

## APOLOGY, REPARATIONS, AND THE QUESTION OF INHERITED GUILT

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In 1988 the United States Congress apologized to the Japanese-American community for the internment, seizures of property, relocation, and less than honorable discharges of Japanese Americans during the second World War. Arpad Göncz, the President of Hungary, apologized in 1992, "in the name of the Hungarian nation" to foreign university students who had been assaulted by Hungarian skinheads earlier that year.<sup>1</sup> In 1993, then Prime Minister of Australia Paul Keating delivered a public expression of repentance for the many injustices committed by the Australian government against Aboriginal peoples.<sup>2</sup> In 1996 the President of Portugal apologized for a forced conversion of Jews to Christianity in the fifteenth century.<sup>3</sup> The last fifteen years have witnessed an unprecedented number of public apologies on behalf of one group for wrongs suffered by another. We might add to the list apologies by the Pope for past actions of the Catholic Church, by European heads of state for treatment of Jews during the Holocaust, by the Japanese government for treatment of Korean women during the second World War, by the Southern Baptist Church for complicity in regard to slavery in America, and a variety of other examples.

Most of these incidents were preceded and in some cases followed by strong protests and refusals to apologize. In 1992 the Canadian Indian Affairs Minister refused to apologize for the 1950's Canadian forced relocation of seventeen Inuit families from Quebec to the High Arctic.<sup>4</sup> Australian Prime Minister Howard "'apologized' personally but rejected a formal apology" on behalf of the nation to Australia's "Stolen Generation."<sup>5</sup> President Clinton was widely criticized in 1998 for choosing not to apologize for American slavery.<sup>6</sup> There are a number of reasons for these protests and refusals. Some are distinctively political. There is widespread concern that official apologies will open the door for lawsuits to be filed by representatives of the wronged group who are demanding compensation, and there is sufficient precedent for such

concern to be reasonable. On the other side, there is concern that once an apology has been offered there will be no further action to improve the condition of those who suffered harm. In other words, the fear is that the apology will amount to mere lip service, and that the apologizing group will assume it no longer has any obligations to those who were wronged.<sup>7</sup> Other reasons have to do with the appropriateness of such apologies. Does the one apologizing have the proper standing in relation to the misdeed to apologize for it? Does the apology imply that all members of the group on whose behalf the apology is offered are guilty? It is with questions of the latter sort that we shall be concerned in what follows, viz., the implications and appropriateness of group apology. In particular, we shall attend to the appropriateness of a Congressional apology to the African American community for slavery and the institutionalized racism that followed in its wake, as well as what such an apology might entail.

#### APOLOGIZING

An apology is among the class of speech acts that John Austin calls a performative utterance. Unlike constative utterances, which merely accompany an action, performative utterances are constitutive of an action. It is not that I apologize and, along with it, say, "I apologize," in the way that one might be running and say, simultaneously, "I am running." Rather, it is by saying, "I apologize," under circumstances of the appropriate sort, that I apologize. The utterance performs the deed.<sup>8</sup>

Of course, much is hidden in the gloss "under circumstances of the appropriate sort." What do such circumstances entail? At the structural level, (1) there must be an accepted convention of apologizing, (2) words conforming to the convention must be uttered by (3) speakers conforming to the conventional procedure with (4) attitudes or intentions conforming to the procedure in (5) circumstances conforming to the convention. When, as in the case of apologizing, the convention entails an indication that one will conduct oneself in future in a certain fashion, then we might add (6) the speakers "must actually so conduct themselves subsequently."<sup>9</sup> When objections are raised against group apologies, sometimes the objections are directed at (1). The concern is that, while there is a convention for individual apologies for individual actions, there is not a conventional practice of group apology. However, the spate of collective apologies in the 1990s is evidence of the existence of such a convention, which, if it did not exist prior to this point, has now emerged.<sup>10</sup> Those who object to the existence of the convention must do so, therefore, as a result of concern that group apologies, either individually or as a class, are unable to meet one of the other

structural requirements for apologizing. Let us, then, look at the conditions pertinent to (3) speakers, (4) attitudes/intentions, (5) circumstances, and (6) subsequent conduct that should be met in the case of an apology, so that we are better situated to appreciate the concerns relevant to public apologies in general and to an apology for slavery in particular.

Typically, the person who apologizes was in some way responsible for the harm or offense suffered by the one receiving the apology. This responsibility can come by way of what one has done. The speaker may have hit another motorist. Or she may have maligned someone being considered for a job at her company. Responsibility may also come by way of what one has failed to do. One may have failed to remember one's anniversary. One may have failed to ask for a friend's keys at a party when one knew that he had drunk too much to be safe on the road. Or one may have remained silent when hearing a job applicant maligned by a co-worker, even when one knew that what was being said was false or misleading.

If one does not stand in this relationship to the action or event for which one is apologizing and to the person or persons to whom one is apologizing, then one is misguided or mistaken in one's apology. If Josh's college roommate submits a plagiarized paper for his assignment, and Josh is unaware of his roommate's actions until after the fact, he would not be in a position to apologize for the plagiarism. Not only is Josh not obliged to apologize for this action of his roommate, he is unable to do so. Josh does not bear the right relation to the offense. Likewise, if Josh's roommate apologizes to the dormitory custodian, rather than to his instructor and classmates, then the apology is misdirected. Just as it is not Josh who is responsible for the wrong, it is not the custodian who has suffered the wrong. Under either sort of condition, the apology misfires.<sup>11</sup>

There are a few apparent exceptions to this rule.<sup>12</sup> Sometimes when we say "I'm sorry so-and-so acted as he did" we are not apologizing at all. We are using "I'm sorry" in one of its other common roles, either as an expression of sympathy or of regret. In other cases, the language of apology distances the speaker from responsibility for the wrongdoing. When the daughter "apologizes" for her father's insensitivity, she lets the one wronged know that, in spite of the close connection between herself and her father, the wronged ought not assume she endorses her father's actions. Unlike these two uses of the language of apology, there is at least one type of context where one may genuinely apologize in relation to someone else's behavior. As in the daughter-father example above, in these contexts we are so closely connected with the wrongdoer that we are identified with one another. What is added to these contexts that was missing in the daughter-father case is an element of responsibility for the actions of the wrongdoer. A daughter is not generally

morally responsible for her parents' actions. A parent, however, is responsible to some extent for the actions of his children. The level of responsibility diminishes as the child becomes more independent and comes to be seen as a responsible moral agent in her own right. In the case of a child's misbehaving, then, a parent does seem to be in a position to apologize for another's wrongdoing. Similarly, perhaps, a commanding officer might apologize for the misdeeds of a subordinate. What is interesting about such cases is that what the parent and the commanding officer offer may not be precisely an apology for the wrongdoing of the agent for whom they are responsible. It may instead be an indirect apology for failing to fulfill all of their perceived responsibilities for insuring that those in their charge act in an appropriate fashion. At any rate, such apologies involve taking responsibility, either directly or indirectly, for the wrong done.

We commonly apologize both for peccadillos and for serious wrongdoing. If one joins a queue in the middle because one is mistaken about where it ends, one may apologize to those in front of whom one has cut, saying something like, "I'm sorry, I did not realize the line continued around the corner." However, in such a circumstance, although we have employed a common formula of apology (*viz.*, I'm sorry), it would be more precise to say one has offered an excuse rather than an apology for one's actions. The line between these two practices is blurred both by the employment of shared locutions and by the fact that we may in one and the same speech-act both apologize for one part of our action and attempt to excuse another part. Thus, one may excuse oneself of malicious wrongdoing at the same time that one apologizes for culpably ignorant wrongdoing. Nevertheless, traditionally an apology implies an admission of guilt. It is because of an apology's implicit admission of guilt that so much energy was expended in the wording of an official statement issued by the United States government to China in regard to a midair collision between a Chinese military jet and a U.S. spy plane on April 1, 2001. In an attempt to smooth international relations, language was selected that could convey the sentiments of an apology in Chinese without carrying the connotations of an acknowledgement of guilt in English. The crafting of the statement required care and was surrounded by controversy not because of the possibilities of erroneous translation, but because of an apology's implied admission of guilt.<sup>13</sup>

If one does not accept the guilt implied by an apology (or at least offer the pretence of so doing), the result may be an expression of regret, but not an apology. One may express regret without admitting culpability. Generally one expresses regret when one is causally but not culpably involved in a situation that resulted in harm to another. An expression of regret registers that a course of events had an undesirable

outcome, thereby evaluating it in reference to the matrix of good and bad, without taking a moral stand, i.e., evaluating it in reference to the matrix of good and evil.

Closely related to the U.S. "apology" to China is the issue of the attitudes or intentions that are appropriate to an apology. Erving Goffman, discussing what he calls "remedial exchanges," offers a description of apology that highlights the attitudinal and intentional elements of apology.

In its fullest form, the apology has several elements: expression of embarrassment and chagrin; clarification that one knows what conduct had been expected and sympathizes with the application of negative sanction; verbal rejection, repudiation, and disavowal of the wrong way of behaving along with vilification of the self that so behaved; espousal of the right way and an avowal henceforth to pursue that course; performance of penance and the volunteering of restitution.<sup>14</sup>

Goffman's analysis identifies as features of "apology in the fullest form" the attitudes of embarrassment, chagrin, and sympathy with a retributive attitude toward oneself (reflected in repentance or remorse) along with the intention to act rightly in future, do penance, and offer restitution.<sup>15</sup> However, not every apology is as full as Goffman's exemplar. As Goffman's own wording suggests, there is a noticeable gulf between expressing an attitude and feeling it. Kathleen Gill, J. Harvey, and others are inclined to make attitudinal states like regret, remorse, and sincerity necessary conditions of apology.<sup>16</sup> However, while apologies lacking such attitudinal states may be morally deficient, we are not generally inclined to say they fail to be apologies.<sup>17</sup> If we learn that the wrongdoer who apologized to us lacked the appropriate attitudes, we may criticize her on the grounds that she "didn't mean it," and it is no longer likely to have the reconciling effect at which it aimed. It does not fall short of being an apology in the way that an excuse does. Just as a lying promise does not, thereby, fail to be a promise, an insincere apology does not fail to be an apology. It is merely an "infelicitous" one.<sup>18</sup>

In an apology one indicates one's intention to refrain from similar actions in future. An apology which ran, "I'm sorry for what I did, but I should tell you that I have every intention of acting in similar fashion in future," would ring hollow in our ears. It would seem so empty as to cause us to question whether it counted as apology in the first place. Perhaps it has so explicitly deviated from the implicit conditions of an apology that it would fall beyond the pale. However, were the last clause to remain unexpressed, we would have a case like that of insincerity. The absence of the appropriate intention, of itself, provided it is not articulated, would not prevent the employment of conventional language

in the conventional context by the wrongdoer from being an apology. It would be an infelicitous apology, but it would be an apology nonetheless.

So far we have considered the speakers, attitudes, intentions, and circumstances that pertain to apologizing. What about (6), the subsequent conduct? There are two types of subsequent conduct of special relevance to the convention of apology. The first type of conduct includes actions that may be considered part of the performance of apology. Acts of penance and reparation would fall in this first class. The second type of conduct is not so much part of the performance of apology as it is a mark of the felicity of the apology. Let us consider these two classes of subsequent conduct in turn.

Reparation aims, insofar as one is able, to right a wrong.<sup>19</sup> It is an attempt to restore the person wronged to something like the condition they were in before the wrong occurred or to the condition they would have been in had the wrong not occurred. The process of repairing the damage caused by wrongdoing is always only approximate. Seldom can the damage of a misdeed be easily mended. Perhaps the most direct situations to repair involve theft. The stolen item can be returned. Property damage is next in order of ease of restoration. A broken window can be replaced. A dented fender can be repaired. Some items are exceptions, e.g., family photos, heirlooms, objects of sentimental attachment, pieces of art, but in our day of mass production, most things can be fixed or replaced without much trouble. Nonetheless, even in these cases, there are aspects of the social fabric that cannot be so easily restored. The feeling of security that the victim of vandalism has lost is not repaired by the fresh coat of paint and replaced windows. The breach of trust that the embezzlement involved is not mended by the return of the stolen funds. The damage inflicted by more serious crimes is often irreparable. In such cases reparation is necessarily incomplete. One does what one can to ease the victim's suffering, with the all-too-evident awareness that the past cannot be undone.

To some extent we may be inclined to think of reparation as an act that is distinct from apology. We apologize and *then* we make reparation. Or we return the stolen object and *then* we apologize. However, on closer examination, the lines separating reparation and apology fade. Often reparation is an obvious element of apology. We hand the neighbor a check for the window we broke playing ball as we say, "I apologize for breaking your window." Here offering repayment is part of the apology. We can imagine cases where the offer of the check is the act by which we apologize. It is the third time my lawnmower has projected a stone through your window, and with apologetic demeanor I hand you the check. Here the offer of reparation just *is* the apology. Conversely,

the failure to offer reparation can prevent an action from being an apology. "I'm sorry I stole your paycheck, but I'm not giving it back, even though I am able" would fall outside the parameters of apology. A locution of this sort is not merely infelicitous, in the manner of an insincere apology: It misfires altogether. Our assumptions regarding the distinctness of reparations and apology stem, it would seem, from cases where we are unable to restore what was lost, where the locution of apology is necessarily separated in time from the mending of what was damaged, or where the offense was trivial and reparation unnecessary.

Penance is less immediately connected with apology than reparation. Penance involves going beyond reparation, taking steps that demonstrate how seriously one takes one's offense and how highly one values the relationship that one's actions have damaged.

The giving of the costly gift does not have the function of making clear something which was true whether or not the agent made it clear, that he meant the apology. Rather, it is a performative act whereby he disowns his wrong act (in a way which mere words do not do, where the wrong is a serious one). By doing his act of disowning, by doing something which costs him time, effort and money, he constitutes that act as a meant and serious act. To give what we cannot too easily afford is always a serious act. The penitent constitutes his apology as serious by making it costly.<sup>20</sup>

Unlike reparation, penance is never a necessary part of apologizing. This lack of necessity is part of its effectiveness. The penitent does more than is required, in order to demonstrate repentance, reform, and the desire for reconciliation. In so doing, he constitutes (if the penance accompanies the locution of apology) or continues (if the penance follows the locution) his apology, underscoring the victim's importance and the wrongdoer's sincerity.

Even more distant than the connection between apology and penance is that between apology and "consequential conduct."<sup>21</sup> Implicit in an apology is the claim that the wrongdoer intends not to act in this fashion toward the victim in future. The sincerity or abuse of the convention of apology is disclosed in the wrongdoer's subsequent actions. The connection between apology and consequent conduct is analogous to that between promise and fulfillment. In certain respects, the connection in the case of apology is taken to be even stronger. If someone breaks a promise, we are not inclined to say "She did not really promise *x*, she merely uttered the words." But in the case of apology we are occasionally inclined to say exactly such a thing: "She went through the motions, but she didn't really apologize."

## WHY THE UNITED STATES SHOULD NOT APOLOGIZE FOR SLAVERY

There are a number of objections that might be raised against Congressional apology for American slavery. The first kind of objection is concerned with structural feature (3). None of us considering whether we should apologize for slavery shackled Africans and their descendants, purchased or sold them, or forced them to work for us without compensation. We did not vote to permit the continuation of slavery in Southern states even after its abolishment in the North. We did not vote to retract Sherman's promise of forty acres and a mule to the newly emancipated slaves. Many of us did not legalize, enact or participate in "separate but equal" policies designed to exclude African Americans from the practices and institutions of civil society. Thus, it would seem we do not stand in the right relation to the offense for us to offer apology. If the apologizer is supposed to be responsible for the harm or guilty for the wrong, then we are unable to apologize even if we want to do so, for we had not yet seen light of day at the time of the offenses.<sup>22</sup>

A second objection stems from concerns about the nature of collective agency. What is required for a collective to offer an apology? Can Congress or the President speak on our behalf? We are generally suspicious of apologies offered "on behalf of" someone else.<sup>23</sup> Even if we stood in the right relationship to the offense, there is concern that all the President or the members of Congress can do is offer individual apologies, rather than offering an apology from "We the People."

A third objection is relevant both to conventions regarding the speaker and to those regarding attitudes and intentions conforming to the convention of apology. How can a collective have an attitude or an intention?<sup>24</sup> Aside from a Neo-Platonic appeal to a World Soul or a Hegelian appeal to the Spirit of a Volk, it is hard to see what might have an attitude or intention relevant to collective apology. For those skeptical about invoking this metaphysical language as well as for those skeptical about invoking any metaphysical language, a collective apology will be unable to comply with the attitudinal and intentional requirements of a felicitous apology.

A fourth objection is closely related to the third. It suggests that even if it is possible to speak of a collective attitude, it is not clear that we want a collective apology to be accompanied by the attitudes relevant to individual apology. When we apologize, at least when we do so from genuine repentance, we separate ourselves from the self who perpetrated the misdeed. Jeff Murphy suggests that "the sincerely repentant person tortures himself—hates at least that aspect of himself that allowed him to engage in the wrong he now laments."<sup>25</sup> In cases of collective repentance, this self-hate poses two peculiar dangers. If we, as individuals,

are not responsible for creating, practicing or permitting slavery, then we find that in our repentance we vilify our forebears and overlook our own faults. Writing about national repentance in relation to England's involvement in the wars of the last century, C. S. Lewis drew attention to these temptations.

Since, as penitents, we are not encouraged to be charitable to our own sins, nor to give ourselves the benefit of any doubt, a Government which is called "we" is *ipso facto* placed beyond the sphere of charity or even of justice. You can say anything you please about it. You can indulge in the popular vice of detraction without restraint, and yet feel all the time that you are practising contrition. A group of such young penitents will say, "Let us repent our national sins"; what they mean is, "Let us attribute to our neighbor . . . in the Cabinet, whenever we disagree with him, every abominable motive that Satan can suggest to our fancy."<sup>26</sup>

One might think this danger was realized in Germany in the aftermath of the second World War. The atrocities committed during the war were attributed to a few visible individuals like Hitler, Eichmann, and Himmler. This attribution allowed people to ignore their own responsibility and to overlook the still-present conditions that made the war and its horrors possible. Thus, the collective repentance that should accompany a felicitous apology is likely to generate self-righteousness and self-deception, rather than true contrition.

A fifth objection takes up the issue of the one to whom the apology is offered. Not one of America's former slaves is alive today. Assuming we were able to satisfy the other structural features of apology, this condition remains unmet: There is no one to whom we may properly apologize.<sup>27</sup>

The question "To whom should we apologize?" raises a further issue, closely related to worries raised by Samuel Wheeler and Janna Thompson.<sup>28</sup> The worry arises from observing that, among other things, a sincere apology amounts to saying something like, "I wish the deed in question had never been done."<sup>29</sup> However, the existence of the descendants of American slaves depends upon the actions the apologizer says she wishes had not happened: "African Americans who presently exist would never have been born if their ancestors had not been abducted and forced into slavery."<sup>30</sup> It would be troubling, and unlikely to promote reconciliation, if an apology implied the wish that the one to whom we are apologizing had never existed.

Finally, regarding feature (6), if we have no intention of making reparation, doing penance, and acting justly in future, then the offer of an apology is infelicitous. We might offer an expression of regret for the sins of our fathers and the suffering they produced. But while an apology absent reparation may be an apology in form, it is not one in substance. If it will ring hollow for all who hear it, if it is only for show

or to ease the consciences of a few bleeding hearts, then offering an apology is likely to do more harm than good and should be avoided.

The remainder of this paper shall limit itself to the question of our standing in relation to the guilt of slavery. The preceding analysis suggested that in order to apologize one must have the proper standing in relation to the wrongdoing in question. Without the establishment of a relation to the guilt of slavery, the other objections to a Congressional apology do not get off the ground: there would be no practice against which to voice an objection. Those who took themselves to be apologizing would be engaging in some other social practice which would need to be analyzed in its own right. To determine whether a Congressional apology is appropriate, then, we shall need to consider the guilt relevant to American slavery.

### GUILT

Implicit in the first objection to a Congressional apology for American slavery is a concern about whether we are guilty for the sins of our parents. If we were not responsible for the wrong, can we bear guilt in relation to it? Echoing Australian Prime Minister Howard's sentiment, many voice the thought that Americans "of this generation should not be required to accept guilt and blame for past actions and policies."<sup>31</sup>

Our day to day usage of "guilt" commonly refers to two conditions. On the one hand, "guilt" designates someone's standing in relation to the rest of the moral or political community. A person who has violated a moral or legal norm is guilty in this sense. In all but the most trivial cases, someone who is guilty in this sense will need to do something (such as apologize, make amends, pay a fine, etc.) to be reinstated by the community. This is often called "objective guilt." If a legal norm was violated, it is legal guilt; if a moral norm, then it is moral guilt. On the other hand, sometimes the guilt of which we speak is a feeling, an emotion that often accompanies our judgment that we are guilty in the first sense. This may be deemed "psychological guilt."<sup>32</sup> In what follows, the word 'guilt' shall only be used in the first of these two senses. Our concern is with objective rather than psychological guilt.

Within objective guilt we often make a further distinction between guilt with fault and guilt without. In law this distinction is reflected in the categories of offense that require *mens rea*, and those that do not. In morality, Richard Swinburne has tried to capture this distinction by employing the label subjective guilt: "An agent who fails to try to fulfill his obligations is subjectively guilty."<sup>33</sup> We may have objective guilt with or without subjective guilt. As Swinburne's examples illustrate, often the distinction rests on differentiating between an action's consequences and the

agent's intentions. However, attending to the difference between consequences and intentions does not fully capture the distinction. Here the model penal code may be helpful in explaining the range of possibilities. Consider a situation in which Rich breaks Amy's vase. He may do so purposely, making it his aim to break the vase. Or he may have engaged in another activity, knowing full well that by so doing he would certainly break the vase, e.g., he is helping Amy move into a new house and, although he realizes that carrying the couch in the current trajectory will lead to a collision with the vase, he doesn't care. Alternately, in transporting Amy's things from her apartment to her house, Rich might place the vase on the backseat of his car without attempting to secure it in place, prevent it from rolling onto the floor, or keep other things from falling on it. In this case he would not have broken the vase purposely or knowingly, but rather recklessly. A fourth way in which Rich might break Amy's vase is through negligence: During a commercial in the broadcast of the Texas-Stanford game he jumps up from the couch to get another beverage and rather clumsily knocks the vase off the end table. Each of these cases invites us to judge Rich's guilt differently. He displays a different kind of *mens rea* in each circumstance. But, while his subjective guilt is different in each case, he is subjectively guilty in all four circumstances. The difference between consequences and intentions does not capture the difference between objective and subjective guilt in these instances. It is not the case that the objective guilt remains the same in each case, viz., the guilt of breaking the vase, but the subjective guilt changes from one example to the next. The objective guilt in each situation changes as well. We do not just have an obligation not to break friends' vases. We might think we have a number of obligations pertinent to friends' vases, which include the obligation not to break them purposely *and* the obligation not to act recklessly around them (even if we do not end up breaking them), etc.

By contrast with the four examples of subjective guilt considered above, there is also the case where one is objectively guilty without being subjectively guilty. Swinburne speaks of "purely objective" guilt "arising from the performance of an unintentional act in performing which there was not even the slightest negligence involved (for instance, dropping your best vase, when startled by a loud noise)."<sup>34</sup> There is still guilt, for "in interacting with others we accept responsibility in advance for not causing them certain kinds of harm (e.g., in handling your vase, I accept responsibility for not damaging it)."<sup>35</sup> But there is not subjective guilt.

Although we regularly make judgments relevant to this distinction in objective guilt between objective guilt with and objective guilt without subjective guilt, our intuitions in such matters are not entirely uniform. Sometimes we are inclined to say that the person who broke

the vase without *mens rea* is innocent, and sometime we are inclined to speak of him being guilty of breaking the vase but without fault. The following discussion employs the wider notion of guilt, which includes both subjective and purely objective guilt. This is because even purely objective guilt is sufficient grounds for offering an apology. We apologize for unintentionally breaking the vase, because we are responsible for breaking it, even though we did so without malice. In such a case we may not see ourselves as deserving of punishment, but we do find ourselves in a place where we feel obliged to compensate the friend for what we have broken.

#### ANTEBELLUM GUILT

Many of the most vexing moral questions that surround the issue of reparations for American slavery arise from the temporal distance that stands between Lincoln's "Emancipation Proclamation" and the present. There is little dispute that slavery is a morally objectionable institution. According to our current moral and legal standards, someone subjected to forced labor without pay would be entitled to compensation. Further, the perpetrator of such a crime should and would be fined and incarcerated. That is to say, he would be punished. However, when these activities are placed in the past, our moral intuitions regarding them become a bit less certain.

One source of complications arises from the fact that slavery was a widespread social practice. This was true both geographically and historically. Some form of enslavement had occurred in the history of every inhabited continent. Using the lives and labor of others without compensation was a widespread and ancient practice that had been accepted by even the most "civilized" and "ethical" cultures. It would be hasty to draw from these observations the conclusion that, under the circumstances, slavery was not morally objectionable. The longevity of a practice should not be confused with its legitimacy: Evil is as old as human history. Nor does the number of people who accepted the practice validate it: "Everybody was doing it" does not a justification make. What is raised by the wide acceptance of the practice is the question "*How* guilty were the slave owners?"

It is clear that slavery inflicted undeserved harm on a vast number of people. To the extent that their slaves were harmed by being enslaved, slave owners were guilty. However, as we observed above, we are also concerned about the actor's motives in acting as she did. Did she know that what she was doing was wrong? Should she have known? The agent who knew that what she was doing was wrong and did it anyway is thought to incur more guilt than the one who performed the same deed without

knowing it was wrong. Similarly, the wrongdoer who should have known better is thought to incur more guilt than the one who, through want of education or deficiency of upbringing, would not be expected to know better. Since "our deeds escape us" by way of consequences we did not expect or motives of which we were unaware,<sup>36</sup> our intentions are not the only things about which we care when determining moral guilt. But they are one of the things we consider relevant to an actor's guilt.

If these common distinctions between the guilt of agents who act with different states of mind are legitimate, then we would need to leave open the possibility that some slave owners were guiltier than others. Some slave owners added cruelty and violence to their wrongdoings, while others were so-called "benevolent" slave owners, who, by comparison with the former sort of slave owner, treated slaves with kindness. But the difference in guilt between kind and cruel slave owners is only one of the differences in moral guilt between slave owners. There is also the difference between two slave owners who treated slaves in a comparable manner, one of whom knew that owning slaves was wrong and one of whom was ignorant of this fact. The latter individual is also guilty, insofar as he enslaved others, but his guilt is of a different sort. In contrast with the former's knowing wrongdoing, the latter is marked by what Karl Jaspers describes as "the guilt incurred by a false conscience."<sup>37</sup> Even if they acted with what they took to be a clear conscience, slave owners in America should have known better.<sup>38</sup> As James Grahame pointed out in 1842, and he was by no means the first to do so, they stood condemned by the Declaration of Independence and by their pride in being "the people by whom civil and political liberty has been most justly and nobly appreciated, and most gallantly achieved, and most faithfully and successfully cultivated, preserved, and extended."<sup>39</sup> Nonetheless, the widespread acceptance and governmental support of the institution of slavery may have kept many slave owners from knowing or acknowledging that they were doing wrong. Attributions of moral guilt to slave owners would need to account for such differences in culpability.<sup>40</sup>

To this point, it has been suggested that *slave owners* were morally guilty, both those who knew that they were doing wrong and those who were ignorant of their guilt, the "benevolent" as well as the cruel slave owner. They were not equally guilty: Some were guiltier than others. But, to the extent that depriving other persons of liberty and deriving benefits at others' expense are wrong, all slave owners were guilty. Were slave owners the only Americans who were guilty in relation to slavery? There is reason to think of all Americans who lived in this country prior to 1865 as having dirty hands.<sup>41</sup> There are a variety of ways in which non-slave-owners might have incurred guilt for slavery in Antebellum America. I will highlight three.

First, there is "the guilt of passivity." Karl Jaspers observes that "passivity knows itself morally guilty of every failure, every neglect to act whenever possible, to shield the imperiled, to relieve wrong, to countervail."<sup>42</sup> The federal government endorsed the institution of slavery, even after many states had eliminated it. Such an endorsement entailed the guilt of those members of Congress who did not oppose the continuation of enslavement in the states. It entailed the guilt of those in their constituencies who remained silent, who did not speak up and act up in opposition to slavery. Perhaps it will be objected that the elimination of slavery required a war which demanded hundreds of thousands of American lives: Surely, "no moral law demands a spectacular death."<sup>43</sup> However, even if the latter claim is granted, much more could and should have been done to curtail and oppose slavery in the United States before the Civil War. Many Americans turned a blind eye to the suffering and degradation endured by millions of human beings<sup>44</sup> within this country who were bound by steel and law to serve the whims of another. They remained inactive in the presence of injustice. As a result, most Americans incurred the guilt of passivity.

Second, there is the guilt of those who reap the benefits of an unjust situation. If the food I am eating is stolen from another, I am guilty, even if I am not the one who stole it. This is especially true if I am aware of its mode of acquisition. If I run an auto body repair shop and use materials from stolen vehicles, I am guilty of illegitimate gain at another's expense. If I run a textillery using cotton harvested with stolen labor, the same principle would seem to apply. America's economy, both north and south, was so heavily dependent on slave labor, that this second type of guilt would bring nearly every American in the eighteenth and nineteenth centuries within the web of guilt associated with the institution of slavery.<sup>45</sup>

There is a third type of guilt that is interestingly different from the first two. The types of guilt discussed heretofore are each a kind of personal guilt. Individuals are guilty for what they, as individuals, have done. It is often assumed that this is the only sort of guilt there is: "One can, after all, *bear* guilt only for one's own wrongdoing."<sup>46</sup> If we only lived our lives as individuals and never as members of larger groups with which we identify and by which we are shaped, perhaps personal guilt would be the only type of guilt we could acquire. However, much of who we are and what we care about is wrapped up with larger collectives. As a result, it should not be surprising if, in addition to *you* and *me* acquiring guilt, *we* also may be guilty.

We are members of a family, graduates of an alma mater, employees of a corporation, members of a professional guild, parishioners of a church, residents of a city, citizens of a country. Some of these memberships

factor more prominently in our sense of self than others. As a part of these groups we take pride in the accomplishments of others within the group. We take pride in the successes of the football team of our university, of athletes from our country in Olympic competition, of our soldiers in military conflict, of our authors who win Nobel prizes. At least in the realm of pride and shame, we identify with members of "our" group. "We" can be successful or unsuccessful. However, our identification is not just limited to pride and shame. We can also be innocent or guilty. "We the People" may engage in or refrain from unjust war. We may pay or fail to pay money that we owe to other countries. We may oppress or liberate citizens of our country and of other countries. If it is possible for a collective to fail to meet its obligations, then a collective may incur objective guilt. If it is possible for a collective to fail to try to meet its obligations, then it makes sense to speak of a collective incurring subjective guilt as well. Thus collectives, according to the language we have been employing, may incur guilt.<sup>47</sup>

If one grants the claim that a collective may be guilty, the question remains whether that guilt gets distributed to all of the members of the collective. Speaking of what he calls collective liability, Joel Feinberg identifies four different ways in which we might find a group liable.<sup>48</sup> First, a group may be held liable and this liability may be transferred to each group member even though some members of the group are not individually at fault.<sup>49</sup> A second way a group may be liable is through the contributory guilt of each of its members. Unlike the first type of group liability, in the second, each member of the group is at fault in one way or another, and it is in virtue of this collective individual fault that the group as a whole is held liable. If every member of the United States is guilty either through actively enslaving another or through remaining inactive even in the face of injustice, then the United States is guilty in the second way.

Alternately, a group may "be held collectively responsible through the fault, contributory or *noncontributory*, of each member."<sup>50</sup> This notion of collective liability lent its force to the court's decision in *Sindell v. Abbott Labs* to hold a group of pharmaceutical companies liable for the plaintiff's injuries even though she had been unable to establish which particular company was responsible for manufacturing the drug that led to her cancer. Since each of the companies had manufactured the product in question, they all bore the same standing, even though only one of the companies manufactured the particular anti-miscarriage pill taken by Judith Sindell's mother, and thus only one of the companies bore contributory fault in relation to the harm sustained by Ms. Sindell.

Finally, there is what Feinberg calls collective but not distributive contributory group fault. In relation to this last kind of fault, Feinberg

remarks, "No individual person can be blamed for not being a hero or a saint (what a strange 'fault' that would be!), but a whole people can be blamed for not producing a hero when the times require it, especially when the failure can be charged to some discernible element in the group's 'way of life' that militates against heroism."<sup>51</sup>

The nature of collective agency is such that all members of the collective are implicated in the guilt of the collective, at least as members of the *we* in question. However, guilt as *we* may not translate into guilt as *I*. Conversely, the aggregation of the guilt of *you* and *me* as individuals may not add up to all of the guilt of *us*. For our purposes, we need not choose among the four kinds of guilt as to which is most relevant to American slavery, although it seems plausible to think that all four might be relevant to antebellum guilt. Nor need we decide on the precise relationship between individual and corporate guilt. It is sufficient to note that it makes sense to speak of collective guilt. As long as it makes sense to speak of collective guilt in one form or another, then we will have met this condition of collective apology.

The United States sanctioned slavery in the southern states. It also employed slave labor in many of its construction projects.<sup>52</sup> Consequently, all citizens of the United States in the late eighteenth and early nineteenth centuries would have shared collective guilt for slavery. It is not yet clear whether this guilt could have been both subjective and objective. The answer to that question will depend on whether it makes sense to attribute beliefs, attitudes, and intentions to a collective. At present, it is sufficient to establish some level of objective guilt for slavery born by the United States.

#### TWENTY-FIRST CENTURY GUILT

The above reflections are, in many ways, but a prelude to the especially thorny questions raised by the call for apology and reparations for American slavery. After all, the concerns voiced by most opponents of apology and reparations do not stem from uncertainty regarding the guilt of slave owners and their contemporaries. Instead, their question is, Can twenty-first century Americans be held accountable for seventeenth-, eighteenth-, and nineteenth-century guilt? Offering what she takes to be the definitive refutation of any argument for reparations, a columnist for the *Chicago Tribune* writes, "So let's get this straight: We who have never owned a slave, who have never believed in or condoned slavery, who are not descended from anyone who ever owned a slave must pay people who have never been slaves? The search for logic in the reparations argument is futile."<sup>53</sup>

In general, demonstrating that one was not able to commit an act (e.g., because one was not present at the time and place the wrong was done) excuses one from accountability. If a person was not even born at the time the wrong was committed, she would seem to have an airtight case against being held accountable for it. The movement from the consideration of individuals to the consideration of a collective such as "We the People" appears to do little to improve the case of the apology and reparations advocate. Even if one grants that the nation is guilty, and not just individual members of the nation, there would seem to be a statute of limitations that is relevant to a case like this one.

In the case of individual identity, we often acknowledge that the passage of time may sufficiently alter the nature of a person to prompt us to think of the actions of her youth as the deeds of a different person. In most cases it would strike us as bizarre to ask an eighty year old to apologize for an act she committed as a youth. One reason it strikes us as odd may be an assumption we hold about the diminished responsibility of youths. Another reason may have to do with the lack of a perceived social need for apology: Most actions don't produce wounds that last for sixty years. But a third reason, which is relevant to our discussion, is the recognition that people change over time, both in ordinary and in extraordinary ways. It is this quality, together with the occasional failure to recognize it, that lends Victor Hugo's *Les Misérables* its force. Burleigh Wilkins, who expresses a measure of skepticism about many employments of "different person" language, observes:

The chancellor who embezzled the money is said not to be the "same man" as the one who reformed the university, but this seems just a dramatic way of underscoring the suddenness or severity of his lapse; by contrast the amnesiac who used to be a chancellor but remembers nothing of this or any other aspect of his previous life can much more plausibly be said not to be the same man he once was.<sup>54</sup>

When one is dealing with a collective agent, all of whose individual members have died off, the sameness of the agent in question appears even more tentative than in the case of the amnesiac. If one interprets the Civil Rights Movement and Affirmative Action under the rubric of a conversion experience, the appeal to a statute of limitations becomes yet stronger. Thus, in the case for apology, after establishing the historic guilt relevant to slavery, it will be necessary to offer an account of the transmission or continuation of guilt in the present. Are there resources in the tradition that can make sense out of transgenerational guilt?

## ENTITLEMENT IN ACQUISITIONS

The concept of guilt is often connected to the concept of indebtedness. The association of these concepts has a long history in the Western tradition. Nietzsche went so far as to claim, "The major moral concept guilt [*Schuld*] has its origin in the very material concept debts [*Schulden*]." <sup>55</sup> The connection Nietzsche observes between the concepts of guilt and debt does not depend on the semantic range of *Schulden*. Financial indebtedness has been one of the primary relations in terms of which the concept of guilt has developed and been understood in Western thought. It is also one of the primary relations in terms of which guilt for slavery has been discussed. <sup>56</sup>

Many of the arguments for both antebellum and contemporary guilt for American slavery assume a notion of property rights that received its classic expression in John Locke's *Second Treatise of Government*. <sup>57</sup> According to Locke, we obtain a right to property on the basis of the following reasons.

1. "Every man has a property in his own person: this no body has any right to but himself."
2. "The labour of his body and the work of his hands, we may say, are properly his."
3. When one removes something "out of the state that nature hath provided," one thereby mixes into the thing something new, viz., one's labor, to which no one else is entitled.
4. By so doing, one comes to have a property right in that thing, "at least where there is enough, and as good, left in common for others." <sup>58</sup>

According to this line of reasoning, the slave owner, insofar as he had acquired a right to his land in the proper way, was entitled to what he was able to produce from that land. However, he was not entitled to the products that resulted from slave labor. For he did not have a right to their person or their labor. To claim as his own what they had produced was to steal what was not rightly his, viz., their labor.

The framework of property rights articulated by Locke was adapted by Robert Nozick into a general theory of justice in holdings (his alternative to the label "distributive justice"). Nozick built his theory around three principles: the principle of justice in acquisitions, the principle of justice in transfer, and the principle of rectification. The first two principles describe how one becomes entitled to a holding.

1. A person who acquires a holding in accordance with the principle of justice in acquisition is entitled to that holding.
2. A person who acquires a holding in accordance with the principle of justice in transfer, from someone else entitled to the holding, is entitled to the holding. <sup>59</sup>

If someone has come to hold something in either of the above ways, then she is entitled to use or dispose of that thing as she wishes, subject to Locke's proviso that there remains "enough and as good left in common for others."<sup>60</sup> If she has not come to hold it in one of these ways, she is not entitled to it.<sup>61</sup> At this point Nozick's third principle, the principle of rectification, would come into play.

This principle uses historical information about previous situations and injustices done in them (as defined by the first two principles of justice and rights against interference), and information about the actual course of events that flowed from these injustices, until the present, and it yields a description (or descriptions) of holdings in the society. The principle of rectification presumably will make use of 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 yielded must be realized.<sup>62</sup>

If someone's holdings were improperly acquired, the principle of rectification requires that compensation be made to those properly entitled to those holdings. This includes not only the item(s) unjustly acquired but also the restoration of those wronged to the status they would have had in the present had the historic injustice not occurred.

Had all slave owners, in a short space of time, come to see the error of their ways, acknowledged the former slaves as free, and offered fair compensation for past and future labor, this would have nearly rectified the situation.<sup>63</sup> The fact that history did not unfold in this fashion introduces an additional consideration. Fair compensation for the unpaid wages of generations of slaves would need to take into account how those wages would have bettered the condition of the newly emancipated slaves, their children, grandchildren, and great grandchildren. In other words, as Robert Browne, Boris Bittker, Imari Obadele, Randall Robinson, and others have pointed out, fair compensation would involve the wages withheld from the slaves *plus interest*.

Since Nozick's theory is concerned with the history of how one came to own something, it offers much to the advocate of an apology for slavery. It offers a way to think about guilt and responsibility attaching not only to the original slave owner, but also to subsequent generations. To clarify this point, consider the case of the art thief Flambeau.<sup>64</sup> If Flambeau steals a Rembrandt and bequeaths it to his children, his children will be expected to return it to its rightful owners. While Flambeau bears a different sort of guilt than his children, especially if they were previously unaware of the painting's mode of acquisition, the fact that they did not steal the painting does not mean the children bear no

responsibility in this circumstance. One way we might attempt to capture the difference is by saying the children are guilty of holding stolen property and are responsible for returning the canvass even though they bear no fault for its theft. Another way of stating the difference is that Flambeau is both objectively and subjectively guilty as thief, while his children are objectively guilty of retaining stolen property.

If, however, the children knew all along that the painting was stolen and they had refused to return it, then they too will be both objectively and subjectively culpable. This is especially so if they have made the Rembrandt part of a for-profit museum while they watched the painting's former owners struggle to make ends meet. But in this case, they are not guilty of stealing the painting, merely of failing to return it. If they apologize and return the painting to its rightful owners, they are not apologizing for their father's individual guilt, nor, it seems, are they apologizing for the family's collective guilt *for the theft*. Instead, they are apologizing for their personal (and perhaps collective) guilt for having failed to return someone else's property.

What the Flambeau family example, together with Nozick's principle of rectification, gives us is a way of thinking about inheriting guilt.<sup>65</sup> As a result of their father's action, the Flambeau family inherits objective guilt. By their own action or inaction, in light of their knowledge or ignorance, they may (but needn't) add elements of subjective guilt. The addition of the subjective element also alters their objective guilt. They are now guilty of purposely retaining stolen property, rather than of doing so out of ignorance. But they haven't inherited *their father's* objective guilt. In this respect, the language of inheritance is misleading. It is not as though their father's guilt is transferred to them. Instead, as a result of their father's actions they find themselves in an unjust situation that needs to be rectified. It is their failure to rectify this unjust situation that constitutes their guilt. In apologizing and making restitution, then, the family attempts to correct a current wrong the major conditions for which were created by someone else's past wrong. What the foregoing analysis suggests, in relation to an apology for slavery, is that present individuals may need to apologize for our own inaction with regard to rectifying present injustices that are the continuing result of slavery.

Can these resources extend from an individual guilt to something that would warrant a collective apology? It seems that they can in at least two ways. The first stems from the actions of "We the People." The second stems from a social inheritance resulting from American slavery that has been unjustly enjoyed by the non-African-American majority at the expense of the African-American minority. In the end, although each of these warrants a collective apology, it will not be an apology *for slavery*, just as the apology of Flambeau's family was not

an apology for the theft; instead, it will warrant an apology for some other injustice, for which slavery set the stage.

#### "WE THE PEOPLE" AND THE GUILT OF PRIVILEGE

The United States derived great economic benefit from the institution of slavery. The production of cotton allowed the United States to compete successfully in the international textile market. The creation of government buildings was made possible both by tax dollars drawn from slave owner earnings and by the physical labor of the slaves involved in their construction. Funding for the Revolutionary War and the War of 1812 was drawn, in part, from the earnings of slave owners. The same is true of some of the money used to pay for the Louisiana Purchase. As a result of both general economic impact and the importance of Southern tax dollars for its budget, the United States benefited at the expense of the slave. Thus the United States finds itself in a circumstance to which the principle of rectification applies.

Unlike the case of the Flambeau family, it would seem that in the United States we have a single agent with which to deal. It is a collective agent, but it would seem to have a single lasting identity in a way that Flambeau and his children do not. However, here the paradox of Theseus's ship looms large.<sup>66</sup> If every one of its members has been replaced, in what sense is it meaningful to speak of the same agent? It seems to stretch our common-sense notions of *we* to the point of breaking to say that *we* did something when none of the *I*'s of which the *we* was made up are still living.

Admittedly, we sometimes employ plural first-person pronouns to speak of historically distant actions or qualities of collective agents of which we are a part. "We have not fought a war on our own soil since 1865." "We haven't won a pennant since the curse of the Bambino." "We were the first company to employ the assembly line for the production of automobiles." However, while the grammatical form of these sentences may be like "We incited last week's riots," what the sentences do and the conceptions of "we" that stand behind them are very different. In all four sentences, the employment of "we" communicates something about the identification of the speaker with a particular group. Not all of these identifications entail responsibility.

The second sentence is interestingly ambiguous. It could be spoken by a Red Sox player, the Red Sox owner, or a Red Sox fan. The player and owner could take some kind of responsibility for recent pennantless years, however, the fan could not. The fan does not stand in the right relation to lost baseball games to take responsibility for them. At most, she might feel pride or shame at the wins and losses of the team for

whom she roots. She could not be praised or blamed for them. Current players might be praised or blamed for recent wins or losses, but their standing in relation to decades-old Red Sox seasons is similar to that of the fan. The history of the ball club is something in which they might take pride or shame, but not something for which they may be held responsible.

There are a number of ways in which we might attempt to account for the preceding claims about responsibility. We might ground the claims by appealing to a connection between causation and moral responsibility. What the fan and the current players have in common, at least in relation to decades-old Red Sox seasons, is that they lack any causal connection to those seasons. They have neither actual nor possible causal relations to much earlier seasons. Reference to possible causal connections introduces a complication that suggests causation is not the only matter of interest. For, with regard to more recent seasons, which predate the presence of any current member of the Red Sox organization, but which do not predate the careers of various members of the organization, the possibility condition is met. If one or more current Red Sox players were playing baseball for another team, prior to signing contracts with the Red Sox, the possibility of their having causally contributed to the success or failure of the Red Sox during a season would not entail responsibility for the Sox's performance during that season. If they had no obligations in relation to the Red Sox at the time, then the current members of the club could not be praised or blamed, promoted or punished on the basis of the Sox's performance during the earlier season. Neither by way of omission nor commission were they connected with the season. They had nothing to do with and no obligations in regard to the successes and failures of those seasons.

To the foregoing considerations we must add something about the connection between collectives and the individuals of which they are composed. Edith Stein suggests, "The community is 'founded' essentially in individuals. Its character changes when the individuals belonging to it change their characters, or if new ones enter and old ones withdraw."<sup>67</sup> We need to be careful in the application of Stein's observation about the connection between qualities of individuals and the qualities of the collectives of which they are a part. It is important to observe which qualities or actions are relevant to individuals as individuals and which relevant to individuals as members of the collective. It is likewise important to note which kinds of individual qualities are transferable to qualities of the collective. But if the collective is founded in individuals, and none of the current individuals, either as individuals or as members of the collective, had direct or indirect, actual or possible causal relations or obligations in regard to some event, then the collective does not stand in the right relation to the event to be praised or blamed for it.

It is not clear at what point a change in membership overextends our common-sense notion of *we*. But where every member has changed, we seem to find ourselves in a circumstance much like that of Flambeau's children. No current member of "We the People" was engaged in the creation or maintenance of slavery. Nonetheless, what was taken from the slaves was never returned. It has remained in our account and we have continued to benefit from interest it has accrued. Hence, like Flambeau's children, when we apologize we will only be able to apologize for our own guilt in failing to return what is not rightfully ours. We will not have the standing to apologize for the objective and subjective guilt of our parents.

We might assume responsibility for our parents' guilt, in the way someone might assume another person's debt, agreeing hereafter to make the other's payments or make amends for the other's misdeeds. In so doing we take on a relation to some aspect of the present and acquire obligations in regard to correcting the current deficit. But we cannot take responsibility in the sense of acknowledging our responsibility for the existence of the debt, which resulted from an obligation that our progenitors failed to meet. The responsibility "We the People" *can* acknowledge is for failing to return illegitimately acquired benefits inherited from our forebears.<sup>68</sup>

Closely related to the illegitimate acquisitions of which we have been speaking is another source of guilt stemming from the effects of slavery. It is what Sandra Lee Bartky calls "guilt by virtue of privilege." The guilt of privilege, at least as I shall employ the term, is not incurred simply by the possession or enjoyment of social and material benefits. It is incurred when the benefits one enjoys come alongside and/or as a result of another's undeserved hardship.<sup>69</sup>

If guilt by virtue of privilege fits the standard view of guilt . . . then the enjoyment of privilege must involve the violation of a moral principle. Here is a candidate for such a principle: *it is wrong to enjoy privileges from which other people have been unjustly excluded, especially if one's privileges have been predicated upon the unjust exclusion of others.*<sup>70</sup>

According to this conception of guilt, one becomes guilty by enjoying the fruits of an unjust social order.<sup>71</sup>

I have not had to worry that my skin pigment would prevent me from finding housing in a desirable neighborhood. I have not had to worry that the patterns of speech into which I was socialized would inhibit my finding a job. I have not had to worry that when I walked into a public place many would automatically dislike me. Walking down the street, in shopping centers or airports, I need not worry about looking "suspicious" to the authorities.

I have enjoyed fresh produce while many who harvested that food are underfed. I have been clothed in fabrics manufactured by persons whose children are in rags. I have worn shoes while the families of those who made them are unshod. I have heated food in ovens made by those whose dinners are cold. Throughout my life, my parents' lives, my grandparents' lives, someone else has always been on the bottom of the totem pole. And unknowingly I have reaped the benefits.

It should be clear from the examples used above that the guilt of privilege is not limited in its scope just to the continuing effects of American slavery. But it is certainly relevant to that issue. To the extent that my privilege is the result of and/or co-exists with the ongoing effects of slavery, it is guilt-inducing.<sup>72</sup>

The preceding discussion has suggested that, while we have a way of seeing twenty-first century agents as bearing guilt *related to* slavery, the notion of guilt stemming from the image of indebtedness does not leave room for twenty-first century guilt *for* American slavery. Thus, while we have grounds for a collective apology, it is not an apology for slavery, but for subsequent conditions made possible by slavery, in whose continuance we are implicated. We may express regret for our parents' actions, but we may not apologize for them.<sup>73</sup>

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## NOTES

1. Cited by Elizabeth Kiss in "Saying We're Sorry: Liberal Democracy and the Rhetoric of Collective Identity," *Constellations*, vol. 4, no. 3 (1998), p. 396.

2. Elazar Barkan, *The Guilt of Nations: Restitution and Negotiating Historical Injustices* (Baltimore: Johns Hopkins University Press, 2000), p. 235.

3. Richard Joyce, "Apologizing," *Public Affairs Quarterly*, vol. 13, no. 2 (April 1999), p. 159.

4. J. Harvey, "The Emerging Practice of Institutional Apologies," *The International Journal of Applied Philosophy*, vol. 9, no. 2 (1995), p. 59.

5. Barkan, *The Guilt of Nations*, p. 247.

6. From *U.S. News and World Report*, April 6, 1998, p.7; reprinted in *When Sorry Isn't Enough: The Controversy over Apologies and Reparations for Human Injustice*, ed. Roy L. Brooks (New York: NYU Press, 1999), p. 352.

7. John Torpey, "Politics and the Past," in *Politics and the Past: On Repairing Historical Injustices*, ed. John Torpey (Lanham, Md.: Rowman & Littlefield Publishers, Inc., 2003), p. 23.

8. John Austin, *How to Do Things with Words*, 2<sup>nd</sup> edition (Cambridge, Mass.: Harvard University Press, 1962), pp. 45–47.

9. John Austin, *How to Do Things with Words*, pp. 14–15.
10. Some of the objections against recent collective apologies may point to the emergence of a practice which is still gaining its acceptance as a convention.
11. Cf. Austin, *How to Do Things with Words*, p. 16.
12. Cf. Kathleen Gill, "The Moral Functions of an Apology," *The Philosophical Forum*, vol. 31, no. 1 (Spring, 2000), p. 12 f.
13. Craig S. Smith, "U.S. and China Look for a Way to Say 'Sorry': Right Apology Depends on Its Interpretation," *The New York Times*, vol. 150, no. 51,718 (April 9, 2001), pp. A1, 10.
14. Erving Goffman, *Relations in Public: Microstudies of the Public Order* (New York: Basic Books, Inc., Publishers, 1971), p. 113.
15. The appropriate attitudes for the apologetic wrongdoer to display is a topic deserving of independent treatment. Kathleen Gill suggests as a "necessary condition of apologizing" that "the apologizer must have an attitude of regret with respect to the offensive behavior and a feeling of remorse in response to the suffering of the victim" ("The Moral Functions of an Apology," *The Philosophical Forum*, vol. 31, no. 1 [Spring, 2000], p. 14). However, for reasons noted in the preceding paragraph, regret seems an inadequate attitude for what Gill calls the "fullest version" of apology.
16. J. Harvey calls them "basic conditions of moral soundness" ("The Emerging Practice of Institutional Apologies," *The International Journal of Applied Philosophy*, vol. 9, no. 2 [1995], p. 63).
17. Louis Kort ("What Is an Apology?" *Philosophy Research Archives*, vol. 1 [1975], p. 84) and Richard Joyce ("Apologizing," *Public Affairs Quarterly*, vol. 13, no. 2 [April 1999], pp. 166–167) make similar points.
18. Cf. Austin, *How to Do Things with Words*, pp. 14–20. It is precisely because it is an apology, albeit a deficient one, that an apology lacking in sincerity is, itself, an act for which one must apologize. (Austin uses "infelicity" to cover both misfires and what he calls abuses. I am using it in this context only in reference to abuses.)
19. Cf. Geoffrey Sayre-McCord, "Criminal Justice and Legal Reparations as an Alternative to Punishment," *Philosophical Issues*, vol. 11: *Social, Political, and Legal Philosophy* (2001), p. 504.
20. Richard Swinburne, *Responsibility and Atonement* (New York: Oxford University Press, 1989), p. 84.
21. Austin, *How to Do Things with Words*, p. 15.
22. For a discussion of this concern and the issue raised in objection five that differs significantly from my own treatment of these matters, see Samuel C. Wheeler III, "Reparations Reconstructed," *American Philosophical Quarterly*, vol. 34, no. 3 (July 1997), pp. 301–318.
23. "[A]n authentic apology cannot be delegated, consigned, exacted, or assumed by the principals, no less outsiders, without totally altering its meaning and vitiating its moral force" (Nicholas Tavuchis, *Mea Culpa: A Sociology of Apology and Reconciliation* [Stanford, Calif.: Stanford University Press, 1991], p. 49). In chapter 3 of *Mea Culpa*, Tavuchis explores various ways to accommodate this

general feature of "one to one" apologies to apologies involving a collective offender (pp. 45–68).

24. Cf. J. Angelo Corlett, "Collective Moral Responsibility," *Journal of Social Philosophy*, vol. 32, no. 4 (Winter 2001), pp. 573–584.

25. Jeffrie Murphy, "Repentance, Punishment and Mercy" in *Repentance: A Comparative Perspective*, ed. Amitai Etzioni and David Carney (Lanham, Md.: Rowman & Littlefield Publishers, Inc., 1997) p. 158.

26. Clive Staples Lewis, "The Dangers of National Repentance," *The Guardian* (March 15, 1940), reprinted in *God in the Dock: Essays on Theology and Ethics*, ed. Walter Hooper (Grand Rapids, Mich.: William B. Eerdmans Publishing Company, 1970), p. 190.

27. John McWhorter worries that attempts to address objections like this one by shifting the discussion from slaves to African-Americans in general engage in an essentializing, dehumanizing racism ("Against Reparations," in *Should America Pay? Slavery and the Raging Debate on Reparations*, ed. Raymond A. Winbush [New York: Harper Collins Publishers, Inc., 2003] esp. pp. 185–186, 194–195).

28. Cf. Samuel Wheeler, "Reparations Reconstructed"; Janna Thompson, "The Apology Paradox," *The Philosophical Quarterly*, vol. 50, no. 201 (October 2000), pp. 470–475.

29. "If we regret that our ancestors did their unjust deeds, then we prefer that they had not been done" (Thompson, "The Apology Paradox," p. 471).

30. Janna Thompson, "Historical Injustice and Reparation: Justifying Claims of Descendants," *Ethics*, vol. 112, no. 1 (October 2001), p. 117. In "The Apology Paradox," Thompson worries that, given the enormous influence of the institution of slavery on the course of Western history, "the history of our country, indeed the history of the world, would have been significantly different from what it has been, and we would probably not exist" (p. 471).

31. Barkan, p. 247.

32. Paul Ricoeur, in *The Symbolism of Evil*, reserves "guilt" for what I am calling psychological guilt and uses "defilement" to capture something like what I have termed "objective guilt" (trans. Emerson Buchanan [Boston: Beacon Press, 1967], pp. 101–102).

33. Swinburne, *Responsibility and Atonement* (New York: Oxford University Press, 1989) 73.

34. *Ibid.*, p. 83.

35. *Ibid.*

36. Paul Ricoeur, "The Model of the Text: Meaningful Action Considered as a Text," in *From Text to Action: Essays in Hermeneutics II* (Evanston, Ill.: Northwestern University Press, 1991), p. 153.

37. Karl Jaspers, *The Question of German Guilt* (1948), trans. E. B. Ashton (New York: Fordham University Press, 2001), pp. 58–61.

38. "Should have known better" may be too generous an articulation of the condition of the slave owner in question. His condition may have been more like an

intentional (or nearly intentional) blindness to what was right before his eyes. Stanley Cavell observes, "The anxiety in the image of slavery—not confined to it, but most openly dramatized by it—is that it really is a way in which certain human beings can treat certain others whom they know, or all but know, to be human beings" (*The Claim of Reason: Wittgenstein, Skepticism, Morality and Tragedy*, new edition [New York: Oxford University Press, 1999], p. 377). This condition is more pernicious than mere ignorance, insofar as it involves a more or less defined awareness of guilt together with a resistance to that awareness becoming any more clearly defined. In such a circumstance, the "false" of "false conscience" is not mere inaccuracy. False conscience would be self-deceptive conscience.

39. From James Grahame, Esq., *Who Is to Blame? Or Cursory Review of "American Apology for American Accession to Negro Slavery"* (London: Smith, Elder and Co., 1842), reprinted in *When Sorry Isn't Enough*, p. 348.

40. When we attribute such mental states as malice, knowledge, recklessness, and negligence to our contemporaries, we engage in a certain amount of educated guesswork. We may gather those who have observed the behavior of the wrongdoer, and after conferring with them, we infer one or another state of mind was present in the wrongdoer at the time of action. These ordinary means of assessing *mens rea* are unavailable to us in a circumstance like the one in question. This makes it difficult to assess the guilt of American slaveowners. However, this is an epistemic, rather than strictly moral, difficulty.

41. It is not only Americans who had dirty hands, as Howard French and others point out ("The Atlantic Slave Trade: On Both Sides, Reason for Remorse," *The New York Times*, April 5, 1998, sec. 4 [Week in Review], p. 1, reprinted in *When Sorry Isn't Enough*, pp. 355–357). But for the purposes of this paper I shall limit my attention to citizens and permanent residents of the colonies and of the United States.

42. Jaspers, *The Question of German Guilt*, p. 63.

43. *Ibid.*

44. There were nearly four million slaves in the United States in 1860 (Randall Robinson, *The Debt* [New York: Penguin Putnam Inc., 2000], p. 206).

45. "The cotton the slaves produced had become not only the United States' leading export but exceeded in value all other exports combined." Yuval Taylor, *I Was Born a Slave*, quoted in Robinson, *The Debt*, p. 206.

46. Margaret Gilbert, summarizing a view she attributes to Joel Feinberg and G. Taylor, "On Feeling Guilt for What One's Group Has Done," in *Living Together: Rationality, Sociality and Obligation* (Lanham, Md.: Rowman & Littlefield, 1996), p. 375. Much of what follows is influenced by Gilbert's treatment of collective agency.

47. There is a lively debate regarding whether collective agents are properly considered morally responsible. Some theorists begin with an analysis of individual human agency and extrapolate from the conditions necessary for moral responsibility in that sphere to conditions a collective agent must satisfy to count as morally responsible. Manuel Velasquez ("Why Corporations Are Not Responsible for Anything They Do," [*Business and Professional Ethics Journal*, vol. 2, no. 3 (1983), reprinted in *Collective Responsibility*, ed. Larry May and Stacey Hoffman (Lanham, Md.: Rowman & Littlefield Publishers, Inc., 1991)], J. Angelo Corlett ("Collective Moral Responsibility"), and others have developed such positions. Not

surprisingly, these theorists often determine that collectives are insufficiently similar to individual human agents to be held morally responsible (Velasquez), or that only very specialized collectives under unusual sorts of circumstances are sufficiently similar to individual human agents to be held morally responsible (Corlett). Philip Pettit's recent treatment of the matter in *A Theory of Freedom: From the Psychology to the Politics of Agency* (New York: Oxford University Press, 2001) is a notable exception to this rule. Other theorists begin with social phenomena that we commonly ascribe to collectives and analyze the conditions under which collectives are seen and treated as plural subjects, rather than merely as aggregates, and the conditions under which we commonly ascribe praise or blame to such collectives. A significant portion of Margaret Gilbert's work on collective responsibility proceeds according to this model (*Living Together: Rationality, Sociality and Obligation*, and *Sociality and Responsibility: New Essays in Plural Subject Theory* [Lanham, Md.: Rowman & Littlefield Publishers, Inc., 2000]). Not surprisingly, theorists who adopt the latter approach tend to suggest collectives not infrequently can be held morally responsible. This paper does not attempt to address the methodological differences between these two approaches to collective responsibility. It will be clear to the reader by this point that I am sympathetic to the second approach. However, the analysis offered in this paper should prove useful to theorists of both sorts.

48. Feinberg's language differs from that adopted in this paper. As he employs the term, "Guilt consists in the intentional transgression of prohibition" ("Collective Responsibility," in *Doing and Deserving: Essays in the Theory of Responsibility* [Princeton, N.J.: Princeton University Press, 1970], p. 231). However, he acknowledges that guilt can be, and perhaps often is, employed differently than the usage he has adopted (Cf., note 8 on pp. 231–232). While his usage of "liability" does not entirely coincide with our term "guilt," the distinctions he makes in regard to liability pertain to our notion of collective guilt.

49. Feinberg thinks that the sense of this first type of liability depends on a high degree of solidarity within the group ("Collective Responsibility," p. 234 ff.).

50. Ibid., p. 233.

51. Ibid., p. 248.

52. For example, more than one hundred slaves were used in the building of the United States Capitol (Robinson, *The Debt*, p. 3).

53. Kathleen Parker, "The Un-slap Heard Around the World," *Chicago Tribune*, August 21, 2002, Section I, p. 21.

54. Burleigh Taylor Wilkins, *Terrorism and Collective Responsibility* (New York: Routledge, 1992), pp. 78–79.

55. Friedrich Nietzsche, *The Genealogy of Morals*, trans. Walter Kaufman, in *Basic Writings of Nietzsche* (New York: Random House, 1968), pp. 498–499.

56. Cf. Boris Bittker, *The Case for Black Reparations* (New York: Random House, 1973); Robinson, *The Debt*; Jack Hitt, ed., "Does America Owe a Debt to the Descendants of Its Slaves?" *Harper's Magazine*, (November, 2000); Marc Galanter, "Righting Old Wrongs," in *Breaking Cycles of Hatred: Memory, Law, and Repair*, ed. Nancy Rosenblum (Princeton, N.J.: Princeton University Press, 2002); David Horowitz, *Uncivil Wars: The Controversy over Reparations for Slavery* (San

Francisco: Encounter Books, 2002); Molefi Kete Asante, "The African American Warrant for Reparations: The Crime of European Enslavement of Africans and Its Consequences," in *Should America Pay?* ed. Raymond A. Winbush (New York: Harper Collins, 2003).

57. We shall only be attending to Locke's remarks on property in chapter V, not his reflections on slavery in the preceding chapter. According to Locke, slavery is permitted only under the condition that the one enslaved has "by his fault forfeited his own life, by some act that deserves death" (John Locke, *Second Treatise of Government* [1690], chap. IV, sect. 23). Thus, on Locke's account, most American slaves were wrongly deprived of their liberty, since they were not guilty of a capital offense. By contrast, many of the original British settlers of Georgia who became slaveowners should have themselves been enslaved.

58. Locke, chapter V, section 27.

59. Robert Nozick, *Anarchy, State, and Utopia* (New York: Basic Books, Inc., 1974), p. 151.

60. Cf. Nozick, pp. 178–179.

61. "No one is entitled to a holding except by (repeated) applications of 1 and 2" (Nozick, p. 151).

62. Nozick, pp. 152–153.

63. Of course this arrangement would not have righted all wrongs, since such measures would not undo the initial abduction, the nightmarish voyage to America, the division of families, and the vast number of other cruel and dehumanizing effects of the American slave trade. As Robert Browne rightly observes, acts of this magnitude are incompensable ("The Economic Basis for Reparations to Black America," in *Review of Black Political Economy*, vol. 21, no. 3 [Winter 1993], p. 2). But within the limited context of justice in holdings, this arrangement would have come close to satisfying the principle of rectification.

64. Flambeau is a character in two or three of G. K. Chesterton's Father Brown mysteries.

65. Janna Thompson ("Historical Injustice and Reparation") and Stephen Kershnar ("Are the Descendants of Slaves Owed Compensation for Slavery?" *Journal of Applied Philosophy*, vol. 16, no. 1 [1999], pp. 95–101) both explore the social practice of inheritance as a way to ground claims to compensation on behalf of descendants of American slaves. While they examine the effects of the concept of inheritance on the *descendants of the victims* of historic injustice, neither of them investigates the concept of inheritance as it relates to *descendants of the perpetrators* of the injustice.

66. "The ship wherein Theseus and the youth of Athens returned had thirty oars, and was preserved by the Athenians down even to the time of Demetrius Phalereus, for they took away the old planks as they decayed, putting in new and stronger timber in their place, insomuch that this ship became a standing example among the philosophers, for the logical question of things that grow; one side holding that the ship remained the same, and the other contending that it was not the same" (Plutarch, *The Lives of the Noble Grecians and Romans*, trans. Dryden [Chicago: Encyclopaedia Britannica, Inc., 1952], p. 8).

67. Edith Stein, *Philosophy of Psychology and the Humanities, The Collected Works of Edith Stein*, vol. VII, trans. Mary Catharine Baseheart and Marianne Sawicki (Washington, D.C.: ICS Publications, 2000), p. 238. At the point in the text where this passage occurs, Stein is using "community" in a broad sense that encompasses our use of "collective."

68. J. Angelo Corlett insists, both in "Collective Moral Responsibility" (*Journal of Social Philosophy*, vol. 32, no. 4 [Winter 2001], pp. 573–584) and in "Corporate Punishment and Responsibility" (*Journal of Social Philosophy*, vol. 28, no. 3 [Winter 1997], pp. 86–100), that for a collective to be held morally responsible it must meet certain intentional, volitional, and epistemic conditions. On this basis he argues that, although "conglomerates such as nations and corporations" can satisfy these conditions, "it is dubious whether such conditions do (commonly) obtain when it comes to collective intentional, voluntary, and/or epistemic agency" ("Collective Moral Responsibility," pp. 581–582). I have intentionally avoided articulating collective responsibility in terms of these conditions of individual agency, because they don't strike me as the most useful way to think about collective responsibility. However, our disagreement over whether in this case the guilt might attach both to individual Americans and to "We the People" collectively understood should not undercut my argument that twenty-first-century Americans meet the guilt condition requisite for an apology related to American slavery. Even the methodological individualist of the reductivist sort Corlett describes, who "argues that all statements of corporate-collective moral responsibility are linguistically redescribable in terms of those corporate individuals who are morally responsible for something" ("Corporate Punishment and Responsibility," p. 87), should find sufficient connection between individual Americans and the guilt in question to warrant a twenty-first-century apology related to American slavery.

69. The class of those who might "deserve" hardship, on my view, would be remarkably small. It would consist, principally, of those who were being punished for violating reasonable legal standards and of students who had cheated on essays or exams.

70. Sandra Lee Bartky, "In Defense of Guilt," in *On Feminist Ethics and Politics*, ed. Claudia Card (Lawrence, Kans.: University Press of Kansas, 1999), p. 38.

71. This conception of guilt coordinates well with what John Torpey calls "reparations in the narrow sense." "Even if they [victims of injustice] are dead, however, there may be present-day beneficiaries of past arrangements who may be said to owe reparations" ("Politics and the Past," p. 7).

72. Reparations, to the extent that they improve the conditions of the unjustly underprivileged, may be one way of atoning for that guilt.

73. I am grateful to Georgia Warnke, Gary Watson, Cheshire Calhoun, and Bill Bracken for helpful feedback on an earlier version of this paper.