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# HISTORICAL INJUSTICES AND THE STATE ENDURANCE THESIS

by

YUCHEN LI

Under the Direction of Andrew Jason Cohen, PhD

## ABSTRACT

Most cases of historical injustices that attract public attention are at least partly caused by states. However, there is not yet a universally agreed upon, single version of a normative account that addresses all associated problems. In this paper, I attempt to defend the State Endurance Account as part of a response to the question of how we should account for reparations for state-caused historical injustices. This account supports the view that, in general, it is justified to require a state to fulfill its duties incurred in the past, including reparatory duties.

INDEX WORDS: Historical injustice, Reparation, Historical debt

HISTORICAL INJUSTICES AND THE STATE ENDURANCE THESIS

by

YUCHEN LI

A Thesis Submitted in Partial Fulfillment of the Requirements for the Degree of

Master of Arts

in the College of Arts and Sciences

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2020

HISTORICAL INJUSTICES AND THE STATE ENDURANCE THESIS

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May 2020

**DEDICATION**

To my late father, LI Feng.

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## 1 INTRODUCTION

Historical injustices are past wrongs, many of which have never been fully redressed. Such injustices did not merely stay in the past but continue to toxically affect the original victims' descendants and social relations at large.<sup>1</sup> Reparations for historical injustices have become an important issue in both contemporary politics and political philosophy. However, this topic is notorious for the various difficulties around it. On the one hand, it is not often clear upon scrutiny to whom the reparations are owed and what is owed. On the other hand, it is also difficult to demonstrate *who* should bear the costs as typically, no living person was alive when the original injustice took place. Yet, states endure despite losses or gains of individual citizens. Occasionally, a whole generation of citizens die out. However, we still take their state to remain—identical to what it was before—and expect it to fulfill any duties it incurred previously. Relying on these observations, various contemporary philosophers have proposed or at least suggested what I call the State Endurance Account as part of an account of reparations for historical injustices.<sup>2</sup>

Not all historical injustices were caused by states; nevertheless, most cases of historical injustices that attract public attention are at least partly caused by states. Among these cases, it is not unnatural to hold the perpetrator state responsible for compensating its victims even though the injustice happened long ago, and none of the citizens who contributed to the original injustice exist any longer. This proposal seems reasonable and circumvents various difficulties for advocating reparations for historical injustices. That said, there is not yet a universally agreed upon, single version of the State Endurance Account. Moreover, none of the existing works that

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<sup>1</sup> Alternatively, one may claim that the absence of full reparations continues to create new victims.

<sup>2</sup> These philosophers include but are not limited to David Boonin (2011), Bernard Boxill (2003), David Miller (2007), and Michael Ridge (2003).

endorse the State Endurance Account has fully considered the challenges one may raise about this account. In this paper, I aim to provide a refined version of the State Endurance Account and defend it against various objections. I do not present a complete theory of state reparations for historical injustices, which may involve other issues that deserve clarification and defense. However, the account I develop in this paper should strengthen such a theory as it maintains states could be justifiably held responsible for their past deeds.

In the first section, I lay out the State Endurance Account and explain why this account is attractive. I then discuss two issues on which I differ from the philosophers who propose other versions of the State Endurance Account in the next section. In the third section, I defend the State Endurance Account against two interrelated objections. I conclude that the State Endurance Account does not violate the core tenets of liberalism and is justified.

## **2 THE STATE ENDURANCE ACCOUNT**

In brief, the State Endurance Account of state duties claims: (1) a state may persist after its citizens, who collectively contributed to a state act, pass away; (2) as an enduring agent of the original act, this state ought to fulfill any duties associated with the original act, including reparatory duties if the act was harmful. As I intend this account be a component of a complete theory of reparations for historical injustices, I will place my discussion of this account in the context of state reparations and examine some perhaps reparation-specific problems. However, this account itself does no more than establish that states should be responsible for their past acts. In this paper, I will ignore questions such as how we should determine the amount of monetary compensation and how we establish the recipients' claim to reparations.

One thing I should clarify at the beginning is that this account involves no odd ontological commitments regarding the state. Read in an overly literal way, this account may seem to posit a

collectivist conception of the state, i.e., the state is an entity over and above and distinct from its constituent members in a problematic way (for a recent critique, see Ludwig 2017: 171).

However, such readings are misguided.

We do not have to commit ourselves to any substantive doctrine of group agency to discuss issues such as the state's obligation to honor its duties in political and legal contexts. Instead, we can (and often do) take state agency as a term that denotes a set of complex mechanisms, which facilitate solutions to problems such as unaccounted for historical injustices. Doing so allows us to remain agnostic about the more foundational questions. The crucial question is whether the resultant solutions prove practically useful and morally justified. In the case of reparations for state-caused historical injustices, my answer to this question is affirmative.

The primary problem for the State Endurance Account, then, is that it seems inevitable that we rely on the current citizens of the perpetrator state for the funds to satisfy the state's obligations incurred in the past. The State Endurance Account seems convincing in the abstract and will surely be welcome among the recipients of the reparation, for instance. However, the state is not a freestanding entity that can fulfill a massive amount of reparations without its citizens' services and raising taxes, at least not typically.<sup>3</sup> Consequently, current citizens of the perpetrator state, who seem entirely innocent regarding the making of the original injustices, may be required to share costs that result from some other's fault and complain. Since the original injustice has happened long ago, why should we not let bygones be bygones? After all, although

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<sup>3</sup> One may have in mind states with an enormous amount of valuable natural resources at its disposal. Those states may not need to directly impose extra costs on the citizens to fulfill the reparations. However, selling those resources to fulfill reparations may still reduce the benefits the state's citizens may otherwise enjoy and result in public discontent. Also, I remain agnostic to the question whether states should possess assets such as natural resources at all in this paper.

we may sympathize with the victims, why should we require innocent individuals to bear the costs for the reparations?

There are several matters related to this issue. First, facing such complaints, certain philosophers resort to the doctrines of property rights and unjust enrichment, as they are primarily concerned with cases where the perpetrators have unjustly—without any compensation—appropriated the victims' land, wealth and labor, and passed down these assets to their descendants (Waldron 1992: 13-20; also see Perez 2012: 70-72). As the current citizens benefit from the continuously appropriated resources, they have no ground from which to complain.

I do not find this approach promising though I concede that evidence for unjust enrichment may reinforce the claim that later generations should bear costs for remedying historical injustices. After all, not all harms bring their perpetrators advantages. An unjust war waged but lost may significantly cost the perpetrators and negatively impact the socio-economic conditions for their civic descendants. The perpetrators are not exempt from obligation to remedy the harm merely because they did not profit. It is their contributions to the harm the typical reason why the perpetrators should bear reparatory duties.

One may argue that absent any direct contribution to the harm, unjust enrichment from the past harm may be the only reason why we should impose remaining reparatory duties on the later generations. In cases where such enrichment does not exist, according to this view, we should leave behind the unfulfilled reparations (there may still be other egalitarian or international humanitarian reasons to assist the victims, but such assistance would not be “reparations” in a proper sense).<sup>4</sup> I doubt if all proponents of the unjust enrichment argument are committed to

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<sup>4</sup> For a useful semantic clarification of the term “reparation,” see Perez 2011.

such a conclusion. More importantly, one should notice that it is the states rather than the citizens that are required to bear the reparatory duties in our picture. That the state bears the reparatory duty does not require reference to unjust enrichment at all since the state was the agent of the original harmful act and should bear the reparatory duties. Given that, current citizens are simply obligated to the state and so must help it fulfill its duties required by justice. The question of whether and how a citizen is bound to such tasks is a different matter.

In this paper, I assume that any citizens could be reasonably expected to participate in such tasks if their state is legitimate.<sup>5</sup> If the citizens fail to recognize the authority of the state and disobey when the state's orders contradict their interests, we will face a more urgent situation, the account of which is beyond the scope of this paper. Moreover, I will shortly elaborate on other reasons why current citizens should contribute to the fulfillment of their state's reparatory duties without relying primarily on their recognition of their state's legitimacy. For the present purposes, it is enough to conclude that it is unnecessary to introduce unjust enrichment to the current discussion.

Second, as Thomas Jefferson famously put it, it may be wrong for one generation to pass down extra, unfulfilled debts to later generations, at least without equal or more compensating benefits (1789). In some cases, citizens of one generation may inadvertently incur state debts that their generation cannot pay off by itself. Indeed, there are certain cases in which citizens of one generation have foreseen the risk of incurring state debts way beyond their capabilities to pay off. Also, there are cases in which the original generation have the capabilities but refuse to pay off the debts, leaving them to their descendants irresponsibly. In these cases, one may claim that

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<sup>5</sup> I will come back to this issue in Section 2.2 a bit more.

since the current citizens are wronged because the previous generations did not fulfill their roles responsibly, the current citizens should not bear the costs for any resultant, unpaid debts.

In an ideal scenario, one may expect each generation not to incur debts they could not pay off. However, what we now face is a non-ideal situation in which the previous generations have already not fulfilled their duties. I agree that the current citizens may be wronged in some sense if their ancestors had a choice to pay off the debts. However, that these citizens are wronged does not change the fact that their state is responsible for remedying the historical injustices but continuously fails to do so. In a broad sense, the current citizens of the perpetrator state do become victims of some sort of those who contributed to the original injustice. Nevertheless, the proper victims under our discussion become victims mainly because of the lasting effects of the original injustice and perpetrator state's non-payment. The current citizens of the perpetrator state become victims because of the original generation's failure to fulfill their duties to help the state at that time to remedy the injustice. These are two separate relations and do not seem to offset each other.

Lastly, I anticipate that most would agree that given the way our society is organized, any generation's subsistence and flourishing depend on a variety of conditions, including their claims to various legacies they inherit from previous generations. Such claims may concern ownership of material resources, financial assets, or territories. They may also concern, moreover, legacies of other kinds, say, the legal system or international legal status. To continue to enjoy the benefits obtained from the state's signing various international treaties previously, for example, the later generation must maintain the state or form a new state as the legitimate successor of the one before.<sup>6</sup> Such maintenance, however, is of a holistic nature. Having identified themselves in

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<sup>6</sup> I take the identity of the state (or of a people) over time as a matter of social and legal construction. It is not a brute fact that one belongs to a state, but the result of the entire citizenry organizing their society in specific ways.

the same way as the previous generations, as a political unity, the new generations must also commit themselves to the obligations this political unity undertook in the past. For simultaneously identifying one's state as the one before in one context and denying it in another similar context would be inconsistent, not to mention any consequent ethical concerns.

But why must later citizens rely on the benefits associated with the continued existence of the state? The continued existence of the state provides certain benefits that one could not reject without incurring overwhelming costs, e.g., basic infrastructure. As some philosophers have pointed out, the enjoyment of such benefits does not sufficiently justify imposing burdens on the beneficiaries since the price for avoiding these benefits could be unreasonably high (e.g., Nozick 1974). However, the continued existence of the state also provides benefits such as privileges acquired from previously-signed international treaties that one generation could collectively decide to abandon. It is conceivable that the current citizens reject all such benefits and decide to negotiate new treaties by themselves. If a people are resolved to forsake all such benefits, on what ground should we bind them to the debts unfulfilled by the state?

The amount of compensation owed for a past war crime, for example, may be enormous. Nevertheless, it is not likely that the gain from abolishing historical debts can offset the various losses and inconveniences generated by forsaking all abandonable benefits one receives from one's state. In addition to the benefits that are not easily avoidable, a functioning state, regardless of its type, quality of governance, or our evaluation of it, must provide public goods of some kinds that are technically replaceable but practically useful to retain, e.g., investment in military technology, plans for future infrastructure projects, regulations on industrial wastes. I find it

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Therefore, it requires "maintenance."

implausible that a people would rationally prefer to forsake all these goods or could do so in a short time, given their other priorities.<sup>7</sup>

Also, we should not ignore the fact that states are often debtors and debtees simultaneously. Rejecting the burdens imposed by past debts may be profitable at one point, but it also grants others excuses not to repay the debts to the people in similar contexts in the future. Consequently, no one could be sure that the opportunistic inheritance serves a people's interest in the long run. Overall, it is reasonable to require later citizens to assist their state with its unfulfilled debts. The perpetrator state's citizens' complaints seem misplaced.

### 3 REFINING THE STATE ENDURANCE ACCOUNT

Having sketched the basic idea of the State Endurance Account, there are two other matters I shall address. These are the matters I find other advocates of this line of argument either insufficiently deal with or mistakenly opine on.

#### 3.1 The Problem of State Succession

First, I shall clarify what I mean by the endurance of the state.<sup>8</sup>

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<sup>7</sup> It is easily conceivable how current citizens reject a treaty their state signed long ago and forsake the associated benefits. It may be less clear how they could reject the material resources their state owns. It is beyond the scope of this paper to discuss the details. Conceivably, the international society may put those resources under the category of ownerless goods after the previous owners' expressed rejection and leave the resources to some international trustee. Depending on what the current people have received, they may wish to re-negotiate the amount of the debt with the victims on the ground that the goods they receive are not proportionate to the debt they are now expected to inherit. This would be a different matter. Also, recognizing the indispensability of receiving benefits from the state does not entail that the goods associated with the state counterbalance the harms caused by a malicious state or obligate the citizens to feel grateful toward that state.

<sup>8</sup> In their discussion of slavery in the United States, both Boonin (2011) and Boxill (2003) developed arguments that share many similarities with mine. However, both philosophers worked on the hypothesis that the U.S. Government has played a role in slavery and has a continued existence even now with no discussion of state succession. Notably, Boxill's argument involves two separable lines of thought: the one based on citizenship and the one on most current white Americans' relation to their ancestors, with the priority on the second. Although Boxill rejects it as "a basic fact of social ontology that governments and nations exist for centuries" and instead places emphasis on the actual history of heritage inheritance, the citizenship restriction he does not clearly defend indicates the indispensability of the factor of citizenship, thus, of an enduring state (2003:70-78).



One may fear that since the State Endurance Account relies on the continued existence of the perpetrator state, citizens of the perpetrator state could easily avoid their collective responsibility by employing various tactics. For instance, those citizens could argue that their current state is distinct from the one before after they tactically change the constitution or conduct a *post hoc* division of territory. Such excuses to avoid the costs for fulfilling the reparations seem quite problematic.

I find this worry noteworthy but do not consider the State Endurance Account vulnerable to it. Using Anna Stilz's terms, we would generate "perverse incentives" for malicious states and create a chaotic global order that no one wants to enter if states can abrogate their responsibility in such a tactical manner (2011:197). Depending on the conditions, there should be (and already exist) international institutional arrangements that prevent such attempts in order to ensure that everyone is aware that she should live up to the consequences of her actions.<sup>9</sup> In this context, all we need is an institution that ensures any new state undertake relevant debts and responsibilities if it wishes to claim ownership of its predecessor state's territory, assets, or resources.

I cannot here offer a detailed theory of how to design, improve, and implement such an institution, and I shall defer to international legal theorists. However, the basic reason we should enact an institution of regulating state succession is clear, as stated above.

What we need now is a more expansive understanding of the endurance of the state. After incidents such as regime change, a state may not endure in the full-fledged sense. However, the debtorship of the perpetrator state should not perish with the original perpetrator state but be undertaken by a successor state specified by international law. The people under the governance of the successor state should still help this new state fulfill its reparatory duties.

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<sup>9</sup> Here I have in mind the *Vienna Convention on Succession of States in respect of Treaties*.

### 3.2 Nation versus State

Second, some may be concerned about why my account focuses on states rather than nations. For instance, although David Miller endorses much of the argument I present in this paper, he maintains that we should switch the focus from state to nation, i.e., “a body of people who share a common national identity, involving cultural values, attachment to a territory, and so forth, and who aspire to institutions of political self-determination which they may or may not actually enjoy” (2007:151-159).<sup>10</sup> In this sub-section, I aim to show why this proposed shift of focus is problematic.

First, I shall clarify my understanding of the two terms “state” and “nation.” It would be beyond the scope of this paper for me to introduce a substantive theory or fine-grained definitions of these two notions. However, I take it to be a plausible, vital distinction between state and nation that only the state is an institutionally identifiable entity. If state officials perform acts under qualified conditions, we will identify those acts as the state’s acts. If those acts result in a harm, the associated responsibility is also attributable to the state. In contrast, nations do not generally have such institutionally identified delegates.<sup>11</sup> It is unclear, ordinarily, whose acts could be appropriately attributed to an entire nation so that all nationals bear the responsibility. Therefore, I take “collective harms caused by nations” as a figure of speech for collective harms caused by a group of co-nationals, but not the nation *per se*.

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<sup>10</sup> One of Miller’s major challenges unmentioned in this section is about the feasibility of demonstrating “the identity of states over time” (2007:141). For my reply, see Section 2.1.

<sup>11</sup> There are figures such as Gandhi and Aung San Suu Kyi, who were, at some moment, accepted as the leaders of the entire nation. However, I doubt if the extensive support and the identification with these figures justify attributing their acts to all nationals, not to mention these figures are atypical. In addition, states and nations do coincide from time to time. However, when certain individuals perform an act, it would be important to distinguish the different capacities in which they perform the act. Even if a nation-state has a clearly identified official, her act performed officially is only attributable to the state. For nations, both commonly understood and defined by Miller, do not have the relevant institutional structure that makes the attribution of acts feasible.

Miller's main reservation about the state-centric approach is that "many historic injustices are not in fact perpetrated by states, but by peoples, or by individuals acting in the name of peoples," and the state-centric approach could not account for these cases (2007:140). Although I share Miller's concern with historical injustices caused by "peoples," I doubt whether even among contemporaries, some group could transfer their reparatory duties to others solely in virtue of the two parties' sharing the same nationhood.

The problem lies in the differences between the bond between the state and its citizens on the one hand, and the bond among co-nationals on the other. The State Endurance Account requires that a state perform the relevant harm in the first place. Although a citizen may not be personally related to the harmful act (via profit or endorsement), we typically interpret her situation as she stands in a unique, obligation-generating relation to her state, given her recognition of the legitimacy of the state. The relation between the citizen and her state may obligate her to assist the state with its debts. That said, the nature of such a bond between a citizen and her state has undergone severe scrutiny from contemporary philosophers (e.g., Simmons 1981). In addition, such a bond is not unlimited. Most liberal thinkers maintain that one is not supposed to obey the state if the state's demands violate basic principles of justice or threaten the subject's security. Fortunately, however, we do not have to define the bond in absolute terms or be concerned with its normative source. Citizens may have different conceptions of the source and nature of such bonds by their own standards but typically still agree they are bound.<sup>12</sup>

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<sup>12</sup> One may object that reparations are different from other debts, such as public loans for infrastructure projects, and the difference matters normatively. One may claim that infrastructure projects typically place most citizens as the intended beneficiaries, and this obligates the citizens to pay off the debts. On the contrary, reparations bring the citizens of the perpetrator state no benefits but only burdens. I doubt if this claim stands scrutiny since many infrastructure projects do not bring most current citizens direct benefits. The constructions may take generations so that the citizens and their direct descendants are unlikely to benefit from these projects. Alternatively, the benefits, both direct and indirect, of some constructions may only be accessible to some minority groups but not to the majority. I am skeptical whether my opponent would agree that citizens are not obligated with such projects if they prove not directly beneficial to those citizens. Moreover, as I would show momentarily, helping one's state with its

That said, the bond between the state and its citizens does not seem to exist between me and my co-nationals if our major connection is a shared national cultural heritage. If a group of zealous nationalists initiates terrorist attacks in the name of our nation, am I thus obligated to pay for their damage? It does not seem so—for the same reason parents are not commonly held liable for the crimes committed by their grown children. We may blame parents for their failure to nurture and educate their kids properly. However, we do not hold people accountable for crimes that result from other adults' free exercise of their agency even if the two parties share the strongest social ties—that is, family ties.

One may object that perhaps beyond personal contributions to the harm or unjust enrichment, there is another source of one's responsibility to make up for the national harm. For instance, Linda Radzik proposed an account of duties to respond (2011). According to Radzik, victims of collective atrocities may experience reasonable fear that the perpetrator group might not have fully repented and may harm them again. Such fear is harmful to the victims and detrimental to the community. To the extent this fear remains reasonable, as Radzik outlines a few limits, the perpetrator nation's members share a moral duty to respond to that fear, whose fulfilment include "[a]pologizing, expressing regret and shame, offering help, and actively condemning" the perpetrators (2001:466-468). Those members share such a duty mainly because "they are likely to be the only ones who are in a position to mend it" (Radzik 2001:467). I concede that such fear constitutes a legitimate concern and we must amend the broken relation between the victim group and the perpetrator group. However, the duty to respond seems to only require the duty-bearer to do *something* to help remove the fear.<sup>13</sup> Public apology, recognition of the past,

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unfulfilled reparations brings the citizens some crucial, though not obvious, benefits in the long run.

<sup>13</sup> Using a Kantian taxonomy, one may say that the duty to respond is an instance of imperfect duty, which lacks a rigid stipulation of what to do to satisfy the duty

instituting a more egalitarian international order, and publicly expressing commitment not to harm in the future—all these are possible acts that would satisfy the duty as admitted by Radzik. It is not clear, however, why material compensation itself is required to achieve the relevant end. According to the account I am developing in this paper, requiring material compensations from the historical perpetrator states would create global incentives for states to maintain a more just international order. However, if the reason for imposing duties to respond is our concern about the victim group's fear, then the cure for that fear may take multiple forms and does not necessarily include reparations we are now interested in.

To continue to advocate for the nation-centric approach, figuratively, one may speak of nations failing to nurture and educate their members. Nonetheless, I or any other members of the nation, are different from the nation *per se*: neither of us typically has authority over our zealous co-nationals as parents do over their kids. Consequently, it is dubious that we should be accountable for such educational failures.<sup>14</sup> Perhaps my refusal to criticize co-nationals of mine would be thought to constitute a tacit endorsement of their acts and leave me liable for those acts in some weak sense. This could be the reason why an announcement of distancing one's nation from a group of fanatics is due on some occasions. Admittedly, there are also cases in which distancing oneself from the fanatics is only counterproductive as outsiders may not know the genuine mentalities of the distancers and worry about the distancers' being secretive supporters of the fanatics. In such cases, some more active actions, such as “[e]xpressing horror and shame at the crimes,” may be expected. For these actions “will communicate sympathy with the victims

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<sup>14</sup> One may argue that just as parents with grown-up children, any individual citizen could not exercise enough control over the state's acts to make herself liable for those acts. Regarding this criticism, I shall admit that I could not settle the controversy whether a lack of control over the state's acts would undermine one's political obligation. However, a citizen's inability to control the outcome of an election by a single vote and my inability to control what my co-nationals/grown-up kids do seem to be respectively *de facto* and *de jure* lack of power, thus categorically different.

and a wish to heal the rift” (Radzik 2001:468). Apart from this, the bond between me and my co-nationals, i.e., a “common national identity,” does not seem adequate to justify imposing reparatory duties on other, non-participating nationals (Miller 2007:140, 151).

In some situations, I and my co-nationals may acquire some perhaps unwarranted advantages and privileges through our national membership. Some may argue that the possession of such advantages makes us liable for the reparations. To the extent that these advantages result from historical injustices and constitute a counterpart to the victims’ losses, it is natural to claim that the privileged must compensate the victims proportionally. I take this to be a variant of the unjust enrichment argument and find it reasonable. There are also cases in which the specific advantages do not seem to originate in injustices to the victims under discussion. In such cases, since the connection between the advantages and the injustice hardly exists, it again seems arbitrary to assign reparatory duties to those who merely acquire some advantages. Imagine I have an uncle who later proves to be a fraudster. By being such a member of the family, a nephew of my uncle, I received much love and care. I may also have become the exact, happy person I am now because of my uncle’s humor and the laughter he brought to the family. Suppose, however, my uncle was a stingy person to the extent that he did never spend a single penny on the family and passed away. Should I financially compensate the victims of my uncle’s as I have benefitted from being his nephew? It does not appear so unless, say, my uncle has unwittingly left us his wealth. Still, as long as I return that wealth to my late uncle’s victims, it is not a common expectation, if sensible at all, that I should use my own savings to make up for the remaining debt. In conclusion, acquiring benefits through national membership one way or another does not seem sufficient to burden the recipients with reparatory duties unless those benefits originate in the relevant injustices under discussion. Overall, I find it unconvincing that the line of thought

underlying the State Endurance Account applies to nations. It is not to say that none should be held responsible for remedying historical harms caused by “peoples,” but we will need another account for those problems.

#### **4 THE COMPATIBILITY OF THE STATE ENDURANCE ACCOUNT WITH LIBERALISM**

In my previous defense of the State Endurance Account, I have appealed to considerations such as the detrimental impact on international order of allowing the historical debts to be superseded, and the perpetrator state’s interest were it to become a victim in the future.<sup>15</sup> Some critics may find my account too consequentialist in nature and argue that it violates certain core tenets of liberalism.

In this section, I deal with some objections Nahshon Perez has raised against accounts such as the State Endurance Account. Perez has made the most comprehensive examination of consequentialist-oriented arguments for intergenerational redress, and I will primarily examine two of his principal objections to this orientation (2003).

##### **4.1 Is the State Endurance Account Against “Separateness between Persons?”**

Perez bases his fundamental criticism of various arguments for historical redress on the Rawlsian liberal doctrine of “separateness between persons:” “imposing costs on person X, following a wrong committed by person Z, is illegitimate” (Perez 2007:16). According to Perez, talk of essentially collective responsibility may unwarrantedly violate this core tenet of individualism and liberalism. Nevertheless, at least when it comes to the State Endurance

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<sup>15</sup> Section 2.1 and Section 1.

Account, it appears that this criticism results from an error in the way one frames the basic question.<sup>16</sup>

Rather than imposing one's responsibility on another *simpliciter*, according to the State Endurance Account, present and future generations are not required to repair the harm as if mere strangers caused the harm. Nor are the later generations required to make reparations *merely* because their ancestors caused the harm. Nor again are they required to pay for the crimes of persons with whom they happen to share common citizenship but have no further connection, e.g., the zealous nationalists discussed earlier. On the contrary, these later generations are required to help *their* state repair the harm the state once committed. The state with which a person is affiliated is an entity distinct from this person. However, this does not mean the state is as alien as some strangers whom the person could reasonably identify as mere "others."

But how could a state simultaneously be distinct from but also not alien to a citizen? To explicate this seemingly paradoxical claim, I suggest we approach the state mainly in terms of its institutional functions as a complex cross-generational collective cooperative scheme with no mention of its ontological structure.<sup>17</sup> From this perspective, the state is an institution that coordinates massive transactions of various kinds among individuals, and, makes possible cooperative projects that last generations. Individual citizens engage with this institution,

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<sup>16</sup> The doctrine of the "separateness between persons" is a complicated issue, and there may be more nuanced formulations of the doctrine. However, in this section, I mainly deal with Perez's version as a part of his criticism of reparations for historical harms. My argument here should be compatible with various anti-consequentialist stances. For more discussion, see Brink 1993.

Also, elsewhere, Michael Blake defended the view that liberalism is compatible with assigning certain burdens particularly to citizens in virtue of the citizens' sharing a legal system (2001). His argument does not directly imply that it is reasonable to assign the burdens I discuss in this paper to ordinary citizens. However, it shows that states may possess a salient normative standing within the framework of liberalism, and states may justifiably exercise coercion on its citizens they may not otherwise exercise on non-citizens.

<sup>17</sup> This conception of the state is inspired by Rawls (1999:4). We do not need, as we've already seen, to involve controversial social ontological commitments such as a collectivist conception of the state, i.e., the state is an entity over and above its constituent members.



participate in it, and receive benefits in return because of their undertaking costs they would not otherwise bear. In the current case, while present citizens undertake the burden of paying for their ancestors' unfulfilled responsibilities, they also receive other legacies from their ancestors and the benefit from undertaking those responsibilities, e.g., the creation and consolidation of a more desirable international order where no country could avoid its responsibility for reparations by tactically postponing its fulfillment. The costs these citizens bear are not the consequence of a unilateral, arbitrary imposition but a part of a large set of transactions that bring citizens advantages.

Furthermore, I do not find the distribution of collective responsibility objectionable even if the responsibility undertaken happens not to bring the citizens the intended advantages. The sacrifice made by individuals may not always be compensated by reciprocal benefit: citizens of a once-perpetrator state may pay to fulfill its reparatory duties despite hardships but do not receive equal treatment when another state owes debts to them. This does not suggest that we should not aspire to an international order in which *each* party behaves more responsibly or try to realize this ideal. Nor are the efforts to fulfill one's responsibilities necessarily in vain; if they are, at least in this particular case, I propose that we improve the various unfavorable conditions rather than forsake the ideal.

In conclusion, the State Endurance Account articulates an ideal of international order accompanied by a conception of the state that I anticipate Rawlsians would endorse. It does not violate the doctrine of "separateness between persons" as Perez thinks.

#### **4.2 Are We Treating Later Generations as Mere Means?**

One may also characterize our endorsing historical redress for the sake of creating an ideal international order as essentially a strategy to deter present and future states from causing harm.

Regarding such strategies, Perez claims that we are imposing burdens on innocent persons “to deter future perpetrators of a hypothetical wrong.” We thus treat the present generation as “a means rather than an end in themselves,” which is against the core liberal doctrines (2007:108-109).

With the explication from the last subsection, my response to this objection is simple. According to the State Endurance Account, the bearers of the historical debt should rather seek to determine the best rules for international society in the long run. The problem they face does not only have the description of “leaving victims’ descendants the way they are or burdening innocent citizens of the once-perpetrator state.” It also has the description “whether we should create a global order in which malicious states have greater incentives to cause harm because all debts would be nullified in one generation.” As I suppose most of us would prefer avoiding such an order, those citizens are not a means to an end but rational agents who would endorse an international rule that happens to leave them with debts for historical injustices on a particular occasion.

Nonetheless, there is another sense in which the perpetrator state’s citizens may feel burdens are *arbitrarily imposed* on them. Consider the case in which victorious states unilaterally impose reparatory duties on defeated countries as a result of the defeated countries’ waging unjust wars. Non-ideal procedures for ascertaining the debts as such may still deprive the defeated states’ citizens of the feeling of co-authorship in making related international rules, though, in principle, these states should pay for the reparations. Consequently, these citizens may fail to recognize these rules as fair ones, though not because they would not otherwise endorse these rules *per se*. Instead, these citizens may feel so because they are not content with the procedures of applying the rules.

These problems may have motivated Perez's following claim that since the citizens may be outraged by being treated as mere means to deter other states from causing potential harm, their discontent may transform into destructive public mistrust of the legal system (Perez 2007:109). I acknowledge such "discontent," but disagree with Perez regarding the diagnosis. Though I admit people may have such feelings of being used as mere means, I believe it is the imperfect, sometimes unjust, procedures of specifying and applying relevant rules rather than the rule itself that causes the trouble. Problems of this kind put on us a requirement of creating just background institutions and procedures in actual politics but by no means challenge the normative force of the State Endurance Account.

## 5 CONCLUSION

In this paper, I have presented the State Endurance Account as part of a response to the question of how we should account for reparations for state-caused historical injustices. This account supports the view that, in general, it is justified to require a state to fulfill its duties incurred in the past, including reparatory duties. In addition, incidents such as regime change should not affect this normative requirement on succeeding states.

Against the critics, I argue that nations could not be the subject of the argument underlying my account. I also argue that asking current citizens to pay taxes for reparations for historical injustices should not be read as a simple matter of imposing one party's responsibility on another innocent party. Instead, the citizens are to assist their state with its duties in a way compatible with the core tenets of individualism. Furthermore, that the state should continue to be responsible for its historical acts is not a result of some arbitrary imposition. Instead, it results from our establishing an international rule applicable to all states that the citizens of the perpetrator state would also rationally endorse. Lastly, given just background institutions,

citizens of the perpetrator state should also be able to *feel* they are the co-authors of the rule, not mere means to the creation of an ideal international order.

That said, I conclude by noting that the State Endurance Account does not specify the details of how we should implement the reparations. Nor does the account assert that we must complete the reparations in one generation at whatever costs. Following Bernard Boxill, I agree that if the immediate fulfillment of historical reparations would result in humanitarian crises within the perpetrator state, we may need to postpone its full fulfillment provisionally (2003:78). Moreover, I am suspicious of forcing perpetrator states to immediately fulfill the reparations at the risk of severe economic recession. I am also suspicious of insisting on high interest rates for the reparations so that the perpetrator state may be trapped in a vicious debt cycle. Both measures would debilitate the perpetrator state and cause collateral damage to other victims of this state, not to mention any injustice that happens to the perpetrator state's citizens. Without much space to investigate these issues in more detail, I shall leave these questions for future research.

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