CHAPTER 1

# *Introduction*

Rome, 1960: Enrica, a seventeen-year-old teenager coming from a low-income family, finds out she is pregnant by Cesare, a law student with whom she has had a long-term affair while he has been engaged with another woman. Reaching the conclusion that she cannot keep the baby, but abortion being illegal in Italy, Enrica resorts to dangerous means, as many other women did before her throughout history. After having unsuccessfully attempted to miscarry by drinking a glass full of magnesium sulphate and having a steaming bath, she pays a visit to a local backstreet abortionist. Describing her atrocious experience in that squalid apartment, Enrica says, 'I felt forged by the long needles . . . Suddenly, when they started to probe in depth, the pain became acute and went through me like an electric shock. All my body was torn apart. I screamed . . . I put my hand over my mouth and bit it. The crochet hook shrank and widened inside me, leaving me in pain and worn-out'.[1]

Rome, 2010: Valentina is a twenty-eight-year-old woman who wishes to become a mother but has a very rare and serious genetic disease and cannot access state-funded assisted reproduction. Five months into her pregnancy, she discovers that her foetus inherited her disease; she then decides to get an abortion. Since her gynaecologist is a conscientious objector, Valentina embarks on an exhausting search for another doctor; finally she is admitted to a hospital. The medical staff starts the procedure to induce labour through a pessary, and Valentina's ordeal begins. Because, after a change of shift, all the hospital staff are registered as conscientious objectors, she is left completely alone with her husband. Valentina recalls that 'it was a nightmare. After fifteen hours of agonising pain, during which I vomited and fainted several times and my husband screamed and searched for help in vain, I gave birth [to a dead foetus] abandoned in the bathroom'.[2]

[1] This story is drawn from Dacia Maraini's (1963) novel *L'età del malessere* (The age of discomfort), 114–15, my translation.
[2] Pasolini (2014; my translation).

Like Valentina, many women in Italy deciding to terminate their pregnancies have to travel inter-regionally or abroad, are left alone during the procedure and, if unsuccessful, try other means. Recently, this unjust situation has (rightly) sparked much outrage from the Italian and international presses. Many have framed such an injustice as a 'return to an unjust past' and specifically to a time of obscurantism in which Italian women such as Enrica had to risk their lives to get abortions – an era that seemed long gone.[3]

This framing gets us on the right track for thinking about the current unjust situation in Italy. However, it is not fully satisfactory. Certainly, there are important new elements that differ between Enrica's and Valentina's stories, such as the existence of a law (1978's Law 194) that should guarantee women the right to safe abortion in Italy and some constraints on that right that women face (e.g. the spread of 'conscientious objection' among doctors, nurses and anaesthetists), which urge us to go beyond a mere discourse on the return of a past era and also reflect on the *changes* in how the right to abortion has been threatened in Italy. Most importantly, the return-to-the-past narrative paradoxically still offers an overly progressive account of the development of reproductive justice in Italy. It seems to suggest that the passage of Law 194 in 1978 did bring about the revolutionary cultural and social transformation dreamed of by the Italian feminist movement struggling for women's emancipation but that now, suddenly, women in Italy face a 'regressive' turn back in time. What this framing fails to capture is the enduring challenging economic, social and cultural conditions in which women have been exercising their self-determination when deciding whether to have and raise a child in Italy, conditions which question the very idea that the past has ever gone away.[4] Such a narrative thus does not fully conceptualise the *continuity* (and changes) in the reproductive injustice suffered by women in Italy.

What is compelling in return-of-the-past narratives that are often constructed in public discourse is that they refer to the past (and sometimes

[3] See, e.g., Gallo (2016).

[4] Such conditions include, for instance, a family-centred and gendered model of care in which women are expected to undertake the bulk of caring and domestic labour within the household; the poor public support given to balance family responsibility and employment to parents and, in particular, single mothers; the limited assistance provided to those raising a disabled child; and the stigma attached to single motherhood and disability (e.g. Badassi and Gentile 2016; Falcinelli and Magaraggia 2013; Pacelli, Pasqua and Villosio 2013; Sabbadini 2018).

even a distant one) as being present and thus invite us not to dismiss history while analysing our present conditions. Although such narratives point to the political urgency of the presence of the past, they do not entirely capture the complexity of the relation between past and present in thinking about justice. Does an unjust history thus theoretically and normatively matter? And if so, why is that the case?

For someone interested in these questions, the burgeoning literature on historical injustice – injustices committed in the past – within normative political theory is an obvious starting point precisely because by arguing that we have obligations of justice to redress the unjust past, it refuses to dismiss that past. This literature is particularly interesting as it directs our attention not to more recent injustices but to wrongs committed in the distant past involving both original perpetrators and victims that are now dead,[5] such as the seizure of indigenous land by settlers in North America, South America and Australasia; the unjust history of colonialism; the transatlantic slave trade and the institution of slavery in the US. Accounts of historical justice do take history (and our responsibilities to repair its injustice) seriously, but they face serious conceptual challenges in showing why we should worry about wrongs committed in a distant past and what is the normatively salient relation between past and present generations.[6]

A first difficulty lies in identifying which injustices committed in history call for contemporary redress. Indeed, claiming that history is fraught with injustices would be an understatement of history itself. Should we repair all the wrongs that occurred in the past? Or should we focus only on some specific injustices? In this case, what criterion should be used to distinguish past injustices that should be redressed from those that should not?

A second problem is constituted by the passing of time, which, according to many sceptics of historical justice, seriously weakens claims of responsibility to repair or compensate for injustices of a distant past. For instance, too many counterfactuals seem necessary to establish how our present would look if historical injustice had not happened.[7] Moreover, the

[5] Ivison (2008, 509); Meyer (2014); Perez (2012, 153); Spinner-Halev (2012a, 320).

[6] In this respect, accounts of historical injustice encounter challenges that are distinct from those faced by other literatures that focus on a cruel and divisive past – most notably the field of transitional justice, which revolves around the aftermath of civil conflicts and large recent violations of human rights (e.g. the Rwandan genocide in 1994 during the Rwandan Civil War). Indeed, it is immediately more intuitive to see why Tutsi and Hutu cannot easily cast aside their past of violence and conflict than to establish why, in a world fraught with injustices, we should care about offering redress for the injustice of slavery to African Americans whose progenitors were enslaved. For an overview of the specific issues of transitional justice, see Eisikovits (2014).

[7] Waldron (1992, 9–11).

more time passes, the more difficult it becomes to, for example, determine whether entitlement to holdings that have been violated (e.g. indigenous rights to their land) survives in the present and whether current generations (e.g. present-day African Americans) are harmed because of past wrongs (e.g. slavery). In short, many critics of historical justice argue that 'claims about justice and injustice must be responsive to changes in circumstances',[8] and thus, with the passing of time, instead of thinking we should redress the unjust past, we should focus on the here and now as 'present circumstances are the ones that are real'.[9]

Like accounts of historical injustice, this book aims to vindicate the normative significance of unjust history in our considerations of what justice requires. However, it does so by developing an alternative framework to think about the theoretical and normative relation between past and present and what redressing an unjust history entails, which is more compelling yet more unsettling than mainstream cases for historical justice. Or so I hope to show. The chief argument of this book is that the unjust history that should normatively matter in justice-based considerations is present because it has been reproduced over time through different means, and it still is so. The reproduction of unjust history is pervasive as it shapes the background conditions in which some present wrongs occur and relations between agents are established. At the same time, it is dynamic because it is enabled also through agents' actions and interactions. In this respect, like return-of-the-past narratives, the book does conceptualise history as present; however, it does so in a more complex way.

A distinguishing feature of the conception of historical injustice developed throughout the book is that it does not deny that many changes have taken place over the time that has passed since past injustices, such as slavery in the US, were committed. Nor does it dismiss the importance such changes should have when we reflect upon what justice demands. On the contrary, it argues that if we want to understand how injustices are reproduced over time, we also need to consider the various and substantial changes undergone by our societies (and the transnational order). A further distinctive characteristic of such a conception is that it significantly

[8] Waldron (1992, 25).

[9] Waldron (2002, 159). Note that many critics of historical justice do not claim that memory and the acknowledgement of an unjust distant past are irrelevant to the present. For instance, Jeremy Waldron, in his famous argument for superseding historical injustice, recognises that we should condemn an unjust past to show our commitment to a just future and that memory is important for communities to construct a common identity (1992, 5). What critics of historical justice usually dispute, and its supporters instead argue for, is that redressing a distant past is a demand of justice.

broadens our understanding of historical injustice by advancing a case for thinking of the normative significance of the unjust past not only in relation to wrongs, such as slavery, colonialism and the destruction of indigenous communities – which usually dominate the literature on historical injustice – but also in relation to other groups that have suffered from systematic injustices in history.

To do so, the book concentrates on the condition of women in societies that have endorsed anti-discrimination legislation and formal equality of opportunity, thereby merging the literature on historical injustice with debates over gender injustices and inequalities. With very few exceptions, gender dynamics within groups that suffered from past injustices are neglected in accounts of historical justice.[10] Moreover, the very injustices women were subjected to over history within, for example, so-called liberal democratic societies, such as the denial or violation of their political, economic, sexual and reproductive rights, are rarely considered within theories of historical justice and redress, let alone being a central case of why history should matter for considerations of justice.[11] This neglect is puzzling if one thinks that women have arguably been one of the groups that have been most systematically oppressed and unjustly treated over history nationally and transnationally and that nowadays such a history is largely recognised as unjust within liberal democratic societies. It is important to point out that such a neglect cannot be easily corrected by simply adding the past injustices against women to the cases that mainstream accounts of historical injustice should focus on. This difficulty is at least partially due to the narrow understanding of groups that is endorsed within the literature. Let me anticipate some observations.[12]

The literature on historical injustice has started to look at members of groups (as opposed to mere individuals) as rightful claimants of reparations or compensation for past injustices in an attempt to reply to the so-called non-identity problem, which philosophically challenges the ground for intergenerational obligations. In short, according to proponents of the

[10] For instance, in her recent account of justice and reconciliation in world politics, Catherine Lu argues that gender dynamics are important to think about the responsibilities not only of the colonisers but also of governments in the colonies for wrongs occurring during colonial rule (2017, 132–38). Lu also mentions that women as a group are relevant to issues of past injustice (161), but she does not extensively focus on it.

[11] Note that my critical target here is the normative literature on redress for historical injustice. I do not want to suggest that within political theory, there is no 'historical argument' to advance the condition of women such as their political representation (e.g. Williams 1998, 8).

[12] A reconceptualisation of the relation between groups and historical injustice will be advanced in Chapter 4.

non-identity problem, an act harms someone only if that person is made worse off as a result of it. Since (1) many past wrongs led to the very existence of contemporary descendants of original victims and (2) existing (or, more precisely, living a life worth living) is always better than not having been born, descendants of victims of past wrongs cannot be harmed by these wrongs, as they would have not existed if such wrongs had not been committed and thus should not receive reparation or compensation for them.[13] To overcome or sidestep the non-identity problem and develop notions of harm and identity over time, some supporters of historical justice have tried to identify different types of harm from that captured by the non-identity problem – namely, harm that members of groups that suffered from past injustice experience because of their constitutive attachment to those groups[14] – whereas others have concentrated only on those groups, such as nations, that are allegedly regarded as displaying an enduring shared collective identity as claimants of rectification.[15] The assumption underpinning accounts of historical injustice thus is that for a group to endure over time, its members must share a common identity and strongly identify with their group. Even those diminishing the importance of the non-identity problem for matters of historical injustice, such as Jeff Spinner-Halev, endorse a similar understanding of groups.[16] In his account of 'enduring injustice', Spinner-Halev argues that only those groups that have developed a shared collective narrative centred on their past injustices, which ties the knot among group members, can suffer from enduring injustices.[17] In other words, groups suffering from enduring injustice must be characterised by a collective identity based (at least significantly) on past wrongs its members identify with that continue over time.

Anyone familiar with debates within feminist theory over what defines women as a group is aware that a conception of groups centred on a common identity and members' attachment to that identity cannot (and should not) be applied to women because it neglects the important differences among women and runs the risk of constructing a common identity that actually promotes particular interests and experiences.[18]

[13] For a seminal formulation of the non-identity problem, see Parfit (1984, 351–80), while for discussions of this problem in the context of historical injustices, see Boxill (2003); Cohen (2009); Kershnar (1999); and Sher (2005).
[14] E.g. Herstein (2009). [15] E.g. Butt (2009, 23–24); Tan (2008, 451).
[16] Spinner-Halev (2012b, 83–84). See also Butt (2009, 106). [17] Spinner-Halev (2012b, 59–61).
[18] E.g. Crenshaw (1991); hooks (1982, chapter 5); Mohanty (1991); Young (1997a). I will discuss the difficulties with defining women as a group and yet the importance of this task at length in Chapter 5.

Trying to fit women into the understanding of groups that underlies mainstream accounts of historical justice would amount to misinterpreting what makes women a group.

The impossibility of simply adding women to our understanding of groups should also lead us to ask whether the very conception of groups at play in the literature on historical injustice, which assumes common identity and attachment as necessary conditions for a group's continuance, is not actually flawed. Indeed, it seems that groups such as women do persist over time, for instance as groups suffering from injustices. The partiality of such an understanding of groups becomes immediately evident in a theory such as that of Spinner-Halev, which explicitly focuses on enduring injustices. Stipulating that only those groups that have developed a shared collective narrative on their history of injustice can be said to suffer from enduring injustices is misguided. Would we say that, for example, since the Romani people and Sinti have traditionally not constructed a composite collective narrative on the past injustices they experienced, they are not the target of persisting injustices in Europe?[19] Determining that a group suffers from a persisting injustice should depend on whether injustices against them endure over time and not on whether such a group has developed a collective narrative on their (unjust) past.

In other words, considering gender in discussions over the normative significance of the unjust past for considerations of justice is fruitful because, as the historian Joan Scott points out, analysing women as a group 'not only add[s] new subject matter but . . . also force[s] a critical re-examination of the premises and standards of existing scholarly work'.[20] It prompts one to put forward a different account of groups and of 'descendants'[21] that, as we will see, will also offer a more sophisticated understanding of the nature of the injustice suffered not only by women but also by those other groups that are usually at the centre of the literature on historical injustice and of contemporary responsibilities for reparation and redress.

[19] For Ian Hancock (one of the leading scholars in the field of Romani studies), in the case of the Romani people and Sinti, the lack of a collective narrative about the past injustice is (at least partly) due to the Romani attitude not to conceive of themselves as victims of an unjust past, which is in turn also a result of a never-ending history of injustices. The Romani people, Hancock argues, 'are traditionally not disposed to keeping alive the terrible memories from [their] history. Nostalgia is a luxury for others' (2008, 93).

[20] Scott (1986, 1054).

[21] To anticipate, I will conceptualise 'descent' beyond family and biological lines and show that this reformulation captures who should count as descendant in cases of past injustices and what is normatively salient in being a descendant (see § 4.2).

The book can be thought of in three parts. The first part aims to develop a framework to reflect on the normative significance of unjust history in considerations of justice – a framework that is able to theorise the presence of the past and overcome some shortcomings of existing accounts of historical injustice by reflecting on what history means, analysing injustice and theorising groups. Chapter 2 argues that if we want to understand the importance of historical justice, we need to endorse an apt conception of history. After having discussed the problems the two main approaches to historical injustice – backward-looking and forward-looking justifications – encounter as a result of their under-theorisation of history, I will make a case for 'de-temporalising injustice' by building on some insights into history provided by Reinhart Koselleck. 'De-temporalising injustice' entails avoiding the conceptual separation between past and present and endorsing a structural conception of history. In particular, it means thinking of history itself as made up of long-term structures that outlive unjust (past) events and reveal the continuum between past and present. How should 'long-term structures' be defined? And how do they persist over time?

Chapter 3 replies to these questions by merging a structural view of history with a structural conception of injustice. Arguably, the most influential notion of structural injustice in political theory is the one advanced by Iris Marion Young.[22] This notion captures important lessons social movements offer on the nature of injustice, such as the fact that injustices (1) are about not only the distribution of goods, resources and wealth but also the relations in which persons stand with one another and vis-à-vis national and transnational institutions;[23] (2) result from complex dynamics in which many actors participate; and (3) tend to become normalised and not to be perceived as injustices.[24] According to Young, structural injustices occur when 'social processes put large groups of persons' in a systematic position of vulnerability, 'threat of domination[,] or deprivation of the means to develop and exercise their capacities', while the same processes 'enable others to dominate or to have a wide range of opportunities for developing and exercising capacities available to them'.[25] By combining a structural account of history with Young's understanding of 'structures', I identify a specific type of injustice – 'historical-structural injustice' – constituted by the structural reproduction of an unjust history over time

[22] See, e.g., Young (2000, chapter 3; 2006; 2011). [23] Young (1990, chapter 1).
[24] Young (1990, 95; 2011, 59–62). [25] Young (2011, 52).

and through changes. By focusing on the example of stereotypes, I will show that the conception of historical-structural injustice offers a more complex understanding of persistence and change than, for instance, Spinner-Halev's theory of enduring injustice. By theorising unjust history as structurally reproduced, the account of historical-structural injustice will overcome the serious obstacles that mainstream theories of past justice encounter. Furthermore, this account significantly broadens the array of groups that can be said to suffer from the new reproduction of history and thus calls for a reconceptualisation of groups.

Chapter 4 is precisely devoted to this task and puts forward a dynamic taxonomy of structural groups. Specifically, I will argue that there are many types of structural groups and that they should be envisaged as components of a spectrum. The idea of the spectrum is particularly congenial to capture both the similarities and the differences that structural collectives display vis-à-vis one another. The spectrum will be constituted by three categories of structural groups: (1) 'historical-structural groups' (e.g. women and gay men); (2) 'non-historical-structural groups' (e.g. the homeless and veterans); and (3) 'historical groups with structural dynamics' (e.g. nations). I will contend that the idea of the spectrum not only offers a compelling alternative to mainstream accounts of groups endorsed by scholars of historical injustice, one which, for instance, reconceptualises the notion of 'descendants', but also significantly elaborates on the conception of structural groups delineated by Young. In particular, I will argue that thinking in terms of the spectrum is fruitful for mapping out the various structural groups that are present in our societies and thinking about (1) how to remedy the injustices they suffer from and (2) historical and contemporary responsibility for redress.

The account of historical-structural injustice developed in the first part at a general level contributes to both the literature on historical injustice and the growing scholarship on structural injustice. As for historical injustice, my account of historical-structural injustice challenges the theoretical and normative divide between past and present injustice through the idea of de-temporalisation, and it identifies and theorises a type of injustice that has been reproduced in such a pervasive way that we cannot fully understand (some) existing injustices without accounting for the dynamic presence of history. In so doing, my account shows why a 'present'-focused egalitarianism is misguided when it comes to certain current injustices. Moreover, by pointing out the interdependence between persistence and change, it shows that the passage of time is not such a challenge when it comes to certain injustices.

The account of historical-structural injustice also enriches our understanding of structural injustice. In particular, it advances the case for *a pluralistic account of structural injustices*, which highlights both the similarities and the differences between types of structural injustice by looking at the role unjust history plays in their formation and persistence. This is necessary because, especially through the influential and latest work of Young's, structural injustice has become a framework deployed to characterise many instances of oppression and marginalisation (e.g. women, sweatshop workers, the homeless, temporary migrants and the unemployed).[26] Although there is much to admire in this attempt to think about how mechanisms of injustice analogously operate, the risk of turning 'structural injustice' into an umbrella term is that we lose sight of (1) the heterogeneous nature of the injustices at stake, (2) the different means that are required to address them and (3) the different types of responsibilities they generate. Therefore, my account of historical-structural injustice maintains and defends the centrality of the paradigm of structural injustice by enhancing it and diversifying among (equally important) structural struggles.

The second part of the book zooms in on women as a group and specifically on the position of women in formally egalitarian societies, which is one paradigmatic example of historical-structural injustice. Defining women as a group is not as straightforward as it may seem. Chapter 5 faces the challenge that defining women traditionally poses according to feminist scholarship: the charge of essentialism and risk of neglecting intersectionality. Although there are many attempts to theorise women as a group within the feminist literature, I extensively engage with Young's account of 'seriality' as one of the most logical and compelling starting points. I contend that, although promising, the idea of seriality still contains problematic essentialist elements, fails to take intersectionality into full consideration and misses some crucial ways in which being a member of the group of women operates in persons' lives. Such shortcomings, however, should lead to an improvement of the idea of 'seriality' rather than its outright rejection; an account of women as a historical-structural group can provide such an improvement.

Chapters 6 and 7 aim to show how the conception of historical-structural injustice is particularly suitable to capture the condition of injustice suffered by women in formally egalitarian contexts. Chapter 6

[26] On women, sweatshop workers and the homeless, see Young (1997a, 2004, 2011, chapter 2). On temporary migrants and the unemployed, see Nuti (2018) and Woodly (2015), respectively.

points out that some of the enduring inequalities characterising women in liberal democratic societies (viz. the dramatic presence of violence against women and the gendered division of both paid and unpaid labour) cannot be explained without considering the history of discrimination and oppression that women suffered as a group as well as the reproduction of that history. Chapter 7 demonstrates that the conception of historical-structural injustice offers a normative framework through which it is possible to assess and design policy proposals that can contribute to tackling persistent issues of gender inequality. In particular, by critically examining solutions implemented to overcome intimate-partner violence, horizontal occupational segregation and the gendered division of domestic labour, I identify the necessary features that must generally be displayed by measures devised to address injustices that are both historical and structural (i.e. 'transformative measures').

In addition to refining the account of historical-structural injustice developed in the first part, Chapters 5, 6 and 7 engage with some of the most lively and long-standing debates in feminist theory, such as how to define women as a group without neglecting differences among women. Moreover, unravelling the structural reproduction of unjust history is particularly fruitful in understanding why certain dimensions of gender inequality and difference are unjust and how they persist in egalitarian settings. Obviously, much more work needs to be done to explore the role unjust history plays in contemporary gender injustice and within specific contexts than I can aspire to do in this book, but I hope I will at least show that this is a valuable project to be further pursued.

A particularly valuable general lesson that should be learned from the presence of the unjust past in the condition of women in egalitarian contexts is that a necessary (yet not sufficient) tool to redress historical-structural injustices is promoting historically sensitive policy making.

The third part of the book shows that de-temporalising injustice also has far-reaching implications for thinking about the 'politics of the past' – that is, the ways redress for past injustices is demanded in political struggles and the responsibilities arising from the reproduction of historical injustice and structural injustice. Chapter 8 directly engages with the channels whereby the unjust past is reclaimed in contemporary politics by focusing on the history of racial injustice in the US. I criticise theorists of structural injustice, such as Catherine Lu and Young, who reject reparations claims for racial injustices of a distant past (e.g. slavery), and I argue for the existence of backward-looking obligations of repair that fall on certain agents from within a structural approach by examining the history of

reproductive injustice against African American women and putting forward the novel notion of 'structural debt'. In addition to reparations claims, the unjust past is at the centre of another form of activist politics and specifically of a type of activist discourse that is largely under-theorised yet becomes crucial for redress once we recognise the unjust past as structurally reproduced in new ways. To identify and conceptualise such a discourse, which I call 'counter-historical institutional justifications', I draw on how the narrative developed by the prison-abolitionist movement in the US connects the injustice of slavery to the contemporary workings of US society so as to criticise its present institutional and structural setting (and, in particular, the penitentiary system). Such narratives show how important and unsettling redressing an unjust history can be.

Chapter 9 concludes by reflecting upon how we should think about contemporary responsibility for structural injustice (of a historical nature or not). I argue against accounts of a shared responsibility based on contribution and contend that responsibility within unjust structures must be more sensitive to the different types of agents participating in them than structural-injustice theorists have recognised so far. Before doing so, I pull together my arguments and advance the idea of redress as a process. Overcoming injustices that are both historical and structural entails an intersectional process of redress, which is constituted by many measures, including reparations, historically sensitive policy making and counter-historical institutional justifications.

Redressing historical-structural injustices generates both historical accountability and contemporary responsibilities, and it entails a radical transformation of our societies and transnational order and many of our familiar ways of organising our social, political, economic and cultural life. On the other hand, as women in Italy and many others probably know too well, the neat division between the past and the present is just a dangerous illusion preserved to the advantage of a few. Redress is thus a fundamental demand of justice that should not be postponed any longer.