

Cicero on the Problem of Unjust Origins

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If our fundamental institutions, such as states and distributions of property, derive their present success from instances of gross injustice in the past, their present legitimacy appears to be compromised. Many modern scholars have wrongly treated this problem as if it—and the awareness of historical injustice that prompts it—were new. In this article, I explore the various ways in which Cicero attempted to grapple with this challenge. I find that he provides at least three distinct lines of argument to defend Rome's imperial possessions and unequal distributions of property, despite their roots in injustice. The first appeals to reasons of self-defense, the second to national paternalism, and the third to basic human sociality. The third argument holds the most promise to inspire productive contemporary thinking about this question.

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Recent events on college campuses have prompted a renewed interest the proper attitude toward institutions rooted in historical injustice. Students have called attention to the ways in which their own universities owe their success in part to benefits acquired through slavery and imperialism. But, thinking through the premises underlying such protests reveals that virtually all facets of modern life are implicated in the same kinds of historical injustice, including our most fundamental institutions. The problem of the unjust origins of states and property poses a serious challenge to the legitimacy of virtually every political society. Trace back the history of almost any state far enough, and one will eventually come upon an instance of conquest or theft that established the state on land once occupied by others (who, in turn, usually had done the same to others still earlier). If nearly all states have their origin in conquest, and if existing property distributions can be traced (at least in part) to some historical instance of theft, plunder, or slavery, it becomes difficult to defend any currently prevailing political or economic order—even if those injustices are no longer being actively and systemically committed.

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This insight would seem to support the arguments of those who endorse radical proposals for economic redistribution and revolutionary political change. Under most circumstances, we take it as axiomatic that instances of injustice ought to be rectified. Therefore, if the institutions of a society—including the state and property distributions—exist in their current form due to injustices committed in the past, justice would seem to demand some sort of correction. Nor would opponents of total social transformation find the support they might expect from the great defenders of property rights. John Locke’s legitimate commonwealth requires an original act of consent for its foundation.¹ Likewise, Locke’s great modern heir, Robert Nozick, offers a theory in which people have just holdings only if those holdings came to them through an unbroken process of legitimate acquisition.² He calls for rectification if the current distribution of property derives from injustice, even if the contemporary possessors committed no intentional injustice themselves. Since states occupy land and claim authority to regulate the property within their borders, the problem of individual property ownership scales up to encompass states as well. If the people who compose the state do not have just claim to the property they hold, they are in no position to grant the state they create any rights over it. Conversely, if a state has unjustly acquired territory through threat or force, it would seem to have no moral right to convey that territory to its citizens to use. It seems that precisely those thinkers who have tried hardest to render an account of the legitimate grounds for a theoretical political order have (inadvertently, perhaps) undermined the legitimacy of almost all existing political orders. The consent of the governed is a less compelling ground for legitimate rule if “the governed” had no business being there in the first place.

Not everyone agrees that historical injustice must be grappled with at all. We might follow David Hume, who noted that “almost all the governments which exist at present, or of which there remains any record in story, have been founded originally, either on usurpation or conquest, or both.”³ According to Hume, our very sense of justice emerges only after society has been founded and property secured. So, for Hume, we must accept this unalterable fact about our origins and simply get on with the business of the present. But such an easy solution seems unsatisfactory. Even some of Hume’s most sympathetic readers have noted that even if justice is

1. John Locke, *Two Treatises on Government*, ed. Peter Laslett (Cambridge, U.K.: Cambridge University Press, 1988), §22.

2. Robert Nozick, *Anarchy, State, and Utopia* (New York: Basic Books, 1974), 15.

3. David Hume, “Of the Original Contract.” *David Hume: Essays Moral, Political, and Literary* (Indianapolis, Ind.: Liberty Fund, 1985), 471

a concept that emerges after the establishment of states and distributions of property, there is nothing to stop us from turning that sense of justice backward to examine the grounding of our holdings.⁴ On a still more basic level, it is difficult to see how a person or a community could object to the apparent injustice of someone seizing what they now hold, if they recognize that they only hold it *because of* some prior injustice. At the very least, the recognition of the situation is disquieting—prompting us to grope for some account of why present injustices should have greater claim to redress than past ones.

It is of course possible to accept the moral argument for reparations to be paid to the descendants of historically wronged groups or for other economic and political programs to rectify the injustice by other means, while at the same time opposing radical attempts to reorder society on pragmatic grounds. However, such a view is substantively different from opposing such radical proposals on principle. Without an adequate response to the problem of unjust origins, normative political theory would appear to be seriously compromised, yet contemporary discourse seems to have reached a series of impasses when trying to sort through the proper response to historical injustice.⁵

It is tempting to think that the recognition of historical injustice is a novel theoretical problem. Many contemporary arguments seem to begin with the assumption that awareness of historical injustice and the challenge it poses is a relatively recent discovery. In fact, however, it is perhaps one of our oldest political insights—maybe as old as the Book of Genesis. After murdering his brother, Cain goes on to found the first city; biblical politics is in a sense born out of fratricide.⁶ The Romans especially, among pre-modern peoples, seem to have been particularly self-aware concerning this problem. The story of Rome’s founding features the fratricidal murder of Remus by Romulus, the assassination of Titus Tatius, and the in-

4. Jeremy Waldron, “The Advantages and Difficulties of the Humean Theory of Property,” *Social Philosophy and Policy* 11, 2 (1994): 85–123, at 116.

5. Following others, such as Nahshon Perez and Jeff Spinner-Halev, I use the term “historical injustice” to refer to instances of injustice committed against a group of people, in which the original perpetrators and victims are now dead. However, the consequences of that injustice may persist for the descendants of the wronged group. See Jeff Spinner-Halev, *Enduring Injustice* (Cambridge, U.K.: Cambridge University Press, 2012), 56; see also Nahshon Perez, “On Compensation and Return: Can the ‘Continuing Injustice Argument’ for Compensating for Historical Injustices Justify Compensating for Such Injustices or the Return of Property?” *Journal of Applied Philosophy* 28 (2011): 151–68, at 153.

6. In a close reading of this story, Leon Kass writes that “civilization as it comes into being, starting from [Cain’s] founding act, is tainted”; see his *The Beginning of Wisdom* (Chicago: University of Chicago Press, 2003), 145.

famous Rape of the Sabines. Whereas other peoples—ancient and modern—appeal to founding myths for national justification and self-glorification, the Romans wove injustice into the very fabric of their origins story.

For this reason, we ought to consider what we might learn from how Roman political thinking attempted to grapple with the challenge of historical injustice. In particular, I suggest we look at the ways in which the statesman and philosopher Cicero is able to offer a unique Roman perspective on the question. As a politician and supporter of the aristocratic elite and the institutions of the Roman Republic, he opposed radical political change and economic redistribution.⁷ That opposition has commonly been attributed to the prejudices characteristic of Cicero's class and circumstances. Such influential scholars as Martha Nussbaum and Neal Wood have argued that Cicero's rejection of radical redistribution is evidence of a self-contradictory blindness to the significance of the unjust foundations of Rome's political and economic institutions.⁸ But Cicero's circumstances also gave him a certain outsider's perspective on the mores of the Roman elite, especially as they relate to the past. A typical member of the senatorial class would gain prestige from the glory of his illustrious ancestors. A *novus homo*, Cicero was the first man in his family to serve in the senate, and so he could point to no such famous forebear. Instead, he took pride in the fact that his political success was of his own making, and he believed that the obscurity of his ancestors redounded to his credit. Moreover, as a rationalist and skeptic philosopher, Cicero put little stock in Rome's myths, while remaining deeply concerned with the normative aspects of Rome's actual history, particularly the ways in which questions of justice might impact the two pillars of Roman political life: the state and property. For these reasons, it should not surprise us that Cicero was profoundly reflective on the problem of historical injustice.

A passionate republican and patriot, Cicero was committed to defending the goodness of the Roman system. Yet, as a serious philosophical thinker, he could not conceal from himself the fact that Rome's history is replete with conquests and appropriations of land that did not originally belong to the Romans. Autoch-

7. Marcus Tullius Cicero, *De officiis*, ed. Walter Miller (Cambridge, U.K.: Cambridge University Press, 1913), 2.79.

8. Martha Nussbaum, "Duties of Justice, Duties of Material Aid: Cicero's Problematic Legacy," *Journal of Political Philosophy* 8 (2000): 176–206, at 182; and Neal Wood, *Cicero's Social and Political Thought* (Berkeley: University of California Press, 1988), 95, 129–30. Peter Garnsey also rebukes Cicero for believing "that he could introduce the matter of the origins of private property without even considering the issue of legitimacy"; see Garnsey, *Thinking about Property: From Antiquity to the Age of Revolution* (Cambridge, U.K.: Cambridge University Press 2007), 118.

thony, the idea that one's ancestors were the first human inhabitants of a land, is rarely more than a myth—and not even a myth in Rome's case.⁹ Thus, the problem of unjust origins appears as especially personal and urgent to him. In *De re publica*, one of Cicero's characters puts the issue most starkly: "all successful imperial peoples—including the Romans themselves, who have seized the whole world—if they wish to be just—that is, to return property that belongs to others—would have to go back to living in huts."¹⁰

Nowhere in his extant corpus does Cicero come to a wholly satisfactory response to this problem. His engagement with it is truly a struggle. I identify three different lines of argument that Cicero advances to square the legitimacy of prevailing institutions of government and property with the fact of historical injustice. The first two should be somewhat familiar to us, as they represent early articulations of ideas that recur throughout history as justifications for established institutions and arrangements that derive from some instance of injustice. In the first of these, Cicero attempts to deny the very fact of the injustice by claiming that Rome's rise to dominance occurred through the just defense of itself and its allies. In the second, Cicero suggests that Rome's conquests ultimately benefitted the conquered by civilizing them and bringing them under a stable and advanced regime. I suggest that these two arguments suffer from the same flaws as their more modern manifestations, flaws which Cicero himself recognized at least to some extent. However, Cicero's little-noted third argument holds much greater promise, even though it does not resolve all questions and raises new difficulties of its own.¹¹ This last argument begins through an examination of the purpose of institutions such as states and property. Cicero reasons that these institutions derive their value from their contributions to communal human life. Cicero then suggests that we therefore ought to engage instances of historical injustice by taking our bearings from what serves our ultimate interest of living together justly.

Although Cicero often attempts to justify the institutions of his beloved *res publica*, we shall see that many of his concerns are still our concerns, and so his an-

9. Marcus Tullius Cicero, "De re publica" 3.25, in *De re publica and De legibus*, ed. Clinton Walker (Cambridge, U.K.: Cambridge University Press, 1928), *De re publica*, 3.25. Subsequent citations of *De re publica* or *De legibus* are to this edition. Unless otherwise noted, all translations are my own and drawn from the Latin Loeb editions of Cicero's works.

10. Cicero, *De re publica*, 3.21b.

11. The relative emphasis Cicero accords to the problem as it relates to property and to states varies throughout these arguments. But because Cicero considers the defense of property to be both government and property, I treat one of the essential purposes of government, and because his logic often applies equally well to both government and property, I treat both issues together throughout this article.

swers might have relevance to us. Although contemporary scholarship often fails to recognize it, Cicero stands behind several different strains of modern and contemporary political theory that have addressed this problem. Locke was deeply influenced by Cicero, particularly his thoughts about legitimacy—and how we might go from an original position in which no property is by nature private into one in which political society justly defends private holdings.¹² For his part, Hume wrote that he had Cicero’s *De officiis* “in my Eye in all my reasonings.”¹³ The arguments for restitution made by Nozick and others often rest on a Lockean logic. Their opponents, like Waldron, often appeal to Hume.¹⁴ Cicero’s thought, it seems, is implicated on both sides of the debate. Therefore, even where Cicero cannot directly provide guidance and inspiration, understanding his ideas can help us better grasp the sources of our own, and perhaps also the tensions and potential avenues for progress embedded in our received notions.

With this paper, I seek to shed light on certain interesting aspects of Cicero’s own thought. But more than this, I hope to increase our own self-understanding. The problem of the unjust origins of our fundamental institutions continues to vex us. Cicero offers two potential answers to this problem, answers that we often tell ourselves. But, when presented from the salutary distance Cicero provides, the weaknesses of these arguments become apparent. At the same time, Cicero also suggests a different, third approach, which may open up fruitful new treatments of the question by addressing it from an orientation that is at once familiar and foreign to us.

Contemporary Theoretical Reponses to Historical Injustice

Scholars in recent decades have spilled a small ocean of ink over the issue of historical injustice. Some have focused on a general argument for intergenerational national responsibility. Hannah Arendt writes that we cannot “afford to take that which was good in our past and simply call it our heritage, to discard the bad and simply think of it as a dead load which by itself time will bury in oblivion.” Farid Abdel-Nour expresses a similar view when he argues that the same faculty of imagination that might lead a citizen to feel proud of their country for historical national

12. John Marshall, *John Locke: Resistance, Religion, and Responsibility* (Cambridge, U.K.: Cambridge University Press, 1994), xvii.

13. John Greig, *The Letters of David Hume* (Oxford, U.K.: Oxford University Press, 2011), 34.

14. Waldron, “Advantages and Difficulties of the Humean Theory,” 87 (see note 4 above). Additional connections of Cicero’s theory to other contemporary thinkers, such as Nussbaum and Rawls, will also prove relevant.

achievements also brings upon them responsibility for grave injustices their country may have committed in the past.¹⁵

However, there is an immediate problem with grounding our thought about historical injustice on the imagination of individuals. Abdel-Nour himself seems to recognize this problem at least in part, when he writes that citizens' imaginative capacity is "also the limit of their national responsibility, which only extends to the actions that have historically brought about the objects of their national pride."¹⁶ The implication of this is that one can avoid responsibility for historical injustice on this account simply by relinquishing any pride or imaginative association with the states, institutions, and individuals responsible for the injustice. When it comes to the actual matter of rectifying any historical injustice, it seems likely that most individuals would see changing their mental attitude and giving up such imaginative self-identification as a small price to pay to avoid making costly real-world sacrifices.¹⁷

The weaknesses of this sort of treatment of the problem have prompted others to look elsewhere for the assignment of responsibility, focusing on institutions instead of individuals.¹⁸ This approach offers the ability to address concrete instances of historical injustice and to assign specific responsibility for redress. So, for instance, Thomas McCarthy is able to argue that the United States government owes compensation to African Americans because "the United States is a nation-state with an unbroken constitutional history and that African Americans were denied equal protection under the law for most of that history."¹⁹

This method of assigning responsibility for rectification, however, raises corresponding difficulties in determining who should be the beneficiaries of the rectification. The stable intergenerational nature of institutions is what supposedly allows them to be held responsible for past injustices, but there are rarely corre-

15. Farid Abdel-Nour, "National Responsibility" *Political Theory* 31 (2003), 693–719, at 702.

16. *Ibid.*, 703.

17. Burke Hendrix actually reverses this argument: instead of claiming that our historical imagination necessitates rectification, he advocates rectification as a means to reforming our historical imagination. He suggests that offering Native Americans land compensation might be useful in forcing white Americans to confront a national history of unjust conquest and appropriation. See Burke Hendrix, "Memory in Native American Land Claims," *Political Theory* 6 (2005): 763–85, at 771.

18. An influential version of this view can be found in Chandran Kukathas, "Responsibility for Past Injustice: How to Shift the Burden," *Politics, Philosophy and Economics* 6, 3 (2003):165–90, at 167.

19. Thomas McCarthy, "Coming to Terms with our Past, Part II: On the Morality and Politics of Reparations for Slavery," *Political Theory* 32 (2004), 750–72, at 757.

spondingly long-lasting and stable institutions able to justifiably claim restitution. In other words, if the reason we can hold the United States responsible for paying compensation for slavery is that it is a stable institution that persists through time, we seem left without a similar institution made up of victims that has persisted from the days of slavery to the present.

Attempts to provide a different account of who is entitled to benefit from compensation run into another series of conceptual problems. It is commonly agreed that descendants of the victims are the strongest candidates for benefits. But determining who is a descendant is a significant practical problem. Complicating matters further are those who are descended from both the victims and the perpetrators (or members of the institutions responsible for the injustice). Do such individuals owe compensation to themselves? Perhaps the greatest difficulty in theorizing who is entitled to compensation is the so-called non-identity problem. The nature of material causation is such that the descendants of victims would almost certainly not exist if the injustice in question had not happened. For instance, the descendants of American slaves would not exist today if their ancestors had not been kidnapped and brought to America. There is a conceptual paradox in claiming that a person is entitled to restitution for something that is simultaneously a necessary condition of their own existence.²⁰

Even responses to these difficulties concerning the precise identities of the rightful claimants to compensation run into a new problem: the claims themselves might diminish with time.²¹ Some philosophers have challenged the idea that historical injustices can be or ought to be rectified. Jeremy Waldron endorses the view that certain rights and entitlements are capable of “fading,” particularly rights to property.²² This alleged fading arises for a number of reasons. Waldron writes that when a long time has passed since an instance of unjust appropriation, “people build up structures of expectation around the resources that are actually under their control, [thereby] upsetting these expectations in the name of restitutive justice is bound to

20. Christopher Morris, “Existential Limits to the Rectification of Past Wrongs,” *American Philosophical Quarterly* 21 (1984):175–82, at 177.

21. Examples of those who have sought to overcome the non-identity problem and related challenges include George Sher, “Intergenerational Compensation,” *Philosophy and Public Affairs* 33 (2005): 181–200; Bernard Boxill, “A Lockean Argument for Black Reparations,” *Journal of Ethics* 7 (2003): 63–91; Andrew Cohen “Compensation for Historic Injustices: Completing the Boxill and Sher Argument,” *Philosophy and Public Affairs* 37 (2009): 81–102.

22. J. Waldron, “Superseding Historic Injustice,” *Ethics* 103 (1992): 4–28, at 15. Waldron’s position comes closest to that offered by Cicero, but as will be discussed below, there are salient differences between the two.

be costly and disruptive.”²³ Furthermore, questions of distributive justice might demand that the property be otherwise allotted, especially if one does not accept a Lockean account of property rights to begin with. Thus, for Waldron, the further an instance of injustice fades into the past, the less reason there is to seek to rectify it.²⁴

All of these attempts to grapple with the problem generally share at least two features. First, they approach the issue by asking questions about claims and responsibility. This is understandable. Dealing with injustice and rectification lends itself naturally to thinking along these lines. But, as illustrated above, in the case of historical injustice, such thinking seems to lead to certain persistent conundrums. Second, absent from these discussions is any attempt to mine pre-modern theoretical responses to the issue. Despite the fact that the problem is by its very nature bound up with historical events, there is a surprising inattention to historical perspectives on the question. Treatments of historical injustice often seem to imply that the recognition of the problem it poses is a purely modern development.²⁵

Cicero’s View of the Problem

In view of this situation, I propose considering how Cicero approaches the issue of historical injustice. Cicero’s struggle with this question is of interest in its own right as an expression of an unappreciated facet of his thought and as an example of how Romans more generally might have tried to think about their imperial situation. But we also discover that his thought resembles our own thinking in certain ways: he sometimes addresses the problem in terms of claims and responsibility, and he deploys some failed arguments that are familiar to us. Even the structure of his thought is similar to our contemporary debates wherein an argument is often put forth that is later undermined dialogically or contradicted by other moral commitments. Still, as we shall see, Cicero also presents another argument, which—while not wholly satisfying—offers a somewhat different perspective on the matter from which we might benefit.

That Cicero might be useful in this way may come as a surprise even to some scholars specializing in Cicero’s political thought, who have rarely given much attention to his engagement with the problem of historical injustice. For Nussbaum,

23. *Ibid.*, 16.

24. For an even more forceful rejection of the case for reparations and rectifications, see Perez, “Compensating Historical Injustices,” 152 (see note 5 above).

25. See, for instance, the introduction of John Torpey’s *Politics and the Past: On Repairing Historical Injustices* (Lanham, Md.: Rowman & Littlefield, 2003).

the great drawback in Cicero's thinking about justice is his failure to consider the moral differences between the various ways in which states and property can arise. She argues that founding a state or acquiring property by agreement or by conquest "look morally different, yet Cicero makes no distinction among them."²⁶ As a result, she concludes, we have no reason to believe that existing institutions have any correspondence to the arrangements justice would mandate. For his part, Wood takes Cicero to be blinded to such issues by the prejudices attendant on Cicero's social position.²⁷ To Wood, Cicero is an apologist for what simply happened to be the prevailing practices and laws of Rome.

It is true that as a member of the senatorial class—and a member of the aristocratic, anti-populist optimate party—Cicero held views we would consider troublingly inegalitarian. He opposed major agrarian reforms even as many rich Romans openly stole lands belonging to the poor. However, Cicero himself, despite lacking great wealth of his own, scrupulously avoided plundering Rome's poor or her subject provinces when he served as governor—unlike self-styled populists such as Caesar.²⁸ Therefore, it is worth at least considering Cicero's thoughts on property as honestly held—and not simply a smokescreen for his classist views.

As for Wood's contention that Cicero was blinkered by Roman norms, Cicero explicitly rejects the tendency to identify the just with the conventional or lawful. According to Cicero, it is "most ignorant of all" to "consider just all things which have been established by a people's institutions or laws."²⁹ Nor does he hesitate to apply this principle to Roman practices—including Rome's treatment of its enemies. At the same time, Cicero is critical of Greek philosophers like Plato, whose ideal theorizing ignores the fact that states are rarely founded upon "unoccupied tracts of land."³⁰

So, what is justice by nature for Cicero? Not only to be observed among the powerful, "justice must be maintained even towards the lowliest . . . even to slaves."³¹ Cicero offers a succinct definition in *De officiis*: one must not harm others unless provoked by wrongdoing, and one must treat common property as common

26. Nussbaum, "Duties of Justice," 182 (see note 8 above).

27. Wood, *Cicero's Social and Political Thought*, 91 (see note 8 above).

28. See Dean Hammer, *Roman Political Thought: From Cicero to Augustine* (Cambridge, U.K.: Cambridge University Press, 2014), 27.

29. *De legibus*, 1.42–1.45.

30. *De re publica*, 2.22. See also Hammer, *Roman Political Thought*, 32 (see note 28 above). Nussbaum, however, objects that Cicero fails to draw the most important moral conclusion from this recognition: that the origins of the prevailing property distribution are morally tainted. Nussbaum, "Duties of Justice," 182–83 (see note 8 above).

31. *De officiis*, 1.41.

and private property as private.³² Injustice lies in the violation of these conditions or in allowing others to violate them when one is in a position to prevent it. The primary obligation of natural law is to cultivate human fellowship and harmony.³³

Cicero, who is well-versed in Roman history, is well aware that Rome's rise violated both of the conditions of justice. During Cicero's life, Rome's empire had already stretched to include almost the whole Mediterranean world. Much bodily harm had been done, and the property belonging to others had been seized. Not only the Roman state, but also individual Roman citizens were implicated in this, as they held private property in the form of land taken forcibly from other citizens, allies, or foreigners.³⁴

In acknowledging the troubling reality of Rome's history, Cicero places himself in a difficult position. As a philosopher, he admires Rome as perhaps the practically best regime.³⁵ Moreover, as a citizen, he has a passionate devotion to his own country.³⁶ How, then, can Cicero maintain his attachment in light of these inconvenient facts? In the next sections, I identify and explore three attempts Cicero made to provide an answer, in ascending order of plausibility.³⁷

The "Self-Defense" Defense

Cicero's most famous response to the historical injustice involved in Rome's rise to power is to deny that any great injustice occurred. Often, Cicero suggests that Rome's empire is just because it arose through the Romans' (just) defense of themselves and their allies. In *De officiis*, Cicero acknowledges that Rome's recent in-

32. *Ibid.*, 1.20–1.21.

33. *Ibid.*, 1.23

34. *Ibid.*, 2.28–2.29, 2.75–2.77. For another famous republican, these facts are less a problem than a cause for admiration. Machiavelli argues that Rome's tendency to injustice was precisely what made it great, enabling it to expand at the expense of its neighbors. For Machiavelli, it is always necessary to commit injustice to establish a worthwhile new order. But for Cicero—as for us—justice was a necessary quality for a good regime, and so we cannot accept Machiavelli's solution.

35. *Ibid.*, 2.66.

36. Marcus Tullius Cicero, *Philippics*, ed. D.R. Shackleton Bailey (Cambridge, U.K.: Cambridge University Press, 2009), 3.33.

37. As we shall see, strands of these arguments appear in many of Cicero's works, and sometimes elements of more than one can be found in the same work. For this reason, I make no attempt to order these three arguments chronologically. I do not wish to create the impression that Cicero ever totally dispensed with the flawed first two arguments and settled on the third. It is worth noting, however, that Cicero seems to give the question more rigorous thought near the end of his life, as he confronts the chaos and injustice that marked the end of the Roman Republic.

ternal disorder has led to mistreatment of its imperial allies and subjects, but he argues that Rome rose to acquire that empire justly.

The ends of wars took place either through mercy or necessity, the senate was a haven and refuge for kings, peoples and nations. By this, our generals and magistrates sought to gain highest praise by defending fairly and faithfully our provinces and allies. Thus we could more truly be called the protectorate—rather than the empire—of the world.³⁸

Cicero's justification for Rome's empire by recourse to self- and other-defense has been historically popular. St. Augustine would later repeat it almost verbatim.³⁹ In the Renaissance, Alberico Gentili likewise accepts this as just grounds for Rome's empire.⁴⁰ The idea that territorial gains can be justly held if they were acquired in a war of self-defense (or defense of allies) is so intuitively plausible that even some of history's most blatant examples of naked aggression have sought cover by appealing to its logic.⁴¹

In this account, Rome's empire appears justified because it was gained almost unintentionally. Merely by defending themselves or coming to the aid of allies in need of defense, the Romans somehow found themselves the masters of the Mediterranean world. There is, of course, a kernel of truth to this version of Rome's history. Rome's conquests in Greece, Gaul, and elsewhere often commenced upon the call for help by some weak power in the region (for instance, the Aetolian League in Greece). But in every case, sooner or later, Roman "help" gave way to Roman rule. Many of these wars featured atrocities that appalled Cicero.⁴²

More importantly, Cicero himself realizes that not all of Rome's wars—even in the supposedly more decent past—can plausibly be understood as wars of defense. Rome has also waged *bella de imperio*—wars for the sake of empire. These wars include Rome's earliest campaigns against the Latins, the Sabines, and the Samnites, during which it unified Italy. They also include Rome's wars with Carthage and with Pyrrhus, which began its march to Mediterranean hegemony.⁴³

38. *De officiis*, 2.26–27.

39. Augustine, *De civitate dei*, ed. G.E. McCracken (Cambridge, U.K.: Cambridge University Press, 1957), 3.9–3.10.

40. Alberico Gentili, *The Wars of the Romans: A Critical Edition and Translation of De Armis Romanis*, ed. Benedict Kingsbury and Benjamin Straumann, trans. David Luper (Oxford, U.K.: Oxford University Press, 2011), 163.

41. For instance, even Germany's invasion of Poland in 1939 occurred only after a staged Polish "attack" on a German radio station.

42. For instance, the Roman destruction of Cornith; see *De officiis*, 3.46.

43. *Ibid.*, 1.38.

In *De re publica*, Cicero explores the way in which this fact of Rome's history could undermine his own claim that Rome's rule is just. In the dialogue, a debate is waged between the characters Philus and Laelius over the question of justice, especially as it relates to Rome's empire. Although the original passage is lost, some of it is preserved in the writings of Lactantius and Augustine. According to Augustine's summary, Philus makes the case for injustice by pointing out that a commonwealth "cannot grow without injustice . . . if an imperial state, a great commonwealth, does not subscribe to that injustice, then it cannot rule over provinces."⁴⁴

This objection seems confirmed by empirical historical experience.⁴⁵ Empires are seldom gained wholly by just defense of self and others, and they are never held in such a way. Rome's wars of conquest acquired for it at least as much of its empire as did its wars to protect itself and its friends. Cicero never seems to completely abandon this justification for Rome's empire, at least for earlier historical iterations of the empire. However, this recognition of the other sources of Rome's dominion leads Cicero to another, more sophisticated defense of its rule.

The Civilizing Mission

If Cicero's response in the first argument is to deny that Rome's rise violated any significant obligations of justice, in the next he attempts to suggest that the unique qualities of the Roman regime meant that its conquests (both those arising from self-defense and those intended to achieve empire) were actually *demand*ed by justice. In *De re publica*, as the debate between the representatives of justice and injustice continues, Laelius responds on behalf of justice to the charges made by Philus. He argues: "when the right to do injury is taken away from wicked people: the conquered will be better off. . . . Do we not see that the best people are given the right to rule by nature herself . . . ? Why then does the god rule over man, the mind over the body . . . ?"⁴⁶ This argument seems to resemble Aristotle's argument for natural slavery in *Politics* 1.5. In Cicero's version, however, the emphasis is placed on restraining the tendency of those incapable of self-rule to harm others. It also seems more clearly to justify wars for empire. Rome's conquests benefit the conquered, take place "on their behalf," and are as warranted by nature as the rule of

44. Translation taken from *On the Commonwealth and On the Laws*, ed. James Zetzel (Cambridge, U.K.: Cambridge University Press, 1999), 72; this was originally preserved in Augustine's *De Civitate Dei*, 19.21.

45. Indeed, in the same way, the United States can point to some, but certainly not all, of its territory and overseas bases as acquired in wars of self- and other-defense.

46. *Ibid.*, 73.

the head over the body.⁴⁷ Natural law demands that people refrain from harming each other, and that those with power should use it to prevent harm to others. In contrast to the famous vision of Scipio's Dream at the end of the dialogue, in which the good statesman imitates the deity by guiding and governing his commonwealth, here the good commonwealth itself resembles the god, ruling over the conquered peoples. Rome's domination might be justified because it actualizes the rule of natural law in the world.

It follows from Cicero's account of natural law that those who do not follow it are—by definition—prone to commit injustice against others. In *De legibus*, Cicero presents his comprehensive account of natural law and the political laws that could be derived from it, which are nearly identical to the laws and constitution of Rome. Cicero writes that the idealized version of the Roman republic found in *De re publica* is not simply an example of a commonwealth, but is the best commonwealth humanly practical. It is meant to embody a close approximation of the natural law. For this reason, Cicero's injunction that wars be carried out only for the sake of a "just peace" or the defense of others might stretch to include Rome's wars of imperial conquest, if they are the means by which the peaceful and liberal commands of the natural law are brought into reality. An end state in which all live according to natural law might be construed as the only true "just peace."

In illustrating the idea of natural law, Laelius articulates the principle that there be "not one law here, another in Athens, one law now, another in the future, but a single, eternal, unchanging law binding all peoples always."⁴⁸ Such an aspiration is unlikely to come about in a world filled with countless different states. But if the state that best approximates the natural law in its own laws were to conquer the other states, they could be brought into conformity with the natural law.

We can see elements in this line of reasoning that are strikingly similar to the logic of European imperialists of the sort analyzed by Uday Mehta and Jennifer Pitts.⁴⁹ For such liberal imperialists, more advanced societies, reflecting better the moral law, have the right—perhaps the duty—to conquer less advanced or more barbarous peoples in order to bring them closer to the ideal of civilization. European thinkers from Condorcet to Mill express versions of such sentiments. It is hardly a coincidence that Cicero functioned as "a kind of biblical text" for colonial

47. *Ibid.*, 72.

48. *De re publica*, 3.27–3.33.

49. Uday Mehta, *Liberalism and Empire: A Study in Nineteenth-Century British Liberal Thought* (Chicago: University of Chicago Press, 1999); and Jennifer Pitts, *A Turn to Empire: The Rise of Imperial Liberalism in Britain and France* (Princeton, N.J.: Princeton University Press, 2009).

officials and public policy makers during the height of Europe's colonial period, as he puts the case for paternalist empire so compellingly.⁵⁰

While Cicero's explicit statements about the general rules governing the foreign policy of a commonwealth support cosmopolitan norms of just and peaceful interaction, those statements coexist with this imperialist alternative. As a Roman, Cicero evinces a tendency to see his particular fatherland as exceptional. For him, Rome might just bear the potentially world-historical mission of bringing natural law to the unruly human race.

Despite its hubris, there is a certain plausibility to this line of argument. In barely modified form, it has been used as (at least a partial) justification for great imperial missions like that of Great Britain in the nineteenth century, and even the United States' attempts to spread democracy and human rights in the twenty-first. Even less controversial instances of modern humanitarian intervention work on the premise that stable and well-off nations might have an obligation to prevent people abroad from harming each other. Nor is Cicero the only one to deploy this idea in defense of the Roman Empire in particular. Virgil's Aeneas learns that the great mission of the Romans is to "impose morality with peace, to spare the subjugated and batter down the proud."⁵¹ Some thus take Laelius's defense of Rome's justice to be Cicero's true and final opinion.

Others, however, have questioned whether this view of Rome's justice is the unambiguous lesson to be drawn from Cicero's dialogue. Zetzel considers the outcome of the debate in *De re publica* to be more complex. He writes: "[*De re publica*] tells two stories about Rome. One is about a state whose rule over the nations is justified, whose constitution and laws most nearly approach natural law. . . . On the other hand, . . . Cicero and his characters know perfectly well that Rome is not, in any significant way, exceptional."⁵² Jed Atkins goes so far as to argue that the debate is meant to undermine the reader's confidence in Rome's claim to justice (and therewith, we might add, legitimacy).⁵³

Ultimately, the fragmentary nature of this section of *De re publica* makes it impossible to come to any firm conclusion about what conclusions the reader ought to draw from it. We do not have a complete enough account of what was said on

50. Nussbaum, "Duties of Justice," 180 (see note 8 above).

51. Virgil, *Aeneid*, ed. H. Rushton Fairclough (Cambridge, U.K.: Cambridge University Press, 1999), 6.852–6.853.

52. James Zetzel, "Natural Law and Poetic Justice: A Carneadean Debated in Cicero and Virgil," *Classical Philology* 91 (1996): 297–319, at 317.

53. Jed Atkins, *Cicero on Politics and the Limits of Reason: The Republic and The Laws* (Cambridge, U.K.: Cambridge University Press, 2013), 39.

each side of the debate. However, two considerations prevent us from adopting Laelius's argument for ourselves, however strong its full version might have been. The first reason is irrelevant to Cicero's circumstance, but certainly relevant to us. Laelius's argument depends on the allegedly unique status of Rome. As a result, his logic is not readily adaptable to defend the legitimacy of the vast majority of states that cannot even plausibly claim the world-historical significance Laelius attributes to Rome.

The second reason to resist accepting Laelius's argument, however, is equally relevant to Cicero as to us. There seems to be some performative contradiction in the idea that a state could rightly establish itself over others indefinitely by virtue of its claim to possess just institutions. Since Cicero himself asserts that justice entails the avoidance of harm and the respect for the property of others, the mere act of unprovoked conquest would seem to violate the conquering state's claim to being particularly just.⁵⁴ If true, there is no way that a state could grow by conquest and claim that its adherence to the laws of justice legitimizes its rule. If Laelius accepts Philus's claim that justice entails "returning property that belongs to others," there does not seem any way to avoid the conclusion that justice would demand the Romans (and everyone else) "go back to living in huts and languishing in want and wretchedness."⁵⁵

An Argument from Human Sociality

This impasse brings us to a third potential defense of the legitimacy of regimes built on historical injustice. Cicero (like most of us) certainly accepts the position that justice demands the return of property that belongs to others. However, what if the lands conquered by the Romans long ago no longer unambiguously belong to "others?" More importantly, when considering what we ought to do in cases that implicate states and property distributions, we should begin by considering what, exactly, we believe states and property exist for. In this section, I attempt to outline what I believe is the most persuasive response to the problem of historical injustice that can be gleaned from Cicero's writings. It cannot be found in any one particular place in Cicero's corpus, but it proceeds from arguments at the core of Cicero's political philosophy. I draw it out and extrapolate it from several different places.

54. It would also violate Cicero's own conditions for just relationships between states as elaborated in his just war theory.

55. *De re publica*, 3.21b.

Moreover, Cicero's sympathy with this view—or something like it—might help resolve certain tensions in his thought and explain certain puzzling stories and examples scattered throughout his writings.

The argument begins from Cicero's view that neither states nor property exist by nature. He insists that both are human inventions. In *Pro Sestio*, Cicero describes a period in which human beings lived without any form of government or organization, which later philosophers would call the state of nature.⁵⁶ In his description, there is no such thing as property by nature.⁵⁷ Yet Cicero considers both states and property to be indispensable means to the proper end of all human institutions: the preservation and advancement of human fellowship. According to Cicero, living together cooperatively and harmoniously constitutes both humanity's fundamental desire and ultimate moral duty. This obligation to advance and preserve human community and fellowship is the core of Cicero's natural law doctrine.⁵⁸

Let us first consider the idea of property, since Cicero claims that it pre-dates the establishment of states. Although it does not exist by nature, Cicero nevertheless employs two different Stoic examples to illustrate how the acquisition and protection of property is *compatible* with the natural law. To explain how we might justly derive private property from the propertyless state of nature, Cicero ascribes to the Stoic Cato the following analogy in *De finibus*:

Just as, though the theatre is a public place, yet it is correct to say that the particular seat a man has taken belongs to him, so in the state or in the universe, though these are common to all, no principle of justice militates against the possession of private property.⁵⁹

56. Marcus Tullius Cicero, *Pro Sestio* 19, In *Vatinius, Pro Caulio, De provinciis consularibus, pro Balbo*, ed. Robert Gardner (Cambridge, U.K.: Cambridge University Press, 1958).

57. Thus, Cicero, like Locke much later, must account for how we go from an original position in which there is no natural private property to a situation in which all legitimate governments protect private holdings.

58. *De officiis* 1.21–1.22; see also Marcus Tullius Cicero, *De finibus bonorum et malorum*, ed. H. Rackman (Cambridge, U.K.: Cambridge University Press, 1967), 3.57.

59. *De finibus* 3.67. This passage is often credited to Cicero's own invention, although elsewhere Cicero acknowledges that it is drawn from the stoic Chrysippus. Cicero also recognizes that human beings must have appropriated from the common unoccupied stock not only by peaceful occupation, but also by conquest. That Cicero fails to differentiate between property inherited from conquerors and property inherited from peaceful settlement is the centerpiece of Nussbaum's critique of his theory. In what follows, I suggest a reason why Cicero might have insisted on treating them alike.

For these reasons, we may rightly obtain property by long uncontested occupation or by inheritance.⁶⁰ It is furthermore permissible for each citizen to attempt to enlarge his property as long as he does so without interfering with others. Cicero quotes the Stoic Chrysippus: “When a man runs in the stadium he ought to struggle and strive with all his might to be victorious, but he ought not to trip his fellow-competitor or push him over.”⁶¹ Thus, one is entitled to pursue the indefinite increase of one’s property or social position, as long as one refrains from meddling with or seizing that which belongs to others.

Strange as it may seem, Cicero argues that private property is not merely compatible with but even actively required for human fellowship. This is because the failure to respect a distinction between *meum* and *tuum* ruptures the social harmony and creates chaos, while preserving the distinction allows people to live together on the basis of good faith. Cicero is keenly aware that much of the violence and disorder suffered in Rome under Sulla, Caesar, and others was fueled by a lust for spoils (*praeda*) of the vanquished. As Jackson Barlow puts it, “the passion to acquire and the passion to regain that which has been stolen are passions that create civil discord.”⁶² For this reason, Cicero argues that “each man should hold on to whatever has come to him. If someone else should attempt to seize any of it for himself, he will be violating the law of human fellowship.”⁶³ A respect for the property of others is an indispensable precondition for peaceful coexistence.

Now, let us consider states. Similar to later social contract thinkers, Cicero views human beings as driven to form human societies to satisfy certain basic needs. Although the earth produces much that makes human life possible and even pleasant, human beings could not enjoy those fruits without cooperation.

Neither medicine, nor navigation, nor agriculture, nor the harvest and preservation of fruits and other crops could exist at all without human work and labor . . . , or indeed our houses . . . , if common life had not taught us to seek help from our fellow men in such instances.⁶⁴

60. There is also compelling evidence that Cicero’s thought on this matter is shaped by Roman property law, which granted ownership status to possessors of land and property after certain periods of time. See Peter Garnsey, *Thinking About Property* (Cambridge, U.K.: Cambridge University Press, 2007), 115.

61. *De officiis*, 3.42. Adam Smith later adopts this example in his *The Theory of Moral Sentiments* (Cambridge, U.K.: Cambridge University Press, 2002), II.ii.2.

62. Jackson Barlow, “Cicero on Property and the State” in *Cicero’s Practical Philosophy*, ed. Walter Nicgorski (South Bend, Ind.: University of Notre Dame Press, 1999), 212–41, at 236.

63. *De officiis*, 1.21.

64. *De officiis*, 2.12–2.13. Cicero goes on to enumerate many other necessities (or near-necessities) of human life that are dependent on cooperation, including the domestication

Thus, human association is necessary in part because human beings are not naturally equipped to survive or thrive without cooperation. Since such cooperation requires “human administration,” politics is likewise necessary for human survival.⁶⁵

Cicero insists, however, that human beings are also drawn to political life for higher, non-instrumental reasons. While human society eases the needs of our body, it is also absolutely required by the rational aspect of our nature, which provides us with speech and a desire for fellowship for its own sake: “the same nature, through the power of reason, connects one person to another for a common speech and life.”⁶⁶ So strong is natural human sociality that even if all our bodily wants were perfectly satisfied, we would still crave society with others and would be miserable without it. “Just as bee swarms do not congregate to make honeycombs, but, because they are social by nature, they make honeycombs, so too human beings, but to a much greater extent.”⁶⁷ Finally, states also come into existence to protect property:

Republics and states were set up in large part so that people could hold onto what is their own. For, while human beings were originally led by nature to congregate, nevertheless they first sought protection in cities with the hope of safeguarding their property.⁶⁸

Cicero maintains that the protection of private property against theft or redistribution is an important moral imperative for the state.⁶⁹

For Cicero, a rightly ordered state is a *res publica*, a commonwealth. The idea of the commonwealth is central to Cicero’s political philosophy. Despite the ultimate smallness and apparent insignificance of even the largest empire on earth (Rome), Cicero’s Scipio is assured that great rewards wait in heaven for the leaders and preservers of commonwealths, which Scipio defines as follows:⁷⁰

The commonwealth (*res publica*) is the concern of the people (*res populi*). However, a people is not any collection of human beings gathered in what-

of animals, the protection against predators, the irrigation of fields, and the importation of goods not to be found locally.

65. *Ibid.*, 2.12.

66. *Ibid.*, 1.12.

67. *Ibid.*, 1.157; see also *De finibus*, 3.65. This resembles Aristotle’s view that humanity is naturally political, that even if our bodily needs were all met, we would still congregate for the sake of communal life; see his life, at Aristotle, *The Politics*, trans. Carnes Lord (Chicago: University of Chicago Press, 1984), 3.6.1278b17.

68. *De officiis*, 2.73. See also *De re publica*, 1.41.

69. *De officiis*, 2.73.

70. *De re publica*, 4.13, 4.29.

ever way, but a sizable group allied together by agreement about justice (*consensu iuris*) and common interest (*utilitatis communione*).⁷¹

In the subsequent discussion, we learn that the governing principles of the commonwealth must be related to those motives that first prompted human beings to gather together. Preserving that sociality, and the justice and common good that arise from it, is the primary end of the commonwealth.

For Cicero, the *res publica* is thus the highest human manifestation of human partnership.⁷² Elizabeth Asmis succinctly describes Cicero's state as "a consensual enterprise in which benefits are shared"—a description evocative of Rawls's understanding of political society as "a cooperative venture for mutual advantage."⁷³ Also important for our purposes is the fact that this definition makes no mention of linguistic or ethnic commonality among the people forming the commonwealth. The citizens must be united in their understanding of political right, and must share a common good, but they need not be all one nation or ethnic group. Rome offers the prime example of this feature of a commonwealth. Unlike the city-states of Greece (or some modern conceptions of "the nation"), Rome did not restrict citizenship to a certain ethnic group. It extended citizenship to its allies, and even to many of those peoples it conquered.

There is a passage from *De legibus* that illustrates the salience of this fact to Cicero in particular. It is worth quoting at length:

It seems to me that both [Cato] and all those who come from the outer towns have two fatherlands, one by nature and the other by citizenship, so that Cato was born at Tusculum but was adopted into the citizenship of the Roman people . . . and he had one fatherland by place of birth, the other by law. . . . But of necessity that one stands out first in our love whose name 'commonwealth' belongs to the entirety of the citizenry, for which we have an obligation to die, to which we ought to give ourselves entirely and in which we should place and (as it were) consecrate everything we have. . . . I will never deny that [Arpinum] is my fatherland, while recognizing that [Rome]

71. Ibid., 1.39. Once again, this logic bears the influence of Roman property law, especially as it relates to partnerships. See Atkins, *Cicero on Politics and the Limits of Reason*, 140–41 (see note 53 above).

72. *De re publica*, 6.29.

73. Elizabeth Asmis, "The State as a Partnership: Cicero's Definition of *Res Publica* in his *Work On the State*," *History of Political Thought* 25 (2004): 569–98, at 582. Compare with John Rawls, *A Theory of Justice* (Cambridge, U.K.: Cambridge University Press, 1999), 4.

is greater and that [Arpinum] is contained within it . . . , two citizenships, but thought of as one citizenship.⁷⁴

On the surface, this is simply a comment about the status of Roman citizens who (like Cicero and Cato) hail from the towns (*municipia*), and not the city of Rome. But Cicero's statement could prompt still further consideration. The towns of Arpinum and Tusculum were once independent states themselves. Rome subjugated them and eventually incorporated their inhabitants into Roman citizenship. Cicero's ancestors may have died fighting to preserve Arpinum's independence from Rome, but he now professes absolute loyalty to Rome. Neither the text nor the example of Cicero's life give us any reason to interpret this passage as expressing hidden resentment. Cicero clearly does not conceive of himself as wronged by Rome's conquest of Arpinum. Instead, he proudly considers himself an equal member of Rome's commonwealth, entitled to the same rights and privileges as those descended from the very first founders of Rome.

This view places Cicero at odds with some modern theories about historical injustice. They might imagine another citizen of Arpinum who refuses to consider himself Roman, whose recognition of the wrongs done to his ancestors leads him to reject the offer of equal Roman citizenship that Cicero prizes. At least they might say, as Timothy Waligore does, that members of historically wronged populations should be provided extra assurances from the broader community: special rights and privileges, which would require "moving beyond the lodestar of equal citizenship."⁷⁵ But Cicero's argument commits him to reject that possibility. If the rules of justice apply equally to all, then Waligore's proposal amounts to claiming that dealing with past injustice requires the commission of further injustice. Cicero was well aware that the Roman state encompassed a multitude of different religious and ethnic groups. He accepted the idea of a multicultural political community—but felt that such a state could only be justly upheld under a common standard of justice and citizenship.⁷⁶ Despite her criticisms of Cicero, Nussbaum praises this element of his thought: "nationality in and of itself provides no sufficient moral argument for a difference of duties."⁷⁷ By demoting the moral relevance of nationality

74. *De legibus*, 2.5. For a close analysis of this passage, see Andrew Dyck, *A Commentary on Cicero, De Legibus* (Ann Arbor: University of Michigan Press, 2004), 258–59.

75. Timothy Waligore, "Rawls, Self-Respect, and Assurance: How Past Injustice Changes What Publicly Counts as Justice," *Politics, Philosophy & Economics* 15 (2016): 42–66, at 44.

76. Hammer, *Roman Political Thought*, 91 (see note 28 above).

77. Nussbaum, "Duties of Justice," 202 (see note 8 above). Recall also that Cicero's understanding of justice and natural law revolves around the avoidance of harm, the respect for prop-

or cultural background to justice, Cicero may here be adopting some of the problematic logic of his second argument—essentially concluding that the demands of a universal law of justice require universal citizenship (i.e., universal Roman empire). But a more generous reading—and one that opens up fruitful lines of thought for us—is one that suggests that cultural or political divisions have no essential bearing on questions of justice.

In either case, Cicero's position depends upon certain cosmopolitan or universalist premises about justice. From the perspective of Cicero's argument, the relevant question about the citizens from Arpinum is whether they are in fact being treated justly as equal Roman citizens. If not, then the injustice is not in the past but ongoing, and the Arpinian deserves redress.⁷⁸ For Cicero to have such loyalty to Rome, he must actually consider its institutions to be just. He must be able to see himself as a member of the commonwealth, enjoying its protection and sharing fairly in its benefits. For Cicero the citizen, it does not matter whether Rome's conquest of Arpinum centuries earlier was justified; it matters whether Arpinum's residents now enjoy justice. A person may retain his cultural identification with Arpinum, but—to use Nussbaum's terminology—that is not a “morally significant characteristic” when evaluating the justice of an institution.⁷⁹

Conversely, even if Rome's conduct had been just in the past, it would not serve to justify Rome's continued rule in the present if it became unjust. This view—that the real legitimacy of the Roman state depends on the extent to which its present institutions reflect justice—draws support from other places in Cicero's texts. A number of times, he suggests that the growth of Roman injustice in the present toward its allies could undo any legitimacy acquired from Rome's past practice of justice.⁸⁰ In other words, Rome's empire, even if justly acquired, would be justly lost if the Roman state failed to ensure continued fair terms of citizenship for all its members.

Cicero also furnishes us with a story that illustrates the way this view would shape our orientation toward the institution of property in particular: the case of

erty, and the cultivation of harmony. As long as these are respected, Cicero's framework leaves room for wide cultural differences.

78. Thus, Cicero's theory leaves space for Spinner-Halev's separate category of “enduring injustices” in the same way that Waldron does. As Waldron says, his theory “only applies if an honest attempt is being made to arrange things justly for the future”; see Waldron, “Superseding Historic Injustice,” 27 (see note 22 above). But reasoning about such cases concerns ongoing injustice—whose historical component may be relevant practically in generating solutions to it, but whose morally relevant feature is the *present* state of injustice.

79. Nussbaum, “Duties of Justice,” 202 (see note 8 above).

80. See: *De officiis*, 2.27–2.28 and *De re publica*, 3.41, among others.

Aratus of Sicyon. Having liberated his city from a tyrant after fifty years of oppression, Aratus was faced with a dilemma. Many of the dispossessed (or their heirs) expected to be restored to their property, but their property was not then in the hands of those who had stolen it during the tyrant's rise to power. Instead, people who had legally bought or inherited it without intended injustice now held it. Recognizing the justice of the claims of both sides and seeing that communal fellowship would not be served by a new round of confiscations and redistributions, Aratus instead sought abroad for funds. He used these funds to pay some current owners to vacate their property and gave the rest to those of the dispossessed who could not return to their homes. Cicero considers Aratus's course of action to be the ideal response to such a dilemma. He writes that by this solution, "harmony was preserved" because Aratus considered "the welfare of all."⁸¹

Obviously, it is unlikely that every such conflict can be solved by the fortuitous intervention of foreign donations, and undoubtedly there must have been some citizens dissatisfied with Aratus's arrangement. Even so, Cicero's endorsement of Aratus's action helps illustrate Cicero's view that the exact arrangement of who owns what is not at the heart of justice. Rather, what is important is the social harmony that arises when everyone respects the property of others as a general rule and treats others with honesty and the presumption of goodwill: "for there is nothing that holds together a commonwealth more powerfully than good faith."⁸² Such an orientation requires us to expect individuals to personally rectify only wrongs they themselves committed or were otherwise willfully complicit in. To coercively deprive people of property they have held innocently would be to repeat the original injustice with new victims. The same principle also obligates the community as a whole to cultivate harmony and to ensure that a historical injustice does not deprive a portion of the community of fair treatment, or the resources to be equal participants.

A Different Orientation

The conclusion we might reach from all this runs something like the following: It is true that probably no state on earth and no prevailing distribution of property has arisen through an unbroken train of just actions. However, since states and property exist for the sake of human fellowship and welfare, it matters whether the cur-

81. Xavier Marquez notes that Cicero's emphasis on harmony, even in conditions of inequality, is also a salient feature of his constitutional theory; see Marquez, "Cicero and the Stability of States," *History of Political Thought* 32 (2011): 397–423, at 413–14.

82. *De officiis*, 2.84.

rent configurations of a state and a distribution of property advance human welfare now (and for the future), not whether they did so in the distant past. States and property distributions in the present that can be traced back to some original injustice should not, *for that reason*, be considered in need of transformation. Such a view does not deprive living victims of restitution, or exempt living violators from just punishment. In fact, much of Cicero's legal career was devoted to defending wronged friends (and even himself) and occasionally prosecuting wrongdoers.⁸³ Moreover, political communities do have a collective obligation to ensure proactively that no segment of their citizenry is deprived of full participation for any reason—including historical injustice.⁸⁴ Such a principle would also help us account for why Cicero might defend vehemently the institution of private property while also endorsing moderate schemes of redistribution and agrarian reform, as well as Aratus's accommodation of the returning exiles.⁸⁵

In a certain practical sense, Cicero thus appears similar to many liberal or democratic theorists outside the contemporary discourse on historical injustice, such as Rawls, who build theories of justice that largely bracket the issue of past wrongs.⁸⁶ In both cases, the decisive issue is whether a society is organized to achieve justice in the present and the future. Unlike Rawls and others, though, Cicero engages the claims for historical redress on their own terms, rather than merely abstracting away from the messiness of history. He insists that history is something a society must reckon with.

Cicero's position also bears a practical resemblance to Waldron's. Both engage the claims for rectification of historical injustice, but ultimately reject the idea that the reality of historical injustice by itself generates sufficient reason for compensatory action. Nevertheless, their logical frameworks differ in subtle but important ways. Waldron clearly sympathizes with Hume's view that we must simply accept

83. For instance, in *Pro Domo Sua*, Cicero sues for the return of his own confiscated property, and in *In Verrem*, he prosecutes a Roman magistrate for abusing his office and violating the rights of Roman citizens; see Marcus Tullius Cicero, *Orations: Volumes III and V*, ed. Gulielmus Peterson (Oxford, U.K.: Clarendon Press, 1922).

84. Here, of course, Cicero's failure to extend this logic to Rome's slaves, as he does to its other allies and subject peoples, cannot be excused. But as many other scholars of the republican tradition have argued, we need not allow Cicero's blindness to prevent us from drawing on what is valuable in his theory.

85. On the question of moderate agrarian reform, see *De officiis*, 3.30; see also Wood, *Cicero's Social and Political Thought*, 204 (see note 8 above).

86. Rawls's original position explicitly and deliberately excludes the histories of the individuals who are to assent to a conception of justice that will govern society; see Rawls, *A Theory of Justice*, 18–19. Given Cicero's influence on many foundational liberal thinkers, as discussed above, this similarity of view should not be surprising.

the brute fact of historical injustice and move on, as long as the injustice is no longer actively continuing.⁸⁷ Still, he claims to respect the idea of justice as operating independently of purely pragmatic considerations—which makes impossible the “breezy indifference to justice” required by the Humean position.⁸⁸ Thus, in addition to his practical objections to rectification, Waldron provides what he views as a normative one. Waldron argues that over time the heirs of those who unjustly acquired something build their lives and expectations around it, which grants them a moral right to possess it. Likewise, the heirs of those dispossessed must have found other ways of organizing their lives without the object, which diminishes or extinguishes their right to have it back.⁸⁹

In some ways, Waldron’s moral argument seems to simply take the pragmatic argument—upsetting people’s expectations will disrupt their plans for their lives—and make that the grounds for the normative objection as well.⁹⁰ It is not clear why disrupting settled expectations is a reason not to rectify injustice—after all, a clever murderer might build his life on the expectation that he would get away with a crime, and the disruption to that plan is not a compelling reason to exempt him from imprisonment. Moreover, Waldron himself acknowledges that his theory leaves some more difficult cases unresolved. For instance, if the property in question has great cultural or religious significance—like a burial ground—Waldron accepts that such an object might still hold great significance in the lives of the heirs of the dispossessed.⁹¹ He does not explain how those claims can be reconciled with those of the current owners, whose possession of the property in question presumably still has all the features Waldron counts as giving them reasonable claim to it. Unsurprisingly, Waldron’s argument has spurred a number of responses by those who wish to defend the idea of rectifying historical injustice, while few have joined Waldron in arguing that the injustice ought not to be rectified.⁹²

87. As Waldron puts it, “My thesis is not intended as a defense of complacency or inactivity, and to the extent that opponents of reparation are complacent about the injustice of the status quo, their resistance is rightly condemned”; see Waldron, “Superseding Historic Injustice,” 27 (see note 22 above).

88. Waldron, “Advantages and Difficulties of the Humean Position,” 116–18 (see note 4 above).

89. Waldron, “Superseding Historic Injustice,” 18–19 (see note 22 above).

90. This impression is strengthened by Waldron’s partial endorsement of Hume’s view that we want to end “squabbling” in order to “enjoy the benefits promised by an orderly marketplace”; see Waldron, “Advantages and Difficulties of a Humean View,” 86 (see note 4 above).

91. Waldron, “Superseding Historic Injustice,” 19–20 (see note 22 above).

92. For instance, Janna Thompson argues that Waldron’s argument fails once the burden of proof about the consequences of the injustice is shifted from those seeking reparations to those

Cicero is of interest because, like Waldron, he rejects straightforward reparation, but unlike Waldron, he does not consider that the end of the matter. In explaining his view of Aratus's situation, Cicero recognizes the force of Waldron's insight—that the new distribution of property has become the basis for the holders' life-choices and expectations—but his greater concern is the actual innocence of the current holders: "Aratus thought it not at all fair to evict those who had occupied it for fifty years, since after so long much was held as result of inheritance, or had been purchased, or given as a dowry, *all without injustice*."⁹³ Cicero's principle that justice (as well as states and property as institutions) exists for the living means that in order to be liable to provide compensation, individuals must themselves have committed or been knowingly complicit in injustice. The current holders of the property in Sicyon held their property innocently. At the same time, the newly returned exiles are entitled to be full participants in the common society, so they must somehow be restored or otherwise compensated, else the value of community and harmony would be violated. Their claims had not "faded," to use Waldron's term, but their claims now had to be somehow reconciled with a new set of claims—those of the innocent current holders. Cicero praises Aratus because he did not "set the citizens' interests at odds with each other, but held them all together under a single principle of fairness."⁹⁴

Although Cicero does not directly address the sort of hard case exemplified by Waldron's burial ground example, his logic seems to offer a clearer framework for dealing with such issues. The innocence of the current holders would preclude the state from simply taking the burial ground from one group to give another group an exclusionary right over it. However, since the principle of justice requires the respect for both private and public property, it may be that objects of unique cultural significance are rightly public property—which might entail granting the heirs of the dispossessed equal access to it, and public protection of it (as long as the current possessors are fairly compensated).

At any rate, Cicero's reasoning presents us with a potentially fruitful perspective when considering historical injustice. Since historical injustices implicate present institutions and distributions of property, our first response should be to consider what purposes property and institutions are meant to serve and what just relations of property and just relations within institutions would look like. In this

who hold the property in question. See Janna Thompson, "Historical Injustice and Reparation: Justifying Claims of Descendants," *Ethics* 112 (2001): 114–35, at 130.

93. *De officiis*, 2.81, emphasis added.

94. *De officiis*, 2.83.

way, Cicero's logic asks us to inquire into justice itself—into why and exactly how we value it. Cicero's famous political principle is *salus populi suprema lex* ("the safety of the people is the ultimate law"), an attitude which places ultimate value on our common human society and flourishing. To push claims of rectification hostile to that goal would be self-undermining, since Cicero presents justice as the virtue that takes its bearings from the common good. Those not responsible for an injustice cannot be responsible for rectifying it themselves, but the community as a whole shares an obligation to ensure that none of its members are excluded from full participation.

Cicero's perspective would not yield any immediate answers to the salient and controversial issues that animate contemporary debate, but it might provide useful tools for approaching them. For instance, a Ciceronian approach to the question of slavery reparations would not ask who should be held morally responsible for slavery, or who is entitled to compensation for it. It would not propose that any rectification need be made *because* of the monstrous wrong that took place in the past. It would, however, prompt us to ask whether our current institutions and distributions of property are in fact modeled on justice now—or whether they still bear the marks of that earlier injustice. Just as Cicero accepted certain proposals for agrarian reform because he recognized that the economic and social inequities in Rome were undermining any healthy common social life, so too should we ask whether our current institutions and property distributions reflect justice for those who live under them.

Inhabitants of some modern states find themselves in much the same position as Cicero and his countrymen. Indeed, some of the parallels are almost uncanny. Post-communist countries still face a situation almost precisely identical to that which confronted Aratus of Sicyon. Relatives of those dispossessed by the defunct communist regimes are seeking the restoration of their family properties, which in many cases have come into the possession of those who believed they had acquired it fairly from the previous owners.⁹⁵ In such cases, Cicero's principle would ask us to look at the conditions of the people who now make up the political community and the obstacles to achieving a harmonious and fair society, and base political action and reform on those considerations alone. It would reject any attempt to render a strict accounting of claims, of who ought to return precisely what to whom, asking instead what fair arrangements of our present institutions would look like.

95. See Nadya Nedelsky, "Divergent Responses to a Common Past: Transitional Justice in the Czech Republic and Slovakia," *Theory and Society* 33 (2004): 65–115, at 78; and Aleks Szczerbiak, "Dealing with the Communist Past, or the Politics of the Present? Lustration in Post-Communist Poland," *Europa-Asia Studies* 54, 4 (2002): 554–72, at 553.

Cicero's argument is by no means a completely decisive answer to the problem. In focusing on the relationships of those who share a political community, his theory provides little guidance on matters of inter-state historical injustice, and those who reject his moral universalism will likely find his indifference to ethnic and cultural self-identification unsatisfying.⁹⁶ On the other hand, for those who accept some kind of universal principle of justice, Cicero's logic suggests strongly that such a premise precludes rectifications that violate that principle by treating citizens unfairly—for instance, by holding the innocent liable for compensation. In doing so, Cicero presents us with a serious challenge: that we might have to accept the impossibility of righting certain wrongs. Injustices in the distant past, where perpetrators and victims are now dead, cannot be made right by contemporary acts of restitution or symbolic atonement.⁹⁷

Yet Cicero's third argument does offer a morally serious orientation toward the reality of the unjust histories of many institutions that are valuable to us today. Unlike the earlier two arguments, this last view does not require us to deny or attempt to justify obvious cases of historical injustice. Instead, it presents a compelling account of why we should not allow those historical injustices to undermine present day institutions. In this light, a suffering individual or a marginalized group could still rightly demand redress and compensation—but only for wrongs currently taking place, or which they themselves have suffered, wrongs which may well be tied to a historical injustice. The idea that we should evaluate our current governing structures and property based on whether they serve justice today thus captures a powerful and common moral intuition: that justice—like states and property—exists for the sake of the living.

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96. Even those who accept his moral universalism would be hard-pressed to accept Cicero's occasional willingness to elide universal principles of justice into a logic for a single universal citizenship.

97. In this respect, Cicero's argument bears closely on what Mario Feit calls "generational democracy," ruling out "efforts to impose intergenerational obligations" as futile "strategies of existential consolation"; see Mario Feit, "For the Living: Thomas Paine's Generational Democracy," *Polity* 48 (2016): 55–81, at 57.