Review

Enduring injustice

Jeff Spinner-Halev

Cambridge University Press, Cambridge, UK, 2012, x+236pp.,
\$99 (hardback)/\$28.99 (paperback), ISBN: 978-1107017511

Contemporary Political Theory (2015) **14**, e8–e11. doi:10.1057/cpt.2014.32;
published online 28 October 2014

No country's history is free of injustice. How should we think about and respond to past injustices? In his characteristically clear-eyed way, Jeff Spinner-Halev argues that the history of injustices matters not so much as a way of determining responsibility for the injustices or shaping our collective memories of them but rather because it enables us to understand the effects of the injustices and how to overcome them. He engages deeply with liberal political theory in order to show the limits of liberal solutions to what he calls the problem of 'enduring injustice'.

It is hard not to be sympathetic to Spinner-Halev's claim that we should move from the idea of historical injustice to enduring injustice. The problem of enduring injustice, as he frames it, has both a historical *and* a contemporary component. The concern is not only that people suffered injustices in the past but also that they continue to suffer injustices (p. 58).

Causality is a central concern for those who want to ameliorate enduring injustice. On this point, specifically with respect to the role of causal arguments – as to how injustices came about and why they persist – Spinner-Halev's account is ambiguous. He introduces the idea of causal arguments in discussing the collective narratives of groups who have suffered injustice; the source of injustice is a part of the collective narratives of groups. He concedes that causal arguments are hard to prove but nonetheless maintains that we can make 'reasonable suppositions' about causality, such as the causal role of government policies in the current suffering of Native Americans. As he puts it, 'there is a clear and strong connection between the past injustice and the current injustice, even if we cannot say what the course of history would have been without the injustice' (pp. 59–60).

While acknowledging the role of causal arguments at the level of group narratives, Spinner-Halev backs away from them when he turns to discuss the idea of responsibility. He says he loosely follows Miller's (2001) view, which distinguishes among: (i) causal responsibility, (ii) moral responsibility, (iii) remedial responsibility and (iv) responsibility in virtue of membership in a community that has inflicted or

that has suffered the wrong. The general idea that Spinner-Halev adopts from Miller is that the idea of responsibility is not necessarily tied to causality, viz I can be responsible for something that I have not caused. Consider natural disasters, which have no causal agents, though their consequences are influenced by government policies. Or, I can be causally responsible for an event without being morally responsible: if I accidentally trip and knock you down, I am causally but not morally responsible. When it comes to enduring injustice, Spinner-Halev views remedial responsibility as primary: 'Instead of first finding the responsible party for an enduring injustice, I suggest we first look to see who is best able to repair the injustice' (p. 83).

By minimizing causal considerations, Spinner-Halev's approach raises two problems. First, in cases where we can make 'reasonable suppositions' about the agents and acts that have caused the enduring injustice, why shouldn't we begin with causal responsibility? Spinner-Halev is dismissive of causal responsibility: 'Determining who is [causally] responsible for the injustice is beside the point, since that does not necessarily tell us who is responsible for ending the injustice' (p. 113). While I agree that causal responsibility is not the only basis upon which to determine remedial responsibility, where 'reasonable suppositions' about causality can be made, why shouldn't we link causal and remedial responsibility? If so, how should they be linked?

Second, jumping straight to remedial responsibility also has the unfortunate effect of minimizing what Spinner-Halev says is a central part of the 'collective narratives' of groups that have suffered enduring injustices. Groups themselves have their own stories about the agents and actions at the source of the injustices they face. Spinner-Halev himself says that collective narratives must play a key role in determining what the remedies appropriate to enduring injustice are. So why shouldn't causal arguments be a central part of the process of responding to enduring injustice, especially if we agree with Spinner-Halev that the non-identity problem – that the person claiming injustice would not exist if the injustice had not occurred, thereby casting doubt on the claim of injustice and any related demands for remedy – is not a serious problem to making causal arguments?

As part of this discussion, Spinner-Halev also develops a model of political responsibility, which holds that not only members of a political community but also all 'those who share space' have certain shared responsibilities toward one another (p. 113). What does it mean to share space? On his account, it includes 'those who inhabit a political community'. It also includes 'descendants of a community who once lived in a place but were expelled' or killed. In such cases, the current members of the political community 'should acknowledge that the space it now inhabits is in some way *shared* by others', and what is done with the land should be decided with the descendants' 'view of this land in mind' (p. 114). There are some implicit distinctions here that should be made explicit.

First, Spinner-Halev suggests that one can 'share space' not only by physically inhabiting the territorial space of a political community but also by having

attachments and identities constituted by memories of having inhabited a territorial space. The distinction here is between physical inhabitation and collective memory and attachments derived from stories of inhabitation.

Second, he suggests a distinction between political responsibility based on *formal membership* in a political community and political responsibility based on shared or at least overlapping *collective narratives* that transcend the boundaries of territory and formal membership. To use an example Spinner-Halev returns to many times in the book, we cannot comprehend and respond to the problem of exile without taking a broader view of 'political responsibility' that goes beyond present day formal membership in the political community.

Both these distinctions help make sense of what it means for political exiles to 'share space' that they no longer inhabit.

Spinner-Halev's book also speaks to the ongoing debate between defenders and critics of multiculturalism and group rights, specifically to the question of vulnerable internal groups. These include women, children, sexual minorities and religious dissenters. This is the problem that Eisenberg and Spinner-Halev (2005) call the problem of 'minorities within minorities' in their important contribution to this debate. The term 'minority' is intended to reflect the relative status and power of the group rather than its numerical strength. The point of view of the liberal state is well-represented by liberal theorists of group rights, and the perspective of women within minority groups has been represented by a number of feminist theorists, including Susan Okin, who answered an unqualified yes to the question 'Is multiculturalism bad for women?' Spinner-Halev's instructive intervention here is to foreground the point of view of historically oppressed groups, which he believes has been neglected in the crossfire between multiculturalists and feminists. He complicates existing liberal responses to this problem by questioning the legitimacy of the state that is supposed to be securing the rights of members of vulnerable groups.

Spinner-Halev argues that 'when an oppressed group uses its autonomy in a discriminatory way against women it should not simply be forced to stop this discrimination' (p. 147), given the role that the state has played in creating and sustaining enduring injustice among historically oppressed groups. He rightly takes feminist critics of group rights to task for assuming that the state is the best or only guarantor of equal rights. Even if we are troubled by Native American tribes' patrilineal membership rules as in the case of the Santa Clara Pueblo (which maybe we shouldn't be, he suggests), why should we assume that the state is the proper authority to limit tribal authority? As he puts it, 'why does the court of the oppressors have legitimate authority over Native Americans?' (p. 155)

What alternative does Spinner-Halev offer? He clearly rejects state intervention aimed at securing liberal rights when the groups in question have suffered enduring injustice at the hands of the state. Nor does he rely, as some liberal theorists have, on the idea of exit: that so long as members of a group can leave we need not worry about the group's internal practices. Instead, he offers what he calls a 'democracy

procedure proposal': 'groups that are victims of enduring injustice and have some autonomy ought to have their rules and laws established by the community as a whole (if small enough) or by democratically accountable representatives. This does not insist that the rules they choose are liberal' (p. 165). His democratic proceduralist approach is adamantly not 'liberal justice'; it 'does not insist that women are in charge, or that women must be elected. The proposal allows the communities themselves to decide how they want to shape their own traditions, instead of a few unaccountable leaders doing so' (p. 166). His approach is a more 'minimal' standard than 'imposing liberal justice'. What his approach requires is, at minimum, ensuring 'participatory rights' for all group members.

It is worth emphasizing that even the most minimal of democratic proceduralisms requires *equal* rights of participation for all group members and that the pursuit of political equality is still a substantively demanding standard. So we might pose to Spinner-Halev the same question he poses to feminist critics of multiculturalism: Who is to ensure genuinely democratic decision-making processes within a group that enjoys partial sovereignty?

Spinner-Halev warns against progress narratives, but he seems to assume one of his own when he says his democratic proceduralist proposal 'is already implemented in most tribes'. He does not provide any evidence to substantiate this claim. The question remains: In cases where the group enjoying partial sovereignty fails to ensure equal participatory rights to some group members, what is to be done? My lingering feminist worry is that Spinner-Halev's approach will say there is not much to be done, except to hope that the group will change on its own.

References

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