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978-0-521-87683-4 - Historical Justice in International Perspective: How Societies are Trying to Right the Wrongs of the Past

Edited by Manfred Berg and Bernd Schaefer

Excerpt

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Introduction

MANFRED BERG AND BERND SCHAEFER

The fall of dictatorships and the growing salience of human rights at the end of the twentieth century have given rise to a broad international debate on how to deal with the injustices and atrocities of the past. Demands for historical justice have been raised all over the world by many different groups, and they cover a wide spectrum of wrongs, ranging from systemic racial or ethnic discrimination to state-sanctioned murder and genocide. Although the mass violence of the twentieth century takes center stage in the politics of the past, there have also been calls for action to address the legacies of slavery in the United States, of Western colonialism, and of the genocidal removal of indigenous peoples. Redress is sought for relatively recent events in which the victims, perpetrators, and beneficiaries of injustices can be identified with a reasonable degree of certainty, while other claims are based on the construction of historical continuities going back several centuries. The material dimensions of historical justice vary from relatively small payments to individuals to demands for a massive redistribution of wealth on a global scale. In addition to material claims, and often as a first step toward this goal, the victims of historical injustices or their descendants fight for the public and symbolic recognition of their suffering.¹

1 Elazar Barkan, *The Guilt of Nations: Restitution and Negotiating Historical Injustices* (New York, 2000), is the first synthesis of the major movements for historical justice; see also John Torpey, ed., *Politics and the Past: On Repairing Historical Injustices* (Lanham, Md., 2003); John Torpey, "'Making Whole What Has Been Smashed': Reflections on Reparations," *Journal of Modern History* 73 (2001): 333–58; John Torpey, *Making Whole What Has Been Smashed: On Reparations Politics* (Cambridge, Mass., 2006). For a systematic inquiry into approaches to historical justice, see Martha Minow, *Between Vengeance and Forgiveness: Facing History after Genocide and Mass Violence* (Boston, 1998). Roy L. Brooks, ed., *When Sorry Isn't Enough: The Controversy over Apologies and Reparations for Human Injustice* (New York, 1999), is a useful documentation of several important cases; for case studies on the politics of the past from Europe, North America, Africa, and Asia, see *Comparativ* (2004) (4/5) and Jürgen Zimmerer, ed., *Schweigen-Erinnern-Bewältigen: Vergangenheitspolitik in globaler Perspektive* (Leipzig, 2005).

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The quest for historical justice involves several dimensions.² At the material level, claimants seek the restitution of property and lands or financial compensation for lost property, for the exploitation of their labor, or for their bodily and psychological suffering and injury. In the realm of criminal justice, rectification aims at rehabilitating the victims of persecution and at bringing the perpetrators to justice. As is well known from the attempts to prosecute the perpetrators of crimes against humanity in the wake of the Second World War, the latter is notoriously fraught with intricate legal problems such as retroactive laws, statutes of limitation, the defense of following orders, and the charge of “victor’s justice,” to list just the most important ones.³ Finally, there is the drive for the recognition of injustice and the restoration of honor and dignity to the victims that often begins with establishing and publicizing a historical record against prevailing patterns of silence and denial. In this vein, truth commissions and expert groups have mushroomed all over the world, even in Switzerland, a nation that has long cherished a self-image of happy insulation from the sordid chapters of history.⁴ Moreover, the politics of recognition extend to official apologies, memorials, and educational programs to integrate the victims into a society’s collective memory and, possibly, to help revitalize their cultural identity.⁵

Historical justice may be rendered at the individual, collective, and structural levels.⁶ Individual justice applies to specific victims who receive individualized corrective remedies and to specific perpetrators who are subjected

2 For an attempt to develop a nuanced typology of historical justice claims, see Torpey’s introduction to *Politics and the Past*, 11–22.

3 For an introduction to the legal difficulties of judging the perpetrators of historical injustices, see Minow, *Between Vengeance and Forgiveness*, 25–51, and Ruti G. Teitel, *Transitional Justice* (New York, 2000), esp. 11–67. For a broad treatment of prosecuting genocide with a special emphasis on the International Criminal Tribunals for the Former Yugoslavia and Rwanda, see William A. Schabas, *Genocide in International Law* (Cambridge, 2000); also see Gerd Hankel and Gerhard Stuby, eds., *Strafgerichte gegen Menschheitsverbrechen. Zum Völkerstrafrecht 50 Jahre nach den Nürnberger Prozessen* (Hamburg, 1995). For reflections on the German experience of dealing with two dictatorships, see Bernhard Schlink, *Vergangenheitsschuld und gegenwärtiges Recht* (Frankfurt am Main, 2002).

4 On the flourishing of truth commissions in the wake of the breakdown of dictatorships, see Priscilla B. Hayner, *Unspeakable Truths: Facing the Challenge of Truth Commissions* (London, 2002), and Robert I. Rotberg and Dennis Thompson, eds., *Truth v. Justice: The Morality of Truth Commissions* (Princeton, 2000). On the South African Truth and Reconciliation Commission, see Chapter 11 by Bronwyn Leebaw in this volume; on the case of Switzerland, see the comprehensive account by Thomas Maissen, *Verweigerte Erinnerung. Nachrichtenlose Vermögen und Schweizer Weltkriegsdebatte 1989–2004* (Zürich, 2005).

5 For an introduction to the politics of memory in the process of historical and transitional justice, see Minow, *Between Vengeance and Forgiveness*, 118–47, and Teitel, *Transitional Justice*, 69–117.

6 This typological distinction is borrowed from Robert W. Gordon, “Undoing Historical Injustice,” in Austin Sarat and Thomas R. Kearny, eds., *Justice and Injustice in Law and Legal Theory* (Ann Arbor, 1996), 35–75, esp. 36–9.

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to individual retributive sanctions. At the collective level, we deal with groups of victims and perpetrators and with collective forms of liabilities, redress, or amnesties that burden or benefit everyone who is similarly situated. Since historical injustice usually involves the victimization of a significant number of people, collective solutions are seen as more expedient than dealing separately with individual cases. Finally, the structural approach implies that historical injustice must be viewed as both cause and consequence of unjust structures that are deeply embedded in the political, legal, and economic institutions of a society and that continue to shape the present in manifold ways. From this perspective, historical justice can only be achieved by sweeping systemic reforms to eliminate these structures of injustice. In contrast, individual and collective redress does not usually involve demands for a wholesale transformation of society. John Torpey has therefore proposed distinguishing between a “commemorative” type of historical justice aimed at the victims of the past, most prominently of the World War II era, and “transformative” claims for social and political change that are based on the “prolonged disasters of the past.” Typically, the latter relates to the legacies of colonialism, slavery, and the marginalization of indigenous peoples.⁷ However, the commemorative and transformative approaches may interact in unexpected ways. In the Federal Republic of Germany, for example, many political officials and members of the public regarded *Wiedergutmachung* (literally “making good again”) for the Nazis’ crimes as a form of commemorative justice that would close the books on that era; those who urged that Germans accept responsibility for the past, by contrast, often saw their efforts as part and parcel of the larger project of transforming West German society.⁸

Since historical justice comprises many different and heterogeneous claims and goals, there is no consensus on an appropriate umbrella concept. In his book *The Guilt of Nations*, Elazar Barkan employs the term “restitution” to cover the “entire spectrum of attempts to rectify historical injustices.” But obviously, the legal implications of restitution rather narrowly refer to the actual return of material goods and carry a backward-looking connotation of restoring an earlier state of affairs – a notion that does

7 Torpey, “‘Making Whole What Has Been Smashed,’” 337.

8 For a comprehensive account of German *Wiedergutmachung* for the Nazis’ crimes, see Karl Döhring et al., *Jahrhundertschuld, Jahrhundertstühne. Reparationen, Wiedergutmachung, Entschädigung für nationalsozialistisches Kriegs- und Verfolgungsrecht* (Munich, 2001), and Constantin Goschler, *Schuld and Schulden. Die Politik der Wiedergutmachung für NS-Verfolgte seit 1945* (Göttingen, 2005); on the broader concept of coming to terms with the past, see Peter Reichel, *Vergangenheitsbewältigung in Deutschland. Die Auseinandersetzung mit der NS-Diktatur von 1945 bis heute* (Munich, 2001).

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not square with Barkan's larger argument that restitution must be a future-oriented process. John Torpey, in contrast, prefers the term "reparation" as the more comprehensive one that also enjoys wider usage.⁹ Ironically, the concept of reparations stems from the international law of war and used to refer exclusively to an indemnity that the victor imposed on the vanquished. These were strictly claims among nation-states with very little concern for compensating the victims of war crimes and other atrocities. In fact, in the immediate aftermath of the Second World War, this traditional concept of reparations took precedence over the individual and collective claims by the innumerable victims of the Nazis.¹⁰

As is not unusual in an emergent field, the conceptualization of historical justice is still in flux, and it will take some time before a widely accepted terminology is established, if ever. What is more important, however, is that the new politics of restitution or reparations is based not on coercion, but on negotiated agreements between the perpetrators and the victims or their respective descendants. Societies increasingly show a willingness to face the painful legacies of their histories and to respond favorably to the demands made on them, even if many of the claimants find the actual results of these efforts wanting. Elazar Barkan has noted that the admission of guilt seems to have become "a new threshold of morality in international politics."¹¹ To be sure, the willingness to acknowledge responsibility for historical injustices and to make amends is by no means universal. Nevertheless, making an honest effort at coming to terms with the past has undoubtedly become an asset for the international reputation of a nation. While the Federal Republic of Germany is often praised both for the extent to which it has made material compensation for the Holocaust and for undertaking an ongoing process of collective soul-searching about its Nazi past, the Japanese are chided for their continuing denial and amnesia of Japan's aggression and large-scale atrocities in World War II. The fact that both countries are highly integrated into the global economy makes their markedly different attitudes toward coping with a terrible past even more conspicuous.¹² Apparently, economic interests do play a role in the politics of the past as, for example, has been demonstrated

9 Barkan, *The Guilt of Nations*, xix; Torpey, *Politics and the Past*, introduction, 3–5.

10 For a comprehensive account of reparations after World War I, see Bruce Kent, *The Spoils of War: The Politics, Economics, and Diplomacy of Reparations, 1918–1932* (New York, 1989); for the Second World War, see Jörg Fisch, *Reparationen nach dem Zweiten Weltkrieg* (Munich, 1992), Goschler, *Schuld und Schulden*, and Chapter 4 of this volume: Constantin Goschler, "Disputed Victims: The West German Discourse on Restitution for the Victims of Nazism."

11 Barkan, *The Guilt of Nations*, xviii.

12 On the comparison between Germany and Japan, see Ian Buruma, *The Wages of Guilt: Memories of War in Germany and Japan* (New York, 1994); Manfred Kittel, *Nach Nürnberg und Tokio: "Vergangenheitsbewältigung" in Japan und Westdeutschland 1945 bis 1968* (Munich, 2004).

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by the establishment of the joint government–industry fund to compensate the victims of Nazi forced labor.¹³ Nonetheless, they do not account for profound changes in the mental and cultural underpinnings of historical memory and consciousness.

Obviously, military defeat and the domestic overthrow of dictatorships are crucial catalysts in inducing the quest for historical justice. Transitional justice, as the problems of reckoning with the past in the transformation process from dictatorship to democracy have come to be called, has developed into a major field of both research and consulting, including the recent establishment of the nongovernmental International Center for Transitional Justice, based in New York City. Transitional justice deals with issues such as the establishment of truth commissions, judging the perpetrators, lustration of public officials, or the rehabilitation of and compensation for the victims of repression.¹⁴ However, claims for the redress of historical injustices have also been raised in nations that have not experienced a regime change or other radical break with the past. The struggles of the aboriginal peoples of Australia, New Zealand, Canada, and Greenland, for example, fall into this category.¹⁵

The United States has been confronted with three major demands for historical justice: from Japanese Americans for an apology and compensation for their internment during World War II, from Native Americans for the return of tribal lands and sacred objects, and from African Americans for reparations for slavery and racial discrimination. The Japanese–American campaign for redress was ultimately very successful. Native American efforts have been partly successful in their restitution claims, whereas the call for reparations for slavery has yet to yield tangible results.¹⁶ Of course,

13 For American and German accounts of the negotiations leading to the agreement to compensate the surviving forced laborers, see Stuart E. Eizenstat, *Imperfect Justice: Looted Assets, Slave Labor, and the Unfinished Business of World War II* (New York, 2003), and Susanne-Sophia Spiliotis, *Verantwortung und Rechtsfrieden. Die Stiftungsinitiative der deutschen Wirtschaft* (Frankfurt am Main, 2003).

14 For an introduction to the fast-growing literature on transitional justice and a broad documentation of cases, see Neil J. Kritz, ed., *Transitional Justice: How Emerging Democracies Reckon with Former Regimes*, 3 vols. (Washington, D.C., 1995), and A. James McAdams, ed., *Transitional Justice and the Rule of Law in New Democracies* (Notre Dame, Ind., 1997); for a more theory-oriented approach, see Teitel, *Transitional Justice*; on the International Center for Transition Justice, see its 2003/2004 Annual Report (New York, 2004) and its Web site, www.ictj.org; for a comparative study of post-1945 transitions, see Andrew Rigby, *Justice and Reconciliation: After the Violence* (Boulder, 2000); see also Zimmerer, *Schweigen-Erinnern-Bewältigen*.

15 See the chapters in this volume by Bain Attwood (Chapter 9), Richard S. Hill and Brigitte Bönisch-Brednich (Chapter 10), and Svend Aage Christensen and Kristian Soby Kristensen (Chapter 5). On Canada, see Alan Cairns, “Coming to Terms with the Past,” in Torpey, *Politics of the Past*, 77–80.

16 On the various cases that affect the United States, see Barkan, *The Guilt of Nations*, 30–45, 169–215, 283–307; Brooks, *When Sorry Isn't Enough*, 157–438; and Manfred Berg, “Vergangenheitspolitik und Restitutionsbewegungen in den USA,” *Comparativ* 14, 4/5 (2004): 146–62.

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it can be argued that the civil rights reforms of the 1960s represent the equivalent of a regime change, albeit incomplete, in their repudiation of white supremacy and their institutionalization of equal rights and nondiscrimination. But this process of transformation clearly lacked most of the defining characteristics of transitional justice such as trials, truth commissions, the purging of elites, and structural changes in the political system. Nevertheless, the “rights revolution” sparked by the African-American civil rights movement was a major factor in making the idea of redress for the victims of historical injustices a salient feature of American political culture. Historian Roger Daniels has speculated whether the successful campaign of the Japanese-American community may have established a new legal right to the rectification of historical injustices. Beyond the country’s shores, American institutions, particularly the federal government and the judiciary, are major international players in cases and controversies pertaining to historical justice. The threat to bring a lawsuit in the United States is often viewed as strong leverage to scare the potential defendants into a costly settlement.¹⁷

Viewed from a long-term perspective, current American liability law may be understood as the epitome of a secular trend toward what legal historian Lawrence Friedman twenty years ago called “total justice,” that is, “a general expectation of justice, and a general expectation of recompense for injuries and loss.”¹⁸ This expectation might be most widespread in the United States, but it has gained broad currency throughout the West as the state has increasingly taken on the role of protector against the hazards and risks of modern life. It builds on a rationalistic concept of history according to which suffering, disaster, and misfortune are no longer accepted as fate or as God’s punishment for sinful man, but as an intelligible, man-made process of cause and effect. The more the trials and tribulations of human existence were perceived as injustices, the late political philosopher Judith Shklar argued in her book *The Faces of Injustice*, the greater became the need for holding somebody responsible.¹⁹ But once history is conceived as a process subject to causal and moral judgment, it becomes the source of

17 Roger Daniels, “Asian Americans: Rights Denied and Attained,” in Manfred Berg and Martin H. Geyer, eds., *Two Cultures of Rights: The Quest for Inclusion and Participation in Modern America and Germany* (New York, 2002), 19–32. Ed Fagan, one of America’s most controversial class action–suit lawyers, announced plans in 2002 to bring a liability suit in the United States against international corporations for their alleged complicity with the South African apartheid regime. Fagan was later fired by the plaintiffs; the suit has not yet been resolved.

18 Lawrence M. Friedman, *Total Justice* (New York, 1985), 5. For a critique of the hypertrophy of the law and lawyers in American society, see Mary Ann Glendon, *A Nation under Lawyers: How the Crisis in the Legal Profession Is Transforming American Society* (New York, 1994).

19 Judith Shklar, *The Faces of Injustice* (New Haven, 1990), translated into German as *Über Ungerechtigkeit* (Berlin, 1992), esp. 89–136.

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political conflict. In the modern world, Elazar Barkan writes, history and its injustices are no longer viewed as past events we can do little about, but as a “crucial field for political struggle.”²⁰

West Germany’s efforts to make amends for the Holocaust, as many observers have noted, have become the paradigm for rectification. The 1952 agreement West Germany concluded with Israel and the Jewish Claims Conference marks “the moment at which the modern notion of restitution for historical injustices was born,” according to Barkan.²¹ The universalization of the Holocaust provided the victims of many different crimes and injustices with a vocabulary for articulating their claims and grievances. For example, the term “survivor” has been incorporated into historical contexts even where it makes very little sense, like in the case of Chinese immigrants to Canada who were subjected to a discriminatory head tax until the mid-twentieth century. This kind of discourse is often criticized for trivializing the idea of victimization and fueling competition among different groups of victims.²²

Not surprisingly, the laudable intention not to exclude anybody often leads to a lack of conceptual clarity as to what constitutes a historical injustice calling for rectification. One might consider the following definition by Roy Brooks in the introduction to his valuable anthology *When Sorry Isn’t Enough: The Controversy over Apologies and Reparations for Human Injustice*. According to Brooks, human injustice includes

the violation or suppression of human rights or fundamental freedoms recognized by international law, including but not limited to genocide; slavery; extrajudicial killings; torture and other cruel or degrading treatment; arbitrary detention; rape; the denial of due process of law; forced refugee movements; the denial of universal suffrage; and discrimination, distinction, exclusion, or preference based on race, sex, descent, religion, or other identifying factor with the purpose or effect of impairing the recognition, enjoyment, or exercise, on an equal footing, of human rights and fundamental freedoms in the political, social, economic, cultural, or any other field of public life.²³

The obvious problem with such a broad definition is that it blurs the line between extraordinary historical crimes and atrocities and the innumerable

20 Barkan, *The Guilt of Nations*, x.

21 Barkan, *The Guilt of Nations*, xxiv; Torpey, “‘Making Whole What Has Been Smashed,’” 338.

22 For an influential critique of the universalization of the Holocaust, see Peter Novick, *The Holocaust in American Life* (Boston, 1999); for an argument against a Jewish “monopoly” on victimization, see Jean-Michel Chaumont, *La Concurrence des Victimes: Génocide, Identité, Reconnaissance* (Paris, 1997); on the inflationary use of the term “survivor,” see Chapter 1 by John Torpey in this volume.

23 Brooks, *When Sorry Isn’t Enough*, 7.

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ordinary forms of injustice that occur on an almost daily basis in every legal and political order.²⁴

As Barkan points out, “the inability to quantify, compare, and rank injustices along an agreed-upon scale” is a major impediment to a theory of historical justice. Nor is there a one-size-fits-all model for restitution.²⁵ But even if we had such abstract standards, they would not tell us much about the potential success of a particular claim. The chances to obtain material restitution and symbolic recognition may not primarily depend on the magnitude of the injustice, nor on the merit or morality of the claim, but rather on the ability to organize an effective political lobby and to mobilize the support of national and international opinion.²⁶ Even more fundamental may be the existence of a political culture of rights. The case of recognition of and restitution for the victims of Stalinism, in particular, underscores the importance of the cultural preconditions for righting the wrongs of the past. The scant interest in, and meager results of, the efforts to rehabilitate the dead and living victims of Stalinist terror are due to the unwillingness of both the Russian government and society at large to repudiate deeply entrenched traditions of authoritarianism and nationalism.²⁷ At the other end of the spectrum we find New Zealand, where the successful demolition of earlier myths about harmonious race relations fostered an official biculturalism that has come a long way in incorporating the indigenous Maori culture into the mainstream.²⁸

To be sure, it takes much time and favorable circumstances for a culture of historical justice to develop, and its manifestations are often ambiguous. In the German case, reckoning with the Nazi past and making material restitution to the victims of the Holocaust were accompanied by parallel discourses of German victimization.²⁹ Julie Fette’s account of the apology movement in France during the 1990s stresses, among other factors, the importance of generational change for the French society’s new willingness to face the historical record of widespread collaboration with the Nazi occupation under the Vichy regime.³⁰ Yet with this generational change

24 Sarat and Kearny emphasize that injustice is not a phenomenon of extraordinary times: *Justice and Injustice in Law and Legal Theory*, Introduction, 1–17.

25 Barkan, *The Guilt of Nations*, 308–49, esp. 347.

26 See Chapter 2 by Angelika von Wahl in this volume.

27 See Chapter 7 by Andreas Hilger in this volume; also see Steve Heder (Chapter 8) on Cambodia in this volume.

28 See Chapter 10 by Richard S. Hill and Brigitte Bönisch-Brednich in this volume.

29 See Robert Moeller, *War Stories: The Search for a Usable Past in the Federal Republic of Germany* (Berkeley, 2001); see also Chapter 4 by Constantin Goscmler in this volume.

30 See Chapter 6 by Julie Fette in this volume.

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firmly in place sixty years after the end of the Second World War, Western societies, in particular, have elevated reckoning with the atrocities and injustices of history to the status of a public virtue.

This preoccupation with history has taken a peculiar turn, however, according to some critics. Rather than celebrating achievement and heroism, atrocities and victimization have become the focus of historical consciousness. The catastrophic failure of the utopian projects of the twentieth century, John Torpey argues, has thoroughly discredited the notion of suffering as the inevitable price for a better future that used to be a mainstay of the progressive left. The struggle for justice is no longer defined by visions of the future but by claims for righting the wrongs of the past. At the same time, historical victimhood has become a major factor in the formation of group identity. The Holocaust, Peter Novick suggests, has taken a prominent role in American culture in recent decades because it epitomizes the close linkage between victimhood and the rise of identity politics.³¹ Nevertheless, if we are seriously interested in exploring historical injustice and possible ways to ameliorate its consequences, a victim-centered perspective appears inevitable. Of course, this does not mean that claims to victimhood must be accepted at face value. But, as Judith Shklar has reminded us, the powerful have rarely hesitated to offer apologies for past wrongs without doing anything toward offering redress.³² Calls to let bygones be bygones and to look toward the future certainly have long since been standard rhetorical features in the discourse of denial and evasion.

Advocates of historical justice, of course, strongly contest the charge of being obsessed with the past or promoting narrow group interests. Quite to the contrary, they argue that only by addressing and amending historical injustice will there be a better future for all. The benefits of restitution and recognition are supposed to go far beyond meeting the just claims and material needs of the victims. Historical justice is said to have a therapeutic effect on both the victims and the perpetrators, freeing the former from traumatization and providing an opportunity for purifying atonement for the latter, thus paving the way for true reconciliation and the healing of old wounds.³³ Moreover, historical justice is conducive not only to domestic social peace, according to its proponents, but also to international morality

31 Torpey, "Making Whole What Has Been Smashed," 333–4; also see Chapter 1 by John Torpey in this volume and Novick, *The Holocaust in American Life*, 1–15; for a scathing critique of placing emotions of powerlessness and victimhood at the center of identity formation, see Frank Furedi, *Therapy Culture: Cultivating Vulnerability in an Anxious Age* (London, 2003).

32 Shklar, *Über Ungerechtigkeit*, esp. 10–11, 118–36.

33 See, e.g., Roy L. Brooks, *Atonement and Forgiveness: A New Model for Black Reparations* (Berkeley, 2004).

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either through the power of persuasion or by sending a stern message to those who persist in perpetrating human rights violations that one day they will be made to pay the price. Restitution, Elazar Barkan hopes, will eventually lead toward a “universe that shares vague liberal political and moral commitments to individual rights as well as to group human rights . . . a shared political culture, which pays greater attention to history as a formative political force.”³⁴

While few will disagree with this broader vision, many observers still doubt whether the quest for historical justice can indeed deliver the benefits it promises. Some point to the potentially great costs of making redress or raise the possibility of unintended consequences that are at odds with the high-minded goals put forward by advocates of historical justice. Interestingly, the critics do not focus primarily on the legitimacy and magnitude of financial claims – except of course those who are supposed to pay – but rather on political and cultural issues. Instead of fostering a culture of reconciliation, they contend, moral claims based on the past are often perceived as aggressive accusations projecting attenuated notions of collective guilt and guilt by association.³⁵ Moreover, if the world is divided into perpetrators and victims and the latter into competing groups, there remains little common ground for developing common visions of the future. The shift from class-based politics of economic redistribution to the politics of recognition based on race and ethnicity, critics on the left fear, has seriously weakened the prospects for social reform that would especially benefit poor minorities.³⁶

The skeptics have become particularly critical of what historian Charles Maier, in an influential article published in 1993, called a “surfeit of memory” produced by a self-serving “memory industry.” While its proponents see the recovery and recognition of the victims’ memories as a necessary and wholesome element of a healing process, its detractors fear that memories of victimization may come to dominate the lives of individuals and the identity of groups, thus perpetuating historical conflicts and grievances instead of resolving them.³⁷ Moreover, Maier argues that, far from enhancing our understanding of history, the “canonization” of subjective memories threatens to undermine, if not replace, the analytical function and epistemological

34 Barkan, *The Guilt of Nations*, x.

35 Gordon, “Undoing Historical Injustice,” 67.

36 Torpey, “‘Making Whole What Has Been Smashed,’” 351–7; for an influential critique of the divisive effects of multiculturalism, see Todd Gitlin, *The Twilight of Common Dreams: Why America Is Wracked by Culture Wars* (New York, 1995).37 Charles S. Maier, “A Surfeit of Memory? Reflections on History, Melancholy and Denial,” *History and Memory* 5 (1993): 136–52. For a scathing critique of the “Entrepreneurs of Memory,” see Chapter 1 by John Torpey in this volume and Rigby, *Justice and Reconciliation*, 2.