties*:

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 1999a: 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:

Let us distinguish between three kinds of facts: the first principles of social theory [...] general facts about society [...] and finally, particular facts about individuals [...] In the original position the only particular facts

known to the parties are those that can be inferred by the circumstances of justice. While they know the first principles of social theory, *the course of history is closed to them*; they have no information about how often society has taken this or that form, or which kinds of society presently exist. (Rawls 1999a: 175. Italics added)

Rawls reiterates that knowledge about the history of their society is closed to the parties. By doing this, Rawls has stipulated 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, *they do not know whether their well-ordered society would count 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 counts historical injustices as part of its past.

Because of these reasons (i.e., the normative significance of historical rectification and the fact that the parties do not know whether their resultant society would count severe injustices within its past), the choice problem presented to the parties in the original position (i.e., selecting principles to regulate social cooperation under the veil of ignorance in full knowledge of all relevant information regarding the regularities of human psychology and society — see 1999a: 102-160) cannot be correctly solved by adopting strictly forward-looking principles.

It may be that behind Simmons's verdict of what warrants the forward-looking character of Rawls's theory lies a reading of the original position more akin to rational choice theory, for rational choice theory tends to work under the assumption that persons behave in a forward-looking way. However (as it has been neatly exposed by Sen 1977, Herzog 2006: 35ff, and many others), there are several arguments showing that such assumption in rational choice theory is unwarranted. More importantly for the present purposes is the fact that Rawls was quite clear in his later work regarding his dissatisfaction with the rational choice reading of the original position (see 2001: 82n).

Moreover, Rawls (1999a: 260) already offers a neat reason against Simmons's understanding of the choice problem given to the parties in

the original position. Rawls's justification of the principle of just savings⁸ depends, precisely, on denying that *time preference* is one of the concerns of the parties in the original position:

The original position is so defined that it leads to the correct principles in this respect. In the case of the individual, pure time preference is irrational; it means that he is not viewing all moments as equally parts of one life. In the case of society, pure time preference is unjust: it means (*in the more common instance* when future is discounted) that the living take advantage of their position in time to favour their own interests. (Rawls 1999a: 260. Italics added)

Here Rawls states that time preference in the case of society is unjust. Of course, he adds that its most common instance is to show no concern for future generations or for the future of the current generation. However, that is only one instance of the injustice produced by time preference. It seems that the only other instance would be not to show concern for previous generations or for the past of the current generation. It thus must be accepted that the very same reason that is behind the justification of the principle of just savings compels the Rawlsian theory to show concern for historical injustices. If that reason is introduced in the justification of one of the principles of justice, then the exclusive forward-looking character of the theory must be abandoned.

One final reason against the exclusive forward-looking character of Rawls's theory springs from what Rawls calls the 'most fundamental idea' of his conception of justice: i.e., that a liberal society must be understood as a 'fair system of social cooperation over time from one generation to the next' (Rawls 2001: 5). Rawls repeatedly comes back to the idea of a temporal continuum behind his understanding of society: 'Recall that a political society is always regarded as a schema of cooperation over time indefinitely' (Rawls 2001: 162). However, if society is so understood by a theory, such a theory must offer guidance with regard

⁸ This principle holds that the current generation of a well-ordered society must leave to the future generation at least as many natural resources to be converted into primary goods as the previous generation left to them, so that the future generation have sufficient resources to preserve a just basic structure over time — see Rawls (2001: 159).

to several problems arising between generations that interact with each other. Rawls takes issue with a relevant one having to do with a present and a future generation (the problem of just savings). But just as such a problem arises by assuming that society is a temporal continuum, the normative significance of coming to terms with the past arises too by the very same assumption. This last consideration is very important, for even if the rationale given in favour of the just savings principle was to be abandoned (as English 1977: 98, Wall 2003: 79, Nagel and Parfit — see Rawls 2001: 160n— urge Rawls to proceed), this would not change the fact that Rawls's theory is required to give equal treatment to the problems produced by the interaction of a present generation with both its past and future generations. In this sense, Thompson is mistaken when she suggests:

John Rawls, for example, thinks of justice between generations as consisting of duties that citizens owe to their descendants. This conception of justice divides justice into two parts: synchronic and diachronic. *Synchronic justice* is justice between contemporaries, or between those contemporaries who are full participants in the political relationships of the society. *Diachronic justice* has to do with relationships between these contemporaries and future citizens. (Thompson 2009: 2. Italics in the original, references removed)

Thompson (2009: 2ff) seems to suggest that the stated dichotomy is inadequate because the problems of interacting generations are also *synchronic* problems: that is, problems of 'justice between contemporaries'. That this is so is manifest when we consider how the duties of society with further generations and to rectify historical injustice have effects in the distribution of primary goods amongst contemporaries. Consider what Butt claims when analysing the impact of rectificatory justice on distributive justice:

Questions of rectificatory justice in response to historic wrongdoing are questions which concern the distribution of burdens and benefits in the present day.

Claims that a given group is owed compensation as a result of [a] historic injustice [...] are claims about who should have what here and now. They are claims that operate in the real world, and that propose particular courses of action which affect the distribution of resources within, and between, societies. (Butt 2009: 33)

Butt points at the fact that the decision of how many resources will be allocated for the task of rectifying historical injustices will have an impact on how the resources amongst contemporaries are to be distributed. We can find a similar claim in Rawls's characterisation of the problem of just savings, since any solution contemporaries give to this problem will affect the distribution of primary goods amongst them: if they decide to leave as many resources to the next generation as they have, this will set a limit to their use of resources for the production and distribution of primary goods.

This makes it clear that for Rawls the problem of just savings is also a *synchronic* problem, and thus Thompson's (2009: 2) conceptualisation of Rawls's theory as dividing justice into *synchronic* and *diachronic* is incorrect. Moreover, as we have seen, at the very basis of Rawls's understanding of how a liberal society must be conceived of there is a commitment to the idea that 'intergenerational relationships are central to a political society' (Thompson 2009: 12), for this is implied by Rawls's insistence on the idea that a society is a continuum in time. Interactions between generations are intrinsic to this understanding of society. What Rawls missed, perhaps due to an ambiguity in his characterisation of the divide between ideal and non-ideal theory with which I cannot take issue here, is that some of the problems arising from those interactions, which are relevant for his own theory of justice, have to do with the relation of a current generation with its own past or with previous generations.

So we have three reasons against the putative exclusive forward-looking character of principles of justice. First, the parties in the original position know all relevant psychological and social facts, one of which must be the importance of coming to terms with the past for normal human beings and liberal societies, especially considering that they do not know whether their resultant well-ordered society would count severe injustices as part of its pre-ordered history. Second, since time preference is ruled out by the construction of the original position, the

parties are to show concern for generations behind them (just as they are to show concern for generations next to them). And third, even if this rationale for the just savings principle were to be completely abandoned, so long as Rawls assumes that a liberal society is a continuum in time, his theory is still to show concern for the problems of interacting generations. These problems include not only the interaction with future generations but also with past generations. Considering these three reasons, *pace* Simmons (2010), the choice problem modelled in the original position does not warrant the absence of concern for historical injustice.

4. The Non-Comprehensive Character of Rawls's Theory

So far we have seen that the choice problem modelled in the original position does not confer an exclusive forward-looking orientation to Rawls's principles of justice. In this section I will explore another internal consideration that could be offered in favour of not conceptualising historical rectification as part of such a theory: i.e., the claim that, in so doing, Rawls's theory would acquire a *comprehensive character* that does not suit the purposes of a political conception of justice, considering the fact of reasonable pluralism. In fact, I do believe that some approaches to the moral assessment of the past are comprehensive in character. Three concerns in this direction occur to me.

The first and clearest way in which an account pointing at the importance of historical injustice becomes comprehensive is if such an account offers an ethics of memory or remembrance for the personal domain. This is the case of Avishai Margalit (2002) and Jeffrey Blustein (2008), for these authors provide (amongst other things) an account of what persons *ought* to do regarding the understanding of their own past. Margalit states:

My question, 'Is there an ethics of memory?', is both about microethics (the ethics of individuals) and about macroethics (the ethics of collectives). What I want to address can be rendered by a series of questions: Are we obligated to remember people and events from the past? [...] I reach the conclusion that while there is an ethics of memory, there is very little morality of memory. (Margalit 2002: 6-7)

Margalit distinguishes ethics from morality in the following sense: while morality is concerned with the principles and values that must guide our relations with all human beings as human beings, ethics is restricted only to the principles and values that must guide our relations with our proximate human beings (friends, family, political community). Considering this distinction, when Margalit states that there is an *ethics* of memory, he is proposing that we *ought* to behave in certain ways in a domain that includes our relationships with friends and family.⁹

Blustein also offers an ethics of memory for personal relationships. He holds that by the very fact of remembering an event a person takes responsibility for it. Accordingly, remembrance is connected with moral responsibility: one must assume responsibility for what one has done (Blustein 2008: 33). However, Blustein thinks that a person must also remember certain things for which she is not responsible in any sense. For instance, Blustein believes that persons have an ethical (in Margalit's sense) obligation to retain the memory of their dead parents and close friends — or, as Blustein (2008: 245) calls them, 'the dear departed'.¹⁰

The personal domain of these respective ethics of memory is out of the scope of what a non-comprehensive account of historical rectification can provide. I am not claiming that it is the function of a liberal State to promote any moral obligation in this regard. So long as their distinctive accounts are not the only ethical frameworks available in this regard (see Strawson 2004) and, more importantly, are not part of the political culture of liberal societies, Margalit and Blustein's approaches to the moral assessment of the past are comprehensive in character. In contrast, notice that my argument is rather different: considering the psychological evidence provided, it seems to be a human psychological

⁹ These *oughts*, according to Margalit, are of the following conditional form: *if you want to have correct ethical relationships, you must remember certain things about the persons you are engaging with* (see Margalit 2002: 104-106).

¹⁰ Blustein's rationale for this claim is threefold: first, remembering the dear departed is a way of retaining the significance of their life (see Blustein 2008: 260-263); second, by remembering the dear departed we respect the 'enduring duties' of love and honour on which our moral relationship with them is based (see Blustein 2008: 273-276); and, third, so long as we want to be remembered in turn by other persons, we shall remember the dear departed following an impulse of reciprocity (see Blustein 2008: 276-281). While the first two create unconditional duties of remembrance, the third one only creates a conditional duty.

regularity that *most* normal victimized citizens are in need of coming to terms with their *public* past. It is this interest that must be accounted for in a theory of liberal justice.

A second way of comprehensiveness comes by affirming highly speculative metaphysical claims about persons and the importance of their past. An instructive way of dealing with this question is provided by Bruce Ackerman's paper 'Temporal Horizons of Justice' (Ackerman 1997). Ackerman develops a series of ideas regarding 'the metaphysical foundations of the self's encounter with time', foundations in which, Ackerman argues, 'liberals may find it necessary to probe more deeply' (Ackerman 1997: 317). Ackerman's adventure into the metaphysics of the self ends up suggesting his 'own strong priority to the self's struggle for a meaningful autobiography over the claims of particular relationships and life experiences' (Ackerman 1997: 317). In contrast, notice that I am not making a metaphysical claim regarding the relationship between self and time. The relevant evidence that warrants the concern with historical injustice and the past is either empirical in character or independent of polemical speculative claims. In fact, this idea guides the evidence I provided in section 2 in favour of the normative significance of historical rectification.

Finally, there is a third concern of comprehensiveness. This has to do with whether the State, by promoting a historical narrative that is sensitive to the existence of relevant historical injustices —as some *recognition*-driven measures within my model of historical rectification command—, is already promoting a comprehensive view over others.

The least that can be said against this concern is to point out that, as we saw in section 1, every single liberal society creates a historical narrative for itself. Such a narrative is not the result of chance. Several putative facts about the origin and development of society are chosen with the purpose of creating a strong sense of belonging, solidarity, and unity. Acknowledging relevant historical injustices is not different from this non-stopping exercise of creating a historical narrative. Therefore, this third worry, if maintained, would be stating something stronger: creating a historical narrative of *any* kind is always a comprehensive exercise from which a liberal state must refrain.

I call this position *the libertarian view of history* —since it advocates for exclusively leaving to citizens the creation of historical narratives within a given society. I find such a view implausible on several accounts. First, it goes against empirical evidence. *All* liberal societies we know and

have known create historical narratives. Second, it seems unlikely that a liberal society could endure over time without the public dissemination of a particular historical narrative. Admittedly, the last point is an open empirical question. However, as I already said, it is not accidental that liberal States create these narratives. The goals mentioned before depend on them to a great extent. In the end, the *libertarian view of history* seems concomitant to a much more minimal understanding of the functions of the State —e.g., a State that should not provide civic education, or finance history museums, or name public places and political units, or create public monuments, or adopt days of historical commemoration, or implement an official holiday calendar, etc. Defending a liberal-egalitarian understanding of the State against this alternative minimalist framework is out of the scope of this work. Note, nevertheless, that as long as institutions assume that society has an intergenerational span, and thus use their resources to publicise a particular view of society's history, the need for adopting a historical narrative sensitive to the historical injustices relevant for that society will arise.

However, this third worry of comprehensiveness could persist even if I am right about the unlikelihood and undesirability of a liberal State guided by *the libertarian view of history*. It can be said that the very fact that a liberal State cannot do without promoting a specific view of its history only shows that every single liberal State favours a comprehensive view of history. In this way, this third worry becomes an objection to the possibility of a political conception of justice all together. Yet I think this further claim is also incorrect. This claim puts the competing views about the past on a par with the competing views about the good life. And, indeed, some theorists working on *public memorialisation* sometimes talk in a way that suggests this analogy. For instance, with regards to the dictatorial past of South America in the second part of the twentieth century, Elizabeth Jelin says:

Despite the relevance and centrality of these confrontations on the content of democracy itself, the dictatorial past of the 1970s and 1980s is still very much part of the current debate. Many victims and their advocates demand a complete account of these abuses that took place under dictatorship [...] Others, claiming that they are concerned above all with the functioning of democratic institutions, emphasize the need to focus

on the future rather than the past [...] Still others look at the past in order to glorify the 'order and progress' that dictatorships presumably secured. Thus, there are competing and conflicting understandings and memories of the past in societies that are emerging from periods of political violence and state repression. [...] In all cases, as time passes and it becomes possible to establish or conceive a temporal distance between past and present, alternative and even rival interpretations of the recent past and its memories take the center stage of cultural and political debate. (Jelin 2007: 139-140)

This way of framing the struggles taking place in public memorialisation states that there are many competing views about the past. The third worry of comprehensiveness we are exploring exploits this and holds that the State will always favour one to the detriment of the others and in so doing will adopt a comprehensive view about its history.

Against this worry, we need to remember that not *all* conceptions of the good are permissible in a liberal state. Non-liberal conceptions of the good are forbidden and discouraged due to their rejection of the very principles of liberal justice. Rawls is unequivocal about this when he denies that what it may be called absolute neutrality is possible:

No society can include within itself all forms of life [...] As Berlin has long maintained (it is one of its fundamental themes), there is no social world without a loss [...] But these social necessities are not to be taken for arbitrary bias or injustice. (Rawls 2005: 197)

Thus, even if we preserve the analogy between conceptions of the good and historical narratives, we can say that *certain* historical narratives are to be discouraged in a liberal society —just in the very same way in which non-liberal conceptions of the good life are discouraged in a liberal State. In fact, I believe that the moral grounds for the exclusion of certain historical narratives and certain conceptions of the good are exactly the same: the denial of the equal status of all citizens. A historical narrative that denies or eschews the existence of historical injustices simply is a *non-liberal* historical narrative.

For the stated reasons, appealing to the non-comprehensive character of Rawls's theory does not justify the lack of engagement with historical injustice. None of the three worries of comprehensiveness (the independence of the personal domain, the avoidance of controversial metaphysical claims, and the role of the State in discouraging certain historical narratives) affect the State's exercise of acknowledging and rectifying historical injustices.

5. The Putative Existence of the Non-Identity Problem

So far we have seen that the two internal reasons considered fail in establishing that justice-as-fairness must be exclusively forward-looking. However, it could still be argued that Rawls's theory, as any other theory of liberal justice, is justified in being exclusively forward-looking because of the putative existence of the so-called *non-identity problem*. Typically, such a problem is framed as follows: had the past injustice to victims not occurred, victims' descendants simply would not have come into existence. Because existing (at least in sufficiently bearable conditions) is better than failing to exist, the occurrence of such past injustice does not constitute a harm to descendants. Thus, no compensation, apology, or any other rectificatory measure is due on descendants' behalf for what in fact made possible their very existence (see Sher 1981: 7-8, 2005: 181-182, Morris 1984: 177ff, Waldron 1992: 12, Simmons 1995:178n, Cohen 2009: 81-83).

All versions of the *non-identity problem* in the literature begin by accepting the following standard modal thesis (call it the *necessity of origin thesis*): it is a necessary condition of a person's existence to be originated by a particular pair of gametes. In possible-worlds talk, this is equivalent to say that there is no world in which a person exists and a different pair of gametes originates her.¹¹ From here, we can distinguish two different forms in which the non-identity problem is presented: a modal and a probabilistic version (see Sher 2005: 184-185).

The *modal version* states a strong claim about modal identity: i.e., that the past injustice is a *necessary* condition of the existence of victims' descendants and because of that it cannot constitute a harm to them.

¹¹ Perhaps this thesis is most famous because of Saul Kripke's formulation (see Kripke 1980: 110ff). Formally, such a thesis is an instance of the following: for all x and for all y , if x originates from y , then x originates from y in all worlds in which x exists.

Had such injustice not occurred, their parents (or grandparents, or great-grandparents, and so on) would not have met and conceived them (or conceived their parents, or grandparents, and so on) at the time they did, which is biologically required in order for them to be originated by the same pair of gametes. In possible-worlds talk, this is equivalent to saying that there is no world in which the original harm did not occur and descendants exist.

Before stating my own response, it is worth mentioning two recurrent responses to the *modal version*. First, consider what might be called the *further-harm response*. It can be argued that even if the past injustice is a necessary condition of descendants' existence, rectification is still due on the following basis: while the original injustice (call it Injustice 1) harms the members of the generation that suffered such an injustice (call it Generation 1), the lack of rectification of Injustice 1 to Generation 1 creates a *further* harm (call it Injustice 2) to the next generation of descendants (call it Generation 2). Similarly, the lack of rectification of Injustice 2 to Generation 2 creates a further harm (call it Injustice 3) to the next generation of descendants (call it Generation 3), and so on. Relevantly, it is not the case that Injustice 1 harms Generation 2. Rather, the fact that Injustice 1 was never rectified for Generation 1 brings about Injustice 2, which harms Generation 2 and thus is the one for which Generation 2 is owed rectification. Likewise, the fact that Injustice 2 was never rectified for Generation 2 brings about Injustice 3, which is the one harming Generation 3 and thus the one for which Generation 3 is owed rectification. In this way, a non-rectified original injustice creates a chain of further injustices harming successive generations of descendants (see Boxill 2003: 89, Sher 2005: 190-195, and Butt 2009: 188-189 for independent defences of this response).

Second, consider what might be called the *group-harm response* against the *modal version*. It could be argued that even if the past injustice is a necessary condition of descendants' existence, and because of that it does not harm any particular descendant taken as an individual, such injustice nevertheless harms all descendants because of their belonging to the harmed group (see Herstein 2008: 527-531 for a defence of this response).

While I find both of these responses plausible, they have complications. For instance, one problem of the *further-harm response* is that it does not fit the way in which public official apologies regarding historical injustices are given. For these apologies are not, or not only,

offered due to the further harms that a non-rectified original historical injustice creates, but also because of the occurrence of the *very* original historical injustice. That is, a public apology is due not only because of the fact that the original injustice has not been rectified over the course of history but also because of the fact of its very occurrence (see Herstein 2008: 519-523). Likewise, the *collective-harm response* is committed to the idea that there might be some injustices harming a collective even when *benefiting* each particular individual forming the collective —so long as the harm brings each of them into existence— (see Butt 2009: 105).

Of course, I am not stating that these and similar objections cannot be overcome by the responses just explored. Yet, another response seems to be more straightforward. Let me repeat the main claim of the *modal version* using possible-worlds talk: there is no world in which the original harm did not occur and descendants exist. This claim about descendants' modal identity, unlike the standard *necessity of origin thesis*, is far from being intuitively correct. For it is easy to think of several worlds in which descendants exist without the original harm made to their ancestors. Take the case of the enslavement of Africans and the existence of actual African-Americans. History could have been incredibly different from the way it was *and* still leave room for African-Americans' actual ancestors to meet. For one, they could have been invited to go to North America as workers with equal rights and moral status. In possible-worlds talk, this is equivalent to saying that there is a world identical to the actual one (relevantly, containing the same individuals) except for the fact that Africans were invited to go to North America as workers with equal rights and moral status. This seems to be a genuine possibility regarding descendants' modal identity (see Simmons 1995: 174n and Butt 2009: 115 for equivalent responses).¹²

Derek Parfit himself, who is typically credited with the introduction of the non-identity problem (see Parfit 1984: 351-355, 2011: 218), refrains from endorsing the controversial necessity claim of the *modal version* when he states:

¹² Butt states: 'to assess harm following injustice, it is necessary to compare the current day injustice with some kind of counterfactual. This is done by imagining a possible world in where no injustice occurred. However, *there are many such possible worlds, as there are many possible kinds of interaction between the victim and the offender*. One possible world is the world where the act of injustice simply did not take place' (Butt 2009: 115. Italics added).

(TD2) If any particular person had not been conceived within the month of the time when she was in fact conceived, he would in fact never have existed.

I claim that [what TD2 holds] is *in fact* true. I do not claim that it is *necessarily true*. The different views about this subject make competing claims about what is necessary. It is because I claim less that my claim is not controversial. Those who disagree about what *could* have happened may agree about what would *in fact* have happened. (Parfit 1984: 351 Italics in the original)

Here Parfit clarifies that he does not hold that the *actual* course of history, affecting monthly patterns of conception, is a *necessary* condition of actual persons' existence. Rather, his (TD2) is compatible with statements like the following: it *could* have been the case that history was different (and thus monthly patterns of conception had variations) and actual persons still existed. Coming back to the example I just introduced, Parfit's original formulation of the problem is compatible with the claim that it *could* have been the case that African Americans' ancestors were invited to North America as workers with equal rights and moral status and their actual descendants still existed. In contrast, as we have seen, the *modal version* is committed to an extremely polemical assumption about persons' modal identity. Until a defence of such an assumption is provided, this version can be set aside.¹³

¹³ This also shows that Sher's original response to the non-identity problem, based on what he called the *branching criterion of possible worlds* is completely inadequate (see Sher 1979: 381-382 and more recently, Sher 2005: 187). This criterion is committed to an even stronger claim about descendants' modal identity than the *modal version*. For according to such a criterion *actual* history as a whole prior to my conception is a *necessary* condition of my existence (see Sher 1979: 382, 2005: 187). In possible worlds talk, this is equivalent to stating that there is no world in which history prior to my conception is different from *actual* history and I exist. Yet another way of stating the same: I could not have existed had history prior to my conception been slightly different from the way it actually was. However, this form of hyper-essentialism states an extremely polemical thesis about modal identity. For it follows that statements of the sort 'I could have been born in the UK had my parents been studying there in 1982' are plainly false. Even worse, if Sher's *branching criterion of possible worlds* is correct,

So let me turn to the *probabilistic version* of the non-identity problem. This version makes the following softer claim: it is highly *unlikely* that victims' descendants would have existed had the past injustice against their ancestors not occurred. Indeed, Parfit's own formulation is closer to the *probabilistic version*. He states:

Which particular children we have depends on the slightest details of our private lives. Many of our acts affect such details in our own and other people's lives, and these effects spread, like ripples in a pool, over more and more lives. Unlike ripples, moreover, these effects never fade away. Over time, there will be more and more people of whom it is true that, if we acted differently, those people would never have been conceived. *If the motor car had not been invented, for example, it is likely that readers of this book would never have existed.* (Parfit 2011: 218. Italics added)

As the last statement of this passage suggests, Parfit seems to have intended to pose the *probabilistic version* (rather than the *modal version*) of the non-identity problem. Parfit's disclaimer regarding the non-necessary character of his (TD2) —stated in the passage previously quoted— also reinforces this interpretation.

Now, the *probabilistic version* (unlike the *modal version*) seems to state a fairly uncontroversial claim. It seems indeed highly unlikely that descendants would have existed had the original historical harm to their ancestors not occurred. For, coming back to our example, even when it is a genuine modal possibility that actual African Americans could have existed had their ancestors been invited to North America as workers with equal rights and moral status, this would have required of the occurrence of an extremely unlikely chain of events stretching on for centuries resembling the actual one.

Nevertheless, I think that the relevant question to ask is what the moral significance of this fairly uncontroversial probabilistic claim is. For if we ascribe to it the significance of justifying the avoidance of historical rectification, then we are committed to the idea that any meaningful theory for the moral assessment of the past should accept

then statements of the sort 'I could have existed even if Julius Caesar had not died in the Roman Senate but in his house in the year 44 BC' are false.

absurd conclusions. To show this, let me introduce the following example.

Suppose that my parents travelled from very far distant cities to the capital in order to join an activist group against the Vietnam War and only because of this reason they met each other. Considering this, it is indeed very *unlikely* that I would have existed had the Vietnam War not occurred —assuming, as we are, that my parents travelled to the capital for this reason and otherwise would have pursued their independent lives in their respective cities. Does this mean that I cannot morally object to the occurrence of the Vietnam War without thereby stating that I would like not to have existed? Or even worse, should I be grateful about the occurrence of the war, so long as I am grateful about my own existence? These inferences, drawn by the *probabilistic version*, seem absurd.

More importantly, the *probabilistic version* simply fails to show the moral significance of its uncontroversial probabilistic claim. For, so long as it is a genuine modal possibility that I could have existed had the war not occurred —however remote such a possibility is—, this fact about my modal identity allows me to morally object to the war without thereby objecting to my very existence. Similar claims can be made about historical wrongs without the occurrence of which it would have been very unlikely that actual descendants had existed (see Simmons 1995: 174n and Butt 2009: 106 for similar conclusions).

Because of these reasons, neither the *modal* nor the *probabilistic* versions of the non-identity problem succeed in showing that rectification of past wrongs is not morally required, and thus in showing that a liberal theory of justice such as Rawls's is warranted in being strictly forward-looking. As we have seen, while the *modal version* rests on an undefended and highly polemical necessity claim, the *probabilistic version* fails to show the moral significance of the non-controversial probabilistic claim on which it is based.

6. Concluding Remarks

In this paper I have tried to show that neither internal considerations to Rawls's theory (having to do both with the choice problem modelled by the original position and with the non-comprehensive character of justice-as-fairness), nor external considerations to such a theory (having to do with the putative existence of the non-identity problem), warrant

an exclusive forward-looking character of Rawls's principles of justice. So long as these objections have been met, a further argument is required against my claim that a preferable interpretation of Rawls's description of a well-ordered society is one in which the perfect regulation of the very principles of justice-as-fairness ensures that the State has already set in place a coherent set of rectificatory actions (including *retribution*, *compensation*, and *recognition-driven measures* as the contextual case requires) in favour of victims of past political violence.

References

- Abdel-Nour, F. (2003). National Responsibility. *Political Theory*, 31/5, pp. 693-719.
- Abizadeh, A. (2004). Historical Truth, National Myths, and Liberal Democracy: On the Coherence of Liberal Nationalism. *The Journal of Political Philosophy*, 12/3, pp. 291-313.
- Ackerman, B. (1997). Temporal Horizons of Justice. *The Journal of Philosophy*, 94, pp. 299-317.
- Agger, I. & Jenssen, S. (1996). *Trauma and Healing under State Terrorism*. Zed books.
- Backer, D. et al. (1995). Therapy with the Victims of Political Repression in Chile: The Challenges of Social Reparations. In Kritz, J. *Transitional Justice. How Emerging Democracies Reckon with Former Regimes*. US Institute of Peace.
- Blustein, J. (2008). *The Moral Demands of Memory*. Cambridge University Press.
- Boxill, B. (2003). A Lockean Argument for Reparations. *Journal of Ethics*, 7, pp. 63-91.
- Butt, D. (2009). *Rectifying International Injustice. Principles of Compensation and Restitutions between Nations*. Cambridge University Press.
- Cohen, A. (2009). Compensation for Historic Injustices. Completing the Boxill and Sher Argument. *Philosophy and Public Affairs*, 37/1, pp. 81-102.
- de Greiff, P. (2006a). Introduction: Repairing the Past: Compensation for Victims of Human Rights. In de Greiff, P. (ed.), *The Handbook of Reparation*. Oxford University Press, pp. 1-15.
- De Greiff, P. (2006b). Justice and Reparations. In de Greiff, P. (ed.), *The Handbook of Reparation*. Oxford University Press, pp. 451-477.

Elster, J. (2004). *Closing the Books. Transitional Theory in Historical Perspective*. Cambridge University Press.

Elster, J. ed. (2006). *Retribution and Reparation in Transition to Democracy*. Cambridge University Press.

English, J. (1977). Justice between Generations. *Philosophical Studies*, 31, pp. 91-104.

Espíndola, J. & Vaca, M. (2013). The Problem of Historical Rectification for Rawls's Theory. Under review.

Grandin, G. & Miller, T. (2007). Truth Commissions: State Terror, History and Memory. *Radical History Review*, 93.

Gledhill, J. (2012). Rawls and Realism. *Social Theory and Practice*, 38/1, pp. 55-82.

Hamber, B. (2006). Narrowing the Micro and the Macro: A Psychological Perspective on Reparations in Societies in Transition. In de Greiff, P., *The Handbook of Reparation*. Oxford University Press, pp. 560-588.

Hamber, B. (2010). *Transforming Societies after Political Violence. Truth, Reconciliation, and Mental Health*. Springer.

Herstein, O. (2008). Historic Injustice and the Non-Identity Problem. *Law and Philosophy*, 27, pp. 505-531.

Herzog, D. (2006). *Cunning*. Princeton University Press.

Jelin, E. (2007). Public Memorialization in Perspective: Truth, Justice, and Memory of the Past in the Southern Cone of South America. *The International Journal of Transitional Justice*, 1, pp. 138-156.

Jones, A. (2004). Gendercide and Genocide. In Jones, A., (ed), *Gendercide and Genocide*. Vanderbilt University Press, pp. 1-37.

Korsgaard, C. (1996). *Creating the Kingdom of Ends*. Cambridge University Press.

Kripke, S. (1980). *Naming and Necessity*. Harvard University Press.

Kutz, C. (2004). Justice in Reparations. The Cost of Memory and the Value of Talk. *Philosophy and Public Affairs*, 32/2, pp. 277-312.

Kymlicka, W. (1989). *Liberalism, Community, and Culture*. Oxford University Press.

Kymlicka, W. (1995). *Multicultural Citizenship*. Oxford University Press.

Kymlicka, W. (2002). *Contemporary Political Philosophy*. Second Edition. Oxford University Press.

Lawford-Smith, H. (2010). Debate: Ideal Theory—A Reply to Valentini. *The Journal of Political Philosophy*, 18/3, pp. 357-368.

Lykes, B. & Mersky, M. (2006). Reparations and Mental Health: Psychological Interventions Towards Healing, Human Agency, and Rethreading Social Realities. In de Greiff, P. *The Handbook of Reparations*. Oxford University Press.

Margalit, A. (2002). *The Ethics of Memory*. Harvard University Press.

Miller, D. (1995). *On Nationality*. Oxford University Press.

Minow, M. (2002). Breaking Cycles of Hatred. In Minow, M. & Rosenblum, L. *Breaking Cycles of Hatred: Memory, Law, and Repair*. Princeton University Press.

Morris, C. (1984). Existential Limits to the Rectification of Past Wrongs. *American Philosophical Quarterly*, 21/2, pp. 175-182.

Parfit, D. (1984). *Reasons and Persons*. Oxford University Press.

Parfit, D. (2011). *On What Matters*. Oxford University Press.

Pogge, T. (2000). The International Significance of Human Rights. *Journal of Ethics*, 4, pp. 45-69.

Rawls, J. (1999a). *A Theory of Justice*. Revised Edition. Harvard University Press.

Rawls, J. (1999b). *The Law of Peoples*. Harvard University Press.

Rawls, J. (2001). *Justice as Fairness. A Restatement*. Harvard University Press.

Rawls, J. (2005). *Political Liberalism*. Expanded Edition. Columbia University Press.

Sen, A. (1977). Rational Fools. A Critique of the Behavioral Foundations of Rational Choice Theory. *Philosophy and Public Affairs*, 6/4, 317-344.

Sher, G. (1979). Compensation and Transworld Identity. *The Monist*, 62/3, pp. 379-391.

Sher, G. (1981). Ancient Wrongs and Modern Rights. *Philosophy and Public Affairs*, 10/1, pp. 3-17.

Sher, G. (1997). *Approximate Justice. Studies in Non-Ideal Theory*. Roman & Littlefield.

Sher, G. (2005). Transgenerational Compensation. *Philosophy and Public Affairs*, 3/2, pp. 181-200.

Simmons, J. (1995). Historical Rights and Fair Shares. *Law and Philosophy*, 14/2, pp. 149-184.

Simmons, J. (2010). Ideal and Non-Ideal Theory. *Philosophy and Public Affairs*, 38, pp. 5-36.

Strawson, G. (2004). Against Narrativity. *Ratio*, 17, 4, pp. 428-452.

Thompson, J. (2001). Historical Injustice and Reparation: Justifying the Claims of Descendants. *Ethics*, 112, pp. 114-131.

Thompson, J. (2009). *Intergenerational Justice*. Routledge.

Vaca, M. (2012). *Rectifying Wrongs. The Problem of Historical Injustice*. Dissertation. University College London, University of London.

Valentini, L. (2009). On the Apparent Paradox of Ideal Theory. *The Journal of Political Philosophy*, 17, pp. 332-55.

Verdeja, E. (2006). Reparations in Democratic Transitions. *Res Publica*, 12, pp. 115-136.

Waldron, J. (1992). Superseding Historic Injustice. *Ethics*, 103, pp. 4-28.

Walker, M. (2006). *Moral Repair*. Cambridge University Press.

Wall, S. (2003). Just Savings and the Difference Principle. *Philosophical Studies*, 116/1, pp. 79-102.

Weine, S. (2006). *Testimony After Catastrophe: Narrating the Traumas of Political Violence*. Northwestern University Press.

Zalaquett, J. (1998). Moral Reconstruction in the Wake of Human Rights Violations and War Crimes. In Moore, J. *Hard Choices: Moral Dilemmas Relating to Humanitarian Intervention*. Rowman & Littlefield Publishers.

Zalaquett, J. (1999). Truth, Justice and Reconciliation: Lessons for the International Community. Zalaquett, J. *Comparative Peace Processes in Latin America*. Stanford University Press.