

# Untangling Historical Injustice and Historical Ill

by PD Dr. Michael Schefczyk

**A**bstract: This article distinguishes historical ills and historical injustices. It conceives the latter as legalised natural crimes, committed by morally competent agents. A natural crime consists in the deliberate violation of a natural right. 'Legalised' means that the natural crime must be prescribed, permitted or tolerated by the legal system. I advocate an approach which assesses moral competence on the basis of an exposedness criterion, that is: a historical agent must not be blamed for failing to see the right moral reasons if his epoch and social world is utterly unacquainted with these reasons. However, an appropriate application of the exposedness criterion should take social factors and psychological mechanisms into account that obstruct access to the right reasons. I state a number of factors that seem to be auspicious for the development of moral competence.<sup>1</sup>

Some decades ago, Robert Penn Warren decried the "whole notion of untangling the 'debts' of history" as a "grisly farce".<sup>2</sup> One reason for scepticism with respect to the notion of historical justice has to do with unresolved problems of definition. Surprisingly, the philosophical literature lacks a debate on the defining features of historical injustice. My paper responds to this deficit by offering a working definition of the term. The proposed definition captures core cases of historical injustice, but avoids serious problems of the prevailing 'intuitive' usage.

In some instances, the intuitive approach gives rise to the following dilemma: It either ascribes contemporary conceptions of justice to historical agents who do not share them; hence, one horn of the dilemma is anachronism; or it assumes that the actions of historical agents were unjust even though they were not acquainted with the conception of justice which we, here and now, apply. This amounts to the violation of a fundamental principle of fairness, namely that the agent must know the standards which are used in order to evaluate his or her behaviour. Hence, the other horn of the dilemma is unfairness. In order to avoid this dilemma, the paper introduces a distinction between historical injustices and historical ills.

The paper is structured as follows: The first section titled 'Distinguishing historical ill and historical injustice' introduces what I call a

responsibility-centred approach (RCA). According to RCA, historical injustice presupposes that a class or group of persons bears moral responsibility. The second section 'A working definition of historical injustice' defines historical injustice as a particular form of political crime. On this basis, the third section titled 'Moral competence' advocates a 'contextualist' approach regarding the moral competence and responsibility of historical agents.

## Distinguishing historical ill and historical injustice

How do we decide whether a historical event or institution should count as an instance of historical injustice? Historical injustices are, from a moral point of view, bad or ill states of the world. They are historical ills. As examples for bad- or ill-making features of a society take the exploitation of the rural population, the subjection of woman or, due to enormous ignorance, harmful medical practice.<sup>3</sup> Other things being equal, a moral chooser would prefer a world without these practices and structures to a world with them.

However, not all historical ills should count as historical injustices. In the following, I propose

a responsibility-centred approach (RCA). RCA reserves the term 'historical injustice' for cases in which a class or group of persons bears moral responsibility for a historical ill. I shall advocate a version of RCA, which specifies the notion of ill-making properties on the basis of a natural rights approach. People have some elementary rights, such as the right not to be mutilated, murdered, displaced, exploited, raped, captured, robbed or enslaved. The violation of these rights is an ill-making feature in the relevant sense.

The advantage of this version of RCA consists in the fact that the idea of elementary individual rights is arguably less contended than any theory of justice. Thus, basing RCA on a natural rights approach gives us a relatively robust notion of historical injustice.

The distinction between historical ills and historical injustices allows for specifying appropriate reactions to the violation of natural rights. A class or group of agents that are responsible for a historical injustice are obliged to

repair the damage and to 'restore equality' with the victim. The fact that the members of this group or class have acted unjustly gives them a special reason to care for correcting the injustice. In other words, reparative justice regarding historical injustice is a special obligation. In some cases of historical ill, however, there is no group or class of persons that bears moral responsibility and is, thus, to blame. Those who were privileged by the unjust structures without being responsible for them (the profiteers of historical ill) do not deserve to be punished. Profiteers have neither a special obligation to rectify past ills nor have they a special claim on keeping their advantages. I call the latter the *invalidation effect of historical ill*. Historical ill invalidates entitlement claims on the part of the advantaged members of society that otherwise come into play in judgements about the just distribution of resources. In other words, deliberation on redistribution policy has, under such circumstances, not to balance general-right based arguments against

Justice is conscience, not a personal conscience but the conscience of the whole of humanity. Those who clearly recognize the voice of their own conscience usually recognize also the voice of justice.

/ Alexander Solzhenitsyn /

reasons of historical entitlement.<sup>4</sup>

In contrast, blameworthy perpetrators of historical injustice deserve punishment and have special obligations of reparative justice. Whereas historical ill invalidates or enfeebles entitlement claims on the part of the profiteers, historical injustice strengthens entitlement claims on the part of the victims. I call this the *amplification effect of historical injustice*. In such cases, deliberation on redistribution policy gives special weight to reasons of reparative justice, which are a form of historical entitlement.

## A working definition of historical injustice

The natural rights-based version of RCA I am proposing, conceives 'historical injustice' to be a form of political crime. Acts of historical injustice have to be distinguished from 'ordinary political crimes', such as the assassination of tsar Alexander II or the Lockerbie bombing. This distinction is not a matter of magnitude. Presumably, most people would not call the

terror attacks of September 11 an instance of historical injustice, in spite of the fact that the death toll was on a similar scale as that of the Herero campaign.<sup>5</sup> The distinction is also not a matter of 'historical significance'. September 11 is of considerable importance for the historical narrative and collective self-understanding of Americans and for the course of international affairs in the foreseeable future. Notwithstanding, presumably very few would call it a case of historical injustice.

What distinguishes historical injustices from ordinary political crimes is their relation to the legal order. Terrorist acts are ordinary crimes in the sense that they are illegal and that the perpetrators are aware of that. In contrast, historical injustices are non-ordinary crimes in the sense that the perpetrators had reasons to believe that their acts are compatible with the effective legal order. Perpetrators have reason to believe that their acts are compatible with the effective legal order if they correctly assume that they will not be prosecuted for them. What makes an injustice historical, then, is not the fact that it happened in the distant past or that the involved persons are dead but that the perpetrators know that the public prosecutor and other legal authorities will remain inactive; either because the code of law explicitly permits or prescribes the injustice or because the government, the law enforcement agencies and the courts tolerate it.

In order to give a more precise meaning to the idea that a legal action can be criminal, I introduce the concept of a 'natural crime'. A natural crime consists in the deliberate violation of natural rights. For instance, assassinating someone is a natural crime in so far as it violates knowingly and willingly the natural right of that person not to be assassinated. As I will state in section III with greater accuracy, I presume that the violation of natural rights can only be called 'deliberate' if the agent is morally competent, i.e. has the capacity to understand what a natural right is and what it consists in. Only morally competent agents can commit natural crimes.

I shall now turn to my *working definition of historical injustice* (WD): A historical injustice is a (complex of) natural crime(s), which is (i) legalised and (ii) being perpetrated by morally competent agents.

Since I will say more about the problem of moral competence in the next section, I can focus here on (i). I call an action 'legalised' if the agent correctly assumes that he will not be prosecuted for performing it under the current legal order; or if he correctly assumes that he will be prosecuted for refusing to perform it. Legalisation can take the form of a legal command, legal permission or legal toleration. Accordingly, a historical injustice is a natural crime, which is being prescribed, permitted or tolerated by the legal system.

The legalisation of a natural crime is itself a natural crime; for it is a deliberate violation of natural rights. This is obvious in the case of legal commands, but less so for legal permissions and legal tolerations. Why is it a violation of natural rights on the part of the authorities when they permit or tolerate natural crimes? My answer moves along the following (roughly Lockean) lines. Natural rights imply two orders of duties. The first order aspect is well characterised by the introductory sentence of *Anarchy, State, and Utopia*: "Individuals have rights, and there are things no person or group may do to them (without violating their rights)."<sup>6</sup> First order duties require people to perform (or to abstain from) certain actions that have the right-holder as the object. The second order duty, though, requires that violations of first order rights are being punished. Their object is not the right-holder but the perpetrator.

If the legal order permits or tolerates the violation of first-order rights, it disregards its second order duty to sanction such violations. The failure of the state to prosecute a first-order violation is a second-order violation of a natural right. For this reason, the legalisation of a natural crime is itself a natural crime.

I use the term 'legalised' in contrast to 'legal' in order to take account of the fact that juridical opinions regarding legality may differ. The notion of historical injustice, though, should not depend on rather technical juristic questions. Using 'legalised' instead of 'legal' is supposed to make the notion of historical injustice sufficiently robust.

As an example for what I have in mind, one may think of the 'ordinary men' who were complicit in the Nazi genocide. Those who slew Jews were not afraid of being charged for murder by German courts, although, technically, they violated § 211 of the Reichsstrafgesetzbuch of 1941 (which dealt with murder). According to WD, the crucial question is whether the historical agents have reasons to believe that their actions are in accordance with the effective legal order or not. In the case of the Shoa (Holocaust), they correctly assumed that Nazi Germany had legalised natural crimes.

**The history of the world is the world's court of justice.**

/ Friedrich von Schiller /

WD is helpful in order to understand the 'collective nature' of historical injustices. Consider the following thought experiment: In 1818, an individual named *I* invented a technical device with which he murdered thousands of Cherokees. *I* acted as a lone operator. Neither did he conspire with others nor did he receive help or

expect approval for his act. In fact, the public is shocked and appalled by his mass murder.

The reason why one would not say that *I* did commit a historical injustice, I presume, consists in the 'individual nature' of his crime. We use the notion 'historical injustice' in order to address acts that were directed against individuals as members or representatives of groups. The victims suffer as Jews, African-Americans or Cherokees. Correspondingly, the perpetrators do not act on the basis of merely personal preferences but as members of a community, a culture or as agents of organisations.

Its collective nature distinguishes an act of historical injustice from crimes in the past that had been committed or suffered by individuals as individuals. It is important, however, to understand in what precisely the 'collective nature' of historical injustice consists. I propose to consider collective action as neither necessary nor sufficient for the understanding of the collective nature of historical injustice. If the members of the Miller family killed dastardly all the members of the Graham family in a conflict about water rights, it is a case of collective injustice, but it is no historical injustice, even if it happened in the distant past and the involved persons are deceased.

A test of one's intuition regarding a slightly modified version of the above thought experiment is instructive in this context. Imagine that *I*, although the public is shocked and appalled by his mass murder, is not being prosecuted. In this case, I think, one would not hesitate to speak of the mass murder as a historical injustice although *I* had acted as a lone operator and neither expected nor received moral approval for his deeds. However, the fact that the legal order tolerated *I*'s acts gives them a 'collective dimension'. For the political community upholds a legal order, which permits individuals like *I* to put their preferences into effect. Thereby, it negates the natural rights of the victims, even if, as in the thought experiment, no member of the political community conspired with the perpetrator or personally favours his deeds. In the thought experiment, the 'collective nature' of the mass murder consists in the omission on the part of the political community to prosecute a natural crime, an omission which implies the negation of the victim's natural rights.

Thus, conceiving historical injustices as legalised natural crimes, helps us to pinpoint in which sense they have a 'collective nature'. They are not necessarily collective actions; however, they are actions, or complexes of actions, which are in accordance with the collective will of the political community that upholds the legal order.

I shall now turn to three objections to WD. One may criticise that WD is not in harmony

with the *common philosophical view* according to which an injustice is historical if the victims and the perpetrators are dead. Following this view, the philosophical debate on historical justice deals with moral claims and obligations that contemporaries have because of injustices which their ancestors committed or suffered.<sup>7</sup> In contrast to WD, the common philosophical view calls the above-mentioned (fictional) assassination of the members of the Graham family by the Miller family a historical injustice, even if it had been a criminal offence at the time. This approach has two disadvantages: First, in everyday English, the word ‘historical’ can be used in order to emphasise the importance of an ongoing event as in ‘This merger is a historical moment for our company!’. If ‘historical’ is understood in this sense, an injustice can already be historical while it happens. WD is compatible with this usage. Second, and more importantly, it is common in the philosophical literature to understand historical injustices not with regard to the internal features of events but with regard to a relation between the event and a claimant.<sup>8</sup> A plain murder metamorphoses into a historical injustice by means of a claim on the part of the victim’s descendants. If there are no descendants, then there are no (potential) claimants and, thus, no historical injustices. I find this contingency unfortunate. In contrast, WD defines historical injustices by internal features of the action (legality, natural criminality). The passage of time, the death of the involved persons or the existence of (potential) claimants are irrelevant for the identification of an event as historical injustice.

It is one thing to settle what a historical injustice is and another to determine whether contemporaries have obligations or rights with respect to them. One may distinguish between *hot* and *cold cases of historical injustice*, hot being those regarding which contemporaries have obligations and rights.

The second possible objection criticises that WD excludes core cases of historical injustice such as (i) the consistent neglect of contractual obligations against indigenous people or (ii) the subjection of women. (i) Take, for instance, the notorious Treaty of Waitangi (1840) in which the British Crown promised to protect the Maori against the uncontrolled and unwished infiltration of settlers.<sup>9</sup> The historical injustice, which the current restitution policy is supposed to rectify, is conceived to consist in the neglect of this contractual obligation. WD has the awkward consequence that a much discussed case of historical injustice like this would not count as such. I am prepared to bite this bullet. It is, indeed, the case that, according to WD, the breach of a treaty constitutes no historical injustice, unless natural rights of

individuals are being violated. However, this appears to be no serious disadvantage. For what makes the breach of a treaty wrong, is, first and foremost, the violation of the natural rights of individuals.

(ii) Similarly, one may opine that the subjection of women in Victorian Britain should be described as historical injustice but not as a complex of natural crimes. Admittedly, it may be unfamiliar to characterise the situation of women in Victorian Britain with terms like ‘violation of natural rights’ and ‘natural crimes’. If one consults Mill’s description of the legal situation of married women in Victorian Britain, however, one learns that they were not only disadvantaged, curbed in their professional ambitions and deprived of political rights, but that they had no legal protection against (what we would call) domestic rape.<sup>10</sup> If rape is a natural crime, the legalisation of it is a historical injustice. Hence, at least in this regard, it is not true that my robust notion of historical injustice is too narrow.

A third objection claims that, according to WD, all historical injustices are essentially crimes by the authorities in so far as they legalise natural crimes. As I already mentioned, legalisation can take the form of toleration. In such a case,

the authorities take no measures against natural crimes by non-state groups although they would be capable of ending the crimes. Thus, the claim that all historical injustices are essentially crimes by the authorities has to be taken with a pinch of salt.

It is correct that, following WD, shocking natural crimes, like mass murder, mass rape, mass mutilation and so forth, do not count as historical injustice if they happen(ed) in a state of nature, in civil war or in failed states. However, this is arguably not at variance with ordinary usage. We address the genocide in Sudan as historical injustice but not the unspeakable atrocities of the Lord’s Resistance Army that operates mainly in Uganda. The reason is, I presume, that the government of Sudan legalised the mass murder, whereas the government of Uganda is willing but so far unable to stop the Lord’s Resistance Army.

### Moral competence

In the previous sections, I suggested to distinguish between historical injustice and historical ill. Historical injustice implies, among other things, that a class of persons bears moral responsibility for the violation of natural rights.<sup>11</sup> This section is devoted to the question under what conditions historical agents should be considered as *morally competent* and, thus, being capable of bearing moral responsibility

for some ill. I will argue that we should take seriously the social and cultural ‘embeddedness’ of historical agents.

A standard condition of moral competence is a person’s ability to grasp the relevant moral reasons. We blame Alfred for  $\varphi$ -ing only if Alfred has the capacity to understand that  $\varphi$ -ing is wrong. Blaming presupposes, on the one hand, that Alfred is able to comprehend the basic distinction between morally right and wrong actions. We do not blame wild beasts for killing a child since we assume that they lack the according ability. On the other hand, Alfred must have epistemic access to the right kind of moral reasons. In the following, I use ‘moral competence’ in the latter sense. A historical agent is morally competent if he has access to the right moral reasons; his failure to act upon these reasons, then, is blameworthy since ‘he should have known better’. An agent bears part of the moral responsibility for a historical injustice, if he should have known that a complex of actions, although legal, constitutes a natural crime and that he is under a natural duty not to participate in its execution.

Moral excellence comes about as a result of habit. We become just by doing just acts, temperate by doing temperate acts, brave by doing brave acts.

/ Aristotle /

The above-mentioned *access condition* is inherently normative in the sense that it involves statements about what an agent *should have known* to be right in a certain situation. In the following, I shall explore very tentatively aspects that seem to be relevant for our judgments regarding moral competence.

Let me begin with a brief remark on *absolutism*. Absolutism claims that all historical agents could and should have known the right moral reasons. Such a position would certainly be worth considering more closely if moral nativism were true. If our moral knowledge were innate, the access condition seems to be fulfilled for all cognitively competent persons. Even then, however, opponents could challenge absolutism with the argument that cultural influences can and often do corrupt our natural capacity to see what is right. The cultural context deprives agents in some cases of their natural moral competence. For this reason, absolutism is implausible.

In reply to this challenge, an absolutist could assert on a Kantian note that it is the agent’s recreancy and sloth, which keep him from using his own wit. Since moral incompetence is the result of the agent’s own vices, he or she is to blame for them.

Let me abbreviate this discussion with the apodictic assertion that the content of our moral beliefs and the modes of our practical delibe-

ration are not innate. We acquire them in the course of our acculturation. For this reason, judgements about the moral competence of an agent should take account of the cultural and institutional matrix within which a person is acting (*contextualism*). Naturally, the question whether or not the members of a culture are to blame for their failure to see the right moral reasons is fiendishly difficult to answer in many cases. These difficulties notwithstanding, the idea that the members of some cultures are not to blame for violations of natural rights has strong roots in common sense.

One way to spell out contextualism could take the following form: A historical agent is not to blame for his immoral views if they are in complete agreement with those of his social environment (*consensus criterion*). The buttressing idea of the consensus criterion is that it would be too demanding to expect individual actors to question what everyone else seems to take for granted, or to see what no-one else seems to be seeing.

In the remaining part of the paper, I shall argue that the consensus criterion is too coarse-grained and that one should distinguish between appropriate and inappropriate causes of societal consensus.

The consensus criterion is too coarse-grained since the fact that people agree on the acceptability of immoral practices is not necessarily a good indicator for their moral incompetence. The criterion does not exclude cases in which people have access to the right reasons but refuse to give them proper weight in their practical deliberation since they conflict with their self-interests. All slaveholders agreeing on the moral admissibility of slavery does not warrant the conclusion that they are morally incompetent. It is perfectly possible that their consensus stems from a collective rationalisation of shared immoral interests and is, thus, a product of wickedness and not of incompetence. In order to take account of this point, I propose a finer-grained criterion. This criterion is construed in analogy to norms that we accept in the realm of theoretical beliefs. The rough idea is that we would, for instance, criticise average students if they were completely ignorant of the basic principles of evolution; but, naturally, we do not blame Leibniz for his ignorance concerning this matter. Our different assessments are easily explained by the fact that most members of our society learn the principles of evolutionary theory in school, whereas Leibniz did not. He would have had to formulate them by himself. Thus, blaming him for his ignorance would simply amount to demanding too much, even of a genius like Leibniz.

A similar point, I think, can be made with respect to moral competence. According to the

exposedness criterion, a historical agent must not be blamed for failing to see that certain social practices are natural crimes if this insight is utterly unheard-of in his time and social world. We must not expect ordinary members of a society to be epistemic pioneers, i.e. people that have the extraordinary ability to see what is morally right when no-one else does.

We seem to apply something like the exposedness criterion when we exculpate members of traditional societies in view of natural rights violations. For instance, it is quite common to draw a moral distinction between the British slave trade and, say, the slave trade of the Cherokees. One reason appears to be that people tacitly apply the exposedness criterion and assume that the notion of a natural right not to be enslaved was entirely alien to the Cherokee culture, whereas it was not to the British culture at the time.<sup>12</sup> It is important to note, however, that exposedness is a matter of degrees; whether the demands of the exposedness criterion are being fulfilled will often be an object of reasonable disagreement.<sup>13</sup>

Regarding the interpretation of the criterion, the subjection of women in Victorian Britain is an interesting test case. The idea that human beings have rights and that 'there are things no person or group may do to them (without violating their rights)' was certainly familiar to the British society then. Moreover, one could find a vigorous defence of women's rights in the books and articles of one of the most highly esteemed intellectuals of the nineteenth century, John Stuart Mill. In this quite literal sense, educated men were confronted with expressions of right moral reasons; thus, one may argue that the exposedness condition is fulfilled and that Victorian men are, by and large, to blame for their failure to see what is right.

However, the question is whether the exposure to ideas in books and articles is sufficient to warrant the claim 'that someone should have known better'. A critic may argue that, in the nineteenth century, the overwhelming majority of men found the idea of women's emancipation outrageous. John Stuart Mill's promotion of the cause was vehemently denounced and ridiculed at the time. Even if Mill's male contemporaries knew about his views or read his books and articles, it must have been exceedingly difficult for them to take him seriously. In the light of their social context, blaming them for their ignorance would apply too high a standard.

Group pressure can undeniably be a corrupting force in the process of belief formation. But the presence of group pressure is no reliable indicator of moral incompetence. Frequently, group pressure does not distort the ability to grasp the right moral reasons but aims at suppressing their public expression. It

is even plausible to assume that social pressure exacerbates when people increasingly begin to question the morality of common practices. Thus, growing group pressure may be an indicator for a process of enhancement of moral competence, and not for its absence.

### What happens when good people are put into an evil place? Do they triumph or does the situation dominate their past history and morality?

/ Philip Zimbardo /

On the other hand, there is certainly a strong tendency to avoid cognitive dissonance. With social pressures being intense, people have powerful incentives to adapt their process of practical deliberation to social expectations. Spelled out properly, this may serve as an argument for the view that the subjection of women in Victorian Britain was a historical ill but no historical injustice. Group pressure in combination with the tendency to reduce cognitive dissonance obstructed the access to the right moral reasons.

In reply to this view, one may emphasise the presence of cultural patterns and role models that facilitated or even demanded the use of one's own wit in order to examine the claims of authorities and traditions and the defence of one's own beliefs in public. Martin Luther's famous concluding remarks before the Diet of Worms in 1521 are a case in point.<sup>14</sup> Educated people could and should have been aware that the arguments, which were used to justify the subjection of women, were below the common standards of sound reasoning. In a society that esteems personal courage in the critical examination of ideas, that acknowledges the existence of natural rights and that is used to open discussion in the free press, the conditions for the development of moral competence are auspicious. Thus, it appears not to be too demanding to claim that people in Victorian Britain could and should have grasped that women's natural rights are being violated.

#### Notes:

(1) I wish to thank Dominique Kuenzle, Peter Schaber and the anonymous reviewers for numerous helpful comments.

(2) Warren quoted in: Bittker 2003, 10.

(3) I wish to thank one of the reviewers for the last point.

(4) One may ask here, as one of the reviewers did, whether this means that the advantages of profiteers are fair game for dispossession by the authorities. My point is that profiteers cannot argue against dispossession on the basis of historical entitlement; but there may be other reasons against dispossession.

(5) 1904 soldiers of the *Kaiserreich* committed, perhaps, the first genocide of the 20<sup>th</sup> century in what is now Namibia. The German troops forced the insurgent *Herero* to take refuge in the desert where they were cut off from food and drink and died in the tens of thousands.

(6) Nozick 1999, 9.

(7) Pars pro toto: "Past-referring obligations are historical when those who are supposed to be responsible for keeping the promise, honouring the contract, paying the debt, or making the reparation are not the ones who made the promise or did the deeds, but their descendants or successors." (Thompson 2003, x). See also: Thompson 2000, 2001.

(8) In this understanding, the term 'historical injustice' is only applicable if living persons have rights and obligations on the basis of wrongs suffered by deceased people. Thus, a historical injustice consists in ignoring, here and now, a historical obligation (which is an obligation of living people in virtue of past wrongs). This is, presumably, the reason why Sher (1981) refers to injustices in the (remote) past as 'ancient wrongs'; historical wrongs are necessary, but no sufficient conditions of *historical* injustice. In a similar vein: "Central to the topic of historical injustice, as I understand it, is the question whether and how past injustice and, more generally, wrongs can affect present moral reasons for action." (Pogge 2004, 117, italics mine).

(9) Goodin 2000.

(10) "(...) a female slave has (in Christian countries) an admitted right (...) to refuse to her master the last familiarity. Not so the wife: however brutal the tyrant she may unfortunately be chained to (...) he can claim from her and enforce the lowest degradation of a human being, that of being made the instrument of the animal function contrary to her inclination." (Mill CW 21, 285).

(11) I tend to say that a violation of natural rights counts as a natural crime only if the perpetrator is morally competent. One may object that such a usage misses the distinction between the criminality of an act and the question of guilt. A natural rights violation should be considered as a natural crime even if the perpetrator is morally incompetent and, thus, not to blame for it. Otherwise, one would have to say that morally incompetent agents have the right to violate natural rights. My reply is that morally incompetent agents are beyond right and wrong and, hence, cannot possibly have a right to commit natural crimes. Morally incompe-

tent agents can be bad and produce extremely ill consequences but, like a wild beast that kills a child, they are no criminals.

(12) One aspect of the exposedness criterion, which some may find disturbing, is that it relieves the members of the 'worst societies' of moral responsibility. Since violations of natural rights – committed by members of morally incompetent societies – would not count as historical injustice, it would follow that the perpetrators would not be culpable or under special obligations of corrective justice. It is worthy of note, though, that contextualism does not deny claims of those who were harmed by historical ill; these claims, however rest upon the ongoing distributional consequences of past social practices, consequences that make the present structure unjust.

(13) I thank one of the reviewers for urging me to make this point more explicit.

(14) Luther's words were: "Here I stand; I can do no other. God help me. Amen."

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## Intergenerational Rights?

by Prof. Dr. Richard Vernon

**A** *Abstract: Past injustices demand a response if they have led to present deprivation. But skeptics argue that there is no need to introduce a self-contained concept of 'historical justice' as our general concepts of justice provide all the necessary resources to deal with present inequalities. A rights-based approach to intergenerational issues has some advantages when compared to rival approaches: those based on intergenerational community, for example, or on obligations deriving from traditional continuity. While it is possible to ascribe rights to beings who are not presently in existence, the case for ascribing rights to future generations is much stronger than for past generations.*

Serious wrongs leave their mark on the descendants of their victims. The wrongs of slavery, for example, or of the dispossession of aboriginal peoples, have clearly left their marks – in the form of continuing deprivation – on their respective descendant groups. There have also, of course, been other great wrongs in the past for which no descendant victim group can be identified – for example, the cruelties suffered by sailors in 18<sup>th</sup>-century European wars. The fact that there is no descendant victim group clearly suggests, however, that the effects of the wrong have been dissipated, for if they had not, we would be confronted, in the present, by an identifiable group of people whose common life-situation had been decisively affected by 18<sup>th</sup>-century naval brutality. In

yet other cases, the long passage of time has interposed so many intervening events that the connection with past wrongs has become too tenuous: and there are also a few cases in which relatively recent wrongs have left no perceptible mark, for even though the victim group subsists it has subsequently done well. But for the most part, we pay serious attention to historical wrongs only when there is an identifiable group whose present deprivation continues to display the effects of past injustice.

There cannot be much doubt that present deprivation motivates much of the concern for injustice in the past. To lack concern about past events may display lack of imagination: to lack concern about present deprivation dis-