

5-7-2003

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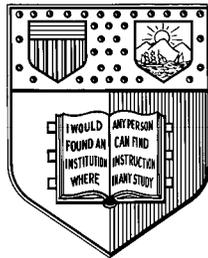
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Alexander, Gregory S., "The Limits of Property Reparations" (2003). *Cornell Law Faculty Publications*. Paper 24.
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The Limits of Property Reparations

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Cornell Law School research paper No. 05-004

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THE LIMITS OF PROPERTY REPARATIONS

Gregory S. Alexander*

One of life's cruelest lessons is that history repeats itself. Forcible and inhumane expropriations of property by morally corrupt nations is a particularly unfortunate example of this lesson. Human history is replete with examples of unjustified expropriations of property by conquering states and other transitory regimes. Only in modern times, however, have nations attempted systematically to remedy historical injustices by providing reparations to the dispossessed owners or their successors. From the aboriginal peoples of the Antipodes to the Native Americans of Canada and the U.S. to the European victims of the Nazi Germany and Soviet communism, groups of people who were stripped of their land and possessions by fraud or force are demanding, and in many cases getting, reparations for these injustices.

The thesis of this paper is that the case for reparations for such expropriations of property is highly tenuous, both morally and in practical terms. Reparations claims in general face two serious challenges: human irrationality and the effects of time. While these challenges are not necessarily insuperable, they are formidable. Most claims are made for reparations for past expropriations are unable satisfactorily to respond to these challenges. As a result, in my view, reparations in the form of specific restitution aimed at rectifying past injustices should be paid only in limited circumstances. This is especially true where the act(s) of expropriation were

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perpetrated many years, even centuries, ago, but it holds true even in the context of more recent demands by victims (or their representatives) of both Nazi atrocities and Soviet-era expropriations of property.

Three important caveats are in order. First and foremost, my doubts about reparations in no way rest upon a judgment that minimizes or trivializes the injustices perpetrated upon those who suffered as the result of the heinous acts of the Fascists of the so-called Third Reich and the brutal agents of Soviet states following the end of the Second World War. History will surely judge the crimes that those victims suffered as among the worst ever experienced as the result of political ideologies.

Second, I am addressing only the question of compensatory reparations, that is, reparations aimed at offsetting the losses experienced by victims of illegitimate property expropriations. My comments in no way are intended to cast doubt on policies of awarding symbolic reparations, that is, payments or other awards designed not to compensate but to signify public recognition that a past injustice was perpetrated. Jeremy Waldron has succinctly expressed the purpose of symbolic reparations this way: “[R]eparations may symbolize a society’s undertaking not to forget or deny that a particular injustice took place, and to respect and help sustain a dignified sense of identity-in-memory for the people affected.”¹ As Waldron points out, overt acts of remembrance are necessary for individuals and groups who were victims of great injustice to vindicate their sense of self and their collective identity. Modest monetary payments may be both necessary and sufficient to establish a public marker of acknowledgment.

¹Jeremy Waldron, “Superseding Historic Injustice,” *Ethics* 103 (1992): 4-28, 6.

Third, my argument applies only to reparations that are restitutionary in character. My comments are limited to reparations claims intended to rectify past injustices by providing restitution, either in kind or monetary, for illegally and immorally expropriated property. Restitution is not the only possible purpose of providing reparations. Monetary awards may serve other purposes as well, including symbolically acknowledging the wrongfulness of the expropriation and the harm done to the victims of such acts.

What I shall address in the remainder of this paper are reparations of a very different kind, the kind that is nearly always involved when demands for reparations become the subject of public controversy. These are what I have already labeled “restitutionary reparation,” that is, reparations aimed at returning to dispossessed owners what once was rightfully theirs and was illegally and usually forcefully taken away from them. Theoretically, restitutionary reparations can take either of two forms, specific restitution and value restitution. Specific restitution is return of the very asset that was taken; value restitution, which is awarded when specific restitution is impossible or impracticable, provides a monetary substitute for the expropriated asset.² Time usually determines which form of restitution is involved. Where claims are based on events long since past (as in the case of claims by Native Americans based on illegal land sales that occurred during the eighteenth and early nineteenth centuries), value restitution will be

²The distinction between specific and value restitution can accurately be expressed in terms of the distinction, developed in American law-and-economics scholarship, between “property rules” and “liability rules.” The property rule/liability rule distinction can be used to shed considerable light on the entire question of reparations, especially with respect to the difference between specific and value restitution. For present purposes, however, I will not pursue that line of analysis, which focuses on the issue of transaction costs. Instead, I will focus on the cognitive problems that the case for property reparations faces.

The seminal work developing the property rules/liability rules distinction is Guido Calabresi and A. Douglas Melamed, Property Rules, Liability Rules, and Inalienability: One View of the Cathedral, *Harvard Law Review*

the only practical remedy. In many of the recent European claims for reparations, both types of restitution are involved.³

I will discuss two arguments that pose problems for the case for specific restitution for illegitimate land expropriations. The first, which is less familiar in discussions of restorative justice, is that cognitive errors are likely to creep into assessments of causal attribution and resulting moral and legal entitlements. These cognitive errors results from the facts that causal attributions depend on counterfactual thinking. The second objection is based on the pragmatic need for repose. Both objections are relevant to any form of reparation, but they obtain greater strength in the case of claims for specific restitution, as I will discuss. Both of these objections derive from the effect of time on the strength of claims for reparations. This fact alone counsels against any flat rule either favoring or blocking recognition of claims for reparations. Differences in the amount of time that has passed between the expropriation and the statement of a claim should be taken into account in assessing the strength of claims.

Another factor that varies the strength of specific restitution claims concerns the character of the asset whose return is sought. While the loss of many assets can be compensated through awards of monetary damages, other assets do not translate into money at all. These case for specific restitution is perhaps strongest with respect to these non-commodifiable assets. The final part briefly considers this concern.

³See Michael L. Ne, Note, Eastern Europe's Policy of Restitution of Property in the 1990s, 10 *Dick. J. Int'l L.* 357 (1992).

I. THE PRINCIPLE OF RECTIFICATION AND THE PROBLEM OF COUNTERFACTUAL REASONING

A. The Principle of Rectification

The case for property reparations rests on the antecedent moral principle of rectification.⁴

Robert Nozick has explained the principle's application to property distribution this way:

This principle uses historical information about previous situations and injustices done in them [including unjustified expropriations of property], and information about the current course of events that flowed from these injustices, until the present, and it yields a description (or descriptions) of [property] holdings in the society. The principle of rectification presumably will make its best estimate of subjunctive information about what would have occurred (or a probability distribution over what might have occurred, using the expected value) if the injustice had not taken place. If the actual description of holdings turns out not to be one of the descriptions yielded by the principle, then one of the descriptions must be realized.

Philosophers have debated the moral soundness of this principle, but let us accept it, at least in some version, for present purposes. Accepting the principle provisionally, the question then becomes, does the principle of rectification always require that new political regimes redress victims of wrongful state expropriations. In particular, must the righting of such past wrongs take the form of specific restitution? Examining this question requires that we first identify and understand the cognitive basis for acting on the principle of rectification: counterfactuals.

B. Counterfactuals and the Attribution of Causality

Implementing the principle of rectification through reparations of any form requires that we act on the basis of counterfactual thinking. By "counterfactual thinking," I mean alternative

⁴I elide here the distinction drawn by Jeremy Waldron between the counterfactual and restorative approaches to reparations. See Jeremy Waldron, *Historic Injustice: Its Remembrance and Supersession*, in *Justice, Ethics, and New Zealand Society*, pp. 139, 146. As Waldron himself acknowledges, the line between these two approaches is very fine, and the two often blend together. In any event, I am concerned in this part of the paper with the counterfactual basis for specific restitution. The next part of the paper addresses a problem that more directly affects the restorative approach.

(i.e., factually untrue) versions of past outcomes. It is, quite literally, the mental undoing of the past. Counterfactual thinking is the necessary cognitive foundation for any attempt positively to act on the principle of rectification.

Counterfactual statements are usually conditional in form. A contrary-to-the truth factual antecedent is followed by an alternative outcome. For example, the claim, “If President Kennedy had not been assassinated, then America would not have gotten into the Vietnam War,” follows the classic counterfactual form.

In recent years psychologists have extensively researched counterfactual thinking. Psychologists have studied both the factors underlying the generation of counterfactual thinking and the consequences of these factors. One generative factor especially important for present purposes is motive. Motivational differences contribute substantially to both the quantity and quality of counterfactual thinking. Since counterfactual thinking represents the undoing of past events, individuals are much more apt to engage in such thinking the more that the past events are painful or otherwise aversive to them. The counterfactual is an attempt to undo the undesired outcome cognitively. On this view, “outcome-based motivational factors constitute the engine driving counterfactual thinking.”⁵

The second stage in this process is the search for some alterable factual antecedent, i.e., a means by which the undesired outcome could have been avoided. Factors affecting the alterability, or mutability, of the factual antecedent (i.e., the “if” clause) in turn influence the antecedent’s specific content. The most common mutability factors are exceptionality, the

⁵Neal J. Roese & James M. Olson, Counterfactual Thinking: A Critical Overview, in Neal J. Roese and James M. Olson, eds., *What Might Have Been: The Social Psychology of Counterfactual Thinking* (Mahway, NJ, 1995), pp. 1, 10.

action-inaction effect, and controllability. For example, the more an antecedent is (or is regarded as) being exceptional, the greater its mutability and, therefore, the greater its role in generating the counterfactual.

An important consequence of counterfactual generation is the attribution of causality to events. All counterfactual have causal implications.

C. Counterfactuals, Transitory Justice, and Specific Restitution

Counterfactual thinking can and does serve many positive functions, but it can also be dysfunctional. Counterfactuals are similar to heuristics; they are a way of coping with experience, of problem-solving by creating categories and stereotypes.⁶ Like heuristics, they help us cope, but often at the cost of biases and judgment mistakes. The salient concern for purposes of this conference is that counterfactual thinking, the mental undoing of past events, is apt to trigger responses more emotional than reactions to actual events. [examples] Such responses influence our judgments about how to behave in the future, leading us to overreact. [examples]

The link between counterfactual thinking and overreaction has important implications for the general issue of transitory justice, including specific restitution for property expropriations. It poses serious questions about whether our collective judgments concerning who gets what can be trusted. Specifically, the link raises questions about the fairness of decisions concerning who gets relief and what that relief is.

⁶See Steven Sherman and Allen R. McConnell, Dysfunctional Implications of Counterfactual Thinking: When Alternatives to Reality Fail Us, in Roese and Olson *supra*, pp. 199, 203.

Fairness concerns exist because unless current regimes are prepared to grant restitution to everyone who make a credible claim (a highly unlikely response), they will have to distinguish among a large number of claims, granting some while denying others on the basis of counterfactual analysis. Research on the psychological effects of counterfactual reasoning casts serious doubt that such distinctions can be made in a consistent and rational way. Decision makers are apt to overreact to some cases and underreact to others because of differences in mutable antecedent factors involved in the cases. People tend strongly to focus on more mutable factors, but those factors may not be rationally connected with either causation of the outcome or, therefore, with the merits of the claims.⁷ Imagine, for example, two claimants demanding that buildings expropriated from them by the Polish communist government be returned. The first claimant is a member of the Habsburg family. His house is a palace which he inherited from his ancestors many years before the communist government confiscated it shortly after taking power in the late 1940s. The second claimant is a former businessman who had acquired his modest house just a few months before the communists seized it. He now wants its return. Psychological research indicates that people are likely to treat the two cases differently on the basis of the difference in the time when each claimant acquired his property. The research has established that the temporal sequence of events is a strong factor that biases attributions of cause and implications about relative desert. Specifically, this research shows that events that occur later in a sequential chain of events are more mutable than events that occur earlier in time.⁸

⁷Sherman & McConnell, p. 204.

⁸D.T. Miller & S. Gunasegaram, Temporal Order and the Perceived Mutability of Events: Implications for Blame Assignment, *Journal of Personality and Social Psychology* 59:1111 (1990).

Later events are seen as more causal and are given greater weight in making judgments about blame, desert, and implications for the future.

The temporal sequence influences the thinking of both the affected individual and others who are in a position to make judgments about that individual's situation. The two claimants in my hypotheticals are likely to experience different reactions to the expropriations of their property. The second claimant is apt to have a stronger more exaggerated reaction, based on the fact that he acquired his house shortly before the communists took power. This fact leads him to think "If only I had waited on buying the house" or "If only I had spent the money on something else" or "If only the communists had taken power a few weeks earlier." Such thoughts of regret will in turn strengthen his affective reaction to the expropriation, producing a more intense feeling of the unfairness of that event and, consequently, how deserving he is of the building's return. The same reactions are likely to occur to the third party who must judge the merits of the claim. He, too, is apt to view the second claimant as worthier than the first, on the basis of the different temporal sequences of events in the two cases. Yet this analysis is not rational because the temporal sequence had no bearing on the cause of expropriation or on the merits of the two claims.⁹ In all relevant respects the two cases are alike and should be treated similarly, either allowing or denying claims for restitution, but in fact they are likely to be treated differently.

The point can be stated more generally. Our sympathies and our responses to claims for expropriations are not going to map any single normative theory. Cognitive responses to counterfactual thinking are morally inconsistent and unprincipled. Our responses are quirky, based on factors that have no moral relevance. Counterfactuals lead our responses to be based

⁹See Sherman & McConnell, p. 204.

on more emotional content, having greater or lesser sympathy for individuals who are in all relevant respects similarly situated. This undermines the possibility that a policy based on counterfactual analysis will in fact effectuate any moral principle. From the moral of view, then, counterfactual analysis is self-defeating.

An obvious response to this point is that it implies that we should throw the baby out with the bath. Conceding (at least *arguendo*) that specific restitution for past injustices may be awarded erratically and inconsistently doesn't warrant never awarding it. Just because our efforts at achieving transitory justice may be inconsistent shouldn't lead us to conclude that it should never be attempted. There may be times when we are unsure whether and to what specific restitution is required or justified, but surely there are times when there is no room for such doubt. At such times, we should trust our moral intuitions. Failing to do so out of a fear of getting it wrong only compounds the injustice originally perpetrated.

This is an important point, one that we should take seriously. My argument, however, is not to propose a blanket rejection of all compensation for past expropriations. Rather, it is to counsel against reacting on the basis of our emotional responses to the claims of dispossessed property owners. Reparation claims are an unusually emotionally charged category of legal claims. No decent person can help feeling moved by the stories of petitioners who experienced, sometimes personally, sometimes through ancestors, the horrors of brutal regimes like Soviet Europe and the so-called Third Reich. Our instinct is to want to do something for the victims of inhuman government policies. This is exactly why caution is especially important in this context. Current regimes must resist the instinctual urge broadly to dispense compensation to past owners and their successors.

Counterfactual thinking has dysfunctional effects in a second respect as well. Apart from the problem of fairness, where the problem is with the comparative treatment of cases, counterfactual thinking has negative implications for our analysis of the merits of claims standing alone. Even if the counterfactual accurately tells us (as more often than not it does not) how things would have turned out had the antecedent factor (i.e., the “if” clause) been different, it does not tell us what our response should be today. That is, the counterfactual itself does not warrant any particular normative response. Yet counterfactual thought strongly tends to lead us to believe that there is a single correct response that follows from it.

In the context of restitution claims, the counterfactual line of thinking that inevitably precedes our conclusion distorts our judgments about what justice requires of us now. It leads us to want to undo the antecedent event to which we attribute causal responsibility for the injustice. The brute fact, though, is that we simply cannot undo the past. What makes specific restitution seem so appealing is that it appears to be the way return us to the status quo *ante*, but specific restitution does not and cannot do that. The expropriated asset may be returned to its former owner, but much else has changed over time. The asset was used by someone else, possibly in a capacity that affected many other people. Specific restitution does not merely return these individuals to their status quo prior to the expropriation for they may well have made different choices (or had different choices made for them) had their not been an expropriation and redistribution of the asset. The clock simply cannot be turned back. We are in a zero-sum situation or something possibly worse. Returning the asset to A means taking it away from B (and possibly C, D, and E). Such a solution may not be what justice requires of us or indeed what it permits. Counterfactual thinking clouds our ability to reason through what justice, as distinguished from emotion, demands of us.

II. THE PROBLEM OF TIME

“[T]ime seems to mitigate or at least to muddy injustice.”¹⁰

“Our intuitions are that [reparatory] claims generally weaken over time.”¹¹

As these quotations suggest, several commentators regard the effect of time on reparation claims problematic. There are good reasons for these qualms. The western law of property is replete with rules and doctrines that reflect the insight that at least certain rights fade over time. The law of prescription and the related law of adverse possession are but two obvious examples.¹² Many legal entitlements that were fully recognizable in the past do not survive today. To see whether entitlement claims for reparations fall into this category, we need to understand why we often treat time as corrosive of past entitlements.

One reason recurs to the principle of rectification to which I referred earlier. The substantive foundation of that principle is the idea that the moral justification for protecting a person’s entitlement originally lies in the role that the entitlement plays in that person’s life. If I own a piece of land and use it in some way, the land becomes an important element in how I shape my life, both now and in the future. So, if someone takes that land from me without my permission, that act disrupts my life and activity, altering my plans in some unintended and non-trivial way. The principle of rectification represents both an attempt to remedy that disruption so that my life course is restored to the my original plans. The difficulty with this justification,

¹⁰Jennifer Nedelsky, *Should Property Be Constitutionalized? A Relational and Comparative Approach*, in *Property Law on the Threshold of the 21st Century*, G.E. van Maanen and A.J. van der Walt eds. (Antwerp 1996), p. 417 (italic omitted).

¹¹Ruti Teitel, *Transitional Justice* (New York 2000), p. 138 (footnote omitted).

¹²See generally the essays in the symposium entitled *Time, Property Rights, and the Common Law*, published in the *Washington University Law Quarterly*, 64 (1986): 667.

however, is the fact that “[i]f something was taken from me decades ago, the claim that it now forms the centre of my life and that it is still indispensable to the exercise of my autonomy is much less credible.”¹³ If the thing has been gone from me for a significant period of time, it can no longer, in any meaningful sense, be said to be essential to my life. As circumstances change, for whatever reason, people move on with their lives. They change their plans. Things that were important to them once fade in significance, and are replaced by other things. Indeed, these changes may become so great that there has been a fundamental change in their identities, their selves. They may in truth say, with Dickens’ Scrooge, “I am not the man I once was.”¹⁴

The second reason why time usually affects the viability of entitlement-claims is that circumstances, including surrounding material conditions, change over time. We do not usually evaluate the existence or strength of any right, including property claims, in total isolation from other factors. Unless we are prepared to do so, property claims weaken with time. This is not simply because memories fade, witnesses die or become inaccessible, or other evidentiary concerns arise. More fundamental are concerns growing out of the redistributive aspects of specific restitution as a form of reparations. There are two different concerns here. The first is the fact that the current owner-possessor of the asset may not be the person or entity who expropriated the asset. Specific restitution involves literally taking asset *x*, now in B’s hands, and giving it to A, the original owner. (I am assuming away here the quite substantial complication that A may not be the original owner but her heir or some other successor of the

¹³Waldron, *Historic Injustice*, p. 158.

¹⁴For an extraordinarily sophisticated account of the phenomenon of “multiple selves,” see Derek Parfit, *Reasons and Persons* (Oxford, 1984). The general matter of the implications of multiple selves for the coherence of claims to reparations for past expropriations is a fascinating and undeveloped problem that I cannot explore in this brief paper.

original owner's rights.) This redistribution is easiest to justify, both as a matter of corrective justice and distributive justice, if B is the person or entity who wrongfully took the asset from A in the first place. Suppose, for example, that the original owner of a farm now seeks its return from a government that expropriated the land some time in the past but later changed its policy and now permits restitution of expropriated property. Here the redistribution from B to A seems, all else being equal, seems fair. But this scenario will be rare. More commonly, the current owner-possessor of the farm or other expropriated asset will be a person or entity other than the one who perpetrated the original wrongful act. In the typical case, where the expropriation was committed by a government, the current owner-possessor is likely to be either a successor government, one that followed a radical rupture from the preceding government, or a person or institution to whom the expropriating government transferred the asset. In either case the current owner-possessor is an innocent party, someone who had no part in the expropriation. Under these circumstances, correction of a past injustice through specific restitution is a redistribution that itself constitutes government expropriation that can reasonably be considered wrongful. This restitutionary expropriation is not inherently or categorically less wrongful than the original expropriation. The argument that it is not wrongful rests on the contention that it undoes a past wrong. But the original expropriation may likewise have been committed for the purpose of undoing past wrongs, i.e., the then-existing distribution of assets was, in the expropriator's view, unjust. That is, the original expropriation was committed as an act of justice. The difference between the justifications for the two acts of expropriations, of course, is that one (the second) was done in the interest of *corrective* justice while the original act was based on *distributive* justice. Any argument that seeks to legitimate one but not the other, then, must establish that one form of justice is morally privileged over the other, and that will not be a very difficult task, one

that is inherently contestable. The point is not that the case cannot be made but rather that it is far more difficult than many proponents of specific restitution recognize.¹⁵

The second concern is with second-order redistributive effects. In addition to the current owner herself, other people may well be affected by the shift in the asset's ownership and possession. Even if B is not innocent, other innocent people may be adversely affected by the redistribution. This will be the case, for example, if the asset is a building used by the state, both the current state and its socialist predecessor, for public purposes, such as health or welfare. To put the point more concretely, imagine that the building is a former palace that was ancestral home of an aristocratic family and now used as a state mental-health hospital. The claimants are the heirs of the original owner, now deceased. They no longer live in the country where the building is located, and despite the injuries inflicted upon them in the past, they are now quite well-off. The state, which now owns the building, is financially strapped. Its resources already stretched too thin, it will not be able to purchase or build a substitute for the current building if specific restitution is ordered. There are too few beds in mental-health hospitals already, so there is no place to relocate the existing hospital's patients. They will be left without professional care or, quite possibly, without any care whatsoever. The apparently simple redistributive act of

¹⁵Martha Minow argues that subsequent owners of unjustly expropriated property cannot be regarded as innocent because they have benefitted from the expropriation. Martha Minow, *Between Vengeance and Forgiveness* (Boston, 1998), p. 108. I find this argument too quick. Why should one person's enrichment be regarded as unjust simply because it is the result of another person's unjust act? Unless the current owner has in some way participated in the injustice (and, in my judgment, participation in the injustice require more than the passive state of holding the fruit of the injustice), it is not at all clear why, from the moral point of view, that person should share responsibility for the injustice with the perpetrator. This is not to say that cogent arguments for responsibility cannot be made. It is too say that the case for attributing responsibility to that individual is not obvious. In any event, Minow does not even attempt to provide any such argument.

transferring title from B to A's successors in fact has much more complex redistributive consequences. These redistributive consequences must be taken into account into any argument favoring specific restitution of previously expropriated property.

III. SPECIFIC RESTITUTION OF NON-COMMODITY ASSETS

Thus far I have suggested that the case for specific restitution of unjustly expropriated property faces serious normative objections. To a considerable extent these objections can be avoided by making reparations that are monetary in character, especially if the reparations are strictly symbolic. There is one category of assets as to which the case for specific restitution seems far more compelling. It is those assets whose meaning and value defies all attempt at translating into monetary terms. I call these "non-commodity assets." I have in mind assets like ancient Indian burial grounds. What distinguishes such assets from others is the fact that their core purpose is not to enable their owners to satisfy personal preferences but to create a sense of identity for their owners, individual or collective. Such assets merit greater protection, through specific restitution rather than through monetary compensation, precisely because money cannot compensate for what has been lost, namely, a sense of self or identity.

The case for specific restitution of non-commodity assets faces several possible objections, not all of which can be addressed here. One that merits attention now, however, is the question how one can distinguish commodity from non-commodity assets. There is no obvious means by which objectively to determine which assets are so essential to self-identity that they legitimately warrant protection through specific restitution. One approach worth serious consideration is to distinguish between individually-owned assets and group-owned assets. It is at least arguable that no individually-owned asset should not be treated as a non-commodity asset because to do otherwise would create a serious risk that many former owners

will claim that their ancestral property are non-commodity assets. It does not seem at all far-fetched to suppose that there are many former owners of farms, family homes, heirlooms, and similar assets who sincerely believe that these assets, just because they have passed down through several generations within the family, are integral to their sense of self and personal identity. Without necessarily denying the legitimacy of these beliefs, such claims should not be single out for special treatment. Doing so would create a serious risk that the entire system of reparations will be burdened by such claims. There is simply no objective basis for determining whether one such claim is legitimate while another is not.

One can, however, objectively distinguish between individually-owned and group-owned assets with respect to their status as a non-commodity assets. There is more likely to be a continuing connection between a particular asset and a sense of identity in the case of group assets. As Jeremy Waldron has observed, “Religions and cultural traditions we know are very resilient, and the claim that the lost lands form the center of a present way of life—and remain sacred objects despite their loss—may be as credible a hundred years on as it was at the time of the dispossession.”¹⁶ Precisely because the connection between specific assets and a group’s identity typically endures for long periods of time it is much easier to say with some sense of confidence that the asset is and remains a non-commodity asset. This seems especially so with respect to religious property. It is also likely to be true with respect to assets owned by “discrete and insular groups,” such as the native peoples of North America. In the context of claims such as these, the case for specific restitution seems much stronger than in other contexts. At least. Such a limited approach to specific restitution seems far less likely to arouse widespread public

¹⁶Waldron, *Superseding Historic Injustice*, p. 19.

resentment than a general program of specific restitution.

CONCLUSION

In this very brief paper I have suggested two reasons why reparations in the form of specific restitution for unjustly expropriated property should be awarded only in exceptional cases. Specific restitution is a unique form of reparations. It is neither the only nor the best means of recognizing the legitimacy of claims brought by the many victims of atrocities committed in the past half-century. The tragic fact is that no form of reparation can truly compensate those who have endured so much. We have only inadequate choices available to us.