RESPONSIBILITY FOR GROUP TRANSGRESSIONS

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ABSTRACT

This dissertation seeks to develop a novel account of the responsibility members of a group bear for transgressions in which they did not participate. More specifically, the dissertation argues that individual members of a group may be blamed for group transgressions independent of their participation in those transgressions, and it grounds their blameworthiness in a normative conception of membership. The account developed here is intended to apply to any institutional group – the university, corporation, advocacy group, nation-state, etc. Throughout the dissertation, I make reference to each of these kinds of groups (and some others) but the account has been developed with an eye to a special problem – vīz. the problem of assigning responsibility to American citizens for U.S. wrongdoings in the course of the war in Iraq. In the last chapter of the dissertation, I address this problem, contemplating the responsibility borne by not only the generic citizen who neither supported nor opposed the war but also the citizen who did everything in her power to protest, and thereby prevent, the war and the abuses committed in its course.

The dissertation has four main objectives: First, the dissertation seeks to ground skepticism about the notion of collective responsibility (Chapter 1). Second, the dissertation seeks to offer a critical examination of existing theories of shared responsibility, and to argue that they are ill equipped to elucidate the nature of a group
member’s responsibility in cases where the group is large and longstanding, and its aims diverse and sometimes even contested by the group’s members (Chapter 2).

The third and central ambition of the dissertation is to provide an account of shared responsibility for institutional groups. Along the way, the dissertation develops a normative understanding of group membership (Chapter 3). The dissertation then builds on this normative understanding to describe its implications for assigning responsibility for group transgressions (Chapter 4).

Finally, the dissertation ends by seeking to apply the account of shared responsibility to the question of Americans’ responsibility for human rights abuses committed by the U.S. government in the course of the war in Iraq (Chapter 5).
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INTRODUCTION

The children of Nazis feel deep shame, and sometimes even guilt, about the acts of their parents.¹ Opponents of George W. Bush vote against him in the 2004 election, and yet post photos of themselves holding signs saying, “I’m sorry,” after he wins.² Soldiers readily kill the enemy in battle because they perceive themselves to be mere agents of a state to which the killing will ultimately redound. Corporate officials apologize for injustices committed by their corporation, or even its predecessor in interest, decades and centuries ago – well before the executives in question could have had any hand in the injustice.³

In short, we belong to groups whose acts we do not always participate in or support. Under what circumstances do we, as members, bear responsibility for these acts?


² For a gallery of these photos, see Sorry Everybody, at http://www.sorryeverybody.com/index_old.shtml. (The website was updated in the wake of Barack Obama’s presidential victory, with individuals holding signs saying things like, “Hello World! Want to Hang Out?” or “Obama won. No apologies needed.” The new photo gallery is introduced as follows: “Hi, world. Remember four years ago, when we screwed up and then we were really sorry? You’ll never guess what just happened.” The use of the first-person plural is noteworthy, given that the individuals photographed did not themselves vote for Bush in 2004. See Hello Everybody, at http://www.sorryeverybody.com/.)

³ Consider, for example, Wachovia Bank’s apology to “all Americans and especially to African Americans and people of African descent,” issued after Wachovia learned that its predecessor owned slaves and accepted slaves as collateral, at http://www.wachovia.com/misc/0_877_00.html. See generally Roy L. Brooks, Institutional Atonement for Slavery: Colleges and Corporations, Repairing the Past: Confronting the Legacies of Slavery, Genocide, & Caste, Yale University, New Haven, CT, Oct. 27-29, 2005.
What about these circumstances licenses an assignment of responsibility to us? And what does it mean to hold us responsible – to what kind of treatment may we legitimately be subject? These are the central questions of this dissertation.

Though the literature on responsibility is vast, the literature addressing the responsibility of groups and their members is relatively modest. Theorists of collective responsibility acknowledge that it “has enjoyed few philosophically sophisticated defenses,” and is “one of the murkiest and least explored topics in moral philosophy.” This dissertation seeks to engage with the existing literature on group responsibility, identify its weaknesses, and offer a novel account that would justify our holding members of groups responsible for a group transgression independent of their personal participation in that transgression.

More specifically, the dissertation articulates a normative conception of group membership according to which members are subject to demands of loyalty both to one another as well as the joint endeavor that unites them. The demands of loyalty take many forms but most relevant here is the demand that the member not seek to disclaim responsibility for a group transgression, even if she did not participate in that transgression. Instead, she must stand alongside her fellow members and recognize that the group wrong appropriately redounds to each of them.

In this way, the dissertation’s central claims are at odds with two dominant views in ethics and the law. The first, and more controversial of these, is the view that collectives are entities that may be held responsible in their own right – a view that

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5 MARGARET GILBERT, *SOCIALITY AND RESPONSIBILITY* 142 (2000).
enjoys a (recently) established philosophical pedigree,\(^6\) and supports legal doctrines like corporate criminal liability and state responsibility for war crimes. The second view, which dominates much moral and legal thinking on responsibility, restricts responsibility assignments to individuals, and apportions responsibility strictly in relation to the individual’s causal contribution to the act in question. In contrast to the first view, the account to be developed here takes individuals, and not the group as a whole, as the target of responsibility assignments. In contrast to the second view, the account grounds responsibility not in the individual member’s causal contribution to the group act, but instead in membership itself, with the magnitude of responsibility borne by members, \textit{just in virtue of their membership}, unmoored from considerations of their causal proximity to the group act.

All of that by way of a rough positioning of the dissertation’s account of responsibility. But it will be useful to lay some of the groundwork in more depth. To that end, this Introduction first offers an overview of the broad topic of responsibility, for purposes of situating the dissertation’s account within it. Next, I provide a typology of actions to gain clarity on the kind of acts and groups with which the dissertation will be concerned. I end this introduction with a roadmap to guide the reader through what follows.

\(^6\) While there are biblical references to collective moral responsibility, \textit{see, e.g.}, Deuteronomy 5:9 (“I the Lord your God am a jealous God, punishing children for the iniquity of parents, to the third and fourth generations”), the notion has received much of its philosophical attention in this and the last century, \textit{see, e.g.}, \textit{INDIVIDUAL AND COLLECTIVE RESPONSIBILITY: THE MASSACRE AT MY LAI} (Peter French ed., 1972); \textit{COLLECTIVE RESPONSIBILITY: FIVE DECADES OF DEBATE IN THEORETICAL AND APPLIED ETHICS} (Larry May & Stacey Hoffman eds., 1991); \textit{MARK A. DRUMBL, ATROCITY, PUNISHMENT AND INTERNATIONAL LAW} (2007).
I. RESPONSIBILITY – SOME DISTINCTIONS

In defending the dissertation’s account, and differentiating it from others, much will need to be said about the meaning of the term “responsible.” To lay the background for the dissertation’s account, I want now to present five sets of distinctions relating to different ways in which the notion of responsibility might be parsed:

- First, responsibility might have different temporal dimensions – thus there are forward- and backward-looking accounts.

- Second, the target of a responsibility assignment is sometimes an individual and sometimes a collective entity – thus there are individualist and collectivist accounts. In addition to these two, there are accounts of shared responsibility that assign responsibility for collective acts to individuals, as where – most relevantly -- members of a group are held responsible for an act of the group independent of their participation in that act.

- Third, sometimes, when we ask, “who is responsible for X?” we seek to know to whom (or to what) we may ascribe a particular act; in other instances, we seek to know to whom (or to what) we may appropriately assign the moral (and sometimes material) sanctions that follow from X’s occurrence. Our act ascriptions need not be coextensive with our responsibility assignments; nor need the grounds of ascribing an act to someone (or some entity) be identical to those for assigning responsibility to her (or it).

- Fourth, in the philosophical literature on responsibility, there are those whose interest lies in responsibility’s metaphysical dimensions and, in particular, in a debate about free will. Others eschew the notion that debates about free will meaningfully affect our responsibility practice. The accounts of these theorists
might be called Strawsonian accounts, after Peter Strawson’s seminal paper on the subject;⁷

- Finally, the notion of responsibility might be parsed in terms of the objective sought to be achieved by undertaking a responsibility assignment, and there is more than one such objective. I focus here on restorative versus punitive accounts.

In the remainder of this Part, I elaborate on each of these distinctions. A word about terminology first: The term “agent” is sometimes used in a purely causal sense (e.g., a pathogen is an agent that causes disease), though that will not be the use to which the term is put here. Instead, I will be concerned with the notion of agency as it pertains to questions of moral responsibility. Even here, multiple meanings are possible. Thus “agent” might describe one who acts on behalf of another (the standard legal meaning),⁸ and at other times used to refer to one who can act of his own accord, or act intentionally. I will be adopting the latter use. By “moral agent,” I shall refer to the agent who is capable of acting in a manner fitting for assignments of moral responsibility.

A. Forward- versus Backward-looking Accounts

The distinction between forward- and backward-looking accounts of responsibility can be most succinctly cashed out in terms of responsibility to versus responsibility for. More specifically, backward-looking accounts of responsibility are

concerned with blame: Who committed or participated in a transgression in such a way as to warrant assigning responsibility for the transgression to that individual, group, or group member? By contrast, forward-looking accounts of responsibility ignore questions of blame. Instead, and as their name suggests, forward-looking accounts contemplate the obligations going forward that individuals, groups, or their members, bear in virtue of some act to which the individuals, groups or members bear a relation, the nature of which it is a task of these accounts to specify. These accounts gain special prominence in the context of historical injustices, where no contemporary member of a group belonged to the group at the time of the injustice, and so none could have participated in the injustice. Thus, some theorists argue that contemporary Americans have an obligation to offer reparations for slavery – that is, they ought to respond to the victims of slavery (if there are still any) -- even though these theorists deny that contemporary Americans are morally responsible for slavery. The ground of the obligation may be fleshed out in terms of the membership of these contemporary citizens in the group that committed the harm, or in light of a psychological connection contemporary Americans bear to earlier citizens.

The account I will advance is backward looking. I am concerned with determining the circumstances under which members of a group may be held responsible for acts the group has committed. Further, the dissertation contemplates group transgressions (though

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11 See, e.g., van den Beld, supra note 10; Meir Dan-Cohen, Responsibility and the Boundaries of the Self, 105 HARV. L. REV. 959 (1992) (identifying pride in the group’s successes as a basis for responsibility for the group’s transgressions).
I will offer some brief words about the ways in which the account applies to group achievements in Chapter 4). Thus the competing theories of responsibility contemplated from this point on are all varieties of backward-looking accounts. It is only at the end of the dissertation that I return to forward-looking considerations, in order to explore the kinds of obligations group members might have to the victims of their group’s transgressions.

B. Individual, Collective and Shared Responsibility

On an *individualist* account, the responsibility of a collective can be fully distributed to its members. On a *collectivist* account, the responsibility of a collective cannot be distributed at all, or cannot be distributed without remainder, to its members. Further, whether one accepts or denies the possibility of collective responsibility, there is the additional question of how to distribute responsibility among group members. On a *strictly individualist* account, responsibility is assigned only to the extent of a member’s participation in the harm in question, and any sanctions may be imposed strictly in proportion to the member’s contribution to the harm. By contrast, on an account of *shared* responsibility, the members of a group will bear responsibility for at least some group acts in which they did not participate. The ground for assigning


\[13 \text{ See, e.g., Tracy Isaacs, *Collective Moral Responsibility and Collective Intention*, MIDWEST STUDIES IN PHILOSOPHY 59, 62 (2006) (advancing an “account of the moral responsibility of collectives in which it does not fully distribute among the individuals”).} \]
responsibility to members (participating or not) and the responses appropriate to them will vary from one account to the next.

The dissertation begins by casting doubt on the notion that collectives can bear moral responsibility in their own right. Nonetheless, it rejects the distribution of responsibility that the strict individualist would endorse, according to which each member bears responsibility only for her contribution to the collective’s act. As others have compellingly argued, the strict individualist’s account of responsibility presupposes that we can individuate actions and their effects, and thereby determine exactly who caused what. But this conception of agency ignores the fact that no one acts in a vacuum. Others’ actions can influence our own, and their effects can combine with ours to form a product that can no longer be divided into distinct individualized contributions. The task of individuating contributions is made all the more difficult in the case of the action of a longstanding institutional group, where the group’s capacity to act might be sustained by processes and characteristics for which all current, and sometimes even all former members as well, bear responsibility. Whatever the merits of strict individualism, then – and I am convinced that these must be modest, given how difficult it is to

14 See, e.g., Larry May, Collective Inaction and Shared Responsibility, 24 NOUS 269, 273-4 (1990); Elizabeth S. Anderson, What is the Point of Equality?, 109 ETHICS 287, 321 (1999) (“From the point of view of justice, the attempt ... to credit specific bits of output to specific bits of input by specific individuals represents an arbitrary cut in the causal web that in fact makes everyone’s productive contribution dependent on what everyone else is doing. Each worker’s capacity to labor depends on a vast array of inputs produced by other people – food, schooling, parenting and the like.”).

15 Some egalitarians and feminists rely on this expansive notion of responsibility for a product in order to defend redistribution or compel recognition of women’s work. See, e.g., Eva Feder Kittay, Love’s Labor: Essays on Women, Equality and Dependency (1999) (criticizing theories of formal equality because these neglect the fact that women are often saddled with dependency work, which entails that they are not symmetrically situated to the men with whom they are supposed to enjoy equality).
disaggregate actions into their individual contributions – it has virtually no traction in assessing responsibility for collective acts.

Put differently, given its focus on causation, strict individualism overlooks a significant source of responsibility – viz. the responsibility that flows from membership itself, given members’ contributions to the collective’s agency. In contrast to the strict individualist, I shall argue that the relationship between members and the collective entails a distribution of the collective’s responsibility to all members, regardless of their participation in the collective act.16 This is not to say that, at the end of the day, participating members bear no greater share of responsibility than do non-participating members; to the contrary, participating members will bear individual responsibility for their contributions, in addition to the responsibility they bear qua group members, such that the sum total of the amount of responsibility they bear will exceed that borne by non-participating members. But when we consider only the distribution of the collective’s responsibility, we shall see that participation is at least relatively insignificant, if not altogether irrelevant, in determining whether or how much of the responsibility for the collective act ought to befall each member.

Though I provide a more detailed roadmap at the end of the Introduction, let me telegraph that roadmap here, since much of the dissertation’s structure aligns with the distinction between accounts of collective and shared responsibility: My reasons for rejecting collectivist views are advanced at length in Chapter 1. In Chapter 2, I argue against existing theories of shared responsibility. In Chapters 3 and 4, I advance my own

16 Compare Gregory Mellema, Collective Responsibility and Qualifying Actions, MIDWEST STUDIES IN PHILOSOPHY 168, 169 (2006) (presenting an account of collective responsibility according to which one is a member only if one has contributed to the act for which responsibility is to be assigned).
ground for distributing responsibility to individuals for the acts committed by groups of which they are members, and I explore the implications of that account in Chapter 5.

C. Metaphysical versus Strawsonian Accounts

Metaphysical accounts of responsibility seek to determine what facts must be true if agents are to count as morally responsible. The facts in question fall into two camps – those that go to the conditions the world must meet, and those that go to the conditions agents must meet. Debates between libertarians (those who believe in free will) and hard determinists (those who deny freedom of the will, and believe that no account of moral responsibility can survive in the face of that denial) involve questions of the first type. Those who insist upon the existence of robust freedom of the will, or believe that there is a meaningful kind of freedom of the will that would persist even if determinism were shown to be true, address questions of the second type. In particular, they are concerned with the capacities one must possess if one is to count as a moral agent. In the literature on collective moral responsibility, those who contemplate metaphysical matters address only questions of the second type. They are not concerned with whether we can, in general, capture a meaningful notion of freedom of the will; instead, they presuppose that we can, and seek to determine instead what must be true of collectives – in particular, what capacities collectives must possess – if collectives are to count as moral agents.

Strawsonian accounts of responsibility – so called after Peter Strawson’s seminal account\(^\text{17}\) -- seek to circumvent questions about the nature of the world, and a great

\(^{17}\) See Freedom and Resentment, in Perspectives on Moral Responsibility 45 (John Martin Fischer and Mark Ravizza eds., 1993).
many, though not all, of the metaphysical questions about the capacities of agents. The point of departure for these accounts is an argument for the practical irrelevance of debates about free will: Even if determinism were true, the Strawsonian argues, our practices of holding responsible are so deeply entrenched, and so central to our interpersonal relationships that, were we to abandon these practices “it is doubtful whether we should have anything that we could find intelligible as a system of human relationships, as human society.”\footnote{Supra note 18 at 65.} In this way, the practices of responsibility need no metaphysical justification; they are simply “given with the fact of human society.”\footnote{Id. at 64.}

Central to the practices that the Strawsonian has in mind are the \textit{reactive attitudes} – the emotional responses we have to the attitudes and intentions of others as these are displayed in their actions.\footnote{See, e.g., id. at 49, 56-57.} More specifically, we experience the reactive attitudes in response to actions directed at us, actions directed at third parties, or actions that we ourselves have committed. Peter Strawson classifies these three types as \textit{personal}, \textit{impersonal} and \textit{self-reactive attitudes}.\footnote{Id. at 57.} Typical of the personal reactive attitudes are resentment, hurt feelings, gratitude and so on;\footnote{Id. at 48.} typical of the impersonal reactive attitudes are indignation, moral disapprobation, approval and so on;\footnote{Id. at 56.} typical of the self-
reactive attitudes are guilt, remorse, shame, pride and so on.\textsuperscript{25} Whether personal, impersonal or self-regarding, the reactive attitudes “rest on, and reflect, an expectation of, and a demand for, the manifestation of a certain degree of goodwill or regard on the part of other human beings.”\textsuperscript{26} The reactive attitudes are connected to morality, and to the concept of moral responsibility in particular, to the extent that the demand for goodwill takes a generalized form. That is, the object of the demand is “all those on whose behalf moral indignation may be felt, i.e. as we now think, towards all men,”\textsuperscript{27} and the appropriate subject of the demand is, in general, any participant in the moral community – that is anyone who is not morally undeveloped (e.g., young children) or psychologically abnormal (e.g., psychopathic, deranged, etc.).\textsuperscript{28}

In sum, the Strawsonian adds to our understanding of responsibility two key insights: First, the reactive attitudes are not simply practical corollaries or emotional side effects of one’s theory of responsibility; instead, they are constitutive of moral responsibility.\textsuperscript{29} As Gary Watson notes, on a Strawsonian account, “to regard oneself or another as responsible just is the proneness to react to them in these kinds of ways under certain conditions.”\textsuperscript{30} Second, our practices of holding responsible are internally justifying – we need not look to some further metaphysical fact in order to determine whether someone is an appropriate candidate of the reactive attitudes.

\textsuperscript{25} Id. at 57.
\textsuperscript{26} Id.
\textsuperscript{27} Id.
\textsuperscript{28} Id. at 51-52, 58-59.
\textsuperscript{30} Id.
The account of responsibility I advance is Strawsonian to the extent that it insists upon the centrality of the reactive attitudes in understanding responsibility and in determining who counts as a responsible agent. In other words, I assume that moral agency necessarily and crucially involves an affective component. I do not believe that this assumption unduly stacks the deck against the proponents of collective responsibility. First, at least some collectivists share this assumption, and attempt to articulate a conception of collective emotions in order to meet it.  

Second, though I do not offer a positive argument for the assumption here, I also do not simply dismiss out of hand those theories of collective responsibility that eschew the requirement of an emotional capacity for moral agency. Instead, I offer cases and examples that are intended to marshal support for the greater intuitive appeal of accounts of responsibility that posit an affective capacity as a criterion for moral agency.

While I thus share with the Strawsonian an account of responsibility that makes the reactive attitudes central, the understanding of responsibility upon which I rely differs from a Strawsonian account in two significant ways. First, as a methodological matter, I argue in Chapter 1 that we cannot eschew metaphysical considerations in determining whether collectives are apt objects of moral judgment. In brief, it is certainly true that sometimes we are content to blame the collective. But in other instances, we deplore the use of a collective shield, and seek to assign blame to the members who are the true

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32 The reader seeking a more straightforward defense of the role an affective capacity plays in moral agency and moral judgment should consult especially, in addition to Strawson, see supra note 18, DAVID HUME, A TREATISE OF HUMAN NATURE (David Norton and Mary Fate Norton eds. 2000); R. JAY WALLACE, RESPONSIBILITY AND THE MORAL SENTIMENTS (1994); Gary Watson, supra note 29.
culprits of the act in question. More significantly, in the case of individuals, the buck must stop with them – there is no part of the individual that is itself a moral agent and could thus qualify for an assignment of moral responsibility. By contrast, collectives are comprised of members who are themselves moral agents. We cannot discern, then, from the face of our practices of blaming collectives (to the extent that we do blame them) whether we mean that the collective itself is responsible or instead whether we invoke the collective as a shorthand way of referring to those of its members who bear responsibility in its stead.

In short, our emotional reactions to collectives raise interpretive questions that do not arise when we survey our emotional reactions to individuals. The answers to these questions cannot be found in anything internal to our practices – there is too much conflicting evidence. Instead, I shall suppose that we must turn to more straightforwardly metaphysical questions – in particular, to questions regarding whether collectives can believe, intend, deliberate about moral matters and experience the reactive attitudes -- in order to determine whether collectives are moral agents. The bulk of Chapter 1 is devoted to these questions.

While the first reason for deviating from a Strawsonian account is then methodological – to recap, we cannot assess the cogency of holding collectives morally responsible without turning to the metaphysical considerations that the Strawsonian would eschew in assessing the cogency of holding individuals morally responsible -- the second reason for deviating from a Strawsonian account is metaethical. In particular, I do not share the Strawsonian’s belief that the reactive attitudes are *constitutive* of moral judgments. The propositions that capture the dissertation’s understanding of moral
responsibility are not usually found together, and so it will be useful to enumerate them here:

1. Moral evaluation requires a capacity for emotion.

2. The acts through which one expresses one’s moral judgment – typically, blaming and praising --, as well as the experiences one has when one judges oneself morally responsible – guilt or pride -- also require a capacity for emotion.

3. Nonetheless, we can accurately judge that an individual bears responsibility and sincerely express that judgment even while an emotional response is not available to us, where the absence of emotion results not from some defect in us but instead from a feature of the relationship between the wrong and the individual judged.

The first two of these claims finds an elaboration and defense in Chapter 1, while the third claim gets its due in Chapter 5. For now, let me just articulate the basic idea: Our emotions equip us with the general ability to discern instances of blameworthy and praiseworthy conduct in the world (Claim 1). Further, our emotions undergird and motivate our blaming and praising, in response to paradigmatically good or bad deeds (Claim 2). But I allow that there may be some good or bad deeds to which we bear a relationship that takes us outside the paradigm. The relationship at the center of the dissertation – that between group member and a group transgression in which the member did not participate – is just the kind of non-paradigmatic case I have in mind. In these cases, it may be that our emotions lag behind a cognitive assessment of responsibility. Correspondingly, having arrived at a judgment of responsibility, we might nonetheless remain emotionally numb, and yet there would still be reason to assent to the judgment and engage in the rituals of holding responsible that accompany the more paradigmatic cases (where we judge others -- castigation, demanding an apology, etc.; where we accept blame ourselves – expressions of remorse, offers of an apology, etc.).
To put the point more succinctly, a capacity for emotion is necessary to bear responsibility and engage in the practice of holding responsible, but an activation or exercise of the emotions is not necessary for every instance in which we do hold someone morally responsible. Further, the absence of emotion in these cases need not reflect some pathology in the judges and/or judged; it results instead from the very structure of the relationship of the judged to the wrong.

**D. Ascriptions versus Assignments of Responsibility**

Sometimes when we ask, “Who is responsible for X?” what we want to know is, “whose act is X?” The question arises with special force in the context of group action, since groups cannot act on their own; instead, any act of the group will have been performed by one or more individuals acting on the group’s behalf. Since individual members of the group can act on their own behalf as well as the group’s, it will often be unclear whether some act that a member performs is to count just as her own act or instead (or in addition) as an act of the group. The case of United States v. Hilton Hotel Corps. provides a useful example.\(^{33}\) In that case, an individual charged with making purchases on behalf of a Hilton Hotel located in Portland, Oregon, threatened to cease doing business with one of the hotel’s suppliers unless the supplier agreed to contribute money to a marketing campaign that sought to attract conventions to Portland. The purchasing agent’s acts were contrary to express company policy and the agent had been instructed by the hotel manager to cease threatening the supplier. For these reasons,

\(^{33}\) 467 F.2d 1000 (9th Cir. 1972).
Hilton argued that the purchasing agent’s acts were not its own. The Ninth Circuit disagreed, but many a critic has thought the court’s decision wrongheaded.\footnote{See, e.g., Pamela H. Bucy, The Organizational Sentencing Guidelines: Putting the Cart Before the Horse, 71 WASH. U. Q. 329 (1992); John Hasnas, Ethics and the Problem of White Collar Crime, 54 AM. U. L. REV. 579, 597-600 (2005).}

The case illustrates the fact that there can be deep and puzzling questions around when some individual’s act is to count as an act of the group. Indeed, the American doctrine of corporate criminal liability is riven by a debate over precisely this issue, with the Model Penal Code (which forms the basis of much state law) allowing for an employee’s criminal act to be ascribed to the corporation only if a high-level executive authorized, encouraged or tolerated the act,\footnote{Model Penal Code § 2.07 (1)(c) (1962).} and federal law allowing for the ascription just so long as the employee’s act was within the scope of her duties and to the corporation’s benefit, even if no executive had knowledge of the act.\footnote{See, e.g., New York Central & Hudson River Railroad Co. v. United States, 212 U.S. 481 (1909).}

The dissertation does not seek to provide an account of the circumstances under which it is appropriate to consider some act of a group member to be an act of the group, though it will offer some considerations in passing. Instead, the dissertation contemplates those acts that are unproblematically ascribed to the group, and it considers when, and for what reasons, responsibility for these acts may be assigned to the group’s members, including those members who did not participate in the acts in question. For purposes of making clear the distinction between the two constructions of “who is responsible for X?”, I shall refer to the first construction (“whose act is X?”) as a question about \textit{act ascription} and the second construction (“whom may we praise/blame/hold liable?”) as a question about \textit{assigning responsibility}. 

\[34\]
It is my contention that some of the resistance to theories of shared responsibility arises because critics have in mind those acts whose ascription to the group is problematic in the first place. Thus many Americans are inclined to deny responsibility for human rights abuses at the Abu Ghraib prison in Iraq because they conceive of these abuses as the acts of “a few bad apples,” and not of the U.S. military, or the United States as a whole. But consider other (at least arguable) abuses that have been committed in the course of the war in Iraq, such as the “heightened” interrogation practices sanctioned by the Department of Justice, or the CIA’s rendition practices. Many Americans disavow responsibility for these abuses not because they doubt that the abuses are properly ascribed to the United States but because they insist that only those who participated in the abuses may be held responsible for them. It is this requirement of participation, embodied in the strict individualist manner of assigning responsibility, that the dissertation sets itself against.

E. Restorative versus Punitive Accounts

Once we have determined that some members should be held to account for some past act (an assignment of backward-looking responsibility), the ground of their responsibility (membership), and the conditions of their fitness for responsibility (inter alia, a capacity for emotion), we should get clear on the point of the assignment. What are we hoping to achieve in holding group members responsible for a group transgression?

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Broadly speaking, two possible responses present themselves – the goal of assigning responsibility might be *restorative*, or it might be *punitive*. On a restorative rationale, the assignment of responsibility is largely victim-focused – what matters is that the victim be made whole, and assigning responsibility serves as a means to returning the victim to her status quo ante insofar as the assignment identifies the party from whom it would be most fair to exact restoration.\(^{38}\) A punitive rationale, by contrast, is offender-focused – its goal is to make sure that the offender gets his just deserts. An assignment of responsibility might be instrumentally useful on a punitive rationale – assigning responsibility might be a means to identifying the party upon whom punishment can justly be imposed. But the assignment of responsibility might also be an end in itself insofar as to judge someone responsible for a wrong is also to blame him for that wrong, and blaming itself is a kind of sanction.

The account offered here draws inspiration from each of these rationales. It accords significant weight to the victim’s interest in seeing that group members acknowledge responsibility for transgressions of their groups. Indeed, we shall see in Chapter 5 that the victim’s perspective on the group member’s responsibility will trump the member’s perspective where there is legitimate disagreement between the two, as in cases where a group member opposed the group act and it is genuinely unclear whether his opposition in fact overshadows his membership responsibility. At the same time, the account places blame front and center in thinking about what an assignment of responsibility amounts to. To that extent, but only to that extent, the account is punitive:

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\(^{38}\) See, *e.g.*, John Braithwaite, *Restorative Justice and Responsive Regulation* (2002). In conversation, Robin West has referred to this rationale as the “Pottery Barn rule” – you break it, you own it.
As we shall see in Chapter 4, it is highly unlikely that membership responsibility alone could ground punishments other than subjection to blame. And it is impossible that membership alone would license criminal sanctions.\(^{39}\)

* * * *

While the foregoing provides some clarity on the conception of responsibility at issue here, I turn now to elucidating the kind of acts and groups that the dissertation will contemplate.

II. A TAXONOMY OF ACTION-TYPES

Collectivists are surely correct that much of what we do, we do together.\(^{40}\) But the scope of complicity is greater than the scope of collective responsibility, for not all instances of actions resulting from the combined contributions of several actors properly count as instances of collective action – that is, as instances of action attributable to a group, with the responsibility assignments that collective action entails.\(^{41}\) What follows is intended to serve as a partial taxonomy of action-types, classified according to the ways in which individuals’ acts combine with others to form a joint product.

Consider the following list, the contents of which I go on to explicate:

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\(^{39}\) The law does of course recognize criminal organizations, membership in which subjects one to prosecution independent of whether one has participated in the organization’s crimes. But though criminal organizations might bear some of the hallmarks of institutional groups in virtue of their structure, they differ from the kind of groups contemplated here. The former have criminal activity as their raison d’être, while the groups contemplated here have multiple aims and ends, and so cannot be defined in light of their criminal activity.

\(^{40}\) See, e.g., CHRISTOPHER KUTZ, COMPLICITY: ETHICS AND LAW FOR A COLLECTIVE AGE (2000).

\(^{41}\) I here assume that the notion of collective action is coherent, and that there are some act-types that fit the bill. I defend this assumption in Chapter 1.
(1) Purely individual acts;
(2) combined action where none of the actors knows of the others’ contributions;
(3) action resulting from the influence of others;
(4) joint intentional action of a non-group unit; and
(5) collective action.

Purely individual acts are those that are done of the individual’s accord, without
the assistance of others. Though we have seen reason to doubt that the set of actions that
would qualify as purely individual is as broad as the individualist would have us believe,
there are at least some actions that are performed with sufficient independence to make
this a non-empty set – for example, my picking up a pen with which to write, or a fork
with which to eat.\footnote{Even here, one cannot claim to have acted entirely alone – other individuals
manufactured, distributed and sold the pen and the fork, taught me to use these
implements, etc. Nonetheless, we abstract from these other contributions in
understanding who is responsible for my use of the pen or the fork, and it seems more
appropriate to do so in these cases than, for example, in cases of an individual’s success
within an institution. If there are any independent individual actions, then, I submit that
the mundane acts of picking up a pen and using a fork are among them.}

To give some flavor of the type of actions falling into categories (2) and (3),
consider the case of pollution. In general, no one individual can produce enough waste to
cause damaging air pollution. Instead, air pollution results from the combined emissions
of many individuals. Suppose that, for a given instance of pollution, no one contributor
knew either that the substance he was emitting was noxious, or that others were emitting
the same substance. This would be an example of actions of type (2) – i.e., those where a
combined product results though none of the actors knows of the others’ contributions. In
such a case, it would be appropriate to hold each responsible just for his or her share of
the noxious emissions: Since each acted solely on his or her own, each ought to bear
responsibility solely for his or her contribution. In cases of type (2), then, we have combined products reducible to individual actions.

More often, pollution results from an attitude of indifference cultivated by being among those who routinely, and negligently or knowingly, release noxious gases into the air. Category (3), which consists of action resulting from the influence of others, is intended to cover such cases. In these instances, any one person’s emissions are partly attributable to others whose influence lessened that person’s concern for the environment. Here, one can argue that each emitter’s share of the total emissions would not necessarily equal her share of responsibility, for some (if not all) individuals would, by their negative example, bear a share of responsibility for the emissions of others. More generally, in actions of type (3), individuals other than the one who performs the act intentionally or negligently contribute to the actor’s motivational set and may, therefore, bear (some) responsibility for the resulting act.

Category (4) can be elucidated by distinguishing it from category (5), which covers cases of bona fide collective action. Briefly, collective acts are intended to be attributed to a collective; by contrast, for actions of type (4), there is no intention that the individuals act on behalf of some entity that subsumes and represents them. Going for a walk together is the paradigmatic example of actions of type (4). Typically, when a pair of individuals goes out for a walk, each intends that they walk together, but neither intends that their outing unify them into a kind of group to which the walk can then be

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43 Larry May’s account of shared responsibility is one that would assign responsibility in virtue of some individuals’ negative influence on others. See SHARING RESPONSIBILITY 105-124 (1992).

44 See, e.g., MICHAEL BRATMAN, FACES OF INTENTION: SELECTED ESSAYS ON INTENTION AND AGENCY 126 (1999).
attributed. In other instances, individuals join forces because the act they seek to perform is one that none of them could perform on his or her own, as when two people together move a piece of furniture too heavy for either one to carry alone. Here too there will be a significant amount of coordination, and each intends to assist the other, but neither intends that they be taken by others to be a unit, and to have their act ascribed to the unit in the first instance and to each of them only derivatively. By contrast, individuals participating in a bona fide collective act not only intend to act together, but also intend that their act redound first and foremost to some super-entity in whose name they perform their contributions. For example, the baseball player intends not only to swing a stick at a ball but also to have the resulting run credited to his team. I shall refer to these cases of joint intentional action on behalf of an entity in whose name the contributions are performed as instances of collective action.

It is worth noting that, as we proceed down the list from individual to collective action, it becomes increasingly difficult to individuate contributions and responsibility assignments. Further, each category of action encompasses, and adds to, the collectivist features of the category before it. Thus, category (3) adds the element of influence to the combined contributions of category (2); mutual influence is assumed in category (4), and it adds to category (3) each party’s intention to have her acts coordinate with those of the others; bona fide collective action involves not only mutual influence and efforts at coordination but also commitment to a larger entity whose identity is, at least in part,

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45 But see Margaret Gilbert, *Walking Together: A Paradigmatic Social Phenomenon*, 15 Midwest Studies in Philosophy 1 (1990) (construing the project of going for a walk together as a joint commitment to form a plural subject of going for a walk).
independent of the identities of the members comprising it.\textsuperscript{46} The dissertation will be concerned with category (5) type acts – \textit{i.e.}, cases of collective action.

### III. Groups

For purposes of gaining clarity on the notion of collective action, it will be important to distinguish between two kinds of collections of individuals, which I shall call \textit{aggregations} and \textit{groups}. The dissertation shall focus upon groups, but even here distinctions arise. Part III.A distinguishes groups from aggregations, and Part III.B advances distinctions between different kinds of groups.

#### A. Aggregations and Groups

Generally speaking, an aggregation is a loose collection of individuals who share some feature in common, but who do not intend to be taken as a unit, and who are not organized so as to be taken as a unit. Thus, we might speak of left-handed individuals, or the members of Generation Y, or oenophiles, or the passengers on the rush hour express train to the suburbs. In doing so, we delineate a collection of individuals in virtue of a shared trait (handedness, generational culture, pastime, position in space and time), but it is purely a matter of contingency that anyone happens to belong to the aggregation. Members of the aggregation do not owe one another anything in virtue of the shared trait, there is no shared activity around which each may press the others to coalesce, any one of

\textsuperscript{46} See, \textit{e.g.}, \textsc{Peter French}, \textsc{Collective and Corporate Responsibility} 28 (1984) (“the existence of the corporation through time is indifferent to the shifting identities of those persons associated with it.”); \textsc{Christopher Kutz}, \textsc{Complicity: Ethics and Law for a Collective Age} 72 (2000) (arguing that a group is nonextensional insofar as its identity is independent of the identities of its members).
them may leave the aggregation (assuming, as in the oenophile or passenger cases, that the shared trait is one that can be changed) without incident or offense to the others.

By contrast, a group, as I shall use that term, is by definition a collection of individuals with a *joint project* at its core. A joint project is a cooperative activity of two or more individuals in which each is expected to participate. Different joint projects may have different rationales: People join forces to get something done because the objective is one that is more easily accomplished with others, or because of the value of cooperative activity, or because the project is one whose meaning derives, at least in part, from the fact that it is shared with others. I will be interested in drawing out the normative dimensions of a joint project, and I will argue that there is a core set of expectations that members may press against one another that arises independent of the rationale for the joint project. For now, it is sufficient to note that a joint project entails a set of normative expectations for those who are parties to it.

Insofar as membership is the predicate for shared responsibility on the account to be advanced here, matters become somewhat confusing because some aggregations seem to have members. Thus we refer to those who belong to some aggregations as “members” of the aggregation in question – e.g., the members of Generation Y. More confusing still, some aggregations adopt a pay-to-play model, where those who are entitled to play are

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47 It is possible that at least some of these aggregations contain the seeds from which a group might grow. Thus, for example, the collection of passengers on the rush hour train might coalesce into an ephemeral group if, say, the train were to crash and they were to come together to help one another exit the train cars. See, e.g., Joel Feinberg, *Collective Responsibility*, 65 J. Phil. 674 (1968); Larry May, *The Morality of Groups: Collective Responsibility, Group-Based Harm, and Corporate Rights* 38 (1987); Virginia Held, *Can a Random Collection of Individuals Be Morally Responsible?*, 67 J. Phil. 471 (1970). The point is that, without a joint project, the collection is an aggregation and nothing more.
referred to as “members” of the aggregation. These entities afford goods or services to “members only,” and the nominal “memberships” they extend are intended to confer a sense of exclusivity on their “members” (as with websites offering “members only” access to sales of, say, designer goods), or secure fees to defray the services rendered (as with a membership at a gym, or in AAA), or subject their “members” to a contractual agreement that is a condition of eligibility for the entity’s wares (as at Costco or Blockbuster).

Genuine membership is distinct from “membership” in, say, Gen Y, or Costco, or AAA because “memberships” in the latter come neither with expectations nor even opportunities to participate in the group’s shared project. This is not to say that Costco members, for example, won’t find points of affinity – a desire to buy merchandise in large quantities, a quest for value, and so on. Indeed, there may be even richer grounds of connection. For example, Costco members may be more likely to have large families, or to run small enterprises that make shopping at a store like Costco sensible, and these features may well ground a sense of commonality among members. But Costco itself does not have a joint project that unites members at its core. A contrast with a local grocery co-op is instructive. Many a co-op operates as a place to establish, and give voice to, a community that seeks to do more than buy food and other household goods. The co-op might unite members around the shared goal of local sourcing, or organic growing practices, or healthful eating, or simply the enjoyment of good food. The co-op might facilitate member interactions, by providing seating areas, or hosting information sessions on topics of interest to the membership. The mission statements of these entities reflect the differences in the kinds of membership they offer. Costco, for example, identifies as
its mission a quest “[t]o continually provide our members with quality goods and services at the lowest possible prices.”\textsuperscript{48} Costco “members,” that is, are the beneficiaries of its central project, and not participants in that project. Instead, Costco’s true members are the employees, directors and shareholders of the corporation who enjoy established avenues for contributing to the company’s mission, and who are expected – in various ways, and to various degrees – to do so. By comparison, the International Co-operative Alliance, which is the umbrella organization for grocery co-ops, defines a cooperative as “an autonomous association of persons united voluntarily to meet their common economic, social, and cultural needs and aspirations through a jointly-owned and democratically-controlled enterprise.”\textsuperscript{49} In this way, members’ participation is at the heart of the venture.

Given that “memberships” in Blockbuster, Costco and so on, carry no expectations of participation, and provide no avenues for doing so, these “memberships” are better thought of as subscriptions. (Indeed, the term “subscription” is often used instead of “membership” in entities offering arrangements similar to those offered by Blockbuster and Costco – e.g., Netflix and Amazon’s “subscribe and save” program, respectively). The co-optation of the “membership” banner by these subscription services (as well as the casual way in which we refer to individuals who belong to a particular aggregation as “members” of that aggregation, as in “he is a member of the Greatest


\textsuperscript{49} E.g., The Swarthmore Food Co-op, What Is a Co-op?, at http://www.swarthmore.coop/index.php?page=what-are-coops. Some co-ops, such as the Park Slope Food Co-op in Brooklyn, go farther than this, allowing only members to shop at the store, and expecting that members will contribute labor as part of their membership. See http://foodcoop.com/go.php?id=38.
Generation.”) might well have contributed to a felt decline in membership’s moral meaning. But we should not be misled by misuse of the notion of membership into ignoring membership’s moral import. In what follows, when I refer to membership, I shall mean only genuine membership and not the morally vacuous “memberships” conferred upon those who belong to some aggregations.

**B. Ephemeral, Intimate and Institutional Groups**

We have just seen that a group has a joint project at its core; as such, members of a group legitimately harbor expectations that each will participate in the group’s joint project. But for all that a joint project entails, it could characterize joint intentional action (Type 4) just as aptly as it characterizes collective action (Type 5). The purpose of this section is to refine the distinction between these two kinds of action, and describe the reasons for which the dissertation focuses only on groups engaging in collective action, or institutional groups.

One way to distinguish between groups refers to the time span over which the group endures. Thus groups may be ephemeral or longstanding. Ephemeral groups are defined in reference to the act that constitutes the group, while longstanding groups are defined partly in reference to the acts they perform, but also in reference to their characteristics, history, reputation, and so on.

As an example of an ephemeral group, consider the mob that is unified by a common interest or spirit, such as the mob consisting of the Parisians who stormed the
The 1789 Paris mob is not a mere random collection of individuals; instead, as Larry May compellingly describes, the mob participants were unified in their class struggle and they joined forces in an organic fashion to press their cause together. More to the point, they reflectively or “pre-reflectively” shared an intention to have their acts represent the group as a whole.

The defining act committed by the 1789 Paris mob was the revolt against the king. It is true that the revolt itself was a kind of composite act, consisting of many smaller acts that together constitute the revolt – the looting of arsenals, the demolishing of barricades, the shouting of demands, etc. – and not all group members need have participated in each of these smaller acts. But one could not have been a member of the mob if one did not participate in some aspect of the revolt.

With longstanding groups, by contrast, there is typically no one composite act by which one can define the group, and in which all of its members participated. The life of the family, corporation, nation, university, professional sports team, ethnic group, and so

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50 This is Larry May’s example, which he borrows from Sartre. LARRY MAY, THE MORALITY OF GROUPS: COLLECTIVE RESPONSIBILITY, GROUP-BASED HARM, AND CORPORATE RIGHTS 38 (1987).

51 May at 60 (“The members of the mob can attain the kind of collective consciousness of each other’s needs that unites them as if they were one organic totality.”). In other instances, the word “mob” is used to describe a random collection of individuals who together participate in a set of destructive acts but who do not view themselves as part of a cohesive group, and who act without a shared purpose. For example, after the Montreal Canadiens hockey team won the Stanley Cup in 1986 and again in 1993, throngs of their fans took to the streets. The celebration quickly deteriorated into riotous looting and vandalism, as individuals broke into stores and overturned parked cars. See, e.g., Graeme Hamilton, Riots a Black Eye for Montreal, NATIONAL POST (Apr. 22, 2008). In describing these acts of vandalism, it would be perfectly appropriate to refer to what the mob did – after all, no one individual could overturn a car on her own, for example. Nonetheless, this mob likely did not constitute a group since its participants did not intend to act on behalf of some unifying entity. Instead, the acts committed by this mob are those captured by category (3) above.

52 May at 61-65.
on, is rich and varied, and we should not expect that all of the members of the longstanding group will have participated in all of its acts. Indeed, we should not even expect that all will have participated in those acts that are significant constituents of the longstanding group’s identity. This is most obviously true when we take a long-range view of the group: the membership of contemporary Americans in the United States is not impugned by the fact that we were not present at the Founding. But it is also true for contemporaneous significant group acts: not all White males of majority age living within the thirteen colonies in 1776 need have fought in the War of Independence in order to claim membership in the then-nascent American nation-state.

The difference between ephemeral and longstanding groups is significant for the dissertation, since its central focus is the responsibility members of a group bear for group transgressions in which they did not participate. For that reason, the focus of the dissertation will be on the collective action of longstanding groups.\(^53\)

\(^53\) It may well be that the account I advance could be extended to cases of ephemeral collective action, though I am doubtful that one and the same account could cover both kinds of groups. In this respect, my account differs from that of Larry May, who advances an account of collective responsibility whose central virtue, according to May, is its capacity to capture the acts not only of longstanding, institutional groups, like the corporation, but of mobs as well. See, e.g., May, supra note 14 at 31. May recognizes a key distinction between ephemeral and longstanding groups – viz., that in the latter, but not the former, it is a necessary truth that “some individuals [will be] authorized, or appear to be authorized, to represent their own actions as the actions of the group as a whole.” Id. at 55; see also id. at 57. Call this the authorization condition. May nonetheless believes that collective responsibility for all collective action can be grounded in an enabling condition – i.e., the fact that, within all groups, “individuals are related to each other so as to enable each other to act in ways they could not act on their own.” May, supra note 47 at 55; see also id. at 57 (concluding that the enabling condition “is the only condition which is necessary across all forms of collective action”).

To identify a single necessary condition true of all forms of collective action is not yet to arrive at a unitary account of collective action, however. (By way of analogy, it is true of all crimes that they involve violations of the law but to note this is not yet to arrive at an account of what makes an act a crime.) If some group action can be explained
But even within the class of longstanding groups, there is a further distinction of relevance here – *viz.*, that between *intimate* and *institutional* groups. It is here that the distinction between simple joint intentional action (Type (4) acts) and collective action (Type (5) acts) becomes especially salient. Intimate groups (e.g., friends, family, and romantic partnerships, and perhaps also informal religious or ethnic communities) no less than institutional groups have a joint project at their core. (In intimate groups, the joint project might be best understood as the relationship itself). As such, the set of obligations that follow from a joint project obtains within both intimate and institutional groups. There are of course significant differences in the nature of the joint project at the heart of intimate groups relative to those at the heart of institutional groups – partners in romance owe one another a set of obligations that partners in business do not, and vice versa. But the relevant distinction for our purposes lies not in the differing kinds of joint project in which the two groups engage but instead in their organizational structure.

More specifically, the kind of joint action in which an institutional group engages requires that the group itself be taken to be an author of the group’s acts. In other words, the members of an institutional group intend that acts be ascribed in the first instance to

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only where both the authorization and enabling conditions are satisfied, while other group action can be explained solely by reference to the enabling condition, then it already looks like we have two accounts. (Again, by way of analogy, though it is true that both *malum prohibitum* and *malum in se* crimes involve violations of the law, only the latter are bad in and of themselves, and one might rightly think that this difference between the two kinds of crime makes necessary differing accounts for holding individuals responsible for the commission of one rather than the other kind of crime.) So, the most May has done is to come up with a condition for collective action – albeit an important one – that mobs and corporations share; he has not made good on his promise of delivering a single theory that can account for both mob and corporate acts. Since I ultimately reject his account on other grounds, see Chapter 2, I do not pursue this matter further here.
the group itself. This is not true of intimate groups. A number of important implications follow from the fact that institutional groups agglomerate their members in a collective entity. First, that entity’s existence and capacity for action depend crucially on its members. Thus, central to the obligations of members of institutional groups is an obligation to sustain the group’s identity and agency. I shall elaborate upon this obligation in Chapter 4. Moreover, the presence of the collective entity allows us to ascribe a group act to the group’s members independent of the members’ participation – an act of the group is, in a sense, an act of each of the group’s members. By contrast, it is not at all clear that intimate groups are structured so as to allow us to ascribe the acts of one of the members of the group to the others. I leave open the question whether there is some analogous mechanism within intimate groups that would allow for shared responsibility. The dissertation’s account of shared responsibility is intended to apply only to institutional groups, whose very structure licenses our ascribing to the group an act of some of its members. Finally, there is a strategic reason for restricting the focus to institutional groups. Outside of institutions, a theory that would assign responsibility for one group member’s transgression to other group members is likely to meet with the (not undue) criticism that it is barbaric, or smacks of racial or ethnic animus. We have at

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54 Margaret Gilbert believes that all group action creates a “plural subject” to which the group’s acts should be ascribed in the first instance. I advance reasons for rejecting her account in Chapter 1.


56 See, e.g., Howard McGary, Morality and Collective Liability, in COLLECTIVE RESPONSIBILITY: FIVE DECADES OF DEBATE IN THEORETICAL AND APPLIED ETHICS 77, 77 (Larry May and Stacey Hoffman eds. 1991). The worry here is that members of a racial or ethnic group will be castigated for the transgressions of fellow members when the only thing unifying one to another is their shared race or ethnicity. Cf. KARL JASPERS, THE QUESTION OF GERMAN GUILT 41 (E.B. Ashton trans. 1947) (describing anti-Semitism as
least some hope of staving off these criticisms if we restrict our inquiry to institutions, whose members intend to have other members’ acts represent them through the institution.

IV. THE DISSERTATION’S MAIN THESES, AIMS, AND A ROADMAP

In light of the foregoing, we can now reformulate the dissertation’s central question as follows: What responsibility do members of an institutional group bear for collective acts in which only some members participate, and what is the ground of their responsibility?

The question assumes that responsibility redounds to individual members, rather than resting with the group as a whole. That assumption is motivated in Chapter 1, where I seek to cast a skeptical light on the possibility of collective moral responsibility.

Other theorists have also held that group members may be held responsible for group transgressions independent of their contributions to those transgressions; in other words, there is already a literature on shared responsibility. In Chapter 2, I argue that none of the existing accounts can justify assigning blame to members of a group for a group transgression in which at least some members did not participate.

an invidious form of assigning collective responsibility for Jesus’ death, and denying German responsibility for the Holocaust by analogy). Nonetheless, there may be exceptional cases in which members of an ethnic group who do not participate in the group’s transgression may yet bear responsibility for that transgression for precisely the reasons that the dissertation will outline. This will most likely be true where the ethnic group in question comes to function like a quasi-corporate body because so many members participate in the group transgression. Yet, because the dissertation takes a right of exit to be a precondition for being held responsible, and because it is not clear how one could renounce or abandon his ethnicity, the dissertation will not seek to have its account extend to ethnic groups.
Of course, the very thought that individuals might be blamed for a transgression in which they did not participate is sure to raise a few eyebrows. The central task of Chapters 3 and 4 – which together form the centerpiece of the dissertation -- is to articulate an account of member responsibility that defends the notion that membership provides a ground of blameworthiness different from participation, but a worthy ground nonetheless.

Chapter 3 sets the stage for the account of shared responsibility, by articulating a normative conception of membership that draws out the ways in which members bear a special set of obligations to one another. Chapter 4 seeks to articulate the ways in which the group’s members bear both causal and moral responsibility for all of the group’s acts, independent of their participation in these acts. More specifically, I argue that all group members bear causal responsibility for group acts – including group wrongs -- insofar as each contributes to the group’s capacity to act. Further, I argue there that contemporary members bear a kind of causal responsibility for a group’s historic injustices (i.e., those committed well before the tenure of the group’s current members), insofar as they contribute to the circumstances that make the continued ascription of the injustices to the group true. But while we can thereby locate a causal connection between members and a group transgression, that connection does not ground the members’ moral responsibility. To establish the member’s moral responsibility, I leverage the insights of Chapter 3 to argue that one of the obligations members bear is an obligation to refrain from seeking to be evaluated individually and apart from the group; instead members should stand together as the group is judged. The causal account that I offer in Chapter 4 is intended to establish that the intricacies of a group’s operations might well be such as to make
dubious any attempted disclaimer of responsibility. But, more than that, as a normative matter, the Chapter seeks to establish that any attempted disclaimer is distasteful – it is inconsistent with the bonds of loyalty to one’s fellow members that membership demands.

Chapter 5 elaborates on the implications of holding group members responsible, by seeking to apply the account developed in Chapter 4 to the question of American citizens’ responsibility for human rights violations committed by the United States in the course of the war in Iraq. To that end, Chapter 5 first offers a recap of the account of membership responsibility, as it would cash out for American citizens. The claims advanced in Chapter 5 about Americans’ responsibility are not immediately intuitive – if they were, we would witness far more self-remonstration among everyday Americans than we do. The divergence between the account’s assessment of Americans’ responsibility and our pre-theoretical assessment provides occasion to explore the source and implications of the obstacles to acknowledging Americans’ responsibility. The discussion there traverses social and political philosophy, moral psychology and metaethics, in a kind of process of reflective equilibrium: The ambition is both to use our metaethical commitments to refine our understanding of what it means to hold individuals who do not participate in a wrong responsible for that wrong, but also to use the account of membership responsibility to challenge some of our metaethical commitments. The work of Chapter 5 ends with some practical, concrete suggestions for the kinds of initiatives Americans might pursue by way of discharging the obligations that responsibility entails.
CHAPTER 1
A CRITIQUE OF ACCOUNTS OF COLLECTIVE MORAL RESPONSIBILITY

“The faculty voted to grant Melissa tenure.” “The Catholic Church believes that, at least in most instances, abortion is wrong.” “Alcoa intends to make a hostile takeover bid for Alcan.” “Germany regrets killing thousands of Namibia’s ethnic Hereros in 1904.” “The Sudanese government is responsible for genocide in Darfur.”

We often speak as if collectives can act, believe, intend, and emote; more to the point, we frequently treat collectives as if they are morally responsible agents. Ought we to take our speech at its word, or are these statements merely convenient shorthand for a more complicated state of affairs? This chapter probes accounts that hold that collectives are appropriate bearers of moral responsibility -- or collectivist accounts, to use the terminology introduced in the Introduction – and finds these accounts wanting. More specifically, I bring to bear an understanding of moral responsibility that grants the emotions a central role in our practice of judging that someone is morally responsible for some good or bad deed, and I argue that, because collectives lack a capacity for emotion, they cannot judge themselves to be responsible; nor are they appropriate objects of others’ judgments that they are responsible.57

57 Paul Sheehy has raised the interesting suggestion that the question of a collective’s moral responsibility might not be an all-or-nothing affair; instead, he argues, collectives might well possess the capacities that make them morally responsible “up to a point,” in much the same way that children may be held morally responsible “up to a point.” Paul Sheehy, Blaming Them, 38 J. SOCIAL PHIL. 428, 430-31 (2007). Whatever it might mean to hold collectives responsible “up to a point,” I do not take up this suggestion here, since I am concerned to determine whether it is appropriate to respond to the group that has
The arguments about the dubious possibility of collective emotion are intended to cast a skeptical light on the possibility of collective moral responsibility, but not to refute that possibility altogether. I maintain modest ambitions here because the understanding of moral responsibility upon which I rely in this chapter – again, one in which a capacity for emotion is essential -- is not the only understanding of responsibility to have garnered a respectable philosophical following. There are some theorists who would deny that emotion is required; for them, judging oneself or others morally responsible turns entirely upon beliefs, or non-emotional reactions. For these theorists, the absence of a collective capacity for emotion would be of no moment. While I offer reasons to think that an emotion-centered account of responsibility best captures our responsibility practice, I do not seek to definitively establish the truth or theoretical superiority of such an account.

But even if the notion of collective moral responsibility survives the arguments of this chapter, the project of the dissertation loses none of its force. For, both as an analytic and as a practical matter, there is no reason to think that ascribing responsibility to a collective for some deed diminishes the responsibility to be assigned to the collective’s members. *(A fortiori* nor would there be reason to think that collective moral responsibility rules out the possibility of shared responsibility altogether.) Adherents of collective moral responsibility have no objection to assigning responsibility for some collective wrong to the collective *as well as* the individual perpetrators of the collective wrong. The law reflects this double-assignment, as seen for example in cases where criminal liability is imposed for one and the same act upon both a closely held

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transgressed with the complement of moral responses we aim at well-functioning adults who have engaged in wrongdoing. The possibility of a collective’s lesser moral responsibility is thus not of interest here.
corporation and its owner,\textsuperscript{58} or upon the executives of a publicly traded corporation and the corporation itself.\textsuperscript{59} Neither criminal nor moral responsibility is a zero-sum matter. If members of a group bear responsibility for a group act independent of their participation in that act – as Chapter 4 argues – then there is no reason to think that members might not bear this responsibility \textit{alongside} the collective, assuming for the moment that the collective can bear moral responsibility. The dissertation’s contribution – a novel account of group members’ responsibility – does not depend for its success on a refutation of collective moral responsibility. At the same time, were we to conclude that collectives could not bear responsibility, there would be an even greater impetus to locate a compelling of shared responsibility. The arguments of this chapter can then be seen as providing motivational fodder for the remainder of the dissertation.

With that preliminary as background, we can turn to assessing collectivist accounts. Generally speaking, there are two points of departure for a defense of collective moral responsibility: First, one can invoke our \textit{practices} of assigning responsibility and argue that, because we treat collectives as morally responsible, collectives must be moral agents.\textsuperscript{60} Alternatively, one can tackle the issue from the other direction, by arguing that,

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  \item \textsuperscript{58} See, \textit{e.g.}, United States v. Andreadis, 366 F.2d 423 (2d Cir. 1966) (affirming conviction of John Andreadis and the corporation of which he was the sole owner and manager). \textit{But cf.} Joshua Dressler, \textit{Reassessing the Theoretical Underpinnings of Accomplice Liability: New Solutions to an Old Problem}, 37 \textit{HASTINGS L.J.} 91 (1985) (objecting to the doctrine of accomplice liability, because it treats accomplices no less severely than perpetrators).
  \item \textsuperscript{59} For example, in the wake of the Enron scandal, the SEC brought fraud charges against both Merrill Lynch and four of its executives, alleging that the firm had aided and abetted Enron’s efforts to pad its profits. \textit{See, e.g.}, Reuters, \textit{SEC Charges Merrill in Enron Case}, \textit{L.A. TIMES}, Mar. 18, 2003.
  \item \textsuperscript{60} \textit{Cf.} \textsc{Christopher Kutz}, \textsc{Complicity: Ethics and Law for a Collective Age} 193 (2002) (noting that we need not answer the metaphysical question of a collective’s
\end{itemize}
\end{footnotesize}
because collectives possess the *capacities* for moral agency, collectives must be morally responsible. In this Chapter, I first address practice-based accounts and then turn to capacity-based accounts.

**I. Our Practices of Assigning Moral Responsibility to Collectives**

Proponents of collective moral responsibility sometimes argue that our practices of assigning moral responsibility to collectives establish that collectives are appropriate bearers of these assignments – in short, that they are moral agents. There are two sets of arguments that will occupy us here: According to the first, collectives are normatively autonomous – that is, they can possess normative properties that none of their members possess. According to the second, collectives are appropriate targets of the reactive attitudes. Though I address each set of arguments separately, I believe that both are ultimately inconclusive because, as we shall see, both beg, rather than answer, the question about the collective’s moral agency.

**A. Collectives and Normative Autonomy**

The general claim to be assessed in this section is that collectives can bear normative properties that are not true of any of their members – that they can be guilty, blameworthy, praiseworthy and so on even if none of their members are. If the claim turns out to be true, then collectives would bear a kind of responsibility that could not be reduced to the responsibility of individual members. The claim comes in two flavors: First, some theorists refer straightforwardly to our speech about collectives – insofar as personhood in order to defend or advance our practices of holding accountable since these can be grounded in instrumental considerations).
we routinely speak of collectives as if they (and not their members) bear certain normative predicates, collectives are normatively autonomous, this first claim holds.

Other theorists rely not upon our speech about collectives but instead on our practices of structuring and treating collectives such that they can render decisions that none of their members would endorse. I address each claim in turn.

1. **Claim 1: We speak as if collectives are morally responsible**

Peter French, who almost single-handedly revived contemporary philosophical work on collective and corporate responsibility, points out that we standardly blame corporations for acts for which none of their members is blameworthy. Thus he argues that the statement, “The Gulf Oil Corporation is responsible for financially ruining small, independent, gasoline station owners by pricing them out of the market” could be true even where none of the individual members of Gulf have acted in a morally substandard way. D.E. Cooper invokes as an example the statement, “the tennis club

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62 **Peter French, Collective and Corporate Responsibility* 15 (1984). Correspondingly, French advances a similar claim about corporations’ legal autonomy. See id. at 183. Specifically, by appealing to what is called the doctrine of identification, French argues that corporations may be guilty of wrongdoing even where none of their members bears a guilty mind. The foundational principle for the doctrine of identification is clearly articulated in the Canadian case of Regina v. St. Lawrence Corp., [1969] 2 O.R. 305, 5 D.L.R. [3d] 263 [C.A.], which French cites approvingly: “If the agent falls within a category which entitles the court to hold that he is a vital organ of the body corporate and virtually its directing mind and will … so that his action and intent are the very
failed” where the failure in question is said to be fully attributable to the club’s lacking an “esprit de corps” rather than to any untoward behavior on the part of its members.  

Deborah Perron Tollefsen raises the possibility that the normative competency of soldiers in combat may be so greatly compromised that they cannot be held responsible for an atrocity they commit; in such a case, she suggests, only the collective would be a legitimate target of the reactive attitudes.

I believe that each of the examples is question-begging. Rather than interpreting the examples as evidence for the group’s normative autonomy, one could argue instead that, if the group’s act is in fact morally substandard, then its members have necessarily acted in a morally substandard way for they have contributed to the group’s act through their membership. On this line of argument, members of Gulf Oil (most likely officers and directors) may well have committed a wrong solely in virtue of their membership in a corporation that engages in unfair pricing practices. Alternatively, one could maintain

action and intent of the company itself, then his conduct is sufficient to render the company indictable by reason thereof.” *Id.* at 183. But, as stated, the doctrine of identification presupposes that some member of the corporation harbor the guilty intent, while French is attempting to establish that the corporation may be legally guilty even where none of its members possesses a guilty mind. The doctrine of identification is thus inapposite. However there is a U.S. case – United States v. Bank of New England, 821 F.2d 844 (1st Cir., 1987) – that finds criminal mens rea satisfied collectively. (I discuss this case in Part II, where I interrogate accounts of collective belief.) In any event, we do use collective responsibility concepts in tort, where there is generally no need to find elaborate scienter.


64 Deborah Perron Tollefsen, *Participant Reactive Attitudes and Collective Responsibility*, 6 PHIL. EXPLORATIONS 218, 230 n.22 (2003). This seems like an especially spurious instance in which to go from the relative blameworthiness of the individual actors to the culpability of the collective, given that other individuals – in particular, those at the top of the military hierarchy – may well be blameworthy even if the low-level soldiers are not.

65 See Amy J. Sepinwall, *Shared Responsibility and Corporate Criminal Liability* (manuscript on file with author) (arguing that officers and directors are appropriate objects of blame for corporate crimes).
that where none of the members’ acts is blameworthy, neither is the act of the group. As such, if the failure of the tennis club, for example, does not result from any morally problematic acts of its members, then the failure itself may be without normative significance; “failed” here might just carry the more neutral sense of “closed” or “folded.” Think here of the phrase “the marriage failed” used to describe a union that has dissolved solely because the two joined individuals have grown apart. That we pin the failure on the marriage – an endeavor – rather than on the parties to it suggests that we are reserving moral judgment, not exercising it.

Tollefsen’s example begs a different question. If it truly is the case that the soldiers were temporarily deprived of their capacities for moral agency, and if no one whose moral capacities were intact at the time ordered or otherwise intentionally or negligently brought the atrocity about, then though we may aim our reactive attitudes at the collective, it is not clear that we do so because we genuinely believe the collective to be blameworthy. Instead, there may be pragmatic or utilitarian reasons for holding the collective responsible – for example, that it is best placed to make amends through offers of restitution and so on. Further, the need to find some target for the resentment or indignation that the atrocity engendered may entail that we are willing to act as if the collective is a moral agent. This would especially be the case where, as a result of insufficient evidence, we were impotent to go after the individuals who participated in the group wrong, though we were convinced there were wrongdoers among them.66 In short,

66 Others have construed responses of this kind as primitive – for example, likening them to instances when our ancestors might have shaken their fists at a volcano. See, e.g., Susan Wolf, The Legal and Moral Responsibility of Organizations, in NOMOS XVII: CRIMINAL JUSTICE 268 (R. Pennock & J. Chapman eds. 1985). But this construction strikes me as wrongheaded: While, as a general rule, it’s a pure category mistake to rail
Tollefsen presupposes that the appropriateness of holding some person or entity responsible is exhausted by considerations of desert when it may be that alternative rationales better explain the basis for our emotional responses.  

2. **Claim 2: Collectives must be autonomous because we take their decisions at face value, even when these decisions fail to coincide with a decision of any of their members**

Recently, a handful of theorists have relied upon discursive dilemmas to insist upon the autonomous decision-making power of the collective. Discursive dilemmas against most inanimate objects, collectives present an exception, insofar as they are comprised of individuals who could – and, as I shall go on to argue, should – function as warranted targets of our resentment or indignation.

Tollefsen makes the additional argument that collectives are often subject to norms that would not apply to individuals – for example, the normative standards implicit in just war theory. *See supra* note 64 at 228. “Although it is the individuals in the group that will have to appreciate these standards, their appreciation will be a function of their reflection on how the standard applies to the group, the group’s action, and themselves *qua* members.” *Id.*

The fact that there are group-based norms does not yet establish the moral agency of groups, however. Consider the following analogy: Dogs are subject to norms dictating that they refrain from jumping on people, biting, relieving themselves indoors, and so on. Here too the individual dog-owners are charged with interpreting and applying the norms, and they do so while contemplating how the norms in question apply to their dogs, the dogs’ actions and themselves *qua* dog owners. No one takes dogs to be moral agents, however. Tollefsen owes us an argument distinguishing groups from other entities that, though subject to unique norms, clearly do not count as moral agents.

As Philip Pettit writes, “The idea of the discursive dilemma is a generalization of the legal idea of a doctrinal paradox.” Philip Pettit, *Responsibility Incorporated*, 117 ETHICS 171, 177 (2007) (citing Lewis A. Kornhauser and Lawrence G. Sager, *The One and the Many: Adjudication in Collegial Courts*, 81 CAL. L. REV. 1 (1993)). A doctrinal paradox arises where there is more than one judge deciding a case, the case turns on a multi-factor test, each judge finds that at least one factor is not satisfied, but a majority of judges find that each factor is satisfied. Where the composition of the majority changes at least between two of the factors in the test, no judge would individually find the test satisfied. But, as a group, the panel of judges finds the test satisfied.

For a more concrete example, consider a question put to the trial judge by the jury in the case charging Arthur Anderson with knowingly and corruptly shredding documents...
arise where a group decision procedure yields a decision for the group to which none of its members would assent. In such cases, these theorists argue, it is only the collective, and not its members, who may be held morally responsible for the consequences of the decision.

For example, Philip Pettit describes a kind of case in which individual members of a group are empowered to decide on a group’s behalf. The decision results from votes that the members cast on multiple dimensions. Consider, for example, a group of three tenured faculty members, A, B and C, empowered to decide on behalf of their department whether a junior faculty member, D, should be granted tenure, on the basis of the junior faculty member’s scholarship, teaching, and service. A believes that D is deficient on the scholarship dimension; B believes that D is deficient on the teaching

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related to Enron’s financial fraud: “If each of us believes that one Andersen agent acted knowingly and with corrupt intent, is it [necessary] for all of us to believe it was the same agent. Can one believe it was agent A, another believe it was agent B, and another believe it agent C?” See, e.g., Jonathan Weil et al., Dramatic Question From Jury Could Shape Andersen's Fate, WALL ST. J., June 14, 2002, at Al. Over the defense’s objection, the judge answered the jury’s question in the affirmative though, in the end, the jury did reach unanimous agreement about the identity of the individual wrongdoer, and so did not need to rely upon the judge’s (dubious) answer to the jury’s question. (The Andersen conviction was later overturned by a unanimous Supreme Court, which held that the jury instructions had been vague and overbroad in their construction of corruption. See, e.g., Charles Lane, Judges Overturn Andersen Conviction, WASH. POST, June 1, 2005.)

Pettit in fact advances three theses in support of a collective’s moral responsibility -- that groups face value choices not faced by their members; that groups have the understanding to make judgments in response to such choices; and that groups have the control to choose between the options on the basis of its judgments of their relative value. Philip Pettit, Responsibility Incorporated, 117 ETHICS 171, 177 (2007). Though my reactions to Pettit revolve solely around his discussion of discursive dilemmas, which arise in his defense of the first thesis, his defense of the other two claims does not alter the comments I offer here.

Pettit presents the issue formally, without offering a concrete example. The tenure example is David Copp’s. See David Copp, On the Agency of Certain Collective Entities: An Argument from “Normative Autonomy,” MIDWEST STUDIES IN PHILOSOPHY 194, 211 (2006).
dimension; and C believes that D is deficient on the service dimension. None of A, B, or C would individually vote in favor of D’s tenure. But the department has decided that so long as a candidate receives a majority of tenure committee votes on each dimension, tenure should be granted. Since B and C approve of D’s scholarship, A and C approve of his teaching, and A and B approve of his service, a majority of the committee finds that D has performed satisfactorily on each of the three dimensions. Thus, the committee as a whole has reached a decision in favor of D’s tenure – again, despite the fact that none of its members would find D suitable for tenure. Pettit argues that in cases where a final vote is to be reached on the basis of a tabulation of votes on subsidiary issues (in the tenure case, the three dimensions upon which tenure is evaluated), there may well be “at least one issue where the group’s judgment fails to coincide with a corresponding judgment on the part of a majority of members. … The permanent possibility of such a problem indicates that … the members will have to create a group agent that comes apart in a manner from the way that they are individually disposed.”71 The positing of a group agent is then a rational response to the possibility of discursive dilemmas. In this way, Pettit’s account is not so much that groups are metaphysically capable of decision-making, but instead that it is practical to conceive of them as such.72

The conception of decision-making that arises on such an account is a functionalist one. In Part II, I argue that we have reason to doubt that functionalist accounts of intention and belief can ground claims of moral agency since our

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71 Pettit, supra note 68 at 183.
72 David Sosa makes a similar point: “Thus, Pettit argues, groups are under pressure to collectivize reason. But this represents a striking contrast with the case of the individual person. The important thing about individual persons is not what practical pressure they are under to be rational: the demand on a person to be rational is constitutive.” David Sosa, What Is it Like To Be a Group?, 2008 SOCIAL PHIL. & POL’Y 212, 222-23 (2008).
understanding of responsibility presupposes that our intentions and beliefs cause felt changes in our internal states. For now, we need not focus on whether a decision-making capacity of the kind Pettit posits is sufficient for moral agency. The more relevant consideration is the motivation behind Pettit’s conception, which stems from Pettit’s implicit denial of the possibility of shared responsibility.

More specifically, Pettit recognizes three sets of individuals who might bear responsibility in connection with the group act, though none of them, on his account, can be made to bear responsibility for the group act itself: The group’s founders may bear responsibility for the decision-making procedures of the group, but that isn’t equivalent to bearing responsibility for the results of decisions undertaken in accordance with those procedures. The group’s current members may bear derivative responsibility for the group’s acts, but that is “not a form of responsibility that might compete” with the responsibility properly attaching to the group. And the enactors of the group’s transgression – those who actually carry it out – may bear responsibility for no more than their contributions to the group act. In this way, there may be “a deficit in the accounting books, and the only possible way to guard against this may be to allow for corporate responsibility of the group in the name of which they act.”

The problem with this picture of responsibility for a collective act is that it omits the possibility of genuinely shared responsibility. Setting aside the question of whether long-departed members of a group bear responsibility for its contemporary acts, we should still acknowledge that enactors might bear responsibility not just for their individual contributions but also for the group act as a whole. (This is the way the

73 Pettit, supra note 68 at 193.
74 Id. at 194.
responsibility of accomplices is understood in the criminal law.) More relevant here,
Pettit’s picture omits the possibility that current members might bear responsibility not of
a derivative kind, but directly for the act of the group. Each member of the tenure
committee did, after all, vote in such a way that allowed D to get tenure; it’s not clear
why the fact that none of the members believed D should get tenure absolves each of
responsibility for having voted for D’s tenure.

The question that introduces Pettit’s account asks whether group responsibility
might be redundant given the responsibility of the individuals involved. He answers this
question in the negative because he does not allow that the group’s responsibility might
redound to its members in a way that leaves no “deficit.” But if he is wrong to overlook
the possibility of shared responsibility – and nowhere does he provide an argument
against it – then the practical consideration motivating collective moral agency
disappears.\textsuperscript{75} This is not to cast doubt on the possibility that collective moral agency
might nonetheless exist – that task will await Part II, as I indicated above. But it is to
argue that the practical considerations in favor of collective moral agency – again,
concern about a deficit of responsibility if responsibility is assigned solely on a strictly
individualist basis – militate just as strongly in favor of shared responsibility as collective
responsibility.

Like Pettit, David Copp uses discursive dilemmas to ground a claim that collectives

\textsuperscript{75} Kirk Ludwig also denies that collective moral responsibility need arise in order to
respond to a responsibility deficit. \textit{The Argument from Normative Autonomy for
problem can be addressed by “apportioning responsibility among the members of a group
\textit{… as and to the degree to which each contributed} to the group act.” Id. In this way,
Ludwig contends that strict individualism is the only kind of responsibility we need,
whereas I maintain that shared responsibility is an important part of the responsibility
picture.
can bear moral responsibility.\textsuperscript{76} To that end, he offers the following example: Suppose that four individuals, P, Q, R and S, comprise a committee that is charged with deciding, on the basis of majority vote, whether to authorize enhanced spending on security services for a prison. After the committee votes against the enhanced spending, a riot breaks out at the prison, several individuals die, and we are asked to assume that the riot could have been prevented had the committee voted to authorize the spending for additional security at the prison. The committee had been presented with findings that strongly supported the need to increase funding, and the committee had had ample time to review those findings. For these reasons, Copp believes that the committee was wrong to have decided against the funding. Yet, as he describes the hypothetical none of the committee members is blameworthy for voting as he or she did: As a result of a family death, P had missed the meeting. Q had argued strenuously in favor of the enhanced spending, and voted in its favor. R and S both voted against the measure but Copp provides excuses for their votes the details of which aren’t important; for the sake of argument, we can assume that R and S’s reasons are in fact excusing.\textsuperscript{77}

Because none of the committee members is individually blameworthy, we might therefore conclude that the committee as a whole properly escapes blame. But Copp believes that this conclusion is wrongheaded. For one thing, our intuitions seem to point in favor of blaming the collective. And, to deny that the collective bears blame, Copp argues, leaves one with difficulty in making sense of our further “intuition that it would be appropriate for the members of the Board to feel bad about the Board’s decision,”\textsuperscript{78} and Copp thinks that “the reason it would be appropriate for them to feel bad is that although

\textsuperscript{76}See Copp, supra note 70 at 214-221.
\textsuperscript{77} Id. at 218.
\textsuperscript{78} Id. at 219 n. 52.
they are not blameworthy, they are members of the Board, and the Board made a decision for which it is to blame.”

More generally, Copp summarizes his argument as follows:

(1) There are possible cases in which (i) individuals act in official organizational roles on behalf of collectives, (ii) the choices and actions of these individuals are entirely rational and morally innocent, or at least excusable, and yet (iii) there is moral or rational fault that must be assigned somewhere, and (iv) the only plausible candidate for the assignee of such fault is the collective. (2) If the collective is at fault in such cases, it must have acted. Hence, (3) agency individualism is false.

In contrast to Copp, the truth of claim (iii) is not at all apparent to me. In cases where one experiences a setback to one’s interests, it might well be more satisfying to assign moral or rational fault somewhere, but the mere satisfaction that the assignment would produce does not entail that the fault must be assigned somewhere, as Copp argues. The fact that, as a pre-theoretical matter, our intuition that the collective deserves blame persists even after we learn that none of the collective’s members deserves blame may speak to the incoherence of our intuitions rather than the truth of collective moral responsibility. And, pace Copp, we don’t need the intuition about collective moral responsibility to make sense of the possibility that members of a group might feel bad for some harm the group produces even if none of the members is individually blameworthy. Instead, it is standard fare for us to feel bad in cases where we have causally contributed to some harm for which we know we bear no moral fault. If I

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79 Id.
80 Id. at 216.
81 In response to Copp’s argument, Seumas Miller simply asserts something like my position. See Seumas Miller, Collective Moral Responsibility: An Individualist Account, MIDWEST STUDIES IN PHILOSOPHY 176, 187 (2006) (“By my lights, if the members of the Board meet the conditions for being jointly institutionally responsible for the decision, and the decision is morally significant, then – other things being equal – they are, qua Board members, jointly morally responsible for the outcome.”). I take it that more than a simple assertion is needed to make his position compelling.
spill red wine on your antique lace tablecloth I will undoubtedly feel bad even if I could
not have been more careful than I was. (Imagine, say, that the person seated next to me
accidentally jostled my arm as I was holding the wine class.). Of course, there is an
alternative explanation for the regret that the committee members in Copp’s hypothetical
might experience – one far more congenial to the account I will go on to advance:
Though none of the committee members might warrant blame if blame is assessed
individualistically, each might well warrant blame simply as a matter of her participation
in the group. A committee member’s regret might then be understood as the response
warranted by her shared responsibility.82

82 There is an additional problem with Copp's account. Copp can view each of the
individuals in his hypotheticals as blameless only because he presupposes that conflicting
reasons and duties can fully cancel one another out. Thus, for example, if a group
member has a duty to seek to prevent her group from engaging in wrongdoing but she is
unable to act on that duty because of an overriding obligation (say, an obligation to be at
the bedside of her dying family member), she may not be held responsible for the group’s
wrongdoing. And, if each member of the group can legitimately claim that each also was
unable to prevent the group wrongdoing because of a conflicting and more pressing
obligation, then none of them may bear responsibility for the group act. In such cases,
Copp concludes, we would arrive at a situation in which “no member is all-in
blameworthy even though the collective is all-in blameworthy.” David Copp, The

Yet it is unclear to me that the presence of a superseding obligation is exculpatory
for the collective’s members in the way that Copp believes it to be. One could plausibly
hold that the conflicting reasons or obligations in question are of a sufficiently different
kind that the reason or obligation that had to be cast aside still maintains some kind of
moral claim. For example, consider that many Germans, Poles, and others at the time of
the Holocaust decided not to harbor persecuted Jews for fear that the Nazis would learn
of their collusion, and execute them as a result. All but the most demanding of Good
Samaritan principles would recognize that, given the risks, it could not be morally
mandatory to offer to hide persecuted Jews. And yet the reasonability of the decision not
to harbor Jews does not seem to impugn our collective assessment that those who lived
under the Nazi regime bear some responsibility for the Holocaust. On a more mundane
note, consider that if you and I make a plan to meet for lunch, and I fail to show up
because my child has been in an accident at school, I owe you an apology though,
presumably, I have chosen correctly between my conflicting obligations – to meet you for
lunch or attend to my child’s injuries – and my failure to fulfill my obligation to you is
In short, the argument from normative autonomy – whether Copp’s or Pettit’s -- unduly ignores the possibility of shared responsibility. Even though no member of a group may have wrongfully participated in an act of the group that unjustifiably causes harm, it may yet be that they are, in virtue of features constitutive of their membership in the group, blameworthy for the group’s act. That, at least, is the position I articulate, qualify, and defend in Chapter 4.

That each of the examples in this Section need not receive the interpretation the authors considered here supply for it, and that none of the authors surveyed here attempts to defeat a position like mine, demonstrates, I believe, that these authors have not succeeded in establishing that collectives can bear normative properties that would not also attach to at least some of their members.83

Therefore justifiable. The general point is that obligations may not be reducible to a common scale. To be sure, we can and do choose between them, and we feel entitled to criticize the choices that others make – we do, in short, believe that there is an objective, or at least intersubjective, standard for judging one’s choice in such situations. But we also appear to believe that the choice leaves a residue or remainder – having chosen correctly, that is, one may nonetheless not have obliterated the claims of the conflicting obligation. The same can be said for reasons. If all of that is right, then the fact that no member is all-in blameworthy for what she did does not entail that she bears no blame for what the collective did.

83 There is one case, though not one I have seen discussed, where it seems especially compelling to attribute normative properties to a collective, first and foremost. This is the case of a collective’s moral progress. Think here of the institution that decides to renounce its history of profiting from slavery by renaming those of its buildings that once bore the names of merchants in the slave trade. It would be appropriate to describe the institution’s decision as a recognition of the institution’s tainted past, and an effort to disavow that past. Because there has been a complete change in membership from the time that the institution accepted donations from slave profiteers to the present, we might be especially inclined to attribute the renaming decision to the institution itself. Indeed, it would likely be odd to say that the members had come to see the error of their ways, or that they had improved morally, since none of the current members had anything to do with the donations in question. Put another way, progress narratives require a subject, and the subject most ready to hand is the institution itself.
B. Collectives As Targets of the Reactive Attitudes

Those who ground the moral agency of the collective on a theory of the reactive attitudes argue that collectives are regularly the targets of our praise, blame, indignation, resentment and so on. For example, Deborah Perron Tollefsen cites one individual’s rage against the tobacco industry for its fraudulent marketing practices, and our general indignation at the institution of the Catholic Church for its complicity in sex scandals. David Silver notes that he resents the corporation that overcharges him, and that he feels guilt for American slavery though he could not possibly have had any control over that institution.

In defending his conception of moral responsibility, Peter Strawson also relied upon examples and appeals to intuition. But Strawson’s argument is conceptual, not empirical: One cannot understand the notion of moral responsibility without attending to

Though moral progress thus represents an instance of collective normative autonomy, the case of collective moral progress also lends support to the idea that normative autonomy does not necessarily entail moral agency. Shampoos and store-bought ice creams are routinely touted to be “New and improved!,” but the fact that it is the products themselves, and not their makers, that are improved does not entail that the shampoos or ice creams are responsible for their improvements. Similarly, the fact that collectives can undergo moral transformations that their members do not undergo does not establish that it is the collectives themselves that are responsible for these transformations. Collective responsibility would arise only where the collective appreciated, in some robust sense, the wrongfulness of its transgression. I argue elsewhere in this Chapter that this the collective cannot do.

As we saw in the Introduction, candidacy for moral responsibility on a Strawsonian account has two (corresponding) dimensions – first, one must be an appropriate target of the reactive attitudes; second, one must be capable of experiencing the reactive attitudes oneself, whether these are directed at self or others. In this section, I address the first of these dimensions; I take up the second dimension in Part II of this Chapter, where I turn to capacity-based accounts of collective moral responsibility.

Tollefsen, supra note 64 at 223-24.

the reactive attitudes. Silver, and Tollefsen to a lesser extent, seek to ride Strawson’s justificatory wave by refusing to look beyond our emotional responses to collectives for a justification for those responses. Silver argues that “the collective reactive attitudes … reveal their own conditions of justification.”

Tollefsen likewise notes that “Strawson reminds us that the framework of the reactive attitudes is a given – ‘as a whole, it neither calls for nor permits an external justification.’”

Their position would suffice if our responses to collectives bore the same principled regularity as do our responses to individuals. But they do not. Our practices of holding individuals responsible display a kind of regularity that allows us to infer conceptual claims (however culturally or historically specific) from empirical observations: We routinely treat psychologically well-functioning adults as candidates for the reactive attitudes; we typically depart from this treatment only where their conduct cannot be said to express their will or intentions toward those whom the conduct affects (for example, where they act by accident). But our attitudes toward collectives do not

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87 Id. at 272-73.
88 Tollefsen, Participant Reactive Attitudes, supra note 64 at 225 (quoting Strawson, supra note 7 at 23).
89 Where the agent is not psychologically well-functioning, she is exempt from our practices of holding responsible; where she does not act intentionally or with good or ill will, her conduct is excused. See Gary Watson, Responsibility and the Limits of Evil: Variations on a Strawsonian Theme, in RESPONSIBILITY, CHARACTER AND THE EMOTIONS 256, 257 (Ferdinand Schoeman ed., 1987) (reformulating Strawson’s observations relating to our departures from holding responsible as excuses and exemptions, respectively). Strawson speaks also of our turning off, as it were, our reactive attitudes in order to avoid the “strains of commitment.” Freedom and Resentment, in PERSPECTIVES ON MORAL RESPONSIBILITY 45, 48 (John Martin Fischer and Mark Ravizza eds., 1993). I take it that the cases he has in mind arise between intimates; at a minimum, I think it fair to say that concerns about the strains of commitment do not arise when it comes to impersonal reactive attitudes and, in particular, when what we seek to do is evaluate the conduct of others. Since the dissertation is concerned with our evaluative stance, I do not believe that the departures from our responsibility practices involved in our seeking to
bear this regularity: It may be that sometimes we exhaust our emotional responses to a collective’s wrongdoing by aiming these responses only at the collective. Think here of indignation directed at corporations that employ child laborers – we appear to be content to vilify the Gap or Nike, without seeking to transmit all (or even any) of our indignation to those who dictate hiring policies and working conditions within these corporations.90

Similarly, we are inclined to lay blame with groups themselves when the harm they cause results from features endemic to the structure or organization of the group itself. Thus some (to my mind, not terribly convincing) accounts of the financial meltdown attribute blame to “the economics profession” while exculpating the bankers who took excessive risks on the ground that those bankers were simply acting rationally given the incentive structure within which they operated.91

In other instances, however, we are not content to have the buck stop at, or even rest with, the collective; indeed, we view the collective front with suspicion – as a spurious tool with which to shield the individuals who orchestrated or otherwise contributed to the harm. For example, I doubt that anyone who reviles the Tea Party, or

avoid the strains of commitment bears on the claim made in the text accompanying this note.

90 In invoking these examples, I take our responses at face value. But even in these instances we may seek out the collective target only because it would be too difficult to identify the individual members who bear blame, in which case even these cases would not count as evidence of our understanding collectives as appropriate targets of the reactive attitudes.

91 See, e.g., RICHARD A. POSNER, A FAILURE OF CAPITALISM 284-85 (2008) (“Some readers may think I am being too critical of … the economics profession and have let the financiers off too lightly…. Although the financiers bear the primary responsibility for the depression… I do not think they can be blamed for it any more than a lion can be blamed for eating a zebra. Capitalism is Darwinian. … [I]t would make no more sense for an individual businessman to worry that because of the instability of the banking industry his decisions and those of his competitors might trigger a depression than for a lion to spare a zebra out of a concern that lions are eating zebras at a pace faster than the zebras can reproduce.”).
the Green Party, means to have any part of their response rest with the institution itself; though we may here refer to the collective, it is only the members themselves whom we really seek to blame.

More significantly, in the case of individuals, the buck must stop with them – there is no part of the individual that is itself a moral agent and could thus qualify for an assignment of moral responsibility.92 By contrast, collectives are comprised of members each of whom is a moral agent in his or her own right. We cannot discern, then, from the face of our practices of blaming collectives (to the extent that we do blame them) whether we mean that the collective itself is responsible or instead whether we invoke the collective as a shorthand way of referring to those of its members who bear responsibility in its stead.

In short, our emotional reactions to collectives raise interpretive questions that do not arise when we survey our emotional reactions to individuals. The answers to these questions cannot be found in anything internal to our practices – there is too much conflicting evidence.

Perhaps in recognition of the inadequacy of the existing data, theorists who want to defend collective responsibility on Strawsonian grounds ask us to consider counterfactual evidence for their position. More specifically, they invite us to contemplate a world in which we relinquish our reactive attitudes. The invitation draws inspiration from an argument Strawson makes, in which he asks us to consider a world where, as a result of the truth of determinism, we cease treating ourselves and others as

92 I am reminded here of the old-school parenting tactic of asking the child-culprit of some offense, “which hand did it?,” and targeting that hand for the ensuing sanction. That the question and resulting punishment are ridiculous supports, I believe, the claim made in the text accompanying this note.
candidates for the reactive attitudes. Supra note 32. Strawson concludes that, because our emotional responses to others are inextricably bound up with our interpersonal relationships, the resulting world would be, if not incomprehensible to us, then at least so devoid of the features that make us recognizable to ourselves as to be abhorrent. Put another way, to give up the reactive attitudes would require that we give up so central a feature of our existence that it is not clear that human society could survive it.

Extending Strawson’s argument to the context of collective responsibility, Tollefsen writes: “eliminating our emotional responses to collectives would eliminate the possibility of relationships with collectives and relationships of this sort are a substantial part of human society.” But the relevant counterfactual is not one where we abandon our reactive attitudes when it comes to collective action; it is one where we abandon the notion that collectives are the ultimate targets of our reactive attitudes. I do not believe that an abandonment of that kind would yield the impoverishment, let alone practical impossibility, that Strawson envisions in asking us to imagine relinquishing the reactive attitudes in our treatment of individuals. If anything, the thought experiment lends further support to the notion that collectives are not the intended targets of our reactive attitudes and so not the ultimate bearers of responsibility.

C. Summary

We have seen that our practices of assigning normative predicates to collectives or aiming our reactive attitudes at collectives do not establish that collectives are moral

93 Strawson, supra note 32.
94 Strawson, supra note 32 at 82.
95 Strawson, supra note 32 at 95-96.
96 Tollefsen, supra note 64 at 230.
agents in their own right. These practices can be interpreted in a manner consistent with collectives’ serving simply as placeholders for responsibility assignments that are intended, ultimately, to redound to some or all of the collective’s members. We would then understand our tendency to reference the collective in our assignments of blame as nothing more than a matter of convenience – we simply haven’t the knowledge of the identities of the collective’s members, or the time to list them all by name. In short, we should adopt the collectivist’s interpretation of these practices only if there are independent grounds for thinking that collectives possess the kind of capacities that would qualify them for moral agency. It is to a consideration of these grounds that I now turn.

II. COLLECTIVES AS MORAL AGENTS: ONTOLOGICAL CONSIDERATIONS

I began this chapter by reproducing examples of our everyday speech about collectives. I do not believe that the truth of these statements can be decided by appeal to semantic considerations: Whether statements of the kind, “The Sudanese government is morally responsible for the genocide in Darfur” are simply a metaphoric way of capturing the claim that (some) members of the Sudanese government are morally responsible for the genocide depends on whether the Sudanese government is a morally responsible agent, and whether it is or not depends on the correct ontological view of the matter.97

In this Part, I thus survey the accounts of theorists who hold that, because collectives possess the requisites for moral agency, collectives are moral agents in their

own right. To assess these accounts, it will be necessary first to say a few words about the capacities an entity (usually, an individual) must possess to qualify for moral agency. There is, of course, widespread and deep debate on this subject in the philosophical literature, and it is not my intent to try to adjudicate all the issues here. Instead, I consider the features that collectivists have invoked to establish the collective’s moral agency – in particular, collectives’ purported capacities of belief, intention, moral deliberation, and emotion.

In defending claims about the collective’s capacities for moral agency, collectivists face the difficulty of accounting for the moral agency of entities that do not have minds, or at least the kind of minds that paradigmatic human moral agents possess. To address this difficulty, collectivists adopt one of two strategies: They either reify the group in an attempt to argue that the capacities it does possess are functionally equivalent to the mental capacities of human moral agents; or, they argue that, though the collective does not itself believe, intend, deliberate, or respond emotionally, its members do so on its behalf, and their doing so is sufficient to underpin the collective’s moral agency. I shall refer to accounts that adopt these strategies as, respectively, *reifying* and *recruiting* accounts. My general tactic in responding to reifying accounts will be to point out that descriptions of the collective’s agentive capacities leave something crucial out of the picture. I rely here especially on the comments I made in the Introduction about the centrality of a capacity for affect in understanding the notion of responsibility. I argue

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98 As Paul Sheehy notes, “[a]n immediate objection to regarding groups as capable of sustaining moral judgments is that moral responsibility is grounded in the agentive and so minded capacity of an actor. A group as an entity in its own right is not minded and so cannot stand as an agent in our evaluation of those events or states it causes.” Paul Sheehy, *Holding Them Responsible*, MIDWEST STUDIES IN PHILOSOPHY 74, 77 (2006).
that recruiting accounts fail to explain adequately why the collective ought to count as a moral agent in its own right when it is the collective’s members who exhibit the capacities typically thought to comprise moral agency.

A disclaimer before proceeding: As I noted in the Introduction, the issue of collective moral responsibility is, even as one of its defenders has noted, “one of the murkiest and least explored topics in moral philosophy.”99 I here address the major accounts that have been advanced, and I seek to point out the deficiencies of each. What I do not do is rule out of hand the notion that collectives can believe, intend, deliberate, emote, and so on. It is open to the collectivist to come up with a novel account of collective moral agency that meets the objections I levy here, though I think the possibility of success is remote at best, for the reasons I advance in what follows.

This Part contains four sections: In the first, I advance my reasons for subscribing to the notion of genuinely collective action. The second and third sections address reifying and recruiting accounts, respectively. I end with a brief summary.

C. A. Collective Action

Of all the features underpinning moral agency that collectives allegedly possess, perhaps none is more important than the capacity for action. If an argument for collective responsibility is to get off the ground, it must be the case that collectives can act – that is, there must be some sets of acts that may properly be attributed to the collective.

Used in a purely descriptive manner, the notion of collective action seems to me unobjectionable. Indeed, there are some verb-types that make sense only when their

99 MARGARET GILBERT, SOCIALITY AND RESPONSIBILITY 142 (2000).
subject is a collective entity. For instance, only a collective can elect someone into office, or vote for a policy.\textsuperscript{100} There are other action types that can be performed by both individuals and collectives but that take on an irreducible collective cast when a collective is their subject. Take, for example, the act of hiring: When a democratically-organized faculty hires a junior professor, that act is irreducibly the faculty’s -- that is, the collective’s -- act. The member of the hiring committee who claimed that she had hired the junior professor would rightly be accused of either self-aggrandizement or improperly side-stepping the democratic processes that I here assume the faculty has in place.

That it makes sense to ascribe an act to a collective does not yet establish that collectives are the kinds of entities that bear responsibility for their actions, for not all subjects of action are the kinds of things that can be morally responsible. For example, boulders can roll down hills, but if a spontaneously rolling boulder crushes a picnic set up at the hill’s base, the question of moral responsibility for the picnic’s destruction will not arise. Similarly, though it will make more sense to describes a marionette’s dance in terms of what her feet did -- “the marionette performed a pirouette,” -- than in terms of the strings the puppeteer pulled, the description should not be read as evidence of the marionette’s control over her actions (her agency), let alone her moral agency. In what follows, I advance my reasons for denying that collectives can perform the acts typically believed to be jointly sufficient, if not individually necessary, for moral agency.

\textsuperscript{100} Though we sometimes use the locution, “I voted for X,” I take it that “vote” here carries the sense of casting a vote; in the sentence, “the collective voted for X,” the speaker may mean that each member of the collective cast a vote for X or, what amounts to the same thing here, that the collective together decided upon X.
B. Reifying Collectivist Accounts

In defending the collective’s moral agency, the reifying collectivist advances three claims, which I consider in turn: first, collectives can hold their own beliefs; second, collectives can harbor intentions; and, third, collectives are capable of experiencing the reactive attitudes.101

1) Collective Intentions

Peter French embraces the most robust conception of collective moral personality. Specifically, he argues that corporations, which are paradigmatic of collectives, are full-fledged moral persons.102 French defines a moral person as “the referent of any proper

101 There is an additional criterion for moral responsibility that appears frequently in the literature on collective moral responsibility – to wit, that one must know that the act in question is wrong. For example, Margaret Gilbert believes that groups must satisfy three criteria if they are to be moral agents: they must be able to act; to act freely; and to believe that their conduct is wrong. MARGARET GILBERT, SOCIALITY AND RESPONSIBILITY 144 (2000). Ish Haji offers an even more rigorous knowledge condition: not only must the agent know that the act is wrong, she must pursue it precisely because it is wrong. See Ish Haji, On the Ultimate Responsibility of Collectives, MIDWEST STUDIES IN PHILOSOPHY 292, 304 (2006) (“If one is blameworthy for an action, one must perform it at least partly in light of the belief that one is doing moral wrong in performing it; one’s belief that the action is morally wrong must be a proximal causal antecedent in its production.”).

Either knowledge condition seems too stringent a criterion for moral responsibility, however. Many moral transgressions are committed by those who believe their conduct is entirely justified. For a devastatingly horrible example, consider the murderous shooting spree at Columbine High School, waged by two lonely and alienated teenagers who believed their classmates deserved to die. See, e.g., Dave Cullen, Examining a Massacre, EDUCATION NEXT, vol. 10, 2010. Surely their belief in the justifiability of their mission ought not to undercut an assignment of moral responsibility to them for the deaths they caused. Since I think there is good reason to reject the criterion under discussion in this note, I do not consider whether collectives are capable of satisfying it. It follows, further, that I do not agree with those theorists who deny collective moral responsibility solely on the ground that they reject the notion of collective belief. See, e.g., Ton van den Beld, Can Collective Responsibility for Perpetrated Evil Persist over Generations?, 5 ETHICAL THEORY & MORAL PRAC. 181, 188 (2002).

name or of any noneliminatable subject in an ascription of moral responsibility.”103 While most philosophers view moral agency as a (perhaps unnecessary) condition for personhood,104 French here equates the two. We will need to examine French’s argument for the moral personhood of the corporation, then, if we wish to uncover the basis for his collectivism. That argument takes a syllogistic form:

P1. To be a moral person is to be an intentional agent.105
P2. Corporations are intentional agents.
C. Therefore, corporations are moral persons.

French’s initial argument for P1 is remarkably short, and focuses on just one reactive attitude – regret. He contends that the capacities required for regret – viz., the capacities to view oneself “as the person who did x (where x is some untoward action) and to feel or wish that he had not done x, or that x had not had certain upshots” -- are the very same capacities required for intentional agency. Contra French, however, intentional agency need not encompass the capacity to view one’s action as untoward, and still less the capacity to wish that one had acted otherwise. We need not think that animals are

104 For the view that moral agency is not sufficient for personhood, see, for example, JOHN LOCKE, ESSAY ON HUMANE UNDERSTANDING, Book 2, Chapter 27, Section 9, available at http://www.ilt.columbia.edu/publications/locke_understanding.html (positing identity of the self over time as a necessary condition additional to that of possessing the capacities for reason and reflection). For the view that moral agency is not necessary for personhood, consider the work of animal rights activists who view animals of high cognitive function to be persons, see, e.g., Gary L. Francione, Personhood, Property and Legal Competence, in THE GREAT APE PROJECT: EQUALITY BEYOND HUMANITY 248, 254 (Paolo Cavalieri and Peter Singer eds., 1994), or the position of some religious adherents, who contend that personhood begins at the time a human is conceived, see, e.g., Statement of Professor George (Joined by Dr. Gomez-Lobo), in HUMAN CLONING AND HUMAN DIGNITY: AN ETHICAL INQUIRY (President’s Council on Bioethics ed., 2002), available at http://www.bioethics.gov/reports/cloningreport/appendix.html#george.
105 Or, to use French’s language, “the capacities and capabilities usually wanted for ‘moral persons’ can be unpacked from the set of empirical generalizations that elucidate the intentional agency … [of] ‘person[s].’” PETER FRENCH, COLLECTIVE AND CORPORATE RESPONSIBILITY 91 (1984).
capable of regret in order to believe (correctly) that they exhibit intentionality. This is not to say that animals cannot experience regret. (The dog who has been trained not to eat her owner’s shoes may well cower when she realizes that she has done the thing she has been trained not to do, and it may not be undue to interpret the cowering as an expression of regret.) It is simply to say that it seems obvious that some animals that do not experience regret nonetheless appear to act intentionally. (Think here of squirrels gathering nuts in the fall, or cats who know to communicate their desire to be petted by rubbing their foreheads against their owner’s legs.)

In a refinement of his account, French expands the conditions for intentionality by incorporating into the notion of intentional agency a “Principle of Responsive Adjustment” (“PRA”). He writes:

[C]ats and other lower animals … can neither appreciate that an event for which their intentional or unintentional behavior has been causally responsible is untoward or worthy nor intentionally modify their ways of behaving to correct the offensive actions or to adopt the behavior that was productive of worthy results. In short, they are just not full-blooded intentional actors. Simply, they are not intentional actors.

Since corporations, on French’s account, do exhibit the responsiveness that distinguishes persons from house pets, he concludes that corporations possess the full-blooded intentionality that is the hallmark of personhood.

The first thing to note in response to French’s revised account is the too hasty connection between an ability to make responsive adjustments, on the one hand, and “full-blooded” intentionality, on the other. Instead, the ability to adjust responsively is a

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107 Id. at 166.
criterion for personhood distinct from intentionality – indeed, it is precisely because cats exhibit intentionality but not the capacity to correct their behavior in light of judgments about its moral worth that cats are not moral persons. Thus, by subsuming PRA into the notion of intentionality, French threatens to stretch that notion beyond recognition.

The second thing to note is the weakness of French’s criteria for personhood. French insists that his theory “is not concerned with why the corporation should be moral.”\footnote{Id. at 169.} Yet, at least intuitively, it should matter to the moral person that she act morally. To see this, consider a steadfastly profit-oriented entrepreneur who is also a psychopath – by definition, one who is, \textit{inter alia}, guiltless and unempathic.\footnote{See Robert J. Smith, \textit{The Psychopath as Moral Agent}, 45 PHILOSOPHY \& PHENOMENOLOGICAL RESEARCH 177, 177 n.1 (1984).} Suppose that the entrepreneur’s consumer base consists exclusively of a clientele who will deal only with morally upright businesses. The entrepreneur would be highly motivated to ensure that her business practices were morally unproblematic. That fact alone, however, would not establish that she qualified for moral agency, for her business decisions would be fully explained by her unwavering desire to turn a profit in a community that will only purchase from businesses that follow the moral law (whatever it is). If her clientele were to consist exclusively of customers who desired goods derived through immoral means (child labor, knowingly dangerous environmental practices, money laundering and so on), the psychopathic entrepreneur would be no less willing to oblige. Because she is constitutionally indifferent to the moral dimensions of her business practices, her conduct warrants neither praise nor blame – in short, she is not a morally responsible agent. And, if it is true for the individual that moral agency requires more than knowing right from
wrong and being motivated to pursue right rather than wrong, it should be true for the collective as well.  

To summarize, the premise we have been considering is whether intentionality alone, or intentionality plus a capacity for responsive adjustment, are sufficient for moral personhood. For the foregoing reasons, I believe that they are not.  

Even if I am right on that score, though, we ought not to end our examination of French here, for intentionality is almost certainly necessary for personhood. Thus, if P2

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110 But cf. Michael McKenna, *Collective Responsibility and an Agent Meaning Theory*, Midwest Studies in Philosophy 16, 29 (2006) (arguing that something like French’s PRA (what McKenna refers to as “reasons-responsiveness”), along with intentionality, is sufficient for moral agency, but expressing deep skepticism that corporations possess the capacity to make responsive adjustments in light of reasons).

111 Larry May seeks to reject French’s corporate personhood view by offering an argument different from mine. May notes that French believes that corporate behavior and corporate structure ground the corporation’s moral personhood. He then argues, against French, that we ought not to conceptualize the corporation as a moral agent because “further action of [the corporation’s members] could constitute a change in corporate behavior or even in corporate structure. If a sufficient number of the individual members agree, then there is nothing the corporation can do to override their decision.” *Larry May*, *The Morality of Groups: Collective Responsibility, Group-Based Harm, and Corporate Rights* 43 (1987). May’s argument thus seems to be that corporations are not moral agents since their wills (to the extent it makes sense to speak of a corporate “will”) are subordinate to the wills of their members.

I am not convinced that independence of will, or at least permanent independence of will, is a necessary condition for moral agency. Suppose that a being with superhuman capacities has cast a spell over me and thereby subordinated my will to his. My subordinate status would not undermine my responsibility for acts that I had undertaken prior to being put under the spell or after the spell had been lifted; nor would it impugn responsibility ascriptions for those acts I would have undertaken whether under the spell or not. Analogizing to the corporation, May’s argument leaves open the possibility that the corporation is appropriately held morally responsible at least while its members are not tinkering with its structure, and while its will is aligned with the wills of its members.

112 See, e.g., Tracy Isaacs, *Collective Moral Responsibility and Collective Intention*, Midwest Studies in Philosophy 59, 59 (2006) (“it is a presupposition of most theories of responsibility that responsible agents are capable of intentional action.”); May, supra note 111 at 65 (“For corporate behavior to be assessed in moral terms, there must be intentional behavior which can be attributed to the corporation.”); Michael McKenna, *Collective Responsibility and an Agent Meaning Theory*, Midwest Studies in
– which, again, holds that corporations are capable of intentions -- is false, corporations would not count as moral agents even if they could satisfy criteria for personhood other than intentional agency.\textsuperscript{113}

French contends that one can predicate intentions to a corporation in virtue of the Corporation’s Internal Decision Structure (CID Structure).\textsuperscript{114} The CID Structure consists of three elements: an organizational or responsibility flowchart, and two types of rules – first, procedural rules that articulate how corporate decisions are to be made and, second, policies that reflect the corporation’s core commitments.\textsuperscript{115}

For French, a corporation can be said to have done something intentionally when there is a description of the act properly ascribable to the corporation, and when there are

\textsuperscript{113} In the literature on collective responsibility, two types of intention enjoy pride of place – collective intentions and shared intentions. Collective intentions are predicated to the collective itself; indeed, on some accounts, the collective can harbor an intention that none of its members possess. See, e.g., Margaret Gilbert, \textit{supra} note 42. Very roughly put, shared intentions, by contrast, reside within the minds of individuals who each intend to engage in a joint activity or goal with others who also so intend, and the intention of each is common knowledge for the others. See, e.g., Michael E. Bratman, \textit{Shared Intention}, 104 ETHICS 97 (1993).

The notion of a collective intention maps straightforwardly onto the accounts of collective moral responsibility that I am attempting in this chapter to reject: Because intentionality is a standard prerequisite for moral agency, \textit{see supra} note 56, many theorists who believe that collectives are moral agents seek to establish that collectives can harbor intentions in their own right. I will thus be concerned, in this section, to reject the notion of collective intentions in all of its guises.

The notion of a shared intention commands our attention when we shift the focus from the grounds for holding the group responsible to the grounds for holding individual members responsible for an act of the group. For that reason, I defer consideration of accounts of shared intention to Chapter 2, where I inquire into alternative justifications for holding members responsible for group transgressions.

\textsuperscript{114} \textsc{Peter French}, \textsc{Collective and Corporate Responsibility} 39 (1984).

\textsuperscript{115} \textit{Id.} at 41-66.
corporate reasons for pursuing the act. French argues that the first two elements of the CID structure – the responsibility flowchart and the procedural rules – license our ascribing an act to the corporation; he argues further that the corporation’s policies furnish corporate reasons for pursuing the act (at least where the act is consistent with those policies). Thus, he concludes, corporations are intentional actors.

To see the problem with French’s argument, consider the following example. Law School X has announced a new policy – a commitment to increase diversity among its faculty members by hiring more minority junior professors. An opening is posted for someone who can teach, say, Civil Procedure, and two candidates apply – Dennis, who is White, and Denise, who is African-American. Let us assume further that both would have applied whether or not X had announced an intention to increase faculty diversity. Both have equally stellar credentials that easily meet Law School X’s standards of excellence. Further, while in some cases a pair-wise comparison of two different candidates is made difficult because of the presence of soft variables, Denise and Dennis both have unquestionably spectacular backgrounds. It is a no-brainer for X to interview both of them, and it would have been so independent of either’s race. Each performs well at the interview, and the hiring committee puts both forward for a faculty vote. The hiring procedure at X requires that at least 2/3rds of the faculty vote in favor of a candidate, and that the President of the university approve the vote if the candidate is to be offered the job. Seventy percent of the faculty votes to hire Denise, while thirty percent vote to hire Dennis. Denise’s dossier is forwarded to the President, who approves the hiring of Denise. Denise is hired consistent with X’s organizational flowchart and hiring
procedures; her job offer also conforms to X’s new policy. In other words, French’s three elements of corporate intentionality are satisfied in the hiring of Denise.

Suppose, however, that it turns out that none of the members of the faculty voted for Denise because of her race, and that race was not a factor in the President’s decision to approve the faculty’s vote. Is it still true that X can be said to have hired Denise with the intention of increasing diversity? French would think it is. He writes: “Simply, when the corporate act is consistent with an instantiation or an implementation of established corporate policy, then it is proper to describe it as having been done for corporate reasons, as having been caused by a corporate desire coupled with a corporate belief and so, in other words, as corporate intentional.” Thus, because Denise’s offer is consistent with Law School X’s commitment to increase faculty diversity, it would represent, for French, a corporate intentional act.

French’s notion of intentionality is at odds with our common-sense understanding of what it is for an act to be intentional. For him, an act is intentional just so long as there is a reason that explains it; whether the act was undertaken for that reason is irrelevant. Serendipity thus satisfies his criterion for intentionality. In particular, that the favored law teaching candidate happened to be from a racial minority is, by hypothesis, but a happy coincidence. French, however, would have us understand Denise’s hiring in light of her race – that is, in light of considerations that meant nothing to any of the individuals who voted on or approved her candidacy.

French’s account is troubling because it frustrates our sense that intentions should serve as causes of action. Indeed, it is because of their causal role that intentions serve to explain an individual’s action. In the case of Denise, the purported intention – that of
increasing faculty diversity – does not explain the individual faculty members’ votes.

Why, then, should it serve to explain the vote of the faculty as a whole? More generally, why should we accept French’s implicit notion of causality, according to which action is explained whenever there is a match between a result and some corporate policy, whether that policy in fact functioned as the causal antecedent of the result or not?

In addition to whatever concerns we have about the explanatory power of French’s account, there are concerns about the results it yields when it comes to assigning moral responsibility. French would have the faculty of X (and presumably X itself) bear praise for their hiring of a minority candidate, as emblematic of their commitment to increasing faculty diversity. Yet if no one on the faculty at X sought to increase faculty diversity by hiring Denise, why should the faculty, or X itself, be praised for having done so? If we deny that it should be praised on this score, this is likely because we do not, in fact, believe that a collective acts in light of a policy simply because it acts in conformity with that policy – in other words, we are not willing to view a collective act as intentional for the reasons that French advances. None of this yet establishes that the faculty’s decision was not intentional or, more generally, that groups are not capable of harboring intentions. But it does establish, I believe, that French’s account does not adequately explain corporate intentionality.

The defects in French’s account provide occasion to make good on the promise of a critique of collective decision-making offered in response to Pettit’s account in Part I, since the two accounts suffer from similar failings. French’s account seems deficient because intentions should be connected to decisions in a way that French’s account omits. In particular, our acts are intentional because, if we stop to reflect on what we are doing,
we can identify the reason for which we are pursuing the act in question, and sense the motivation that the reason yields to form and act on the intention. Yet nothing in French’s account furnishes corporate analogs to these features of intentionality. Pettit’s account seems deficient because it too relies entirely on outputs, without elucidating, or even including, the phenomenological features that translate, or at least correspond with, the inputs. In particular, there is a phenomenological quality to making a decision – easy decisions seem straightforward and gratifying; difficult decisions feel like a struggle and cause anguish and anxiety. And, arriving at a decision also has phenomenological correlates – a sense of relief in having made the decision, and a sense of satisfaction if one endorses the decision made. But nothing in Pettit’s account would allow the collective to have these experiences in the face of decisions “it” makes.

The point isn’t mere anthropomorphism (“it doesn’t count as an intention or a decision because it isn’t experienced in the way that intentions or decisions are experienced by humans”). The phenomenological correlates of intending and deciding are regulative of our behavior. It behooves us to hold others responsible for their intentions and decisions in part because of the regulative capacity of the emotions that attend intending and deciding for us. Beings or entities that lack this capacity seem, at least in this way, to bear less responsibility for their intentions and decisions.

The deficiency in French’s and Pettit’s accounts arises from their efforts to secure a kind of ontological independence for the collective – French believes that collective intentionality entails that the collective can act on intentions that do not happen to motivate its members, and Pettit believes that the collective can make decisions that do not depend upon the assent of its members. Margaret Gilbert’s account of collective
intentionality goes further, for she believes that collectives can harbor intentions or make decisions that all of its members affirmatively disavow. Let us turn now to her account.

Gilbert argues that statements of the form “we believe,” “we intend,” “we feel,” and so on can be analyzed as follows: “For the relevant psychological predicate ‘X’ and persons P1 and P2, P1 or P2 may truly say ‘We X’ with respect to P1 and P2 if and only if P1 and P2 are jointly committed to X-ing as a body.” Gilbert calls the body that X-es as a result of a joint commitment a “plural subject.” Since we are here concerned with collective intentions, I shall, for the moment, replace “X” with “intend.”

Importantly, a joint intention is not, for Gilbert, reducible to the personal intentions of the parties to it. Indeed, Gilbert goes so far as to contend that “it is apparently possible in principle that the corresponding personal intentions are lacking when a shared intention is present.” For example, the plural subject formed when Mary and Sherry together intend to go for a ten-mile walk remains committed to walking ten miles even after Mary and Sherry have abandoned the aspiration to walk that distance.

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117 Margaret Gilbert, Sociality and Responsibility 19 (2000). Gilbert uses the phrase “shared intention” to describe the joint intentions she has in mind. Since I want to reserve that phrase for accounts of shared responsibility predicated upon a shared intention, I here refer to Gilbert’s notion of intention as a “collective intention” or “joint intention.” Though the intention in question is that of a “plural subject,” Gilbert insists that her account does not rely upon any metaphysically spurious entities such as a group mind or social spirit. Id. at 3.

118 See, e.g., Margaret Gilbert, Sociality and Responsibility 3, 147 (2000).

119 See, e.g., Margaret Gilbert, Sociality and Responsibility 18 (2000) (italics in original); see also id. at 31.

120 Id.
Gilbert is apparently led to this position as a result of her dissatisfaction with shared intention accounts,\textsuperscript{121} which reduce “we” statements (“we intend to go for a walk,” “we intend to paint the house”) to statements about what each of the individuals comprising the “we” intends to do. Gilbert argues that accounts of that type are unsatisfactory because they cannot capture the obligations that she believes are inherent in joint commitments. Though Gilbert’s argument is ultimately conceptual – her point is that the rival accounts do not offer an adequate explanation of what it is for individuals to intend together --,\textsuperscript{122} she defends her position by examining what it feels like to be a party to a joint commitment and, in particular, what it feels like to be a party to a joint commitment from which another party defaults.

To borrow an example from Gilbert, consider two people who are in the habit of going out for coffee after a weekly philosophy colloquium, though they have never articulated a specific plan or agreement to do so. If, on one evening after the colloquium has ended, one of the people takes off with nary a mention of their regular coffee date, the other will feel, according to Gilbert, that the departing party’s act is “‘quite untoward,’”\textsuperscript{123} and that it “violate[s] an obligation.”\textsuperscript{124} Gilbert believes that these feelings can best be explained by positing a plural subject (of which the coffee-goers are members) that irreducibly harbors the intention to go for coffee after these philosophy colloquia. She argues that, since the plural subject’s intention exists over and above the

\textsuperscript{121} See, e.g., \textsc{Margaret Gilbert}, \textsc{Sociality and Responsibility} 18 & n.12, 156-59 (2000).
\textsuperscript{122} See, e.g., \textsc{Margaret Gilbert}, \textsc{Sociality and Responsibility} 156, 159 (2000).
\textsuperscript{123} \textsc{Margaret Gilbert}, \textsc{Living Together: Rationality, Sociality & Obligation} 368 (1996).
\textsuperscript{124} \textsc{Margaret Gilbert}, \textsc{Living Together: Rationality, Sociality & Obligation} 370 (1996).
personal intentions of the coffee-goers, no one party to the collective intention may unilaterally rescind it. Correspondingly, each party to the collective intention is “entitled,” or possesses a “right,” to expect conforming activity on the part of all other parties to the collective intention. And, when one party threatens to default from the collective intention, other parties may rightly rebuke the would-be defaulter. In the coffee-going example, then, the response of the (purportedly) jilted party is justified in light of the failure of the departing party to seek the consent of the other coffee-goer to deviate from their weekly outing.

Because Gilbert defends her concept of a collective intention in light of what it feels like to be a party to such an intention, it behooves us to consider whether Gilbert has gotten the phenomenology right. I do not believe that she has. First, it is not entirely clear that we believe that no joint commitment may be subject to unilateral revocation. Consider the case of a broken marital engagement: the engagement itself is a joint commitment par excellence – a deliberate, explicit and (presumably) well-thought out and mutually consented to joint intention to be married. I take it that most people think that a marital engagement may be unilaterally revoked, and that the jilted party should not, simply in virtue of the broken engagement, feel betrayed by the jilter, or feel entitled to rebuke the jilter. This is not to say that the jilted party might not have other grounds for feeling betrayed or entitled to issue rebukes: He might believe that the jilter unduly led

126 MARGARET GILBERT, SOCIALITY AND RESPONSIBILITY 26 (2000);
128 See, e.g., MARGARET GILBERT, SOCIALITY AND RESPONSIBILITY 31 (2000).
129 See, e.g., MARGARET GILBERT, SOCIALITY AND RESPONSIBILITY 26, 54-55 (2000)
him on, or that the jilter ought to have considered her decision more thoroughly before agreeing to the engagement. The point here is that the breaking of the engagement is not itself a legitimate ground for feeling betrayed or for rebuking the party who breaks it. There are at least some joint commitments, then, that do not appear to entail the obligations that Gilbert believes necessarily follow from all of them.

Further, even if Gilbert is correct that we often proceed as if some joint commitments may not be unilaterally rescinded, it need not be the case that only the notion of a freestanding commitment – one that is not reducible to the personal commitments of the parties – can explain this. Instead, one could attribute the sense of betrayal or bewilderment that sometimes follows from one party’s abandoning a jointly held commitment to the reliance interests that the abandoning party had induced in the remaining party, or the disappointed expectations that the abandonment produced. Indeed, it seems more plausible to understand the coffee example, for instance, not as a case where each of the regular coffee-goers has a right to the attendance of the other – I doubt our casual commitments can be so oppressively characterized – but as a case where the jilted coffee-goer had, as a result of the regularity of previous coffee dates, reasonably come to expect that the other would go along, and a corresponding sense of regret that, on the night in question, she would be without the company of the other. Now it may well be appropriate for the departing party to seek permission to be excused from the coffee date -- “would you mind if we skipped tonight’s coffee?,” might be a standard line -- but the propriety of the permission-seeking lies in considerations of etiquette or due thoughtfulness; the other coffee-goer has no genuine right to insist upon compliance. Were she to respond, “Yes, I mind. You’ve committed to going out for coffee with me, so
let’s go,” we would, I believe, be correct in thinking that she had, in fact, misunderstood what it was to have a mutual commitment.

In short, it does not seem to me that we need the notion of a plural subject who harbors irreducible intentions in order adequately to understand individuals’ responses to a party’s default from an apparently collective intention. We can see further problems with the notion of a plural subject of whom one can predicate mental or psychological states that none of its members possess when we turn to Gilbert’s account of collective belief.

2) Collective Belief

Briefly, Gilbert holds that “A and B form a plural subject of believing that $p$ if and only if A and B are jointly committed to believing that $p$ as a body.” And, just as she argues that collective intentions can persist in the absence of corresponding personal intentions, so too she argues that it is at least conceptually possible for a group to believe that $p$ even if none of its members personally believes that $p$: “[I]t is not the case that the group believes that $p$ if and only if all or even most members believe that $p$. That all or most members believe that $p$ is neither necessary nor sufficient, conceptually speaking, for the group to believe that $p$.”

\[130\] Margaret Gilbert, Living Together: Rationality, Sociality & Obligation 353 (1996).

\[131\] Margaret Gilbert, Sociality and Responsibility 39 (2000). This articulation of Gilbert’s position might be thought to provide support for the much (and to my mind, rightly) reviled “collective knowledge” doctrine, inaugurated in United States v. Bank of New England, 821 F.2d 844 (1st Cir. 1987). In that case, the First Circuit held that a bank could be said to know that withdrawals had exceeded the level beyond which reporting was necessary where tellers knew the amount of the withdrawals in question but did not know the reporting limits, and other bank employees knew the reporting limits but did
Because collective beliefs are a form of joint commitment, they entail obligations similar to those following from Gilbert’s notion of a collective intention. In particular, the collective belief can be rescinded only through the agreement of everyone to it.\textsuperscript{132} Further, all of the parties to the collective belief have a right to the relevant conforming actions on the part of each party, and each party is under an obligation to perform these actions.\textsuperscript{133} Gilbert offers the following restatement of her analysis:

The requirement to believe as a body that \( p \) might be redescribed as the requirement together to constitute – as far as is possible – a body that believes that \( p \). Presumably this requirement will be fulfilled, to some extent, if those concerned confidently express the view that \( p \) in appropriate contexts and do not call it or obvious corollaries into question.\textsuperscript{134}

Gilbert’s notion of a collective belief has some appeal. We do sometimes want to hold a particular view as a body (or, as outsiders, to ascribe a particular view to a body), even if we allow that the individuals who comprise that body may, in their individual capacities, reject the view in question. Thus, for example, we would, I presume, agree with the statement, “The United States views marriage as a union that may be entered

\textsuperscript{132} \textit{Id.} at 40.
\textsuperscript{133} \textit{Id.}
\textsuperscript{134} \textit{Id.} at 41.
into only by a man and a woman, and not by two men, or by two women,”\textsuperscript{135} notwithstanding the fact that many Americans – and a handful of states – conceive of marriage as an institution that should be open to gay and straight alike. By the same token, we could imagine a scientific body that decides to adopt some view with which a vocal minority of its members disagrees. Again, we might readily believe that the body endorses the view in question, even if we are familiar with the controversy, and know that some set of the body’s members believe the view to be mistaken.

The question Gilbert’s account raises, however, is not whether it might be appropriate to ascribe some view or position to a collective entity, but whether it makes sense to conceive of that entity as believing the view in question. Does the United States, for example, believe that marriage is exclusively a heterosexual institution?

Gilbert would answer the question in the affirmative. For her, collective beliefs are defined solely in terms of the dispositions they induce in their members, and the obligations they entail for these members. She may well be right that beliefs – whether collective or individual – do induce those who hold them to act in certain ways, and do entail that others can expect (though perhaps not demand) the holders of those beliefs to act in those ways. But that characterization may not be adequate to capture the notion of a belief. In particular, one might contend that a belief is, essentially, a holding true. In that case, the term “belief” would not properly capture the mental state of an individual who was merely posturing – one who, for all outward appearances, professed adherence to

\textsuperscript{135} That the United States does indeed “view” marriage as an exclusively heterosexual institution is made clear by the federal Defense of Marriage Act, which states that a marriage consists only of a legal union between one man and one woman. 1 U.S.C. § 7. The Act also permits any state to refuse to recognize homosexual marriages performed in another state. 28 U.S.C. § 1738(c).
some proposition that she did not internally accept. And it is doubtful that we would think it proper to say that an individual believed some proposition where, again, she professed adherence to it, but remained agnostic about its truth, even if she never shared her agnosticism. In the case of groups, there is no internal state that might diverge from the outward evidence. But if we are not prepared to believe that an individual believes that P if she merely postures, or inwardly doubts the truth of P, then should we believe that a collective believes that P if the collective has no internal states whatsoever corresponding to the belief that P?

Gilbert might object that the question is misguided. On a functionalist account of the kind she advances, beliefs may consist of nothing more or less than a disposition to profess adherence to p and act in conformity with p in relevant circumstances. To require that the believer also hold her beliefs to be true is to insist upon just the kind of phenomenological consciousness that the functionalist deems unnecessary to an account of belief.136

The most powerful response to the foregoing objection would involve a full-fledged rejection of functionalism – a task that far exceeds the bounds of this dissertation. Nonetheless, I want to suggest two reasons especially relevant here for thinking the functionalist account of belief inadequate.

First, when it comes to subjecting a person to moral evaluation in light of her beliefs, we do take the certainty with which she holds them to be a relevant consideration.

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136 See, e.g., David Copp, On the Agency of Certain Collective Entities: An Argument from “Normative Autonomy”. MIDWEST STUDIES IN PHILOSOPHY 194, 198 (2006) (“I believe … that intentional states can occur in things that lack the ability to be conscious of their intentional states, or that lack phenomenal consciousness, or in which intentional states do not themselves figure in phenomenally conscious experience.”).
Thus, if we deem the belief in question to be morally problematic (if, for example, it reflects anti-gay sentiment), we are more likely to judge harshly the individual who embraces the belief wholeheartedly than the person who is uncertain about the truth of the position, or the one who professes adherence to it out of a sense of loyalty to others but actually denies the belief in private.\textsuperscript{137} In other words, we care about the individual’s internal relationship to the belief, and not just the outward manifestations of her holding it. Because the collective lacks analogs to the individual’s internal states, it is difficult to know how to evaluate its stance. Indeed, given the collective’s deficiencies on this score, we might, and I think we do, look to the number of individuals comprising the collective who hold the view: The more Americans who deny rights to gay marriage, the more harshly we would judge the United States. But our tendency to modulate our assessment of the collective entity in light of the quantity (or proportion) of its members who hold the belief in question suggests that we are assessing the group aggregatively, and not collectively. In other words, our practices here undermine the thought that we think collectives bear beliefs, and hence responsibility for those beliefs, in their own right.

The second reason for rejecting a functionalist account of belief also hinges on moral considerations. In the individual case, the phenomenon of cognitive dissonance can serve to curb instances of posturing: It is psychologically exhausting, if not also distressing, to act in accordance with a belief that one does not in fact hold. Cognitive

\textsuperscript{137} We might of course have alternative grounds for judging harshly the individual who merely postures: Why hasn’t she sought to convince those with whom she stands in solidarity of the problematic nature of the belief? How can she be so two-faced?, etc. The point for now though is simply to judge her for the content of the beliefs she holds: It is, I submit, worse to embrace a nefarious view wholeheartedly than to embrace it reservedly or to hold it only outwardly and for the sake of others all the while denying its truth to oneself.
dissonance is socially useful insofar as it allows others to predict, on the basis of knowing what beliefs an individual holds, how that individual will act. Further, on at least those metaethical views according to which moral truths are capable of being apprehended, cognitive dissonance conduces to moral conduct: On these views, the moral agent has ready access to knowledge of right and wrong, and the psychological tension of acting contrary to that knowledge may well deter wrongful acts. Yet a functionalist notion of belief – especially collective belief – eschews the phenomenological dimensions of holding a belief. In the collective case, the entity that acts is not capable of experiencing the psychological strife that arises when one’s acts contravene one’s beliefs. So, there is no phenomenon analogous to the cognitive dissonance of the individual case that can deter the collective from acting in a manner contrary to the beliefs that it (allegedly) holds. Even if it made sense to ascribe beliefs to collectives, then, these beliefs could not be relied upon to promote morally upright conduct.

Now, if the functionalist take on belief were correct, the foregoing arguments would come to naught. It only makes sense to advance normative grounds for preferring one conception of belief to another if there is no fact of the matter regarding the nature of belief. I take it, however, that the ongoing debate between functionalists and realists with respect to belief signals that the matter is, at least for now, an open question – if there is a fact of the matter, it isn’t one that we will glean any time soon. In the absence of an answer, then, I don’t think it untoward to have ethical considerations govern our choice.

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138 Of course, an individual might seek to cure the dissonance in the other direction, by altering her beliefs so that they supported the conduct she was inclined to pursue. But at least if her conduct violated local norms, she might find that she had merely exteriorized the dissonance, as her acts conflicted with those that others around her deemed acceptable.
of theory. Since our conception of belief may well have ethical implications, it seems reasonable to choose the theory that better fits with our moral intuitions and ethical commitments.

3) Collective Experience of the Reactive Attitudes

The functionalist character of reifying accounts is even more problematic, and the invocation of ethical considerations is on even surer footing, when we turn to the conception of collective emotions that the reifying theorist adopts. We have already seen that French’s account of regret, tied as it is to his Principle of Responsive Adjustment, is unsatisfactory since it reduces regret to a disposition to change one’s conduct whether that disposition emanates from an appreciation of the moral dimensions of one’s past acts or not.139 At first glance, Gilbert’s plural subject account of remorse appears to avoid a similar failing: “A group $G$ feels remorse over an act $A$ if and only if the members of $G$ are jointly committed to feeling remorse as a body.”140 Yet, though Gilbert’s understanding of collective remorse invokes the word “feeling,” she does not in fact mean that the plural subject feels anything; remorse, for her, is exhausted by the actions and utterances of the individuals who together constitute the plural subject.141 Indeed, Gilbert denies that “‘feeling-sensations’” are a necessary part of remorse, whether experienced by an individual or a collective, and so she is untroubled by the collective’s inability to suffer pangs of remorse.142 Gilbert acknowledges that there may be de facto

139 See supra text accompanying notes 106-107.
141 Id.; see also id. at 137-38.
142 id. at 135-36.
connections between collective remorse, as she understands it, and members’ feelings of remorse over what the collective has done, but she insists that her account of collective remorse does not depend upon the these connections – collective remorse makes sense, she argues, even if no member of the group feels remorse over what the group has done. 143

Even at the intuitive level, something seems amiss here. For example, we wouldn’t be assuaged by some purportedly remorseful corporation, no matter how many public mea culpas it issued, if its members were all the while laughing their way to the bank. But suppose that the corporation’s members did feel pangs of remorse over some wrongful corporate act. The question Gilbert’s account prompts is whether the collective itself can satisfy the conditions for remorse if it is incapable of the feeling sensations that, at least typically, accompany remorse.

One way to answer that question is to imagine someone who meets Gilbert’s definition of remorse: He displays all of the outward trappings of remorse in all of the appropriate circumstances but lacks any internal states that correspond to the outward displays. Can he be said to experience remorse? It is not clear that he can, for his reaction to a wrongful act seem to be no different than that of the psychopath: The psychopath is also capable of saying the appropriate things and performing restitutionary acts when he recognizes that he has violated a moral rule. 144 But the psychopath is, by definition, remorseless. So it is not clear that Gilbert’s account of remorse, pared down as it is, ought to count as remorse at all.

143 Id.
144 I purposely avoid referring to these acts as “reconciliatory” (though Gilbert does so) because the possibility of reconciliation without the perpetrator’s feeling of remorse is precisely what’s at issue.
More damningly, it is not clear that Gilbert’s definition of remorse is even coherent. That definition presupposes that one can, despite being incapable of experiencing the affective component of remorse (or any other reactive attitude), still respond with displays of remorse whenever remorse is warranted (or with displays of any other reactive attitudes whenever that attitude is warranted). But what could guarantee the appropriate response if not the capacity to experience it affectively?

More specifically, two things seem to be missing here. First, the response itself will be deficient if it is issued by someone who is incapable of feeling the emotion he purports to be experiencing. The conciliatory power of the response may well turn upon the possibility that the offeror of the response can be made to feel bad about his wrongdoing (even if he does not happen to feel bad about it at the time that he offers his response.) Second, the very ability to offer any response may depend upon the ability to experience the affective dimensions of the reactive attitudes. Put differently, it may be that discerning right from wrong amid the richly varied contexts in which we are called upon to act requires empathic and imaginative capacities that an unfeeling being (or even a being incapable of moral feelings) does not possess.145 In that case, neither the psychopath nor Gilbert’s remorseful individual could even put remorse on display, for neither would be sufficiently sensitive to the instances requiring it.146

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145 Compare Nancy Sherman, Taking Responsibility for Our Emotions, 16 J. SOC. PHIL. & POL’Y 294, 298 (1999) (“without finely attuned emotions, we are simply insensitive to much crucial moral data and are morally bumbling in our interactions with others and our understanding of ourselves”).

146 One might argue that the affectless individual could in theory offer the right responses if someone who is capable of experiencing the affective side is standing on the sidelines prompting her. The argument thereby suggests a way of remedying the collective defect: Where the affectless “individual” is a collective composed of people who have the
If I am right that one cannot experience the reactive attitudes if one is incapable of experiencing their affective components, and that one cannot be morally responsible if one cannot experience the reactive attitudes, then collectives, as Gilbert understands them, cannot be moral agents.

4) Summary

Our survey of French’s and Gilbert’s accounts reveals that the reified collective is too meager a being to fulfill the requirements of moral agency. It is not clear that either French or Gilbert offers an account of collective intention that is robust enough to count as intentionality. The same can be said for Gilbert’s account of collective belief. And, if collective moral responsibility requires not just intention and belief but emotion as well, then these accounts are even more deficient. In short, the shortcomings of these accounts suggest that collective moral responsibility cannot be secured on the basis of the collective’s own capacities. I turn now to recruiting accounts, to see if reliance upon the capacities of the collective’s members can secure its moral agency.

C. Recruiting Accounts

The distinction between reifying and recruiting accounts can perhaps be captured by analogy to different genres of alien-horror films – specifically, alien invasion and alien capability of feeling, these people can function as the “prompters” of the collective individual.

The argument in question turns on what I have called a “recruiting” account, whereby the collective secures the capacities required for moral agency by relying upon the capacities for moral agency that its members possess. I discuss recruiting accounts, especially as these pertain to the capacity for affect, in Section C, below.
abduction films. On a reifying account, the collective is like the alien invader – think here of the pod people in *Invasion of the Body Snatchers*.\(^{147}\) Though pod people look like humans and can perform many of the acts that humans can perform, they are distinguished by their inability to experience emotion. The relevant deficiency of the pod person can be gleaned from an episode of Seinfeld, where Jerry, upset by Kramer’s lack of social skills, says: “Let me explain something to you. You see, you’re not normal. You're a great guy, I love you, but you're a pod. I, on the other hand, am a human being. I sometimes feel awkward, uncomfortable, even inhibited in certain situations with the other human beings. You wouldn't understand.”\(^{148}\) Because Kramer is unembarrassable, not only can he not be trusted to act in socially appropriate ways; he also cannot be made to see when he acts in socially inappropriate ways, or to care that he does so. Similarly, the collective, understood in the terms of the reifying account, cannot be made to see when it acts in morally inappropriate ways, or to care when it does so. For these reasons, the collective, as it is conceived on a reifying account, fails to qualify for moral agency.

Whereas pod people are mere shells of their human counterparts, the alien parasites of alien abduction films seek to overcome their missing human qualities by glomming onto humans, and recruiting their hosts’ capacities in order to supplement their own. In *The Puppet Masters*, for example, humans are brought under the mental control of repulsive alien slugs that attach to the humans’ backs.\(^{149}\) Understood in the terms of a recruiting account, the collective is like an alien parasite, as it enlists humans to furnish it with the ability to interact in our world and, in particular, to interact as a moral agent. The

\(^{149}\) *The Puppet Masters* (Stuart Orme dir., 1994).
challenge for the proponent of a recruiting account is to supplement the collective’s capacities enough to overcome charges that the collective is no more than a pod, while also explaining why the collective, rather than the members who supply so many of its capacities, ought to be the ultimate bearer of responsibility. In this section, I shall argue that recruiting accounts cannot meet this challenge.

Collectivists who advance recruiting accounts focus on two capacities – the capacity to deliberate and reflect morally, and the capacity to experience the reactive attitudes. For reasons that are not entirely clear, they ignore the capacities to believe or intend. It may be that the strategy does not work especially well when it comes to explicating collective belief, for it is unlikely that one can believe something on behalf of another; even if one could, why would that count as the other’s belief? Larry May’s account of collective intentions comes close to adopting a recruiting strategy: He argues that “decision procedures of [the institutional group] combine and change the intentional states of key members of the organization so as to result in purposive behavior of the group,” but he insists that the group’s purposive behavior “is only to a limited extent collective intent.” His account is thus better understood as a kind of shared responsibility theory, according to which members of the group bear responsibility for the intentions formed by other members where it is the group’s structure or decision procedures that cause the latter’s intentions. For that reason, I defer consideration of his account to Chapter 2. Here, I focus on purportedly collective capacities to deliberate

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151 Id. at 67.
morally and experience the reactive attitudes, as these capacities are construed on recruiting accounts.

Paul Sheehy locates a group’s capacity for moral deliberation and reflection in practices, institutions, and/or traditions of the group that promote or provide space for critical engagement with the group’s activities or values.152 For instance, the multitude of ways in which free speech is protected and facilitated within the United States would confer the capacity for moral deliberation upon the United States, on Sheehy’s account.153 Kay Mathieson articulates an account of moral deliberation according to which one must possess a “framework of beliefs, desires, and goals” that together constitute the agent’s “perspective,” and be capable of reviewing and revising that perspective in light of moral reasons.154 She then argues that collectives can engage in moral deliberation because members can adopt the perspective of the group when reasoning about its proposed courses of action; further, through various group processes, members can reflect upon and revise that perspective in light of moral considerations.155

These reconstructions of Sheehy’s and Mathieson’s accounts are perhaps regrettably brief but my quarrel with them lies not in the details of either’s account but instead in the implications each draws for assignments of moral responsibility: Sheehy argues that, in virtue of the group’s reflective capacity, we can hold the group morally accountable at least to some degree.156 Mathieson goes further, as she asserts that a

153 See id. at 85-86.
154 Kay Mathieson, We’re All in This Together: Responsibility of Collective Agents and Their Members 240, 243 MIDWEST STUDIES IN PHILOSOPHY (2006).
155 Id. at 246-50.
156 Sheehy, supra note 152 at 86.
capacity for moral deliberation is sufficient for full moral responsibility. Further, each theorist adopts what has elsewhere been called a “non-distributive” account of collective moral responsibility, according to which an assignment of collective moral responsibility does not necessarily redound to the collective’s members. In short, in virtue of their accounts of moral deliberation, both are content to have the responsibility buck, so to speak, stop with the collective.

It is likely true that a capacity to deliberate about and reflect critically upon the moral nature of one’s acts is an important aspect of moral agency. Claims that this capacity is sufficient for moral agency seem, however, to rely upon the fact that this capacity generally presupposes other capacities and it is the lot as a whole, rather than the capacity for moral deliberation and reflection alone, that grounds moral agency. More specifically, the capacity for moral deliberation presupposes, at least, the capacity to know right from wrong, and the capacity to act on that knowledge – in short, capacities of belief and intention. So, Sheehy and Mathieson owe us an account of collective intention and belief that sidesteps the deficiencies of French’s and Gilbert’s accounts.

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157 Mathieson, supra note 154 at 245.
159 See Sheehy, supra note 152 at 89 (“group or collective evaluation does not entail any personal judgment of particular members. It is carried out on a joint only basis, rather than a joint and several one.”); Mathieson, supra note 154 at 252 (“in cases where a wrong action flows from the collective perspective, the blameworthy agent is the collective. If a member of [a] collective did not do anything individually to contribute to a collective action, then she is not individually blameworthy, even though she is a member of a blameworthy collective.”).
160 Moral deliberation may well require something more than just capacities for belief and intention – for instance, something like Aristotle’s phronesis –, in which case we are owed, in addition, an explanation of how individuals together arrive at the kind of sensitivity to particulars that moral reasoning seems to require.
In addition to these capacities, moral reflection involves the capacity for critical reflection – that is, an ability to review and pass judgment on one’s acts (and those of others) in light of moral considerations. On the understanding of moral responsibility upon which I rely here, a capacity for critical reflection presupposes a capacity to experience the reactive attitudes,\textsuperscript{161} for the experience of seeing the errors of one’s ways should be robust. One should not just intellectually perceive, or come to believe, that one has acted wrongly; that perception or belief should be accompanied by some feeling – for example, of regret or remorse. We have already seen that the conception of collective emotions that the reifying collectivist adopts is unsatisfactory. Can the capacity for collective emotions be secured on a recruiting account?

Deborah Tollefsen raises the interesting possibility that a group emotion need not be experienced by the group itself in order for it to count as a collective emotion. Instead, the collective emotion is the emotion “one feels in response to the actions of one’s own group.”\textsuperscript{162} In this way, Tollefsen’s account preserves the phenomenological dimensions of the reactive attitudes, which the reifying account of collective emotions eschews as unnecessary.\textsuperscript{163}

Though Tollefsen’s account goes a good distance toward making sense of the notion of a collective emotion, it does not establish that collectives experience the

\textsuperscript{161}Deborah Tollefsen, whose account of collective emotions I survey in what follows, recognizes the connection between the reactive attitudes and collective moral deliberation and reflection. \textit{See} Deborah Tollefsen, \textit{The Rationality of Collective Guilt}, \textsc{Midwest Studies in Philosophy} 234-35 (2006) (“When one feels collective guilt they are often led to reflection about the nature of the group of which they are apart \textit{[sic]}. … The realization of [the collective emotion] in group members provides the group itself with the capacity for ‘self-reflection.’ In this way groups too can be subject to reactive attitudes.”).

\textsuperscript{162}\textit{Id.}

\textsuperscript{163}See, \textit{e.g.}, Gilbert, \textit{supra} text accompanying notes 140-46.
reactive attitudes in the way they should if they are to count as moral agents. On the understanding of responsibility I believe correct, one does not qualify for moral agency simply because one can experience the reactive attitudes; when one confronts the moral nature of one’s acts, one ought to do so, for doing so is part and parcel of the confrontation. Thus, if a group has acted badly then, to qualify for moral agency, it (or its members, if we are to adopt Tollefsen’s account) ought to experience collective guilt. But nothing in Tollefsen’s account secures the requisite “ought,” for nothing in her account explains how group members will necessarily, or even regularly, come to experience guilt on behalf of their group. Indeed, she argues that, for any given member, the appropriateness of the collective emotion turns on whether that member concludes that the group has failed to satisfy demands to which the member believes the group ought to be held. For example, on her account, whether an American ought to experience collective guilt over the lack of universal health care (happily, a now-outdated example) will turn on whether that American believes that the government has an obligation to provide universal health care. But if the emotion is truly collective, then it ought not to be contingent upon vicissitudes among members’ assessments of the group’s act. In any event, even if all of the group’s members agree that the group has failed in some respect, it is not clear that their shared determination will in fact guarantee their experience of guilt. To the extent that, ex hypothesi, it is the collective that is the primary locus of responsibility, its members may well have less reason to experience guilt on its behalf. In short, Tollefsen’s account of collective emotions makes sense of these emotions at the expense of severing the connection to collective attitudes of self-assessment, which moral

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164 See id. at 235.
Nor does it seem likely that one could overcome this difficulty, for emotions cannot be compelled; at any rate, their significance would likely be greatly undercut if they could.\textsuperscript{165}

In short, though members may be able to furnish the collective with some of the capacities required for moral deliberation and reflection, they cannot furnish it with others. In particular, collectives cannot co-opt members’ capacities to experience the reactive attitudes, for experience of them cannot be delegated and, even if it could, we are without an account that would explain why or how members could be counted upon to experience them in all of the instances that the collective should. Recruiting accounts thus cannot make the moral agency of the collective whole; the most they can do is to signal grounds for holding members themselves responsible.

D. Conclusion

\textsuperscript{165} Sheehy presents a possible way around the concern about compelled emotions when he argues that members’ emotional responses follow as a matter of course from reflection upon the group’s deeds: “To be a true member entails that one just does respond in certain ways in particular contexts. To take pride in our achievements and feel shame at our failures may just be part of what it is to be a member.” \textit{Supra} note 152 at 87. If the claim is descriptive, it fails. As we shall see in Chapter 4, it is not at all obvious that members of a group experience remorse in response to group transgressions. Indeed, members who protested the group transgression may be more liable to respond to the transgression with indignation than remorse. If, on the other hand, Sheehy thinks the connection between group act and members’ emotion is conceptual (what it is to be a group member is to experience remorse where the group transgresses) or normative (what it is to be a group member is to be under an obligation to experience remorse where the group transgresses), then I might well be inclined to agree. But neither the conceptual nor the normative versions of the claim would suffice for establishing collective emotion without some account explaining why members’ emotions count as emotions of the collective.
The general problem with reifying and recruiting accounts is that they drive a wedge between the collective and its members in a way that problematizes ascriptions of moral responsibility. Reifying accounts seek to render the collective ontologically autonomous – by allowing it to hold beliefs and intentions that its members need not hold -- and thereby deprive it of some of the key features of moral agency. Recruiting accounts commit the opposite sin. They rely so heavily on their members’ capacities for moral agency that it no longer becomes plausible to view the collective as a moral agent at all.

None of this is to rule out the possibility of collective moral responsibility altogether. It remains open to the reifying or recruiting theorist to offer a more compelling account of collective moral agency. But the foregoing should suggest that the task may not be easily completed. In any event, the possibility of collective moral agency – which should by now appear remote – would not foreclose the existence of shared responsibility. I turn now to accounts of shared responsibility that other theorists have advanced.
In the last chapter, we saw that none of the existing justifications for collective responsibility succeeds, and that we should not be too sanguine about the prospect of any adequate such defense. As such, we have reason to deny that groups themselves are appropriately held responsible for the transgressions they commit. But, even if some compelling account of collective responsibility were to emerge, that account would leave intact the possibility that members of the group – participants and non-participants in the group transgression alike – would bear responsibility for the group’s acts alongside the group itself. Put differently, once we abandon the zero-sum understanding of responsibility that the strict individualist embraces, we are free to acknowledge the possibility that both groups and their members might be responsible for one and the same offense. This chapter focuses on the grounds upon which one might hold group members responsible – a concept, as we saw in the Introduction, referred to as shared responsibility. More specifically, the chapter surveys existing accounts according to which members are deemed to share responsibility for acts of their groups, and finds each of these accounts wanting.

Now, individuals can share responsibility in the sense that the responsibility assignment is to be allocated between them, or they can share responsibility in the sense that the responsibility assignment is common among them. This second sense is
analogous to the use of “sharing” when one refers to a shared value, a shared point of view, a shared way of life, and so on. Here, I am concerned with the second sense of sharing: The claim in need of defense is that members bear some amount of responsibility for transgressions committed by their group; for now, I leave to one side the question of whether, and if so how, the magnitude of responsibility varies among them.166

Arguably, there are many ways in which members may come to share responsibility for an act of their group. Some accounts of shared responsibility presuppose that each member proximately caused the act for which responsibility is to be assigned. For instance, Joel Feinberg describes, as an example of a case exemplifying “group fault distributable to each member,”167 a conspiracy to commit a bank robbery where the robbery’s success is due to each of the members, who variously function as perpetrators, abettors, inciters or protectors.168 The rival accounts I will be examining in this chapter are broader in scope in that they do not require that members proximately cause the group transgression. Since the account I advance in the next two chapters seeks to assign responsibility for a group act to members independent of their participation, I consider here only those accounts that, like mine, are (at least relatively) insensitive to the extent of members’ participation.

The notion that responsibility attaches independent of participation is highly controversial – as we saw in the Introduction, this notion invites cries that a non-individualistic account of responsibility smacks of “barbarism” and “tribalism.” Insofar

166 I take up this question in Chapter 4, where I seek to articulate the factors in virtue of which two members who did not participate in the group transgression might nonetheless bear differing amounts of responsibility for that transgression.
168 Id.
as the task of this chapter is to identify the weaknesses of accounts that attempt to defend shared responsibility, the chapter could be read as yet another polemic against the notion of shared responsibility. That, of course, is not the chapter’s aim. Given that the dissertation seeks to articulate a defensible account of shared responsibility, it should go without saying that I think such an account exists. But without such an account in hand, it may strike the reader as more than a little bizarre to fault other theorists for their failure to defend adequately a sharing of responsibility, especially if the reader harbors sympathy for the individualist claim that the notion of shared responsibility is indefensible on its face. I ask the reader’s indulgence, then, in assuming, for the moment, that a plausible account of shared responsibility exists. The articulation of such an account will have to await Chapter 4. This chapter lays crucial groundwork for that effort. It is only because none of the existing accounts of shared responsibility has, to my mind, succeeded that the project of the dissertation has any force. And, the process of examining others accounts will allow us to appreciate the desiderata for a successful account of shared responsibility.

In short, then, the assumption that operates throughout this chapter is that it is acceptable to assign responsibility to members for a group transgression whether or not they participated in that transgression. What is at issue in this chapter are the grounds that make the assumption true – why should members share responsibility independent of their participation in group transgressions? In Chapter 4, I shall argue for a normative conception of membership, a central element of which is an obligation to accept responsibility for the acts of one’s group. The accounts of shared responsibility I interrogate here locate the ground of shared responsibility elsewhere. In particular, these
accounts can be classified into four broad categories: consent-based accounts, benefit-based accounts, organization-based accounts, and shared intention accounts. I consider each in turn. First, though, some further preliminaries to refine the considerations in light of which these accounts shall be evaluated.

I. WHAT SHOULD A THEORY OF SHARED RESPONSIBILITY DO?

In this Part, I seek to articulate the desiderata for a theory of shared responsibility. The first, and most obvious, desideratum for a theory of group-based shared responsibility is that the theory should provide sufficient justification for assigning responsibility to members of the group, whether or not these members participated in the group act for which we seek to assign responsibility.

Second, the ground that implicates group members should not also necessarily implicate outsiders to the group. As we saw in the Introduction, the scope of complicity is broader than the scope of group responsibility, such that it is possible for members of groups as well as unconnected individuals all to share responsibility for the same harm—think here of air pollution, which results from activities of both group members, in their group capacity (e.g., salespeople for a car dealership), and isolated individuals (e.g., car drivers). The cogency of such theories of complicity may be unassailable, but they do not count as rivals to the one I go on to advance, for I am concerned to identify what it is about membership in a group that licenses our assigning responsibility to group members independent of their participation in the group act. Grounds of responsibility that fail to elucidate the mediating role of group membership are thus inapposite.
Finally, it is not just that the proffered ground should attach to members while excluding outsiders; it should also justify assigning the kind of responsibility with which the dissertation is concerned – *viz.*, a backward-looking account that licenses, and explains the warrant for, our reactive attitudes. There are undoubtedly certain obligations that come with the territory of membership – dues or taxes are typical examples. Sometimes, these obligations arise because of the transgressions of those who incur the pecuniary obligations. At other times, the pecuniary obligations may arise to correct errors or redress wrongs that other group members have committed – think here of an increase in condominium fees necessitated by the profligate tendencies of prior condo boards, or hikes in tuition due to mismanagement of a university’s endowment. The mere existence of the obligations, then, doesn’t tell us anything about whether the members who incur them are at fault, or may be blamed for the underlying acts that give rise to these obligations. By contrast, what we seek is a ground of responsibility that can render perspicuous the way in which group membership entails that members may be held responsible, in the backward-looking sense of that term.

It is in light of these desiderata that I assess rival accounts of shared responsibility.

II. CONSENT-BASED ACCOUNTS OF SHARED RESPONSIBILITY

Any account of responsibility that seeks to hold members of a group responsible for group transgressions in which these members did not participate contravenes what has been called the “fault principle,” according to which one may be held responsible for an
injury only if one proximately caused the injury by acting in a faulty manner.\(^{169}\) Some theorists have argued that departures from the fault principle are warranted where individuals have agreed to be subject to something other than (or in addition to) the fault principle in the assignment of responsibility. Thus, Joel Feinberg countenances “collective criminal liability” so long as the enforcement system is “part of the expected background of the group’s way of life.”\(^{170}\) R.S. Downie argues that, in virtue of their consent, individuals are properly held responsible for acts they undertake on behalf of the groups to which they belong: “[I]n so far as an individual consents to act in a role, he or she thereby becomes morally responsible for the actions which are done in its name.”\(^{171}\)

There is certainly much appeal to the notion that consent helps to justify ascriptions of shared responsibility. For one thing, focusing on consent excludes from the purview of shared responsibility those groups in which individuals do not consent to membership. In this way, consent serves to preempt worries that one will be held responsible for the wrongdoings of another simply because one shares ethnic, racial or familial ties with the wrongdoer.\(^{172}\)

\(^{169}\) See, e.g., Feinberg, supra note 167 at 674.

\(^{170}\) Feinberg, supra note 167, at 681. Importantly, Feinberg envisions something like a surety system where, though criminal liability for a transgression is assigned to the group as a whole, members will assign it only to those among them who participated in the transgression. Id. at 679-81. In this way, Feinberg merely proposes an alternative enforcement mechanism for what ultimately remains an individualist conception of responsibility.


\(^{172}\) One might contend that the requirement of consent ought to exclude also assignments of responsibility to individuals who are citizens of a nation-state in virtue of having been born there. In Chapter 3, however, I will argue that a right of exit permits us to infer tacit consent to membership in the nation-state. Accidents of birth are not sufficient, then, to exempt one from sharing responsibility in the transgressions of one’s nation-state.
The question we need to consider here, however, is not whether the fact of consent helps to legitimate an ascription of responsibility to group members, but whether consent alone justifies that ascription. The first thing to note in response to that question is that there are at least four possible objects of consent: membership in the group, the scheme of allocating responsibility among members of the group (which is what Feinberg has in mind), the roles one assumes as part of membership (which is what Downie has in mind), and the act of wrongdoing for which responsibility is to be allocated. Let us consider the justificatory force of each in turn, beginning with the latter two.

Whatever the justificatory force of having consented to a group role or group act, neither is relevant here. We are interested in finding a justification for assigning blame to members of a group whether or not they participated in or agreed to the group act. We will need a factor more encompassing than consent to act on behalf of the group, or consent to the group’s performance of some act, then, if we are to locate a ground for shared responsibility.

What about consent to membership? I believe that consenting to membership cannot be sufficient for an assignment of shared responsibility. If leaders of a group that had previously adhered consistently to the fault principle suddenly and summarily decided on one occasion to assign responsibility by lottery, the fact that the lottery “winner” had consented to membership would not serve to justify assigning responsibility to him or her. Something additional (or alternative to) consent to membership is then required.

What about consent to the responsibility scheme? In some groups – for example, the business partnership – members may well explicitly consent to incurring
responsibility for acts of wrongdoing of the group. In most cases, however, the consent is no more than implicit (and inferred from free and informed membership in the group), or even hypothetical (and inferred from what the individual who freely joins, or remains within, a group ought to have known about the obligations membership would entail).

No matter the form consent takes, however, it does not serve to justify assigning responsibility to group members: First, the fact that someone is willing to be held responsible for some transgression does not mean that they are in fact responsible for it. (By analogy: the fact that someone is willing to die for the sins of others does not make killing him just.) One who is a strict adherent of the fault principle, then, likely will not be mollified by the fact that group members have consented to departures from it.

More generally, and as others have argued, what makes a responsibility assignment just depends on the background facts surrounding the relationship between the wrongdoing and the individuals who will be made to bear responsibility for it.\(^{173}\) In particular, consent is meaningful where it is free, and its freedom requires, at least, that it be given from a relatively equal bargaining position and against a background of other opportunities. Those who have critiqued the invocation of consent as a ground for imposing shared responsibility have thus argued that “consent is epiphenomenal from a moral point of view”\(^{174}\) – what matters is not consent itself, but the freedom that makes it significant.

But even this freedom is unavailing when it comes to justifying shared responsibility. As stated at the outset of the chapter, the operating assumption here is that


\(^{174}\) Kutz, supra note 173 at 225.
shared responsibility is the proper mode of assigning responsibility for group transgressions. The scheme of shared responsibility in need of defense, then, is not just one that is specific to particular groups; it is one that is entailed by membership in any group. Now, as we have just seen, a choice can be considered free only if chosen over opportunities to do otherwise. But if, as we are assuming, shared responsibility applies to all group memberships, then there is no way to satisfy the requirement that the individual who joined a group and was thereby subject to a regime of shared responsibility had opportunities to do otherwise. The thought that she could have chosen to refrain from belonging to any group ignores the exorbitant social and economic costs that such a solitary life would entail. Nor can one derive much comfort from the thought that individuals could form groups with internal mechanisms for distributing responsibility that departed from a shared responsibility scheme. For responsibility entails not just material obligations, which could perhaps be allocated internally according to, say, the fault principle. (Think here of rights of contribution in the tort context, where the individual (or entity) held solely liable for some joint tort can seek compensation from the other joint tortfeasors). It entails as well the emotional responses of outsiders to the group, over which group members have little control. In short, our lives are such that we cannot, without great and perhaps even prohibitive costs to ourselves, avoid membership in groups and, ex hypothesi, group membership carries with it the prospect of shared responsibility. If it is, then, acceptable to have members share responsibility for group transgressions whether they participated or not, this cannot be because they chose a scheme of shared responsibility freely.¹⁷⁵

¹⁷⁵ The argument just presented relies upon what is, perhaps, a contestable conception of
To summarize, the fact of consent cannot justify the responsibility assignments that group membership entails. Given the prominence of group memberships within our lives, it is doubtful that individuals can be said to consent freely to a responsibility scheme that all groups involve. Further, even if consent could be freely given, it still would not guarantee that the responsibility assignment was just, since individuals could agree to be held responsible for acts for which they ought not, in fact, to be blamed.

Before moving on, I do think it worth pausing to consider the appeal of consent as a ground of responsibility, since I believe that a commitment to consent underpins at least some of the resistance to an account, like mine, that would hold responsible group members who did not consent to a group transgression. Following Samuel Scheffler, who addressed a related objection to the notion of special responsibilities (i.e., those responsibilities arising from the interpersonal relationships we have reason to value), I call this the voluntarist objection.176 As Scheffler notes, the objection comes in two forms. First, and more straightforwardly, the objector might worry that, on an account like mine, individuals come to possess obligations to which they did not consent. As Scheffler argues, however, we are subject to all kinds of obligations to which we did not free choice. One could instead argue, in terms similar to Harry Frankfurt’s, see e.g., Harry Frankfurt, Freedom of the Will and the Concept of a Person, 68 J. PHIL. 5 (1971), that a choice is free so long as the chooser affirms it, whether or not other alternatives existed. Even if consent could then be said to be free, however, it still would not justify shared responsibility since assent to a shared responsibility scheme isn’t sufficient, for reasons articulated above – viz. some individuals’ willingness to incur blame where they are blameless. Nor is assent to a shared responsibility scheme even necessary – most people think that shared responsibility is counterintuitive, if not ludicrous. On that thought, if members’ failure to assent to a shared responsibility scheme entailed their absolution, this project would never have gotten off the ground. Cf. Kutz, supra note 173 at 116-120 (describing the great intuitive force of causal principles of responsibility, which the notion of shared responsibility vitiates).

consent. Norms prohibiting certain kinds of conduct are perhaps the most obvious example here, but positive obligations might count as well – for instance, an obligation to love one’s siblings, or care for one’s ailing parents. Indeed, it would be no less culpably naïve for, say, a husband to shun particular obligations of nurturance and support to his wife on the ground that he did not specifically consent to them than for a group member to seek immunity from various group obligations on the ground that she did not specifically consent to them. As such, the failure to consent to specific obligations does not entail that individuals are immune from incurring those obligations.

But the voluntarist objection takes a second, and more compelling form: On this construal, the worry goes not to the obligations themselves but to their import for the identity of the individual who is subject to them. As Scheffler notes, “[o]ur most significant social roles and relations determine, to a considerable extent, the ways that we are seen by others and the ways that we see ourselves. They help to determine what might be called our social identities. … But to the extent that [our roles and relations] are fixed independently of our choices, our identities are beyond our control.” The point holds equally where it is our group memberships, rather than our roles and relations, that partly fix who we are. In particular, we may choose to belong to a group because we espouse and want to further some subset of its aims and purposes, and we may be comfortable with others’ associating us with the group just to the extent that these others recognize

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177 Id. at 189.
178 Id. at 190. Cf. HENRY MAINE, ANCIENT LAW 140-41 (1986) (“Starting, as from one terminus of history, from a condition of society in which all the relations of Persons are summed up in the relations of Family, we seem to have steadily moved towards a phase of social order in which all these relations arise from the free agreement of individuals.… [T]he movement of the progressive societies has hitherto been a movement from Status to Contract.”).
which of the group’s aims and purposes we endorse, and which we would just as happily
do without. Thus, those who oppose the policies of one or another presidential
administration nonetheless have reason to continue to embrace the nation on the ground
that America encompasses more than just one Administration’s aims and purposes. But
these individuals likely wanted to be seen by outsiders not according to some idea of
what it is to be American that outsiders impose indiscriminately on all members of the
nation; instead, they want their American-ness to bear the particular meaning they attach
to it. If they are held responsible for those acts of the nation that they decry, however,
they may worry that their claims to a qualified embrace of the nation will be undercut.

To be sure, the groups of which we are members do have some bearing on who
we are, and how others see us. But the implications for our identities need not loom as
large as the voluntarist objection would suggest. This is because our identities stem from
so many different group affiliations, to say nothing of the character traits we inherit or
develop, the personal projects we pursue, the values we affirm as individuals, and so on.
So the fact that others may judge us for some act notwithstanding the fact that we have
not consented to that act, or to the larger group project in the service of which the act was
performed, does not necessarily entail that we will come to be defined exclusively, or
even largely, in terms of that act.

Nor is the absence of consent necessarily lamentable; a person who lacks control
over others’ assessment of her does not, for that reason alone, have a ground of
complaint. For one thing, the conception of the individual that the voluntarist objection
presupposes is one that has been subject to compelling critique by feminists and
communitarians alike, who argue that the notion of complete self-authorship ignores the
significant contributions to the self that one’s affective and community ties provide.\textsuperscript{179}

For another, the dissonance between the individual’s commitments and those of her group are part and parcel of membership in a large group, the size of which both strains the possibility for complete unanimity around group goals and acts but also, presumably, benefits its members. Furthermore, it may well be that the source of value of membership in a group lies in part in the notion that members are in the same boat, as it were, for good or ill. Outsiders who ignore different modes of, say, being an American might be accused of over-generalization. But they might instead be understood as honoring the solidarity among members, by presuming the unity to which the nation aspires. Membership in these large and somewhat heterogeneous groups should not be compelled but, so long as is isn’t, consent to shared responsibility for a particular group act should not function as a necessary condition for sharing responsibility. Indeed, requiring such consent might well undermine the bonds of solidarity the group seeks to forge. That, in any case, is the direction I take in defending shared responsibility in Chapter 4.

For now, by way of summary, we should note that the failure of paradigmatic members to consent to a scheme of shared responsibility does not vitiate the possibility of sharing responsibility, but nor does the presence of consent justify that scheme. While consent therefore cannot provide the grounds of shared responsibility, the absence of consent may not be an embarrassment so much as it is a central, and worthy, feature of group life.

II. Benefits-Based Accounts of Shared Responsibility

Those who ground a sharing of responsibility in the benefits membership accords typically have one of two things in mind – the material benefits arising from a cooperative endeavor, or the positive effects membership confers upon one’s sense of self.

In the case of the former, responsibility is alleged to flow reciprocally from the material benefits received. Therefore, for example, Eric Posner and Adrien Vermeule argue that “[p]eople enter relationships in order to obtain the benefits of collective action; in the process they become blameworthy for the harms that occur as a result of collective

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Janna Thompson also offers a defense of shared responsibility that relies upon material benefits, but her account has a kind of pay-it-forward, rather than pay-back, rationale. See Janna Thompson, Collective Responsibility for Historic Injustices, MIDWEST STUDIES IN PHILOSOPHY 154 (2006) (hereinafter Thompson, CR). More specifically, citing the importance of “long-term and ‘lifetime-transcending’ interests and projects,” id. at 165, such as being provided for in old age, or ensuring that one’s culture persists, Thompson argues that “citizens of a political society ought to support institutions and practices that enable such [interests] … to be fulfilled,” id., and her argument derives its appeal from the thought that future generations will incur a collective responsibility to seek to fulfill the long-term and lifetime-transcending interests of our generation, see id. at 165-66; JANNA THOMPSON, TAKING RESPONSIBILITY FOR THE PAST: REPARATION AND HISTORICAL INJUSTICE (2002). There are two things to note in response to her account. The first is the illicit extension from supporting the interests of past generations to incurring responsibility for their transgressions. Thompson lumps together keeping commitments of past generations and making recompense for their failures to fulfill their own obligations, and she argues that we have an “intergenerational collective responsibility” to do both. CR, supra at 166. But while intergenerational reciprocity could ground the fairness of making each generation underwrite the commitments of the generation before it, it would not ground the fairness of making each generation repair the failures of the generation before it, because the current generation might not breach any of its obligations; after all, a commitment to lifetime-transcending projects might be an ineluctable, and indeed desirable, feature of social groups, but debts and transgressions are neither. Secondly, even if every generation could be counted on to bequeath some transgression(s) to its successors, Thompson’s account would be inapposite: The responsibility Thompson has in mind is of the forward-looking variety – specifically, it is a duty to discharge the debts of one’s forbears, not an acknowledgment of blame for their breached obligations. Since the dissertation is concerned with backward-looking accounts of responsibility, I do not consider her account further.
Similarly, Christopher Kutz argues that “[t]he possibility of expanding our powers (or rewards) through cooperation entails the risk that the resulting act will not align with our moral interests,” and that we will thereby come to bear accountability for the collective act. Perhaps most sweepingly, Hannah Arendt claimed that sharing responsibility is the “price we pay” for living in human community.

For the second kind of benefit, responsibility results as a corollary of the member’s identification with the group’s positive acts, and the corresponding feelings of pride the member enjoys. Shame, and thus liability, follow from this positive identification not as a matter of reciprocity, as in the first understanding, but instead as a matter of psychological consistency.

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181 Eric A. Posner & Adrian Vermeule, Reparations for Slavery and Other Historical Injustices, 103 Colum. L. Rev. 689, 703 (2003). In his defense of collective responsibility, Larry May adverts, but only in passing, to the concrete benefits group membership affords, see Larry May, The Morality of Groups: Collective Responsibility, Group-Based Harm, and Corporate Rights 77 (1987); as such, it is not clear that the benefits rationale is intended to carry much weight in his account.


183 See, e.g., id. at 157.


185 See, e.g., Meir Dan-Cohen, Responsibility and the Boundaries of the Self, 105 Harv. L. Rev. 959 (1992); Seana Shiffrin, Reparations for Slavery and Justice over Time (manuscript on file with the author).

While one can experience pride, and hence shame, in connection with any group to which one belongs, national pride is a favorite source of justification for national responsibility. Thus, Meir Dan-Cohen notes that “[t]here must be a group of objects and events – the space shuttle and the Vietnam War are perhaps good examples – that are so prominently linked to American identity that virtually every American sees herself as the author of at least some of them and feels pride or shame with regard to them. Denying responsibility for all such objects and events is tantamount to repudiating one’s American identity altogether.” Similarly, Farid Abdel-Nour contends that “national responsibility is actively incurred by individuals with every proud thought they have and every proud statement they make about the achievements of their nation.”  

Stanley Bates puts the point baldly when he asserts that the “possibility of pride and the liability to guilt and shame are two aspects of one situation – a fundamental involvement in the life of the nation.”

this and cry – literally cry. As far as I was concerned, it was a reflection on me, on every American, on the ideals that we supposedly represent.” Stanley Bates, My Lai and Vietnam: The Issues of Responsibility, in INDIVIDUAL AND COLLECTIVE RESPONSIBILITY 143, 158 (Peter A. French ed., 1972). Alasdair Maclntyre makes an even stronger claim when he argues that individuals are partially constituted by the histories of their families and cultural groups, so that liability follows not as a matter of a self-chosen identity but instead as a matter of metaphysics. ALASDAIR MACINTYRE, AFTER VIRTUE 220 (1984).  


Bates, supra note 186 at 157. Departing as well from the psychological benefits of group membership, Howard McGary invokes a different argument for shared responsibility: He argues that when an individual “profit[s] from the sense of emotional security that is attached to being a member of a powerful group” and “the emotional feelings of security that group members feel contribute to the disadvantage and oppression of members of other groups,” it is appropriate to impose liability on that individual, whether or not she participated in the group transgression. Howard McGary, Morality and Collective Liability, in COLLECTIVE RESPONSIBILITY: FIVE DECADES OF DEBATE IN THEORETICAL AND APPLIED ETHICS 77, 84 (Larry May and Stacey Hoffman eds. 1991). Here, then, the liable member must not only positively identify with the
The general problem with relying upon the benefits of group membership to ground shared responsibility is that benefits do not connect members to the group transgression in the right way. First, it is not just members but also outsiders to the group who can materially or psychologically benefit from it. Permanent residents of the United States may benefit from federal tax cuts, just as American italiophiles may reap pride from Italy’s World Cup victory in soccer. If only members are to bear responsibility for group transgressions, however, then something more than benefiting from the group will have to justify this.

Suppose, then, that there are group benefits that only members enjoy. This would be the case if the benefits in question were intrinsic and unique to membership. On this hypothesis, though, we would be entitled to know why members of transgressing groups ought to bear responsibility for transgressions of their group in which they did not group, but her positive identification must also bear a causal connection to the transgression in question. Ralph Ellison’s notion of “white-skin privilege” would seem to exemplify the kind of case McGary has in mind. According to Ellison’s account, white skin confers upon Whites an unwarranted sense of superiority, which further cements the feelings of inferiority of African Americans. Ralph Ellison, What America Would Be Like Without Blacks, in The Collected Essays of Ralph Ellison, 577, 582-83 (John F. Callahan ed., 1995); see also Conference: Race, Law and Justice: The Rehnquist Court and the American Dilemma, 45 Am. U.L. Rev. 567, 672 (1996) (“[B]ecause of racism, there is a white-skin privilege, so that any white person walking down the street is going to be treated differently than any black person walking down the street.”); Anita Indira Anand, Visible Minorities in The Multi-Racial State: When Are Preferential Policies Justifiable?, 21 Dalhousie L.J. 92, 127 (1998) (“White males, by virtue of their colour and gender, benefit from a social atmosphere in which that is the best thing to be.”). Cf. Harper’s Magazine, Does America Owe a Debt to the Descendants of Its Slaves?, in Should America Pay? Slavery and the Raging Debate on Reparations 79, 91 (Raymond A. Winbush ed., 2003) (citing comedian Chris Rock, who famously said to his white interlocutor, “Despite all the changes in society, you wouldn’t switch places with me, a black man. And I’m rich!”). I am deeply sympathetic to McGary’s account of shared responsibility, but it applies only to responsibility for intra-group animus between the group’s dominant and oppressed sub-groups. As such, it lacks the breadth of the account I go on to advance, and I do not consider it further here.
participate while members of groups that do not commit transgressions are off the hook. After all, for all we know at this point in the analysis, it may simply be a matter of bad luck that one’s group engages in transgressions while others’ groups do not. If all benefit from group membership, why shouldn’t responsibility for one group’s transgressions be shared by everyone who belongs to a group (or at least everyone who belongs to a similar group, making, say, every citizen of a nation-state responsible for any one nation-state’s transgression)? Of course, if the members of the transgressing group are connected to the transgression in some morally problematic way, then their connection provides a legitimate basis for assigning responsibility to them but not to members of non-transgressing groups, assuming that the latter set of members do not bear the morally problematic connection to the transgression. But then the justification for restricting responsibility to the members of the transgressing group does not flow from their benefiting from the group.

The difficulties with benefits-based accounts are especially acute when we turn specifically to psychological benefits. It may be entirely contingent that a member experiences pride in her group. Indeed, Abdel-Nour explicitly allows members of the nation to pick and choose the contents of their national identities, and to restrict the scope of their national responsibility accordingly. Members’ national responsibility, he writes, “only extends to the actions that have historically brought about the objects of their national pride.”¹¹⁸⁹ But why should a member’s share of responsibility turn on the nature or extent of her positive identification with the group? To assign blame strictly in accord with members’ guilt or shame is to commit a naturalistic fallacy, by unduly punishing

¹¹⁸⁹ Abdel-Nour, supra note 187 at 703 (italics in original).
those who experience irrational guilt or unjustifiably absolving those who claim false innocence.

Finally, it is not just that benefits fail to provide a compelling ground of responsibility; they also misconstrue the basis for it. If group members are to be proper objects of blame for group transgressions, whether they participated in these or not, then the feature in virtue of which they are blamed should bear some connection to the transgression. But those who invoke benefits-based accounts typically do not rely upon this kind of connection. Instead, for them, responsibility just “comes with the territory” of membership, so to speak. For that reason, the assignment of responsibility is not so much an acknowledgment as a demurrer of blame. To see this, consider that most of us believe that the government is justified in imposing taxes upon all U.S. citizens to defray costs related to Hurricane Katrina or the September 11th damage. But our tax obligations do not signify that we bear any responsibility for hurricanes or acts of foreign terrorists. Instead, they are justified simply in virtue of our membership in the nation-state (perhaps with a tacit appeal to the benefits we actually receive from the government, or the benefits we would receive if it were we who needed such assistance). But this is just the rationale that benefits-based accounts advance for sharing responsibility. On this understanding of the origins of the group member’s responsibility, the obligations we come to bear in virtue of membership do not carry the expressive dimensions of a responsibility assignment. In this way, the most that the benefits rationale can do is to ground a forward-looking assignment of responsibility; for the reasons advanced in this section, they cannot sustain a claim of backward-looking responsibility.

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190 But see McGary, supra note 188.
III. ORGANIZATION-BASED ACCOUNTS OF SHARED RESPONSIBILITY

Organization-based accounts of responsibility ground members’ responsibility for a group transgression in facts about the structure or culture of the group. For example, Christopher Kutz contends that individuals who engage in risky conduct or environmentally damaging practices share responsibility for the harm they singly or together produce because they “depend on one another for the maintenance of the infrastructure” that supports their activities and “abide by and reinforce in one another a sense of accountability that treats collective and distant harms as off the moral map, so to speak.”¹⁹¹ Similarly, David Cooper evocatively argues that some part of the blame for war-time atrocities lies with the complex of roles, rules and norms in place within the military: “[A] system which has developed its own momentum – and which is not the creature of a few individuals, but rather whose creatures most individuals are – must bear its share of responsibility for the ‘unlovely circumstances’ of … war.”¹⁹²

In this Part, I focus first on shared responsibility for omissions and then on shared responsibility for acts.

A. Responsibility for Wrongful Omissions Relating to a Group’s Structure or Culture

Omissions resulting from a group’s structure or culture are a favorite ground for inculpating members of a group. Thus, for example, Patricia Marino argues that communities, and their members, ought to bear responsibility for the residue entailed by

¹⁹¹ KUTZ, supra note 173 at 186.
moral dilemmas because these communities failed to organize their institutions to
“minimize the likelihood of dilemmas arising”193 – by, say, avoiding a situation in which
we face an organ shortage and are therefore forced to choose between transplant
recipients.194 Elsewhere, May argues that a random collection of individuals shares
responsibility for failing to organize themselves into a group that could collectively save
the life of a drowning person, even though none of the individuals could save that life on
his or her own.195 In a similar vein, Joel Feinberg argues that though no individual ought

193 Patricia Marino, Moral Dilemmas, Collective Responsibility, and Moral Progress, 104
194 Id. at 214.
takes the further step of arguing that those who possess leadership skills ought to bear
more responsibility, as compared with those who lack these skills, for cases in which a
random collection of people fails to form a group that could have saved a life. Id. He
contends that we rightfully expect more of natural born leaders and that, in declining to
equip their given talents, these would-be leaders bear a greater share of responsibility
for the collection’s failure to coalesce into a group, and the resulting failure to save a life.
Id. at 121. One could expand his point to include cases not only of putative groups, but
also of already established groups whose members fail to oppose a group transgression,
where some of these would-be opponents would have been better able than others to
wield greater influence over their fellow members.

A quick response to the claim that would-be leaders bear greater responsibility for
collective inaction than do those without leadership skills would point to Hegel’s master-
slave dialectic, and note that just as the master’s authority depends on the slave’s
subservience, so too does the leader’s ability to lead depend on his followers’ willingness
to follow. (Imagine if the collection of individuals all possessed leadership skills, and all
of them chose to exercise these skills. What would result is likely not a cohesive group
primed for action but instead a cacophony of barked orders, many of them conflicting,
that would create nothing more than chaos.) Since the dispositions of both would-be
leader and would-be follower are equally necessary for group action to result, both ought
to bear equal responsibility for the failure to act.

May’s point raises a deeper issue, however. To the extent that leadership is a
natural talent, or at least a matter of luck, ought it to function as a basis for assigning a
greater share of responsibility? In matters of distributive justice, the liberal egalitarian
would deny that those with greater natural talents deserve a greater share of resources (or,
correspondingly, that those who are less talented deserve less). Assuming that the liberal
egalitarian’s position on distributive justice is correct, it is worth asking why things
should be different in the case of responsibility assignments – which I take to be the
to be blamed for failing to attempt a life-threatening rescue effort, “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.” Finally, Thomas Flynn contends that residents of the Kew Gardens neighborhood at the time of Kitty Genovese’s murder may be held “morally accountable … for sustaining an atmosphere of indifference or mistrust in which it was probable that, despite a victim’s prolonged and agonizing screams, no one would call the police.”

In all of the cases involving omissions, the basis of responsibility is not the harm resulting from the omission but instead some precursor in the causal chain – an organ shortage, a failure to organize, a way of life militating against heroism, or an atmosphere of indifference and mistrust. May’s example of the failure to save a drowning victim has the virtue of involving a discrete event involving people within a confined space. We can thus readily delineate the set of individuals bearing responsibility for the death that results when none of them undertakes a rescue effort. But the very features that provide tractability to his argument also ill suit it to the cases of interest here, since these involve longstanding groups only some of whose members may have been positioned to seek to prevent a transgression that others end up committing on the group’s behalf. The remaining omissions cited in the previous paragraph pertain to larger sets of individuals and more entrenched cultural and structural patterns. Although they thus have a greater range of application than does May’s case, they raise the problem of identifying the

domain of corrective justice – where natural talents are concerned? I believe, but do not attempt to argue here, that natural talents have no more role to play in distributing responsibility than in distributing resources.

196 Feinberg, supra note 167 at 687.
individuals who together can be said to have forsaken the duties in question. Is an organ shortage in, say, Texas ascribable just to the citizens of that state? To the nation as a whole? To the members of all of the countries enjoying free trade with the United States? Similarly, who is responsible for a culture that militates against heroism, or for one that facilitates indifference and mistrust? Just the residents of Kew Gardens? Those who promulgate norms of non-interference or privacy? Producers of television shows that favorably depict anti-heroes?\footnote{See, e.g., Stephen Garrett, \textit{Why We Love TV's Anti-Heroes}, \textit{The Times}, Jan. 21, 2010, available at http://entertainment.timesonline.co.uk/tol/arts_and_entertainment/tv_and_radio/article6995680.ece. In a recent episode of \textit{Curb Your Enthusiasm}, loosely based on the real life of Seinfeld creator Larry David, Larry refuses to sit in the exit row of an airplane, insisting that he is the last person anyone should count on in an emergency: “I cannot be of any help whatsoever in any kind of non-traditional landing or any traditional landing,” he unabashedly announces, and the humor of the moment lies not so much in the audacity of his selfishness as in the resonance of his self-doubt.} In sum, the omissions in question are so grand, and their contributors so amorphous a collection of individuals and artifacts, that they are better treated as rhetorical cries to awaken the conscience than as serious contenders for theoretical inquiry.

By contrast, where authors advert to a group’s structure or culture in order to assign the group responsibility for some of its members’ culpable acts, rather than omissions, the problem of delimiting the set of responsible individuals looms less large. Yet even here, as we shall now see, the proffered grounds of responsibility inculpate both group members and outsiders, and hence fail to justify group-based responsibility. I focus here on Larry May and Christopher Kutz, the two authors with the most well developed accounts of sharing responsibility on structural or cultural grounds.\footnote{Iris Marion Young advances an account of “political responsibility” that identifies structural features as the causes of injustices like homelessness and sweatshop labor. See}
B. Responsibility for Wrongful Acts Relating to a Group’s Structure or Culture

Larry May argues that members of a racist culture share responsibility for racist acts emanating from that culture.\(^{200}\) He believes that this sharing of responsibility is warranted for two reasons: First, those who hold racist attitudes “causally contribut[e] to a climate that influences others to cause harm.”\(^{201}\) Second, and more controversially, those who hold such attitudes unjustifiably risk producing harm themselves:

If having a certain attitude leads some people to produce harm, then each person who holds that attitude risks being a producer of harm. To do that which risks harm to another, especially if it is known that the harm is highly likely and not merely possible, implicates the risk-taker in these harms…. [Thus the] racist who does not cause harm is responsible because he or she shares in the attitudes and dispositions that, but for good luck, would cause harm.\(^{202}\)

We can refer to these two grounds of sharing responsibility as, respectively, the \textit{mutual influence} and \textit{moral luck} rationales, and we can appraise their justificatory force

\begin{flushright}
Iris Marion Young, \textit{Political Responsibility and Structural Injustices, in Freedom and Morality} 1 (2003); Iris Young, \textit{From Guilt to Solidarity}, \textit{Dissent} (Spring 2003), available at http://www.dissentmagazine.org/article/?article=504. Yet it is not clear what a notion of responsibility adds to the distributive justice obligations that we already owe those who are victims of structural injustices. To be sure, the yuppies who are overtaking Harlem are causally responsible for the displacement, and possible homelessness, of the African-Americans whose homes the yuppies purchase while individuals buying homes in, say, Wichita, Kansas, where housing stock is likely plentiful, are not. But the fact of causal responsibility is not sufficient to confer upon the Harlem homebuyers a moral obligation that the Wichita homebuyers lack; such an obligation can result only from culpable action and Young acknowledges that no individual does wrong in buying a house in an area undergoing gentrification is not culpable, \textit{see id.} at 11. Because I do not believe that Young’s notion of political responsibility does any work in justifying or motivating our obligations to respond to distributive injustices, I leave that notion aside here.
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\(^{200}\) \textit{MAY, SR, supra} note 195 at 42-52 & 73-86.

\(^{201}\) \textit{MAY, SR, supra} note 195 at 47.

\(^{202}\) \textit{Id.} at 48-50.
not just in the context of racist attitudes but in the context of any group attitudes, beliefs, values, and so on that motivate their holders to commit wrongful acts.\textsuperscript{203}

The mutual influence rationale seems to me a perfectly acceptable, even compelling, ground of shared responsibility, but it is not one that tracks groups especially well. Attitudes leading to the commission of transgressions need not be unique to any particular group. In recognition of this possibility, Kurt Baier advances a trenchant argument for a broad assignment of responsibility for the My Lai massacre:

\begin{quote}
Let us assume that there is a certain attitude toward the lives of others, particularly those of other cultures, which is not uncommon among soldiers anywhere, and that, under the sort of pressure to which [Lieutenant] Calley was exposed, this attitude leads almost inevitably to war crimes. … Those who see the connection between this attitude and the proneness to war crimes under conditions of strain, yet themselves adopt that attitude and encourage it in others … can be said to bear a share … of the responsibility for the massacre at My Lai.\textsuperscript{204}
\end{quote}

Here, one is alleged to share responsibility not because one belongs to a particular group but because one adheres to a particular way of thinking. But we are looking for an account that tells us what it is about group membership, in particular, that justifies

\begin{footnotesize}
\begin{enumerate}
\item Peter Forrest offers a third rationale that links adherence to an attitude to someone else’s transgression where that transgression emanates from the attitude in question: My hypothesis then is that individuals may participate in the collective guilt of the communities they belong to by being ashamed of the norms which operate in those communities and which form its collective character. Hence the participation in the collective guilt of past wrongs is rational only in so far as the norms that now operate were partly responsible for the wrongs done in the past by operating back then. Peter Forrest, Collective Guilt; Individual Shame, Midwest Studies in Philosophy 145, 151 (2006). His account is not so much concerned with responsibility as it is with making sense of individuals’ moral emotions; for that reason he believes that individuals ought only to feel shame, not guilt, for groups transgressions in which they didn’t participate, see id. at 151-53. As such, I do not consider his account further here.
\end{enumerate}
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assigning responsibility to group members, and especially to those group members who did not participate in a given transgression. The fact of mutual influence, without more, then, is not helpful here.

Of course, it may be that a particular attitude is unique to a given group. Even still, however, the attitude might not be held by all paradigmatic members of the group. Consider, for example, one country’s animus toward an ethnic group located only within its borders, where the animus – though widespread – is repudiated by at least some members of the country’s dominant group. If one citizen were to act on the animus shared by so many of his compatriots, on what ground would we be justified in assigning responsibility for his hate-based act to all of his compatriots, rather than just to those with whom he is aligned in hatred?

More generally, the mutual influence rationale would be sufficient to assign responsibility to all paradigmatic members of the group only if one of two additional conditions were met – either all held that attitude, or the attitude, even if not held by all paradigmatic members, was one that defined the group.

Under the first condition – again, where all members hold the attitude in question -- it is not clear that the group itself is doing any work in mediating the sharing of responsibility. By hypothesis, the attitude is not one that defines the group. Thus, it might just be a contingent fact that all paradigmatic members happen to hold that attitude. Suppose that none of them joined the group because, or even knowing that, other members shared the attitude in question; that it is a statistical anomaly that holders of that attitude happened to converge upon the group in question; and that the attitude they share is unconnected to the purposes or activities of the group. For example, consider the
members of an amateur physics club whose members each happened to bear animus
toward redheaded people. Though each might foment the animus of the others, and
though their mutual influence might entail that each shares responsibility for the animus
of the others, the group would be no more than the site of their incitement; it would not
serve to mediate the sharing of responsibility. To see this, consider that, if the group were
to gain a new paradigmatic member who bore no hatred toward redheads, we would not
think that the new member should share responsibility for the others’ fomenting of
redhead animus. So the sharing of responsibility in the redhead animus case cannot be
group-based.\textsuperscript{205} In any case, if the mutual influence rationale is to be bound by a
requirement of group-wide adherence, it would fail to satisfy the first desideratum for a
theory of group-based shared responsibility – \textit{viz.}, that the theory provide a justification
for assigning responsibility to members of a group \textit{independent of} their bearing any kind
of guilt-worthy connection to the group transgression.

\textsuperscript{205} But what if the physics club decided to vote on a policy of red-headed animus, or to
pursue some act of violence against redheads, and the measure passed? In that case, the
group would, I believe, cease to be just a physics club; it would be a discriminatory
physics club, and its discriminatory policies could rightly subject all members – even
those who bore no animus to redheads – at least to presumptive blame. In response, one
might think the redheaded animus so tangential or minor a feature of the club’s activities
that this element of the club cannot plausibly be construed as a part and parcel of the
club’s joint project. But there is no necessary connection between racism or anti-
Semitism, on the one hand, and golfing on the other, and yet there are golf clubs with a
“no Blacks or Jews allowed” policy in which we do seem to think the policy integral to
the club’s identity, and hence its joint project. Or, if we do think the red-headed animus is
not part of the physics club’s joint project even when the club uses its structure to vote on
and then pursue that animus then, again, it isn’t the group itself that grounds its members’
responsibility. (Suppose that it turned out that members of the physics club were all tea
aficionados, and they decided, at one physics meeting, to schedule a future outing to a
local teahouse. If no physics were pursued at the teahouse, it’s not clear that we would be
licensed in considering the outing to be an outing of the physics club, rather than an
outing of all of its members, even if every one of its members enjoyed tea and
participated in the outing.)
Turning now to the second condition, according to which the attitude is not just widely held within the group but also a defining characteristic of the group, it seems to me that we do have the seeds of a story for sharing responsibility. We do not yet have a sufficient justification for it, however, for much more needs to be said about why all paradigmatic members should come to share responsibility for the acts eventuating from the group attitude when only some of these members subscribe to the attitude.

To see this, consider the following example: A commitment to the supremacy of the French language is central to Quebec nationalism. Yet one can be a member of the Quebec separatist movement and yet not believe that the French language deserves priority. Even more so, one can be a separatist and reject the separatist party’s acts seeking to elevate the status of the French language (mandatory attendance at French-language schools for the children of non-Canadian emigrants to Quebec, sign laws requiring that French lettering on shop signs be at least twice as large as lettering of any other language, etc.). If the Quebec separatist who repudiates Separatism’s commitment to the supremacy of the French language nonetheless bears responsibility for the acts that that commitment entails, something other than mutual influence will have to explain why this is so, because this separatist cannot be said to participate in the mutual influence.

In sum, even if mutual influence operates solely within the confines of a group, it does not, on its own, yield a compelling ground for assigning responsibility to all paradigmatic members of the group.

There are ways to add to the mutual influence story other features that augment its justificatory force. Suppose, as May argues, that group solidarity allows an attitude to
hold sway over members more strongly than it does over non-members.\footnote{206 See MAY, SR, supra note 195 at 78-79.} Then, even if the attitude were not held by all paradigmatic members, one could argue that all would be responsible for the holding of that attitude since all contributed to the group solidarity that allowed the attitude to carry the amount of influence it does.\footnote{207 Cf. MAY, SR, supra note 195 at 86 (arguing that members “should feel,” rather than bear, “some sense of shared responsibility for the changes in value and perspective that have increased the likelihood of harm,” though not for the harm itself) (emphasis added).} Similarly, suppose, as in the example about Quebec nationalism, that commitments shared by all members of the group lead some members, quite naturally though not inexorably, to adopt a pernicious attitude. Then, too, even if the attitude were not held by all paradigmatic members, one could argue that all would be responsible for the holding of that attitude since all upheld the commitments of which the pernicious attitude was a consequence.

While the addition of one or both of these features helps matters, they do not fully solve the problem, either singly or jointly. Presumably, the operation of solidarity is intrinsic to every well-functioning group. It is thus not clear what a member could do to prevent its operation short of seeking to sabotage the group itself, and that seems like an overly demanding requirement for the member who, say, supports all of the group’s goals except those connected with the pernicious attitude. In the case where the pernicious attitude flows from group commitments that all share, one should want to know why the member who does not adopt the pernicious attitude should bear responsibility for others’ adoption of it; after all, if he was able to resist, why shouldn’t they be able to as well? Finally, even if all members bear responsibility for the fact that members come and continue to hold a pernicious attitude -- either through the operation of solidarity or
because the group-wide commitment conduces to the holding of that attitude – why should all bear responsibility for the acts eventuating from that attitude?

In short, even when we add to the mutual influence rationale in the ways just considered, we still do not arrive at a complete justification for assigning responsibility for a group transgression to all paradigmatic members. Accordingly, we may conclude that the mutual influence rationale requires supplementation that the literature fails to provide.

Let us turn now to the moral luck rationale. Typically, moral luck arises where “every member of a group shares the same fault, but only one member’s fault leads to any harm, and that not because it was more of a fault than that of the others, but only because of independent fortuities.” Consider, for example, Joel Feinberg’s example of a social group whose members throw parties with heavy drinking and have no qualms about driving home inebriated once the parties have ended. Suppose that some, but not all, of these drunk drivers end up crashing their cars and injuring others. There is nonetheless some plausibility to the claim that all of the partygoers, or all of the drunk partygoers, or at least all who drive home drunk, are guilty of the crime: The driver who caused the accident “is guilty of or for more than [the other members] are, and more harm is his fault; but it does not necessarily follow that he is more guilty or more at fault than the rest of [the members].” Put another way, though his act is worse, his character is not; thus, to the extent that we are assigning responsibility for one’s character, we ought to treat all drunk-driving partygoers equally.

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208 Feinberg, supra note 167, at 681.
209 Id. at 682.
210 Id.
Moral luck is an appealing ground of responsibility for cases where we do not face messy counterfactuals about whether the purported beneficiaries of moral luck would, in fact, have produced the harm in question if given the opportunity to do so. For example, in the typical firing squad, only one gunman has actual bullets in his weapon; the others shoot blanks. None of the gunmen knows in advance which of them has the gun with bullets in it. All participate willingly in the firing squad, and all fire their weapons. Here, we are, I believe, entitled to hold not only that all are equally at fault but also that all are equally guilty of the resulting shooting death. All intend the victim’s death, and all act on this intention. Our emotional responses confirm the moral equivalency between the firing squad’s participants: I doubt that we would direct greater indignation at the gunman with the bullet than at those who shot blanks. Indeed, this equivalency might be sustained, at least in part, by our sense that the gunmen themselves must recognize the unsavory nature of their participation – hence their decision to supply only one of them with live bullets – as well as our outrage at their transparent and demeaning efforts to insulate themselves from guilt by allowing all but one of them to disclaim causal responsibility for the victim’s death.211

211 For extended and forceful discussions of firing squad examples, see Kutz, supra note 173, at 285; Haskell Fain, Some Moral Infirmities of Justice, in INDIVIDUAL AND COLLECTIVE RESPONSIBILITY: THE MASSACRE AT MY LAI 17, 33 (Peter French ed., 1972). These cases raise questions similar to those encountered in cases where two arsonists simultaneously set fire to a building and where (a) both contributed to the building’s destruction but we have no way of apportioning causal responsibility between them, or (b) we know that only one of the two fires caused the building’s destruction, and the other arsonist is hence the beneficiary of moral luck. One might contend that we should impose equal liability on the two arsonists in (a), but less liability, or possibly even no liability, on the arsonist whose fire makes no causal difference in (b). Compare Alan Strudler, Mass Torts and Moral Principles, 11 L. & PHIL. 297 (1992) (holding that one who causes an accident non-negligently has a reason to feel remorse that another who
However compelling the localized version of moral luck present in the firing squad example, that version is unavailing for larger groups. There, moral luck fails either to restrict responsibility to group members alone, or to explicate the ground of members’ responsibility, as we shall now see.

Where other group members are beneficiaries of moral luck, it is highly likely that outsiders to the group will be too. For example, the practice of drunk driving is not particular to the social group described above; anyone who drives drunk unjustifiably risks harm to others. If group members are more appropriately assigned responsibility for the drunk driver’s accident than are outsiders who drive drunk, something in addition to moral luck will have to explain why this is so. Indeed, it is likely because so many of us benefit from moral luck that it becomes senseless to use it as a ground for shared responsibility. For example, shortly after the My Lai massacre, a Harvard poll found that over half of the respondents, representing a cross-section of Americans at the time, would have shot the women, children and elderly of that village had they been ordered to do so.\textsuperscript{212} And there is the further thought that moral luck should ensnare, or else mitigate the responsibility of, not just those who suffer from the same fault that caused harm but also those who suffer from faults that put others at similar, if not greater risks, of being harmed – for instance, not just those who drive drunk but also those who drive when engages in the very same conduct but who does not cause an accident lacks). I see no reason to treat one arsonist differently from the other in either scenario, however.

\textsuperscript{212} See Haskell Fain, \textit{Some Moral Infirmities of Justice, in Individual and Collective Responsibility: The Massacre at My Lai} 17, 33 (Peter French ed., 1972); Herbert C. Kelman and V. Lee Hamilton, \textit{Crimes of Obedience: Toward a Social Psychology of Authority and Responsibility} 173-76 (1990) (describing polling results from the authors’ survey, as well as two other surveys, indicating that a good proportion of individuals – 51% in the authors’ survey, 43% in another American survey, and 30% in an Australian survey -- would have participated in the My Lai killings if faced with the conditions that the soldiers there faced).
extremely sleep-deprived or while texting or with brakes they know to be faulty, or perhaps even those who keep loaded guns in unlocked cabinets, fire their guns while hunting without first checking to see whether anyone is in the line of fire, and so on.

In any event, even if we could restrict the operation of moral luck to group members alone, it is likely the case that not every group member would be the beneficiary of moral luck, or the beneficiary of moral luck on the occasion when the fault led some of the group members, but not other members who shared it, to cause harm. Since we are after an account that would justify holding each member responsible, independent of fault, moral luck cannot do the requisite justificatory work.

In short, the key problem with moral luck accounts of shared responsibility is that it is neither necessary nor sufficient that all group members share the character flaw, attitude or inclination underpinning a transgression in order for responsibility for that transgression to be assigned to the group. For these reasons, moral luck is not a compelling ground for having all and only members of a group share responsibility.

In sum, we have considered the proposition that members of a group share responsibility for a group transgression where that transgression flows from an attitude that other members of the group share. May argues that the sharing of responsibility results from the mutual influence members exert upon one another or the moral luck that members who share the attitude, but do not participate in the transgression, enjoy. Neither rationale, however, works as a theory of group responsibility, since neither adequately
explicates the relationship between being a member of a group and sharing responsibility for the group’s acts.213

Like May, Christopher Kutz attempts to draw out the ways in which individuals’ seemingly atomistic conduct nonetheless aligns them with others with whom they together promote and protect risky or harmful activities.214 To take Kutz’s examples, those who drive CFC-emitting cars, as well as those who sell guns, each constitute, at least in the eyes of the victims of their conduct, “a community of accountability … who jointly cause harm, against a background of interdependent activity and shared values.”215 Yet Kutz’s aim is not just to interpret these activities according to the perspective their victims take, but also to elaborate an account of responsibility that will resonate with those who participate in these activities, and thereby to provoke a change in their conduct. Kutz thus offers two grounds of responsibility, which he believes are together jointly sufficient to awaken the conscience of these participants: first, an account of

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213 Cassie Striblen has taken exception to May’s account on grounds different from my own. Guilt, Shame and Shared Responsibility, 38 J. SOC. PHIL. 469 (2007). Striblen accepts May’s account of shared responsibility, but she argues that the account should ground an experience of guilt among group members, and not just shame, as May contends. Id. at 481-82. My own view is that, even if we are right in insisting that members who share an attitude that led the group to commit some wrong ought to experience guilt, we would still be left with the problem of assigning responsibility to members who did not share that attitude. Neither Striblen nor May provides the resources for this broader assignment of responsibility.

214 In his book, Complicity: Ethics and Law for a Collective Age (2000), Kutz offers a theory of responsibility largely grounded in group members’ intentions to participate in a collective endeavor. He devotes one chapter of the book, though, to individuals who contribute to a collective harm though they do not view themselves as part of a collective venture, and hence cannot readily be linked to one another through their participatory intentions. See id. at 166-203. In this Part, I address Kutz’s account as elaborated in the chapter just cited. I reserve consideration of the shared intention portion of his account for Part IV.

215 Kutz, supra note 173 at 186.
“symbolic or character-based accountability,”\textsuperscript{216} and, second, a “quasi-participatory basis of accountability.”\textsuperscript{217}

More specifically, Kutz’s first ground of responsibility involves an appeal to the way in which driving CFC-emitting cars or selling guns reflects negatively upon the driver’s or merchant’s character. “Agents who show no concern for their participation in collective harms in overdetermined contexts make themselves vulnerable to the suspicion they will be indifferent even when they could make a difference.”\textsuperscript{218} Kutz refers to the second ground of responsibility as “quasi-participatory” because neither the CFC-car drivers nor the gun merchants view themselves as participating, or intend to participate, in a group that unites them with other CFC-car drivers or gun merchants. Nonetheless, Kutz argues, we can develop in these actors a sense of collective identity by ascribing the harms they together produce to “social and economic structures,” which in turn traces these harms to “individual motivations” since “all social activity is individual activity.”\textsuperscript{219}

Kutz’s characterological ground of responsibility is very similar to May’s moral luck rationale, and is indeed susceptible to almost the same objection: It is not just the drivers of CFC-emitting cars who express their indifference by participating in a collective harm to which none of them makes a consequential difference, but also those who do not recycle, or fail to eat from locally grown or sustainable sources, or neglect to take energy-saving measures when heating and powering their homes, and so on. Appeal to the symbolic aspects of the drivers’ conduct thus fails to pick out only those who drive polluting cars.

\textsuperscript{216} \textit{Id.} at 190.
\textsuperscript{217} \textit{Id.} at 186.
\textsuperscript{218} \textit{Id.} at 190.
\textsuperscript{219} \textit{Id.} at 187-88.
The question then becomes whether we can restrict the set of responsible individuals just to those who drive CFC-emitting cars by adding to the characterological ground Kutz’s second ground of accountability – *vìz.*, participation in a collective venture. I do not believe we can. Again, why should we construe the collective venture such that it includes only those who drive CFC-emitting cars? The social and economic structures that facilitate car pollution are sustained not just by drivers but by all those who benefit from cheap motor transportation – companies that use trucks to transport their wears, consumers intent on purchasing products cultivated or manufactured at a distance from where they shop, and so on. Further, these practices are embedded within even more extensive organizational networks. For example, long car commutes, with their resulting contribution to air pollution, can be traced both to inadequate provision of safe, reliable public transportation as well as residential patterns that create an inverse relationship between the price of one’s home and its distance from the urban centers where most people work. Perhaps, then, we should blame not only drivers but all those who failed to lobby for better public transportation, or who bear responsibility for the relative affordability of ex-urban housing. In short, as we look more carefully at the forces leading to car pollution, it becomes more and more difficult to identify anything like a distinct group that alone can be said to bear responsibility for it. Far from identifying a discrete group whose members bear responsibility for the collective harm they produce, then, Kutz’s grounds of accountability may cast such a wide net as to further entrench individuals’ sense that their individual contributions to the harm are marginal to the point of insignificance.
Kutz likely focuses exclusively on car drivers, rather than all those who facilitate driving CFC-emitting cars, for reasons of moral psychology: I may be more inclined to recognize the way in which I bear responsibility for pollution when I am called upon to see how, by driving, I mutually reinforce others who engage in the very same activity (rather than those who engage in any activity that, together with mine, produces pollution). But it is not clear to me that our moral psychology requires that we restrict our focus in this way. Few of us possess a robust car-driver identity, so it’s not as if restricting our analysis to car drivers will allow us to leverage a strong sense of community with other drivers. And Kutz’s account already requires that we take an imaginative excursion from our tendency to view our acts in isolation from those of others to a perspective that allows us to see how our acts combine with others’; it is but a short journey from a view of myself as among a community of polluting drivers to a view of myself as among a community of polluters tout court. In any case, it is entirely possible that the account furnishing the greatest motivation relies on considerations different from those that supply the strongest justification for sharing responsibility.

But suppose that Kutz were willing to allow for a broader delineation of the set of responsible individuals: In the face of concerns like mine, he would then acknowledge that the characterological and quasi-participatory grounds of responsibility should ensnare not just car drivers but all others who facilitate the driving of CFC-emitting cars. That acknowledgment would allay concerns about the under-inclusiveness of the account, but it might do so at the expense of undercutting the backward-looking sense of responsibility that we want to engender. Once the account sweeps this broadly, we fail to
get much more than causal responsibility, which is an insufficient basis for moral responsibility.

In short, the account of responsibility Kutz advances here is inherently unstable. Where it tracks individuals connected by their participation in a common and tightly bound activity, it seems arbitrarily restrictive. But when expanded to overcome this worry, it loses its capacity to ground responsibility of a backward-looking variety. With that said, our interest in Kutz was part of a larger inquiry, the central question of which was whether one could arrive at a justification for shared responsibility on the basis of organizational or cultural features. For the reasons adduced in this Part, I am not confident that such a justification will succeed. But Kutz offers a theory of shared responsibility more congenial to formally bounded groups and it is to that theory – variants of which others have advanced – that I now turn.

IV. SHARED INTENTION ACCOUNTS OF SHARED RESPONSIBILITY

In Chapter 1, we confronted the notion of a collective intention – one that was alleged to be the intention of the group itself, whether all or even any of its members harbored it -- , and we saw that that notion was deeply problematic. Here, we consider shared intentions – roughly, (a) an intention that two or more individuals perform some act together, which entails (b) that each intend to do her part to facilitate fulfillment of that act, in particular by (c) intending to coordinate her part with the others, where (a)-(c) are common knowledge to each of the individuals who share the intention.220

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220 This is a sketch of the notion of a shared intention that corresponds, at least roughly, with the sometimes highly technical elucidation of the nature of a joint intention. For these more careful and elaborate analyses, see, for example, MICHAEL E. BRATMAN,
Those who invoke shared intentions as a basis of shared responsibility usually have a discrete act in mind, with relatively few participants.\textsuperscript{221} Holding an accessory to a crime responsible for that crime is a typical application of such accounts.\textsuperscript{222} For instance, the driver of the get-away car in a bank robbery, though he did not himself commit the robbery, will nonetheless be held responsible for it if he intended his driving of the get-away car to contribute to the robbery.\textsuperscript{223} On the accounts in question, the driver shared an intention to commit the robbery, which entailed an intention to do his part in the completion of the robbery (in his case, driving the get-away car) and an intention to coordinate his activities with those of his fellow felons (e.g., by driving the car around to the back of the bank if the robbers decide to change their escape route at the last minute). Moreover, his intention to do his part and coordinate his contribution with the others’ is common knowledge to all of them.

\footnotesize FACES OF INTENTION (1999), especially essays 5-8, as well as KUTZ, supra note 173 at 66-112; Raimo Tuomela, Joint Intention, We-Mode and I-Mode, MIDWEST STUDIES IN PHILOSOPHY 35 (2006); Brook Jenkins Sadler, Shared Intentions and Shared Responsibility, MIDWEST STUDIES IN PHILOSOPHY 115 (2006).

\textsuperscript{221} Indeed, even where he explicitly attempts to draw out the implications for responsibility of his theory of shared intention, Michael Bratman, who might be called the father of the shared intention literature, contemplates only small institutional groups, such as a university admissions committee, or collections of individuals who do not constitute a group at all, such as acquaintances who intend to paint a house together. See Michael E. Bratman, Dynamics of Sociality, MIDWEST STUDIES IN PHILOSOPHY 1 (2006).

\textsuperscript{222} See, e.g., Michael McKenna, Collective Responsibility and an Agent Meaning Theory, MIDWEST STUDIES IN PHILOSOPHY 16, 16 (2006). Cf. Meir Dan-Cohen, supra note 186, (grounding the get-away driver’s responsibility in his identification with the crime rather than his sharing an intention that it be done).

\textsuperscript{223} Christopher Kutz offers this example as paradigmatic of the way a shared intention entails accountability for each of the parties to it, KUTZ, supra note 173, at 228-29, though his account is intended to cover cases where the shared intention is much broader in scope, and permits much flexibility in how the parties to it may understand and execute their parts in fulfilling it, as we shall see in what follows.
The acts that form the subject of the dissertation are different from the example just described: The dissertation is concerned with assigning responsibility for acts committed by a group where at least some members harbored no intention that the act be done – some may have been ignorant of, and others may have protested vehemently against, the act’s occurrence. The notion of a shared intention, at least without further qualification, is not likely to be helpful in establishing the responsibility of group members in such cases. For that reason, I do not address the general cogency of the notion of shared intentions here.

There is, however, one set of accounts of shared intentions that warrants attention. Some theorists have argued that we should understand the project that unites members of a collective quite broadly, such that the transgression in question need not have been intended by each member so long as it is plausible to construe the transgression as a reasonable way for one member to carry out the larger project. For a morally and politically controversial example of the way this would work, consider a recent line of cases holding individuals criminally liable for “knowingly provid[ing] material support or resources to a foreign terrorist organization.” In at least some instances, the purported foreign terrorist organization has both humanitarian and terrorist divisions, and the donor

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225 18 U.S.C. 2339B. See, e.g., United States v. Hammoud, 381 F.3d 316, 327 (4th Cir. 2004); Humanitarian Law Project v. Reno, 205 F.3d 1130 (9th Cir. 2000). In *Hammoud*, the defendant was found to have committed immigration fraud, participated in a cigarette smuggling operation, donated $3500 to Hizballah, and encouraged others to donate as well. Though the fraud and money laundering crimes were serious, it was his contribution to Hizballah that did him in: The judge adopted a 12-level sentencing enhancement on the ground that the defendant had “commit[ed] a terrorist act,” and sentenced Hammoud to a prison term of 155 years!
claims to have intended to further the work of the humanitarian division of the
organizations while wanting nothing to do with its terrorist division. Nonetheless,
courts appear to have viewed the various divisions or branches of these organizations as
part and parcel of the same larger project, and to have imputed the intention to participate
in terrorist ways of accomplishing that project to each and every person who supports it.
As one federal court of appeals reasoned:

[E]ven contributions earmarked for peaceful purposes can be used to give
aid to the families of those killed while carrying out terrorist acts, thus
making the decision to engage in terrorism more attractive. More
fundamentally, money is fungible; giving support intended to aid an
organization’s peaceful activities frees up resources that can be used for
terrorist acts.

In order to assess the validity of imputing the specific intention to, say, commit
terrorist acts to those who in fact harbor only the broader intention of supporting a
foreign organization that happens to engage in terrorism (as well as the specific intention
of financing the humanitarian wing of that organization), I examine accounts of shared
intention that seek to connect members of a large group to some specific means of
carrying out the group’s over-arching project through appeal to shared intentions.

Brook Jenkins Sadler advances one such account. More specifically, she contends
that “when two agents share an intention …, they may be held morally responsible not

226 See, e.g., Humanitarian Law Project, supra note 225.
227 205 F.3d at 1136. The Supreme Court endorsed this reasoning, when it held, in a 6-3
decision, that the statute in question survived strict scrutiny because of the government’s
compelling interest in denying legitimacy to groups it had deemed terrorist organizations.
See Holder v. Humanitarian Law Project, No. 08-1498 (Sup. Ct., Jun. 21, 2010).
Amazingly, the “material support” provided by the individuals challenging the statute’s
constitutionality involved nothing more than supplying human rights training to the
Kurdistan Workers’ Party (KWP) in Turkey. Nonetheless, writing for the majority, Chief
Justice Roberts explained that, in providing support of that kind, plaintiffs freed KWP up
to spend money on its terrorist activities.
only for their own, but for each other’s actions, or the outcome of each other’s actions, even though they may have different ends … because of the way in which their individual intentions are interlocked.”  

Intentions are “interlocked” for Sadler when “the reason you intend to X is that I intend to do Y and the reason I intend to do Y is that you intend to do X.”  

To vary slightly an example that Sadler provides, imagine that you intend to belly-flop into the pool because you know that I intend to watch you, and I intend to watch you because I know that you intend to belly flop. Now, if you injure yourself or a third-party while attempting to belly-flop, I bear at least partial responsibility, for my intention to watch provided the reason for your intention. My causal contribution to your enterprise thus grounds my responsibility.

It is important to note that Sadler believes that, in cases of interlocking intentions, one agent’s causal responsibility for the other’s act entails the first agent’s moral responsibility for the other’s act. She arrives at this entailment by adopting a roughly Kantian view of responsibility, according to which an agent bears moral responsibility for her intentional acts because these reflect her will.  

She thus argues that, where my intention provides a reason for your intention, which in turn provides a reason for my intention, each of us manifests her will through the act of the other; I thus bear moral responsibility for what you do.

Now, as I see it, there are at least three problems with this account. First, there is the problem of dividing, or even assigning, responsibility in cases where the interlocking

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228 Sadler, supra note 220 at 139.
229 Id.
230 Sadler leaves open the question of how to distribute responsibility among those who share the relevant intention. See id. at 138.
231 See id. at 137-38, 141-42. For purposes of assessing Sadler’s account, I do not dispute her understanding of the relationship between intentions and responsibility.
reasons over- or under-determine the act in need of accounting: Suppose that you intend to belly-flop so long as someone is watching, and I and another friend both intend to watch. You now have reason to belly-flop. If you injure someone while doing so, am I off the hook since you would have had sufficient reason to belly-flop just in virtue of our friend’s intention to watch you? Sadler insists that “an agent’s merely having an intention, when it is appropriately related to another’s to constitute a shared intention, makes her causally and morally responsible for the other agent’s action.” Here, my intention does not make me causally responsible for your belly-flop; you would have belly-flopped anyway, because you had all the audience you needed in our friend. Am I thus absolved of moral responsibility? Consider now a case where I am the only one who intends to watch you belly-flop, but I intend to do so in part because I want to see your antics and in part because, by watching you belly-flop, I’ll also have a view of the fancy diving occurring on the diving board right next to yours. Suppose further that the fancy diver intends to dive only because I intend to watch her, and she knows that I intend to watch her in part so that I can watch you. Her diving is thus causally related to your belly-flop, since her diving provides me with sufficient reason to watch you, and my watching you provides you with sufficient reason to belly-flop. If, again, you injure someone while attempting to belly-flop, it seems like, on Sadler’s account, the fancy diver should bear at least partial responsibility for the injury. To be sure, the relationship between the fancy diver’s intentions and your intentions is at one degree of remove relative to the relationship between my intentions and your intentions. But nothing in

232 Id. at 117 (emphasis added).
233 I add the last clause in this sentence because, on Sadler’s account of a shared intention, the reasons underpinning the intentions of each of the agents who share the intention ought to be common knowledge between them. See id. at 124.
Sadler’s account explains why we should accord any moral weight to that fact. If I am right that Sadler’s account would assign responsibility to any individuals whose intentions were causally related, under conditions of common knowledge, to the intention of the agent causing harm, then we can imagine how vast, and potentially counter-intuitive and unjust, the implications for responsibility assignments when we move from the triad in the example just described to a large, institutional group, like the nation-state.

In any event, Sadler’s account is not particularly well-suited to capturing the kind of case at issue in the dissertation. Consider, for example, the way in which Sadler’s account relates to the question that is the focus of Chapter 5 – to wit: may we hold Americans who did not participate in American human rights abuses committed in the course of the war in Iraq responsible for those abuses? For Sadler’s account to connect American civilians with acts of abuse committed by American soldiers, we would need to paint the shared intention broadly enough to find intentions of the soldier and the paradigmatic citizen that interlock. Suppose that the soldier intends to fight in the war because he seeks to protect values that other Americans hold dear, and suppose that our paradigmatic citizen intends to continue cherishing typical American values at least in part because she knows that her fellow citizens are willing to fight for them. (Perhaps she derives some of her appreciation for these values from the thought that others are willing to protect them with force, and possibly their lives, if necessary. More generally, it may well be that the shared aspect of some defining group goal is partially constitutive of the value group members attach to it, which would partly explain not only the American’s support for the shared goal, as well as the soldier’s willingness to fight for it.) Suppose further that the soldier commits the act of abuse because he views it as an appropriate
way of protecting American values. So described, the example counts as a shared intention on Sadler’s account since she explicitly allows that the agents who share an intention may “work at cross-purposes, … or [fail to] see their respective actions as contributing toward a common goal or activity.”\textsuperscript{234} In this way, Sadler can provide a story according to which the paradigmatic citizen bears responsibility for abuses in the war in Iraq. So too she could tell a story according to which the humanitarian donor to a foreign organization that engages in terrorism bears responsibility for terrorist acts: Donors could intend to support the organization because some of its members intend to work toward its goals, and some of the members would intend to work toward the organization’s goals because others (including donors) intended to support the organization. The terrorist could then be one of the members intending to achieve the organization’s goals – one who chose to commit acts of terror as a means of fulfilling those goals.

The problem is that the stories just described work only because the unifying intentions are described with great breadth – indeed, so much breadth as to risk no longer accurately capture the intentions of the parties to them. The paradigmatic American may view acts of torture as so inimical to American values that she would not consider torture to be a valid way of fighting for American values; as such, the soldier’s act of abuse would not, in fact, provide a reason for her to cherish American values. Similarly, the donor might well desire not to support an organization that sought to achieve its goals through terror, thereby eliminating the terrorist’s reason for engaging in acts of terror. Further, participants in a shared intention ought to have some authority with respect to the scope of the intention that they are alleged to share; we should not be permitted to

\textsuperscript{234} Id. at 126.
describe the endeavor in which they are engaged with whatever breadth is necessary to connect them to some act for which we seek to assign responsibility, without regard for whether the description we arrive at actually and accurately corresponds to what the participants in fact set out to do.

To put the problems with Sadler’s account in general terms: Recall that Sadler was able to move from causal to moral responsibility by relying on a Kantian conception of responsibility, according to which one’s intentional acts are said to reflect one’s will. The examples presented here suggest that we can use Sadler’s account to elucidate causal connections between individuals’ intentions even though these connections do not correspond, and possibly even conflict, with the contents of agents’ wills. Her proffered ground of responsibility thus either ensnares innocents, or traps the guilty for the wrong reasons.

Christopher Kutz offers what is perhaps the most sophisticated and elegant account linking shared intentions to shared responsibility but, as I shall now argue, his account also suffers from problems of scope similar to those afflicting Sadler’s account.

According to Kutz, a “set of individuals jointly G when the members of that set intentionally contribute to G’s occurrence by doing their particular parts, and their conceptions of G sufficiently and actually overlap.”²³⁵ We can begin to appreciate the ambitious nature of Kutz’s project when we consider the negative formulation of his understanding of a shared intention: “a set of individuals can jointly intentionally G even though some, and perhaps all, do not intend that G be realized, or do not even intend to

²³⁵ Kutz, *supra* note 173 at 103
contribute to G, but only know their actions are likely to contribute to its occurrence.”

Thus, Kutz’s conception of a collective act is minimal enough to accommodate intentional participation not just by those who intend that the collective act be achieved (for example, those who carry out detainee abuse, to return to the example above) but also “by cognitively vague, alienated or dyspeptic agents” (for example, civilian citizens who are stateside and who neglect to keep abreast of news of the war in Iraq, or who actively oppose the war.) All of these agents bear at least some accountability for the collective act, on Kutz’s account.

Given that agents can participate in the collective act with more or less knowledge, input or zeal, Kutz’s account raises two questions: First, what is the act that may properly be attributed to the collective? For example, where I intend that a friend and I go for a walk, and my friend intends that we go for a walk and discuss our ideological differences, is the collective act the walk alone, or walk-plus-conversation-about-ideology? Second, even if it is permissible to ascribe to the group an act that not all members intend, who should bear responsibility for that act, and what is the ground of their responsibility?

Kutz’s response to the first question involves differentiating, first, between over-arching and subsidiary intentions, where the former define the group act and the latter

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236 Id.
237 Id. at 102.
238 According to the taxonomy I presented in the Introduction, a joint casual outing, like a walk, would not count as a collective act at all since it is not undertaken on behalf of some super-entity that is supposed to subsume and represent the outing’s participants. Nonetheless, I follow Kutz in using a walk example to present his account, see KUTZ, supra note 173 at 94-95, since the two-person case is simplest, and since nothing I go on to say in response to Kutz’s account is affected one way or another by the use of this example.

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involve the means members undertake to fulfill it. What is at issue in the walk example just described is the appropriate scope of the over-arching intention that may be attributed to us as a group. Here, Kutz’s answer is straightforward: “Clearly, the collective intention can only be as well defined as the plan of action upon which individuals converge.”

Since my friend and I converge only with respect to our intentions to go for a walk together, and not with respect to her conversational agenda, the collective act consists just of the walk. Even if she repeatedly seeks to raise the issue of ideological differences, or otherwise does everything in her power to seek fulfillment of her intention that the walk address our differences, our collective act will remain the walk alone, at least if I do not accept her invitation to discuss ideology on that occasion. (If I did not set out with the goal of discussing our ideological differences, but pursued the topic with her when she raised it, it would presumably be appropriate to characterize our joint activity as that of going for a walk and discussing differences in ideology.) Kutz’s understanding of the appropriate scope of the over-arching intention seems to me appropriately narrow – the shared goal encompasses only the sphere of overlap between participants’ intentions.

Things become more problematic when we turn to the question of which subsidiary intention-governed acts may properly be ascribed to the group. When may the acts you undertake in the service of our shared goal be attributed to me? Kutz’s answer to this question requires differentiating further between ephemeral and institutional groups. The ephemeral group is constituted by the shared goal – to take Kutz’s example, that of having a picnic together. The shared goal provides a causal and teleological explanation for the acts that the picnic participants undertake in making the picnic

\textsuperscript{239} Id. at 109.
\textsuperscript{240} See id. at 138-39.
happen. Thus, “[m]y buying cheese and your picking out wine can be ascribed to us as a group, in virtue of the explanatory role played by our shared goal. They are our actions, because they are explained by our shared intention, which is causally efficacious through our individual participatory intentions.” Though I do not personally buy wine, and you do not personally buy cheese, Kutz believes that “[i]ntentional participation provides a special basis for ascribing individual members’ actions to the group as a whole, and to the group members individually.” Thus, each of us is an inclusive author of the acts the other performs in preparing for and engaging in the picnic – the statement, “we bought wine and cheese” is true of us.

The analysis for institutional groups is made more complex, Kutz believes, because membership in an institutional group is not conferred by a participatory intention alone – posers and wannabes do not belong, and hence cannot have group acts ascribed to them, no matter how fierce their intentions to participate. Further, in institutional groups, there will likely be formal limits on the scope of the members’ authority to act on behalf of the group. Thus, inclusive authorship arises only for those who satisfy the group’s membership criteria, and only for acts that are “consistent with the particular powers and limitations on the … role” of the member performing it. Where these two criteria are satisfied, “the actions of each and the actions of all are the actions of the collective.” For example, if a member of Humanitarian Law Project, one of the groups forming a subject of the FTO cases described above, acts within the scope of her

\[\text{References}\]

241 Id. at 139.
242 Id. at 138.
243 See id. at 105-107.
244 Id. at 107.
245 Id.
authority in committing a terrorist act, that act may legitimately be ascribed to the group as a whole. And, in that case, every member is an inclusive author of the terrorist act.\textsuperscript{246}

Kutz’s account of inclusive authorship is remarkably sweeping because it allows action stemming from any subsidiary intention that can be rationally related to the shared goal to redound to the group as a whole and hence to its members. Kutz may believe that, at least in the case of the institutional group, restrictions on the scope of members’ authority will serve to curtail the set of acts they may pursue on behalf of the group, and thus limit the possibility of ascribing their acts to other members. But members may act in ways their fellow members deplore even though they act within the scope of their authority. For example, the executive director of the ACLU may authorize members of the organization’s legal team to defend the right of skinheads to march in Skokie, Illinois, and the ensuing legal efforts will, on Kutz’s account, then be legitimately ascribable to every member of the ACLU – indeed, even to those members who joined the organization in support of its efforts to eradicate racism and thus were outraged by the ACLU’s decision to represent skinheads.\textsuperscript{247} Similarly, there is no \textit{a priori} reason to think that an organization that engages in humanitarian work may not also empower some of its members to pursue more violent – and even terrorist – means of securing the organization’s goals.

Now, Kutz’s sweeping conception of what counts as an act ascribable to the group is problematic only if he assigns responsibility to group members who neither participated in nor endorsed the group act, and fails adequately to justify that assignment.

\textsuperscript{246} See \textit{id.}  
Let us, then, turn to the second question advanced above – that of the extent and ground of members’ responsibility for the acts ascribed to the group: Kutz explicitly holds that all inclusive authors of a group act may legitimately be held responsible to at least some degree: “When we act together, we are each accountable for what we all do, because we are each authors of our collective act.” The ground for such widespread accountability is, for Kutz, as it was for Sadler, the way in which our shared goals manifest our will: “We are properly held accountable for the actions of groups (and of individual group members) in which we participate, because these actions represent our own conception of our agency and our projects…. [Group members] manifest their attitudes through one another’s actions.” Kutz even offers a “slogan” to pithily capture his thesis: “No participation without implication.”

The problem with Kutz’s account is that it tends to either unjustifiably implicate or unwarrantedly exculpate non-participants in the group act. To be sure, Kutz appreciates that the kind and degree of responsibility borne by direct actors is typically greater than that borne by members who do not directly participate in the collective act. But the claim I shall press against Kutz is that it is sometimes problematic to assign any responsibility to non-participants on the grounds that his account does; at other times, his account fails to assign responsibility broadly enough.

As we have seen, Kutz’s account relies on a distinction between the acts stemming from over-arching versus subsidiary intentions: While the scope of the shared

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248 Id. at 138; see also id. at 138-46.
249 Id. at 140-41.
250 Id. at 114.
251 As Kutz writes, “Though I am accountable in some form for the actions and events inclusively ascribable to me, inclusive authorship constitutes a fundamentally different responsive position from exclusive authorship.” Id. at 139.
goal, or over-arching collective act, is only as great as the overlap between participants’
conceptions of the shared venture, the subsidiary acts ascribable to all group members
consist of any act a member carries out that is a plausible means to fulfillment of the
shared goal (and, in the case of institutional groups, authorized by her position within the
group).

There are two problems with the structure of accountability on Kutz’s account,
both relating to the purported teleological connections between the shared goal and the
acts it is alleged to explain. First, the over-arching goal shared by members of a group
may be so grand or diffuse that virtually any act its members pursue can plausibly be said
to be in the service of the shared goal. Consider, for example, that citizens of Nazi
Germany who did not support the Nazi regime may nonetheless have chosen not to
emigrate out of a devotion to the Fatherland, glorification of which could be said to be
the goal shared by German Nazi supporters and opponents alike. The problem is that the
Fatherland’s glorification did not demand the Nazi program of mass genocide. The
relationship between “purification” and promoting Germany’s glory is perhaps a rational
one – at least if one believes in the connection between Germany and the Aryan race –
but it is hardly a necessary one. Indeed, given the countless other ways in which one
could, without engaging in any human rights violations, seek to bring Germany glory, the
Nazi purification program seems like an idiosyncratic one, at best. As such, it is a stretch
to say that Germans who opposed the Nazi regime nonetheless provided teleological
warrant for the Nazis’ systematic extermination and purification efforts. This is especially
so in the case of those Germans who stayed precisely in order to thwart Nazi activities.
If appeal to the shared goal sometimes results in too broad an ascription of responsibility, as in the example just presented, it also often fails to cast responsibility broadly enough. Kutz’s account presupposes that groups can be characterized by a unity of purpose. Yet it is a fact, and perhaps even a virtue, of groups that members may diverge in their sense of what the group is about. Kutz is surely right that there must be some region of overlap between members’ conceptions of the purpose or identity of the group if there is to be a coherent group at all. But the region of overlap may well be dwarfed by the great swaths of imaginative terrain occupied by those who embrace a vision of the group that their fellow members would eschew. The nineteenth-century American who repudiated the nation’s “manifest destiny” might well still bear responsibility for the unjust annexation of Native American lands, just as the twentieth-century American who refused to recognize the nation’s exploratory imperative might well still bear responsibility for the nation’s extravagant and environmentally damaging space program.

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252 Consider, for example, the following exchange from the film 2 Days in Paris, as reconstructed in the New Republic, in which the film’s protagonist expresses the view that Democrats and Republicans essentially belong to two different nations: “Having just arrived in Paris, Jack quickly reduces the line at the train-station cab stand by sending a pack of tourists from the American heartland off with fake walking directions to the Louvre. ‘But aren’t they your compatriots?’ Marion asks. ‘My compatriots?’ Jack replies, irritably. ‘They voted for Bush,’” and, with that, he rests his case. Christopher Orr, The Bitter Hilarity of 2 Days in Paris, The New Republic, Online Edition (posted Aug. 24, 2007).

253 Kutz compellingly addresses the case in which a group member fails, as a result of false consciousness, to view her work as connected to a shared goal that she disavows. See id. at 163-64. The problem I am considering here, however, arises where members genuinely diverge as to the content of the shared goal.

254 See, e.g., Ker Than, Nobel Laureate Disses Manned Spaceflight: Particle Physicist Calls International Space Station an ‘Orbital Turkey.’ at www.msnbc.com/id/20869407/ (last updated Sept. 19, 2007); Robert R. Schmucker & Klaus R. Wagner, Do Shuttle Exhaust
In sum, Kutz’s account is inclined to mislead us, at least in the case of large groups with grand and dynamic *raisons d’être*, because the teleological connection between shared goal and subsidiary intention provides either an over-inclusive ground of responsibility – as in the case of assigning responsibility for the Holocaust to those who did not support Aryanism – or else an under-inclusive ground of responsibility – as in the case where members disagree about some of the group’s over-arching goals, and yet we think it justifiable to assign responsibility to all members for acts undertaken in the service of these goals.

More generally, the problem with deriving shared responsibility from shared intentions – and it is a problem that afflicts both Sadler’s and Kutz’s accounts – is that the more diffuse the group, the more difficult it can be to identify an intention (a) that informs and undergirds the group’s act and (b) that *all members share*. Shared intentions serve as a compelling ground of shared responsibility for smaller groups with a narrowly-defined purpose, and especially for ephemeral groups, which are constituted by the shared act. For those groups, we may legitimately ascribe to each member the intention to carry out the acts of the group. But as the group’s size and the scope of its projects grow, the notion that its members share an intention that links each to the group act in a way

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If the group actively promoted diversity in its members’ conceptions of the shared goal precisely in order to confer immunity on some of them for the acts others undertook on behalf of the group, we might then have a compelling ground for holding all responsible. *Cf.* David Luban, Alan Strudler & David Wasserman, *Moral Responsibility in the Age of Bureaucracy*, 90 Mich. L. Rev. 2348 (1992) (grounding responsibility of ignorant members of a bureaucracy in the compartmentalization of functions and information whose very aim it is to shelter those members). But the responsibility assignment would then be justified in virtue of the structure or strategy facilitating diversity, not the shared goal itself.
that licenses a responsibility assignment becomes more and more problematic. If we are to identify a ground of shared responsibility for these large and multi-purpose collectives, we are likely to have to look to something other than shared intentions.

**CONCLUSION**

We are now in a position to offer a more general diagnosis of the deficiencies of the accounts surveyed in this Chapter. All of them aspire to justify shared responsibility not just for small groups in which all members participate in each of the group’s acts, but also for large groups where divisions of labor and divergence of purpose are the norm. We have seen that many of these accounts fail to make good on that aspiration. In particular, mutual influence, moral luck, and shared intentions implicate all paradigmatic members only where there is, respectively, a homogeneity of values, moral equivalence in character flaws among all and only group members, or unitary conception of the group’s goal. Yet these features rarely, if ever, exist in the large and long-standing institutional groups that are the subject of the dissertation. The two remaining features that theorists adduce – consent to membership (along with its shared responsibility scheme), and the benefits of membership – may well pick out all paradigmatic members of the group and no outsiders, but they do not serve to *justify* shared responsibility. Consent to membership is a probative, though unnecessary and insufficient, condition for the justifiability of shared responsibility; the enjoyment of benefits, whether material or psychological, is an effect of group membership, not a ground of members’ responsibility. Neither, then, provides a compelling ground for sharing responsibility.
CHAPTER 3
COMMITMENT

In our overflowing and fast-paced lives we give little thought to the meaning of our memberships in particular groups, and even less thought to the notion of membership generally. We dash off checks to charitable organizations, cash paychecks from various institutions, flash a driver’s license bearing our state citizenship, and stash away birth certificates and passports emblazoned with the crest of our nation-state. Yet the groups to which we belong demand a set of obligations, whether we feel this demand or not. 255

This Chapter seeks to elucidate the content and source of these obligations, and to further refine our understanding of the kinds of groups and members to which they apply. I begin, in Part I, by filling in the content of the obligations of membership. Part II seeks to explicate the source of these obligations. Part III argues that the obligations of membership apply to all groups. Finally, Part IV delineates the individuals within the group who are bound by the obligations of membership.

Before proceeding to the substance of the account, it will be useful to recall some of the terminology presented in the Introduction that will be especially relevant here. First, the entities whose acts we are considering are groups – i.e., entities with a joint project at their core. Second, the presence of a joint project, as I conceive of it,

255 Some theorists distinguish between duties and obligations, holding that the latter must be voluntarily assumed or incurred, but the former need not be. See, e.g., H.L.A. Hart, Legal and Moral Obligation, in Essays in Moral Philosophy 82 (A.I. Melden ed., 1958). I do not insist upon this distinction here, and use the terms “duty” and “obligation” interchangeably.
necessarily entails that members owe one another a set of obligations or, correlatively, that other members may reasonably expect a set of attitudes and acts from their fellows. Specifying these attitudes and acts, and articulating their ground, is the central task of Parts I and II. Groups may be ephemeral (e.g., a mob), intimate (e.g., friends, or a romantic couple) or institutional (e.g., the corporation or nation-state), but all of these have a joint project at their core and thereby entail a set of obligations for their members, as I shall argue.

I. THE OBLIGATIONS OF MEMBERSHIP

At the most general level, we may say that what it is to be a member of a group is to acknowledge that no longer can one operate as a lone agent, whose interests command one’s exclusive attention. Instead, members must set narrow self-interest aside and act with an eye to the effects of their conduct on the group’s joint project.

Intimate relationships provide perhaps the clearest example of the ways in which belonging to a group – in these cases, a friendship, family or romantic partnership -- demands a kind of self-abnegation. Thus, Richard White contends that

friendship … implies an enlargement of our own personal identity and circle of concern, as well as a readiness to call that identity into question, or at least not to insist upon it, for the sake of our friend. Thus the shared horizon of friendship unsettles the fixed opposition between self and other. … [Friendship] requires the ethical subordination of the self to something that exceeds it.  

Similarly, Robert Nozick maintains that romantic love is characterized by a “desire to form and constitute a new entity in the world, what might be called a we.” In light of this desire, Neil Delaney notes, “it is inappropriate for your lover to be a mere spectator, albeit partisan, with regard to your various concerns.”

The requirement of deindividuation, as this aspect of membership might be termed, entails other, more specific obligations. I here briefly sketch the contours of these obligations, though I do not seek to offer a justification for each one. I believe that

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258 Neil Delaney, Romantic Love and Loving Commitment, 33 AMER. PHIL. Q. 339, 341 (1996). Compare Amartya Sen, Why Exactly Is Commitment Important for Rationality, 21 ECON. & PHIL. 5, 7 (2005) (contending that “commitment,” on Sen’s understanding of that term, “need not involve a violation of self-centered welfare, but can take the form of modifying the person’s goals, which can include effects on others beyond the extent to which these effects influence her own welfare….”); Ananta Kumar Giri, Moral Commitments and the Transformation of Politics: Kant, Gandhi and Beyond, 19 J. INDIAN COUNCIL PHIL. RESEARCH 43, 49 (2002) (advocating a synthesis between Kant’s conception of moral worth and the Gandhian notion of Swaraj, which provides for a “transformative mid-point between the self and the other….”).
259 Early research on conformity and obedience articulated an anti-social conception of deindividuation, according to which individuals in group settings were believed to become more inclined to engage in “group think,” eschew personal responsibility, and adopt the sentiments and activities of the “mob.” See, e.g., Leon Festinger et al., Some Consequences of De-Individuation in a Group, 47 J. ABNORMAL AND SOCIAL PSYCH. 382 (1952); Phillip Zimbardo, The Human Choice: Individuation, Reason, and Order Versus Deindividuation, Impulse, and Chaos, in NEBRASKA SYMPOSIUM ON MOTIVATION 237 (W. J. Arnold and D. Levine eds., 1969). More recently, scholars have reacted against the overly individualistic conception of the self underpinning early deindividuation theory. These scholars contend that individuals can harbor conceptions of themselves qua individuals alongside conceptions of themselves as members of a group, with the former reining in any anti-social propensities in the latter. More generally, they argue that deindividuation can have positive or negative effects on the individual’s choices and sense of responsibility. See, e.g., S. Reicher, R. Spears, & T. Postmes, A Social Identity Model of Deindividuation Phenomena, 6 EUR. REV. OF SOCIAL PSYCH. 161 (1995).

This is an interesting debate, but it is not directly relevant for the notion of deindividuation that I employ. I am interested in deindividuation not as a psychological experience but instead as a normative expectation. Specifically, by “deindivuation,” I mean the obligation each group member has to step away from, or soften, an insistence upon the boundaries between herself and her fellow members.
these obligations flow straightforwardly from the requirement of deindividuation, which I defend in Part II. My purpose here is simply to give some content to the obligations of membership so that the reader will more readily grasp what is at stake when I go on to argue that every group entails the obligations of membership. What obligations, then, does the requirement of deindividuation mandate?

First, the member should operate with an openness to the group perspective – that is, a willingness to view various situations in light of the values that the group holds dear, rather than exclusively from the perspective of the member’s own worldview. Second, the member should experience a sense of alignment with the group. In the typical case, members will view their interests as aligned with those of the group where a success for the group is at least a prima facie positive for the member, and a loss to the group is at least a prima facie negative for her. Thus, if a loss for the group is nonetheless to the member’s benefit, this should be in spite and not because of the group’s fate. The member who supports his group need not share all of its core commitments, or endorse all of its purposes. Nonetheless, he should believe in the group as a whole.

Third, the member is charged, with others, with undertaking the steps necessary to facilitate the continued normative force of the commitment that binds members together.

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260 Compare Marilyn Friedman, What Are Friends For? Feminist Perspectives on Moral Relationships and Moral Theory 187-206 (1993) (arguing that friendship involves a willingness to call into question our own commitments and ideas, and can thereby lead to moral growth); White, supra note 25656 at 82 (arguing that friendship “requires a willingness to put my own perspective and immediate needs on hold, so as to overcome any inner obstacles or ingrained ways of thinking that would prevent me from really accepting my friend getting close to her in an ongoing way.”).

261 I thus allow that the member may have interests that conflict with those of the group such that the success of her group redounds ultimately to her misfortune, or that her personal fortunes rise, on the whole, when those of the group fall.

The bonds of membership are vulnerable to vicissitudes in the interests and values of the group’s members, who may grow apart over time. In recognition of this possibility, members must seek to maintain the vibrancy of the bond that unites them.\(^{263}\) This obligation is not intended to impede the member’s personal growth. But, like the more general obligation of acting with an eye to the group’s interests, the member should attend to the group’s interests as she undertakes a process of conscious self-development. As such, she should pay some heed to the ways in which various paths she is contemplating might cohere, or conflict, with her group affiliation, and factor the anticipated effect of the contemplated change into her ultimate decision about whether to undergo it. Here too romantic love is exemplary. As Neil Delaney writes, “the mutual desire for stable and enduring commitment that characterizes most romantic partnerships leads each lover to balance the wish for plasticity with an equally compelling demand for \textit{reciprocity}, where … [this means] that each is to be responsive to the values and preferences of the other insofar as he or she comes to adopt new or different ones of his or her own.”\(^{264}\) In a similar -- though likely less demanding -- way, members should attend to the interests of the group in contemplating self-development. With that said, the member’s duty of “reciprocity” need not extend beyond the group’s characteristic sphere of activity. As such, the requirement to attend to the group’s interests arises only where the dimension along which the change is contemplated relates meaningfully to the central project of the group.

\(^{263}\) \textit{Compare} Iddo Landau, \textit{An Argument for Marriage}, 79 J. Phil. 475 (2004) (conceiving of the marriage commitment as a commitment to “invest work in performing certain acts that are likely to sustain the love.”).

\(^{264}\) \textit{Supra} note 258 at 349.
Finally, complementing the member’s duty to heed the interests of the group in contemplating a change in her interests or values is a duty to seek to reform the group where it threatens to evolve in ways that deviate from her settled interests or values. Thus, where the member deems a course of conduct the group is considering or pursuing unwise or undesirable, the member is required to seek to persuade her fellow members to desist from that conduct, or otherwise seek to restore the group to its earlier path. It follows that withdrawal from the group would be untoward if not preceded by efforts on the member’s part to reform those aspects of the group with which she is dissatisfied. This last aspect of the obligation will become especially relevant when we turn, in the next two Chapters, to the role of dissent within the group.

In short, then, members bear obligations to forge, and seek to maintain, an alignment between the group’s shared project and their personal commitments, where these obligations rest upon a conceptually prior obligation of at least partial self-

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265 Empirical research into the grounds of successful romantic relationships reveals that one indicator of success is just this choice on the part of the members of the couple to continue to see themselves as a unit, rather than succumbing to the forces driving them apart. See, e.g., George Sayre, Deborah Lambo & Heather Navarre, *On Being a Couple: A Dialogical Inquiry*, 37 J. PHENOM. PSYCH. 197, 208 (2006) (describing how couples who successfully worked through difficult times together noted that “they avoided abandoning one another by maintaining their sense of ‘we’ during the process.”). That research further indicates that it is through changing together that couples maintain their bond. *See id.* at 210.

Or, for an example in a very different context, consider the reintegration oath undertaken by Taliban parolees who seek reentry into Afghan society. The oath, as one might expect, contains a pledge of allegiance. More remarkably, it includes a clause assigning responsibility to all of those gathered at the reintegration ceremony – Taliban parolees and Afghan tribal elders alike – should the parolees return to the insurgency. The relevant clause is as follows: “[I]f I make any attempt to return to the insurgency, then … everybody in this room will be responsible.” *See, e.g.*, Steve Coll, *War by Other Means: Is It Possible To Negotiate with the Taliban?*, *The New Yorker*, May 24, 2010, 42. In this way, the oath seems to recognize that the group’s cohesion is a matter to which both its newest (and previously disloyal) members as well as its established supporters must attend.
effacement or deindividuation that arises when one is a member of a group. For the sake of convenience, we may refer to the set of obligations entailed by the requirement of deindividuation as the member’s commitment to her fellows or – what I shall take to be its equivalent – as her commitment to the group.\(^\text{266}\)

To be sure, the strength of the member’s commitment will depend, at least in part, on the kind of group in question – the obligations just described might seem characteristic of intimate relations and more unusual in the context of large institutional groups. Where the member is expected to harbor only a weak commitment to the group, we should

\[^{266}\text{To be clear, when I say that the member owes a commitment to the group, I do not mean that she owes it to the group in its own right; instead, “group” here is used as a placeholder for the set of individuals comprising the group. One reason for conceiving of the commitment as owed to the group’s members, rather than the group itself, relates to the arguments I advanced in Chapter 1, about the dubious possibility that groups are moral agents. The thought here is that one can be owed a set of obligations -- in one’s own right -- only if one can participate in the exchange of emotional responses that attends the fulfillment or breach of these obligations – gratitude and the like, on the one hand, and resentment and anger, on the other. Since the group cannot itself experience these emotions, for the reasons I advanced in Chapter 1, the group cannot itself be owed the member’s obligations.}

\[^{266}\text{In the next Part, I shall go on to argue that the requirement of deindividuation flows from a more general duty of recognition. It may be worth noting, in light of the skepticism about having the group itself function as the object of the commitment, that those who think and write about duties of recognition frequently identify groups as the victims of misrecognition. Indeed, the importance of recognition has perhaps received greatest attention in the literature on identity politics, where the harm of subordination is frequently cast as a failure to appropriately value the subordinated group.}

\[^{266}\text{But we should not be too hasty in making inferences on the basis of what is sometimes a loose articulation of the duty of recognition. Notwithstanding references to the group, it seems clear that what these theorists have in mind is the offense waged against individual group members who are individually devalued by the dominant culture in virtue of their group affiliations. Thus, these individuals suffer group-based harms and not, properly speaking, harm to their groups. See, e.g., Nancy Fraser, Rethinking Recognition, 3 New Left Review (2000), available at http://www.newleftreview.org/?view=2248 (“As a result of repeated encounters with the stigmatizing gaze of a culturally dominant other, the members of disesteemed groups internalize negative self-images and are prevented from developing a healthy cultural identity of their own.”) (emphasis added).}
anticipate that the obligations specified here will be outweighed by other sources of commitment (personal or interpersonal). Thus, for example, the obligation to seek to reform the group prior to contemplating exit may well be so forcefully overcome by countervailing obligations that it never even rises to the level of consciousness; this would explain the casual fluidity with which one enters and exits, say, a grocery co-operative – a group I discussed in the Introduction and one about which I shall have more to say in Part III, where I discuss the magnitude of the member’s commitment. I turn first to a discussion of the grounds of the member’s obligations.

II. THE SOURCE OF THE OBLIGATIONS OF MEMBERSHIP

What is it about membership in a group that grounds the member’s commitment? The first thing to note in response to that question is that central to every group is a project (sometimes more than one project) that is the group’s raison d’être. People join forces to get something done because the objective is one that is more easily accomplished with others, or because of the value of cooperative activity, or because the project is one whose meaning derives, at least in part, from the fact that it is shared with others. So, the group has at its core a joint project.

What then is the moral import of participation in a joint project? More specifically, what is it about participating in a joint project that grounds the member’s obligations to one another? This Part seeks to answer these questions, first, by offering a critique of the responses other theorists have given, and then advancing an alternative response.


A. The Obligations of Membership – Associations Versus Instrumental Groups

Other theorists who have sought to account for the obligations of membership have consciously restricted their attention to those groups in which membership is, or should be thought to be, intrinsically valuable to the group’s members. Familial relationships and friendships are paradigmatic here, but relations among citizens also factor prominently in discussions of the normative source of a range of special obligations that hold between members in virtue of their membership in a group with a joint project that members find intrinsically valuable.

More generally, the groups in question have been called “associations,” and the obligations to which they give rise “associative obligations.” Talbot Brewer, for example, defines an association as a social group unified around a joint project that the members find intrinsically valuable at least in part because it is pursued alongside others. “What associates take to be good,” Brewer writes, “is some kind of coordinated activity with their fellow associates, and not some independent result that might be produced by this activity.”\textsuperscript{267} And, associative obligations are said to be partly constitutive of the value in associating.\textsuperscript{268} For example, friendship is unimaginable without the obligations of friendship, and part of what is valuable in friendship is getting to be a friend – having opportunities, that is, to be a confidante, help someone else out, take on someone else’s way of seeing the world (even if only partially and momentarily), and so on.


In short, in their ideal form, associations have no trouble securing their members’ adherence to the obligations they entail for members will find something of intrinsic value in the association, and they will thus be “internally committed”\(^{269}\) (or intrinsically motivated) to fulfilling their associative obligations. But of course members’ motivation can flag, and some individuals may find themselves in associations in which they do not find anything of intrinsic value. Theorists have advanced a number of accounts that seek to establish that even in these cases the associative obligations obtain.\(^{270}\) I do not attempt to adjudicate between these accounts. Suffice it to say that I think that there is a normatively compelling vision of associative obligations, and it seems clear to me that they hold in at least some groups.

The more interesting and relevant question is how one justifies members’ obligations for those groups that do not bear the hallmark of associations – groups, that is, in which membership may legitimately be pursued for entirely instrumental reasons? Consider, for example, the business partnership, which Brewer excludes from the set of associations, at least where the individuals comprising it “are motivated strictly by a desire to increase their own wealth.”\(^{271}\) Brewer contends that groups such as these are inherently unstable because their members join them only because, and to the extent that, each of them can advance his or her own interests in doing so. As such, once self-interest and the group’s interests part ways, members will privilege their own interests at the

\(^{269}\) See Brewer, supra note 267 at 561-63.

\(^{270}\) Among the strategies advanced include accounts grounding associative obligations on a kind of reflective endorsement or hypothetical consent, see, e.g., Michael Hardimon, Role Obligations, 91 J. Phil. 333 (1994); on the non-instrumental value of these relationships, see, e.g., Samuel Scheffler, Relationships and Responsibilities, 26 Phil. & Pub. Aff. 189 (1997); and on the notion that these commitments help constitute one’s identity, see, e.g., MICHAEL SANDEL, LIBERALISM AND THE LIMITS OF JUSTICE (1982).

\(^{271}\) Brewer, supra note 267, at 567.
expense of the group’s. The only way to overcome the instability is for each member to promise in advance that she will restrain pursuit of her own interests over some specified range of activities so long as the other members do the same. Brewer argues that this conditional exchange of promises, though effective in securing the members’ mutual obligations, nonetheless limits the kind of cooperative activity that these groups can undertake in two respects. First, Brewer contends, in associations – especially intimate ones -- the obligations individuals bear to one another are constantly shifting, given the highly textured nature of these relationships. Associations can accommodate this flexibility because the obligations hold independent of whether their members have promised in advance to uphold them. But the normative force of obligations in groups whose value to their members is purely instrumental derives solely from members’ exchange of promises. As such, Brewer explains, the obligations must be specified in advance, which restricts their content and range of application. A second limit on the kind of cooperative activity these purely instrumental groups can pursue arises, Brewer argues, because “some potentially valuable cooperative activities simply are not valuable, or at any rate are less valuable, if participants have no better reason to observe the obligations that structure them than that they have promised to do so.”272

Brewer is not alone in thinking that there is something shabby, or stilted, or superficial, or unstable about the obligations that arise in groups in which members participate solely for self-interested reasons. And yet it is not clear that these theorists are right to denigrate the affiliations that arise outside of associations or affinity groups in this way.

272 Id. at 568.
Painting in very broad strokes, we can render the issue as an instance of dissatisfaction with the way that some liberal and communitarian theories address and understand the obligations we bear to one another in group settings. Standard liberal duties are of the negative variety – duties, that is, of non-interference. Liberalism – or at least liberalism of the libertarian variety -- can accommodate the positive obligations that obtain between group members only by conceiving of these obligations as “special” and restricting the scope of their application to those groups in which the obligations are conceptually inextricable from the group’s enterprise. One could not understand what it meant to be a sister, child, mother, wife, friend, and so on, if one did not grasp that one’s place in the family or friendship entailed a set of obligations to its other members. But outside of the relationships in which these obligations arise, some liberals conceive of each of us as the rational self-interested utility maximizing animal of the classical economist’s imagination, ready to defect, exploit, free ride, and trample all in the service of our individual ends.  

Communitarians, by contrast, are more hospitable to the notion of positive obligations, and are apt to conceive of more groups as involving the kind of affective ties that one finds in associations. But their accounts are nonetheless limited to the communities they identify. Insofar as the business partnership, the workplace, and the

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273 In addition to Brewer’s deflationary account of the obligations holding between individuals outside of association, see, for example, Christopher Heath Wellman, *Friends, Compatriots, and Special Obligations*, 29 *Polity* 217, 218-219 (2001) (endorsing a view of citizens as “self-interested moral strangers” who form a political society because of the conveniences it affords each).
state of Pennsylvania, for example, are not “communities,” the communitarian’s obligations do not there obtain.

The challenge, then, is to locate a normative source for the member’s commitment for groups that are neither associations nor communities. We can make progress on this front if we resist the idea that there is some bright line dividing, on the one hand, associations and communities and, on the other hand, groups whose value to their members is purely instrumental. Instead, it is my contention that the obligations of membership arise across all groups. That is, these obligations are constitutive of membership in a group no less than associative obligations are constitutive of membership in an association. This is not to say that all of the obligations arising in an association arise as well in other groups; nor is it to say that the obligations that arise across all groups obtain with the same strength no matter whether the group is an association (or a community) or not. But it is to say that the obligations follow from membership in any group, even one where there is no expectation that members will find anything intrinsically valuable in membership.

Where, then, does the normative force of the obligations of membership reside in such a group? I want quickly to dispatch with two possible answers, both of which rely upon the homo economicus model that theorists of special obligations presuppose. I have already suggested the first answer – viz., that it is rational for the member to seek to fulfill the obligations of membership. Surely, groups that do enforce such an obligation will, all

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274 Amitai Etzioni, for example, defines a community as having two characteristics: “first, a web of affect-laden relationships across a group of individuals, relationships that often crisscross and reinforce one another…; and second, a measure of commitment to a set of shared values, norms and meanings, and a shared history and identity – in short, to a particular culture.” Amitai Etzioni, *Are Particularistic Obligations Justified? A Communitarian Examination*, 64 REV. OF POLITICS 573, 587-88 (2002).
else being equal, experience a greater likelihood of success, as their members face
pressure to further the group’s interests (even at the members’ individual expense), work
through tensions that might otherwise undermine the members’ ability to work together,
and so on. And, insofar as members of these groups have self-interested reasons for
wanting the group to succeed, they have self-interested reasons for wanting to fulfill the
obligations that will conduce to the group’s success. A second possible source of the
obligation appeals to the reliance interests that are generated by participation in a
cooperative activity. More specifically, shared activity induces the parties to the activity
to rely on one another, and obligations among the participants – such as those flowing
from the notion of commitment – arise in response to the reliance interests that the parties
develop.

Both of these explanations turn on a set of prudential considerations, and both
may, in many cases, provide sufficient motivation to members to fulfill their
commitments. But there may well be instances in which it is not instrumentally necessary
that every member abide by the obligations of membership, or in which members need
not rely on every other members’ fulfillment of these obligations. Yet if we think that,
even in these instances, the member who breaches the obligations is nonetheless a
warranted object of reproach, we will have to appeal to something other than the
instrumental value of the obligations, or the reliance interests group action generates in its
members.

One might instead argue that reliance interests demand our attention because they rest
upon a moral foundation. But what could that foundation be other than the duty of
recognition as I go on to describe it? Whether prudential or moral, then, reliance interests
do not provide the full explanation for the obligations of membership.
What is needed is something normatively richer than these two prudential concerns can capture. One possibility arises from the principle of fair play. The principle of fair play has been articulated in a number of ways but, at its core, it might be put as follows: Where A and B participate in a cooperative scheme whose benefits require that A and B each restrain their own interests, and where B has restrained his interests and A has thereby benefited and done so voluntarily, A is under an obligation to engage in a like exercise of self-restraint. The principle of fair play captures a powerful intuition about the problematic nature of free riding, and it has served as the foundation of numerous defenses of political obligation – i.e., the claim that individuals must obey the laws of

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276 The genesis of the principle of fair play lies in an oft-cited passage of H.L.A. Hart’s: “[W]hen a number of persons conduct any joint enterprise according to rules and thus restrict their liberty, those who have submitted to these restrictions when required have a right to a similar submission from those who have benefited by their submission.” H.L.A. Hart, Are There Any Natural Rights?, 64 Phil. Review 175, 185 (1955). The passage is cited approvingly in, for example, John Rawls, Legal Obligation and the Duty of Fair Play, in Law and Philosophy (Sidney Hook ed., 1964); Richard Arneson, The Principle of Fairness and Free-Rider Problems, 92 Ethics 616 (1982); George Klosko, Political Obligations (2005). John Rawls embraced the underlying intuition of Hart’s statement, though he revised the principle to restrict its application to just institutions, in order to circumvent the (at least facially) troubling possibility that an individual could acquire obligations to abide by rules that served injustices. (Consider, for example, the case of an individual who enjoys membership in the favored class of an apartheid state – is she obligated to obey those laws that sustain the apartheid regime (or any laws of the regime, for that matter)?.) Thus, Rawls’ formulation: “a person is under an obligation to do his part as specified by the rules of an institution whenever he has voluntarily accepted the benefits of the scheme or has taken advantage of the opportunities it offers to advance his interests, provided that this institution is just or fair….” John Rawls, A Theory of Justice 301 (1999). See also Richard Dagger, Membership, Fair Play and Political Obligation, 48 Polit. Stud. 107, 112 (2000) (“everyone who participates in a just, mutually beneficial cooperative practice has an obligation to bear a fair share of its burdens.”).
their polity.\textsuperscript{277} Can the notion of fair play provide the normative basis for group obligations more generally?

I do not believe it can. For one thing, the principle cannot ground obligations in cases where the benefits of group membership do not, or should not, depend on others’ self-restraint. Thus, for example, one spouse is entitled to the other’s fidelity not in virtue of all of the opportunities for extra-marital sex that the first has foregone but instead because of a bond between the two that would be cheapened were it to be cashed out in terms of reciprocal benefits. More generally, a participant in a joint activity may reasonably expect that her fellows will be committed to the activity even if fulfilling the obligations of membership imposed no costs upon her.

Further, the principle of fair play appears not to explain the converse set of cases, where one incurs obligations to facilitate the joint activity even though one does not expect to benefit, or where the obligations seem to arise independent of the benefit. Parenting might be taken to be paradigmatic here, where it would be unseemly to have the parent’s obligations depend upon the benefits she found in parenting. And there are other kinds of joint ventures where it would be petty, or incompatible with the nature of the venture, to disclaim the obligations of membership because one did not happen to benefit from membership, or benefit to an extent that was equivalent to the set of burdens membership entailed. In short, and as M.B.E. Smith writes, “the obligation of fair play governs a [person’s] actions only when some benefit or harm turns on whether he

\textsuperscript{277} See, e.g., David Luban, Legal Modernism 261 (1997) (endorsing a view “according to which we are obligated to obey the law only insofar as the law is a cooperative enterprise requiring and receiving widespread compliance to achieve its beneficial aims.”). See also Dagger, supra note 276; Klosko, supra note 276 (supplementing the principle of fair play with a subjective argument about individuals’ identification with the state to yield an account of political obligation).
obeys.  

Because much joint activity need not involve a reciprocal exchange of obligations and benefits, the principle of fair play leaves much joint activity unexplained. In any event, the principle of fair play is itself in need of moral justification. Why should I cooperate just because others have done so? In particular, why should I cooperate if my non-cooperation will not harm anyone else? One response to these questions might appeal to enlightened prudential thinking, as captured in the “what if everyone were to defect?” press. But the principle could be made more compelling if it relied upon something normatively richer than enlightened self-interest. It is to such an account that I now turn.

B. The Obligations of Membership and the Duty of Recognition

I now want to argue that the obligations of membership flow not from prudential self-interest but instead from a conception of group membership as a moral matter. The argument that follows is somewhat schematic but it will, I hope, suffice to elucidate the commitment’s normative force.

When one seeks to enlarge one’s agency by joining forces with others, one makes oneself vulnerable to a certain loss of control over the work undertaken and the resulting product. The mutual vulnerability incurred by co-venturers in a joint project grounds something like the obligations at issue here, and this is so independent of the likelihood that any of them will suffer a real setback to his material interests should one or more of his fellow members prove unreliable. In other words, the ground of the member’s

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obligations is not the reliance interests just contemplated. It is instead an expression of a
general duty of recognition that persons owe one another, given specific shape and
content by the nature of the relationship to which it applies. In particular, a member
recognizes the other members of his group by acknowledging that they have thrown their
lots together, and conveying that acknowledgment to the others.

Importantly, the obligations of membership are not special obligations *per se*. To be sure, they are owed only to those individuals with whom one is in a special
relationship – *viz.* those with whom one shares membership in a group. But the normative
source of these obligations is not something specific to that relationship. It resides
instead, as I suggested above, in a general obligation to treat others with due regard. More
specifically, there is, I take it, a duty each of us has toward others, to *recognize* them, and
to convey that recognition, and one’s acknowledgment of one’s duty to do so, in myriad
ways, big and small. Much of our routine social graces manifest this duty; they are tokens
that we have developed to communicate recognition. I greet the security guard who
stands at the door of my office building; I hold the elevator door open for someone who
is about to miss the elevator; I nod to the person who has arrived on the train platform
before me to signal that I acknowledge his entitlement to board ahead of me; I thank
someone for doing what they ought anyway; I apologize to the person whom I have
accidentally jostled even though I know myself not to have been at fault. In all of these
gestures, what I seek to do, above all, is to say to their recipient, “I see you.”

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279 I am reminded here of an argument Tommy Crocker advances to elucidate the
problematic nature of blind justice, which might be cast as a kind of misrecognition
insofar as it occludes the possibility of seeing litigants – especially civil rights litigants –
within the structural constraints from which their injuries stem. Thomas P. Crocker,
differently, I recognize you, at least in part, by getting you to recognize that I recognize you.

It would be beyond the scope of this discussion to locate the ground of the duty of recognition, or to adjudicate between the differing accounts others have offered. Nor do I seek to resolve here whether the kind of recognition owed ought to emanate from, or respond to, some universal quality in virtue of which all humans deserve respect or instead the features that make a particular person unique. I do want to underscore, though, that the duty as I have construed it entails more than merely respect for others’ rights, effectuated through a policy of non-interference. I cannot ignore you and recognize you at the same time. Instead, recognition requires that I affirmatively express my awareness of your presence, as someone who is trying to make her way in the world as I am, and as someone whose ends are not less valuable than my own simply on the basis that they are yours and not mine.

All of this goes to the general duty of respect. But that duty entails a set of specific obligations when we do things together. Indeed, given the vulnerability of

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280 Some of this literature deals explicitly with recognition, with the seminal work furnished by Hegel in his *Phenomenology of Spirit*. But for Hegel, recognition has a self-reflexive aspect – one recognizes another as a self-conscious subject and thereby comes to recognize oneself as a self-conscious subject. See, e.g., *HEGEL’S PHENOMENOLOGY OF SPIRIT* Sec. 178-88, 50-57 (Howard P. Kainz trans., 1994). Given the role that recognition by another plays in forming one’s identity – and the correspondingly devastating role that misrecognition can play – the Hegelian notion of recognition has gained prominence in contemporary works on identity politics. See, e.g., Charles Taylor, *The Politics of Recognition, in MULTICULTURALISM: EXAMINING THE POLITICS OF RECOGNITION* 25 (Amy Gutman ed., 1994); Fraser, supra note 266. And, within a more traditional Kantian vein, there are accounts of respect that resonate with the duty of recognition as I construe it. See, e.g., Christine M. Korsgaard, *The Sources of Normativity* 139-40 (1996). See generally Robin S. Dillon, *Dignity, Character, and Self-Respect* (1995).

281 For a developed account of the different forms recognition can take, see Taylor, supra note 280 at 25.
joining forces with another, the duty to express mutual recognition generates obligations with a particular content and enhanced strength. More specifically, joint action arises – outside of the context of associations, where the togetherness of the activity is central to its value – because it is beneficial to enlist others in accomplishing one’s ends. It follows, then, that the participant in joint activity is not wholly conducting each aspect of the joint activity herself. If she were, the activity would not be joint in any genuine sense; others’ contributions, to the extent they could make any, would be superfluous. So it is that each person who engages with others relinquishes firsthand control over the enterprise, and comes to depend in part on the others for the joint enterprise’s success. This is, as I have indicated, beneficial to each, but it is also disquieting. Sometimes it is downright scary.

Each is, in a sense, the source of the others’ disquiet, and so each is especially well placed to counteract that disquiet by offering assurances of recognition. This is perhaps most easily seen in a case where the member’s vulnerability is palpable. Consider, for example, two people with no prior relationship who are rock climbing together. One of them, the climber, is attached by harness to a rope that the other one, the belayer, who is positioned higher up on the rockface, holds and reels in as the climber approaches. The belayer could easily precipitate the climber’s fall – all she would need to do is release the rope, even if only for an instant. For that reason, it is common to find belayers offering words of reassurance to the climber, “I’ve got you,” being exemplary. And climbers have developed a vocabulary to ensure uniformity across climbing partners that embodies a kind of recognition. Thus, for example, when the climber requests assistance from the belayer – more or less slack in the rope, for instance – the conventional way for the belayer to acknowledge the request is not by saying “I hear
you,” or “okay,” or “10-4” but “thank you”\textsuperscript{282} – a response that would sound wrong in most contexts but that, in this context, communicates the belayer’s gratitude for the climber’s trust.\textsuperscript{283}

It may also be worth noting in this vein that the convention in the Tour de France, when one competitor needs to break to relieve himself, is for his opponents to slow down.\textsuperscript{284} Given that each will, over the course of a multi-day bike race, fall prey to his bodily needs, the convention might have developed differently – no one need have slowed down since the disadvantage suffered on any one occasion would likely be eradicated by the advantage gained when nature called upon one’s competitors. It is noteworthy then that even when the joint enterprise is one in which the participants have opposing ends there may yet be a premium placed on conveying mutual recognition.

On a more mundane note, consider the following anecdote. I was among a set of founding members of an advocacy group, and another founding member and I were charged with drafting the group’s mission statement. Neither of us had had any experience with a task of this nature, or familiarity with the way mission statements are typically formulated. The two of us decided that we would each take a stab at coming up with something, exchange our respective attempts, and proceed from there. As it


\textsuperscript{283}The following quote, which reflects far less enthusiasm for the collective enterprise of climbing has been attributed to Louis Brandeis: “No one can really pull you up very high—you lose your grip on the rope. But on your own two feet you can climb mountains." The quote can be found on numerous websites devoted to physical fitness, see, e.g., Air-Run’s Daily Running Quotes & Inspiration, at \url{http://completerunning.com/running-quotes/page/2/} (last visited Nov. 17, 2010), but I have not been able to locate it in any scholarly source.

happened, my fellow member had formulated a slogan that captured the group’s mission, and I had drafted a paragraph-long statement describing the mission. Since neither of us had a sense as to which the group’s board would prefer, we decided to submit both for their consideration. The board liked the slogan a lot, but thought it didn’t constitute a mission statement, whereas the paragraph I had drafted did. With substantial revisions, that paragraph became the group’s mission statement. At no point in the process did I disclose that I had authored the statement, and my fellow member the slogan. At no point, I believe, would it have been appropriate for me to do so. For one thing, it was something of a matter of luck that the board preferred my attempt -- my fellow member’s slogan was very good for what it was, it just didn’t happen to suit the board’s idea of a mission statement – and so it didn’t seem to me that I deserved more credit than my fellow member. But more than that, this was a joint effort – granted, a joint effort that had individually discernible contributions, but a joint effort nonetheless. What it meant for me to recognize the effort as such, and to convey the appropriate kind of respect for my fellow member, was to relinquish an insistence upon being treated as an individual object of evaluation. In other words, I recognized my fellow member by loosening my hold on myself.

I don’t take my conduct in that instance to have been unusual or exemplary. Anyone who has ever done committee work has likely encountered situations where apathetic members have failed to further the process, bombastic ones have impeded it, and dissident members have declined to embrace its result. But the committee nonetheless presents its product as a product of the committee. Perhaps if pressed, committee members would be licensed in identifying each member’s individual
contributions (or lack thereof). But the committee’s presumptive stance is typically a unified one – the members of the committee speak of its work as the work of the committee, without seeking to call attention to their individual contributions.

These examples are intended to illustrate the more general point that we can understand the obligations of membership as grounded in an effort to convey recognition. Each of these obligations provides a way of expressing the member’s acknowledgment that she is not in this alone and solely for herself. It is in this way that membership demands that the member act so as to underscore the softening of boundaries between self and others that membership entails.²⁸⁵

Further, while I have been focusing on the importance of conveying to one’s fellow members one’s acknowledgement of the duty of recognition, the point is not that

²⁸⁵ Christopher Kutz also invokes the notion that each participant in a joint enterprise enlarges her agency through the cooperative act, but he does so to different effect. “When we act together, we must expect that the group act may have aspects that we do not know about but with which we will have to reckon. … The possibility of expanding our powers (or rewards) through cooperation entails the risk that the act will not align with our moral interests.” CHRISTOPHER KUTZ, COMPLICITY: ETHICS AND LAW FOR A COLLECTIVE AGE 156 (2002) (emphasis added). For Kutz, then, the individual comes to incur accountability for the group act as a corollary – the “moral agency” costs, as he terms it, using the “economist’s jargon,” id. – of the benefits derived from cooperative activity. On the account I have just advanced, by contrast, the enlargement of agency is not meant to establish how the individual comes to be responsible for others’ acts, but instead how enlarged agency makes him responsible to these others.

It may also be worth distinguishing the notion of enlargement of agency from the notion of “surrendering judgment,” which Mark Murphy develops to ground an account of political obligation. Mark C. Murphy, Surrender of Judgment and the Consent Theory of Political Authority, 16 J. L. & PHIL. 115 (1997). Murphy contemplates the citizen who substitutes the judgment of some legal authority for her own in her practical reasoning, and he views the surrender of judgment as a form of consent, even though not expressed in a speech act. Murphy’s account thereby grounds obedience to the law in this form of consent. Though surrendering judgment can be a form of enlarging one’s agency, it is not the form contemplated here. Nor is the ground of the obligations the member comes to bear a result of her having consented to participate with others in a joint endeavor, as we shall see in what follows.
the obligations of membership are all “for show.” For what is important ultimately is not that each member induce in the others a belief in her commitment to the joint project but that the induced belief be true. If it is not true, the expressions of assurance may well ring hollow. More than that, what is sought to be assured – again, that the member appreciates that her agency is bound up with others’, and their agency with hers – requires acts and not just expressions on the member’s part, and these acts may well be difficult to identify, let alone carry out, if the member has not internalized a sense of herself as a member of the group. I have in mind here, for example, the member’s actual contemplation of the group’s interests as she deliberates about what she should do, her actual openness to the group perspective, her actual efforts to maintain an alignment with the group, and so on. All of these manifest recognition no less than do the outward expressions of reassurance.287

I believe that the duty of recognition helps to explain not only the general obligations flowing from membership but also the members’ obligation to adhere to the principle of fair play in particular. For one way to understand what is morally wrong with free riding – which is what the principle of fair play seeks to prohibit -- is to view free-riding as an attempt to remove oneself from the sphere of shared activity, and claim special, individualized consideration. This is often referred to, in the literature articulating accounts of the wrong of free riding, as “seeking to make an exception of oneself.” But the wrong of free-riding could just as well be seen as one species of the larger set of acts

286 Cf. Brewer, supra note 267 (expressing skepticism about one’s ability to participate effectively in an association one does not find intrinsically valuable given the special epistemic position that would be foreclosed to this participant).
287 Compare Jacques Derrida, “To pretend, I actually do the thing: I have therefore only pretended to pretend.” See, e.g., VINCENT DESCOMBES, MODERN FRENCH PHILOSOPHY 139 (1998).
that the obligations of membership are meant to rule out — acts, that is, in which the member continues to view herself, and insist upon being viewed by others, as a free agent, unbeholden to those with whom her agency is entwined.

In sum, the obligations that members owe one another draw their normative force from the general moral duty individuals bear to recognize one another as that duty arises where individuals come together in a group. These obligations hold, I believe, across all groups. In some groups, especially associations, the member may well have obligations additional to these — obligations whose normative source lies in the nature of the association itself. To take what is arguably the clearest case, there is much that married individuals owe their partners that cannot be accounted for by a duty of recognition.

More generally, the obligations of membership might, to put it one way, set the floor for what group members owe one another. At the same time this floor is nonetheless richer and more robust than the thin reed of contractual obligation that Brewer and others have presumed obtains between individuals in a joint enterprise whose value to each is purely instrumental. Contractual obligation, or a less formal exchange of promises, is undertaken, on these accounts, as a bulwark against the forces of self-interest, which purportedly pose a constant threat to joint activity. By contrast, I have advanced a picture of the individual that is far less cynical, and a conception of the obligations that hold between members that is correspondingly more demanding.

As should be clear, the notion of commitment at issue here is not a psychologized notion — the commitment exists whether or not the member has internalized it, or even acknowledged it. By the same token, the strength of the commitment — for example, the extent to which the obligations it entails hold sway over the member in the face of other,
non-group related obligations with which the commitment conflicts – does not depend on the strength of the member’s identification with, or sense of connection to, the group. More generally, one cannot elect to be in the group and yet opt out of the commitment that membership entails. The person who underplays the commitment, or even repudiates it entirely, is not thereby released from the obligations that the commitment entails.

It follows from the non-psychologized notion of commitment at issue here that the commitment is not so much a set of dispositions on the part of the member – in particular, dispositions to fulfill the obligations articulated above – as it is a ground of expectation for other members. Further, the expectations these other members are licensed to harbor are not (or at least not principally) of the predictive variety. Instead, members may prevail upon and even demand that their fellows fulfill the obligations attendant upon the commitment of membership.

Finally, while I have been focusing on the ways in which the duty of recognition sustains the obligations members owe one another, it is worth noting that recognizing one’s fellows also involves acknowledging that the joint project may well not subsume all of its members’ projects and aims. Each may have a “life,” as it were, outside of the enterprise they share. Thus each member must recognize her fellows as individuals who have multiple sets of claims on their time and resources, the claims of group membership being just one set, and possibly not the most important one at that.

More specifically, the enlargement of concern that membership entails is limited in two respects. First, the scope of this requirement extends only to the sphere of activities of the shared project. Thus, for example, the obligation of a philosophy professor to consider the goals and welfare of her department extends to decisions she
makes regarding scholarly activities, but not, for example, to decisions around her lifestyle choices, leisure pursuits, other group memberships, and so on.

Second, even to the extent that the obligations apply, they do not entail that the member must always forego conduct that inures to her benefit, but the group’s detriment. What is required instead is that the member have within her purview, as she engages in practical deliberations, the welfare of the group in addition to her own welfare (and that of any other individuals or entities to which she owes allegiance). Thus she may correctly decide that the all-things-considered thing to do on a given occasion is to further her own interests (or those of others to whom she is committed) at the expense of the group’s interests. What is required is that, among the interests she considers, are those of the group itself.

In sum, recognition in the context of membership has two sides. Each member should recognize the others, first, by fulfilling the obligations of membership and, second, by acknowledging the obligations’ bounds. At the same time, we should not expect that these two corresponding sets of obligations will be of equal strength. In some associations – marriage or the nuclear family being prototypical here -- members will typically expect strong commitments to one another, which would entail that the obligations of membership apply with substantial force, and the obligation to acknowledge life outside the association would be relatively weak. By contrast, in groups formed by a loose collection of persons, the obligations of membership will likely be weak, and the obligation to acknowledge each member’s extra-group sources of obligation might be comparably strong.

Given that the duty of recognition entails that members must recognize that their
fellows may well be subject to obligations outside of the group, and temper the strength of the group-based obligations accordingly, the ground of obligation I identify differs from Margaret Gilbert’s conception of the nature of the obligations that hold between group members. Gilbert conceives of these obligations as the corollaries of an ownership-like entitlement that the individual owed the obligation enjoys: “To say that John owes Mary a certain action is to imply that this action is already in an important sense owned by Mary. It is hers.” Though Mary owns the action, she does not yet possess it, and it is precisely for this reason, Gilbert contends, that Mary may demand the action of John: “‘Give me that, it’s mine!’,” is, Gilbert writes, an appropriate way for Mary to insist upon John’s performance of the action in question.

This characterization of the relationship between Mary and John seems, to my mind, phenomenologically inaccurate. Where John fails to fulfill an obligation he owes Mary, Mary will likely be disappointed by John’s decision, and she will certainly have grounds to rebuke John, but she will almost surely not conceive of having had some kind of ownership violation inflicted upon her. More generally, the purported ownership language seems not only unhelpful in elucidating the morally problematic nature of John’s decision, but also unnecessarily tendentious. Finally, when it comes to

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288 Id. at 162.
289 Id. at 154.
290 Gilbert acknowledges that the ownership discourse might unsettle certain readers. Her initial response is to conjecture that some of those readers might simply be bristling under the prospect that others do have the power over them that her account implies, and might therefore refuse to acknowledge the “truth” of the account. See id. at 109. She also speculates that a given society – one that put a very high premium on personal autonomy – might have developed a convention according to which individuals involved in joint activity could unilaterally decide to exit at any time, which would make it difficult for members of that society to acknowledge that there could in principle be a right to performance, so habituated are these individuals to a kind of “at will” exit condition. On
obligations arising between group members, Gilbert’s account seems especially strained because, while she retains the purported relationship between owing and owning, she conceives of the claimant of the entitlement as the group itself, rather than as holding between members. More specifically, Gilbert contends that where several individuals undertake a joint commitment they are the joint creators of the commitment. The obligations each comes to bear, then, are obligations that are owed to the “creator,” and each participant may demand performance of the others, but only “in the name of the creator,” and not “in his own name.” That the obligations are owed first and foremost to the creator may follow analytically from Gilbert’s notion that a joint commitment is a commitment to do something as a body. Nonetheless, what seems in need of explanation in cases where one party inconsiderately departs from a joint activity is the personal affront the departure causes for each of the others, and not an offense against some disembodied creator of a commitment.

Finally, while I have been focusing on the significance of a breach of the member’s obligations for her fellows, I want now to turn to the significance of a breach of her obligations for her. As with unmet personal commitments (e.g., to save more money for retirement) or existential commitments (e.g., to be a more fiscally responsible person), the member might well censure herself for her failure to carry out her obligations

that possibility, it may be that my cultural ties have limited my ability to acknowledge that joint activity entails rights of the kind Gilbert describes, and that in a less individualistic society I would more readily embrace the notion that others with whom I engage in joint activity might come to own performance of some actions from me. But I suspect that concern over the stringency of Gilbert’s conception of the rights and obligations obtaining between parties to a joint commitment has more than provincialism to support it. The arguments in the paragraph accompanying this note are intended to provide that support.

291 Id. at 154.
to the group, or lament the bad faith she has demonstrated in failing fully to incorporate
into her sense of self her membership in the group. But the moral import of her breach
must not be exhausted by her self-flagellation; indeed, its impact on her ought to
command less of her attention than does its impact on her fellows. For to focus unduly on
the meaning of the breach for herself is, in a way, to commit the breach anew, insofar as
doing so radiates the disregard for her fellows expressed in the breach in the first
instance. For that reason, accounts that understand friendship, or romantic love, as
consisting of equal parts commitment to self and commitment to another seem somewhat
precious,\textsuperscript{292} at least when extended to non-intimate groups. For the obligations of
membership have the subjugation of the self at their foundation. To understand a breach
of the member’s obligations, then, principally as a betrayal of the self is to indulge a
concern with the self too fastidious to track the meaning of group membership.

\textbf{III. Which Groups Demand a Commitment}

Given that group membership entails a set of obligations members can press against
one another, one way to discern whether a particular collection of individuals constitutes
a group is to consider whether the individuals comprising the collection have special
standing to insist upon the others’ obligations. Put differently, are the individuals

\textsuperscript{292} See, \textit{e.g.}, White, \textit{supra} note 25656, at 85 (“In friendship … we also make a
commitment to ourselves, insofar as we view our own activity within the friendship as an
important and undeniable manifestation of who we are…. [I]n failing to be a good friend
I am also threatening the most basic undeniable representation of whom I am insofar as
this emerges in my relationship with others.”); Stan Van Hooft, \textit{Commitment and the
Bonds of Love}, 74 AS\textsc{u}TRALASIAN J. PHIL. 454, 456 (1996) (defining the commitment of
romantic love “as an attitude which gives to its object a positive and practical importance
which involves that object in one’s own integrity”); \textit{id.} (arguing that the obligation of a
lover to avoid becoming attracted to someone other than his beloved is owed “as much to
himself as to [the beloved]”).
comprising the collection licensed in viewing the failure of one of them to respect the commitment of membership as an instance of misrecognition?

To answer this question, I first argue that members may prevail upon their fellows to adhere to the obligations of membership on grounds that are unavailable to outsiders. I then argue that we can appeal to the presence or absence of this special source of standing to determine whether some collection of individuals is a group. I end this Part by considering two features that determine when, and to what extent, the obligations of membership have a hold upon the group’s members.

**A. Sources of Standing To Enforce Others’ Obligations**

As a preliminary matter, it is worth noting that there are two sources of standing to enforce a commitment that do not depend on shared membership in a group. First, the would-be enforcer – call him A -- could be responding to the *personal* dimension of the commitment, in which case his concern relates to the integrity of the would-be breacher – call her B. In this kind of case, A seeks to enforce B’s commitment in order to facilitate B’s self-coherence. In this sense, A’s entitlement is just one species of a general (though not unqualified) entitlement to enforce someone else’s personal commitments. Thus if a friend has pledged to devote more money to her retirement savings and I see that she is contemplating a frivolous and expensive purchase, I might well remind her of her commitment, as a way of nudging her conscience to consider that her contemplated purchase is at odds with her pledge. By the same token, if a friend appears to be acting in a way that disregards her membership in a group to which I do not belong, I might there too remind her of her membership, in an effort to cause her to attend to that which she
has been unduly ignoring. In both cases, my concern goes to a desire to see that her acts align with her higher-order preferences, as a way of helping her to become the person she would like to be. Importantly, I am not here motivated by concern for the individuals who might be disappointed or otherwise harmed were she to betray her commitments (the spouse or children who will incur the burden of financing my friend’s retirement, the other group members to whom my friend bears a commitment).

To be sure, whether a third party to the commitment has any standing to seek to enforce it is an open question. There may well be some set of individuals who do not stand in the right kind of relationship to me to offer any kind of nudge or reproach where my commitment wavers. For example, a neighbor who did not belong to the Sierra Club would be unwarrantedly meddling in my affairs were he to chide me for failing to live out the Sierra Club’s platform. (By contrast, he would be licensed, I believe, in chiding me for failing to do my part in protecting the environment.). But those whose relationship to me entails an obligation to facilitate my self-actualization are, I believe, permitted – if not also obligated – to bring me back to myself, as it were, where they see that I am straying.

A second source of standing to enforce the obligations of membership goes to the object of that commitment, but it does so impersonally, we might say. This kind of standing is just one instantiation of the standing one enjoys when it comes to insisting upon moral action more generally. For example, as a member of the moral community, I am entitled to prevail upon you to refrain from assaulting some third party, or to chide you when you do so.\textsuperscript{293} My concern here relates not to ensuring that you remain morally

\textsuperscript{293} As in the case of the Sierra Club, I leave open the possibility that there are some moral breaches where members of the moral community lack standing of this second kind. I do
unchallenged; as such, this reason for intervention is different from the first source of standing, where my concern goes to the state of your self, as it were. But nor does my concern go to the welfare of the putative victim who stands to be harmed if you undertake the assault. I would enjoy standing to press you to adhere even to those moral rules violation of which harms someone whose injury would bring me pleasure (e.g., my nemesis), or causes no harm to anyone else, for that matter.

That this second source of standing contemplates my concern to see that obligations get fulfilled, and not my concern for the fate of those affected by the obligation’s breach, can be brought into greater relief by considering the third source of standing, which, I will now argue, is available only to the individuals to whom the obligation is owed. Insofar as the requirement of deindividuation flows from a general moral duty, it makes sense that members should enjoy special standing to enforce it and its attendant obligations, just as the claimants of other moral duties have special standing to enforce the duties’ fulfillment. Carl Wellman’s work on relative moral duties is instructive here.294

Wellman helpfully articulates a distinction between, say, the standing of a promisee to enforce a promise and that of a bystander. For one thing, Wellman contends, it is only the promisee whose trust is betrayed by the promise’s non-fulfillment, and it is only she who has been induced to rely on the promisor as a result of the promise.295 Further, Wellman, argues, if the promisee insists upon the promise and the promisor nonetheless fails to keep the promise, the promisor has committed an expressive slight not seek to articulate the kinds of offenses, or the kinds of relationships, that would permit one person to press another to adhere to the latter’s moral obligations.  

295 Id. at 221.
that does not arise where it is some third-party, rather than the promisee, who presses for the promise’s fulfillment, and whose press goes unheeded:

Were I [the promisor] to fail or refuse to do as he [the third-party] has urged me to act, I would be merely rejecting his advice and discounting him as a wise person. I would neither be telling him that I do not care about his well-being (because he is not the person in a position to be harmed [by my breach]…) nor telling him that I consider him a person who does not count morally (because it is not his [entitlement] that I am disregarding). The crucial fact is that were I to break my promise to my colleague after she has insisted that I perform my duty to her … [my act would] express to her my contempt for her.\(^{296}\)

The expressive upshot arises for Wellman precisely because the promisee has insisted upon performance. If she had never sought to enforce the promise, Wellman contends, the promisee might not be licensed in inferring an expressive slight from the promise’s non-fulfillment. The promisor might be someone who serially makes promises he does not keep, so his failure to fulfill this promise would not signify anything in particular about his assessment of the moral worth of the promisee. Or, the promisor might instead be someone who steadfastly keeps his promises whenever he can, so that the promisee would do better to understand the promisor’s non-fulfillment as evidence that some more pressing obligation prevented him from keeping the promise, rather than as an indication of the low moral weight he attaches to her claims. On the other hand, it is difficult to construe non-fulfillment in the face of an explicit claim for performance as anything but an expression of contempt for the promisee.\(^{297}\)

Importantly, then, Wellman might well agree that mere non-fulfillment, even where the promisee has not insisted upon performance, can in fact be an expression of contempt. It is just that there is an ambiguity in the situation where the promisee has not

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\(^{296}\) Id. at 221.
\(^{297}\) Id. at 222.
demanded performance that is mitigated, if not resolved entirely, in the scenario where she has. In other words, the claimant of a moral duty, such as an obligation to fulfill a promise, can suffer an expressive slight simply by the duty’s breach, at least so long as she is warranted in inferring that the breach does indeed signify something about the duty-holder’s assessment of her moral worth. And, it is this expressive slight, along with the setback to the claimant’s interests that violation of the duty produces, that distinguishes her situation from that of the bystander, and provides a kind of standing to enforce her claims that he does not enjoy.

Now, this way of understanding the difference in a claimant’s and bystander’s standing to enforce an obligation may not be the only way of doing so. We might instead look to differences in the kind of emotional response displayed, and the content of reproach offered, by the claimant relative to those of a bystander. (Consider, for example, the set of utterances and sanctions a husband would be licensed in unleashing upon his adulterous wife (or a wife upon her adulterous husband), relative to those that a bystander could legitimately offer.) But Wellman’s account strikes me as a powerful way of identifying a ground of enforcement that holds between members of the same group, but not between the member and an outsider. More specifically, insofar as the member’s unwarranted disregard of her commitment to the group bespeaks her assessment of the inferior worth of her fellows as well as the joint project that unites them, it inflicts an expressive slight on her fellows but not on the outsider. Thus they have a potential ground of complaint – and so a license to prevent the projected slight – that the outsider does not have. Moreover, Wellman’s account does more than elucidate the distinctive standing that group member’s possess relative to one another; it also dovetails nicely with
the duty of recognition that, I argued, sustains the member’s commitment. For, at bottom, the offense in breaching a promise, like the offense in neglecting one’s obligations to one’s fellow group members, is the failure of recognition that the breach conveys.

**B. Special Standing To Enforce a Commitment to the Group as a Barometer of Group Membership**

With this understanding of the special standing that arises between group members in hand, we can now return to the question of determining whether entities like the ACLU or a local grocery co-op count as groups. I believe that these entities do entail the obligations of membership – that is, they do constitute groups – but these obligations typically lay dormant, and are activated only in a small range of cases that do not usually arise. Thus, for example, were one member of the grocery co-operative to spot another exiting a Super Walmart with bags appearing to contain grocery items, I believe that the first would be licensed in reproaching the other. (To be sure, the reproach that would be warranted might consist of no more than a raised eyebrow or some other kind of looking askance – something harsher or more direct might be too intrusive, especially if the two do not know each other well, or there is some possibility that the Walmart excursion was justifiable, etc.) On the other hand, reproach would, I take it, be unwarranted if leveled by one Costco “member” to another as the second exited from Super Walmart, again with bags appearing to contain groceries. In both the co-op and Costco cases, there is some sense in which the entity in which the individuals share membership incurs a pecuniary loss because one of its members has shopped elsewhere, and some concern that, if members routinely shopped elsewhere, the entity might suffer in some significant way. Yet the co-op member enjoys standing that the Costco member lacks, I believe. Put
differently, the co-op member, but not the Costco member, would be licensed in construing a fellow member’s Super Walmart shopping trip as an instance of *betrayal*. One might understand the difference in warranted response by appealing to the fact that the piqued co-op member is reacting not just to the fact his fellow member shopped *somewhere* else, but that she shopped at a place that betrays some of the co-op’s most cherished values (local sourcing, fair labor practices, etc.). But the co-op’s values just are the constituents of its joint project. It is because the co-op has a joint project that it qualifies as a group, and because Costco lacks a joint project – at least as between its “members” – that it does not so qualify. The special standing that co-op members enjoy is consequent upon, and simply an indicator of, the presence of a joint project.

I suspect that the impulse to deny that membership in some groups – like the co-op, ACLU, state of Pennsylvania, etc. – entails a commitment results either because it is rare that members of such groups have occasion to press their fellows to abide by the commitment or because at least some of the group’s members are subject to so weak a sense of expectation from their fellows that just about any countervailing consideration is sufficient to outweigh the obligations of membership. In the former set of cases, we may be dealing with a group whose commitment largely lays dormant; in the latter, we are dealing with a commitment of a very low magnitude. I elaborate in turn on each of these variations in the commitment’s operation.

What determines whether a group’s obligations will be active or dormant? Sometimes, the status of these obligations follows analytically from the kind of group it is. Friendship (or at least true friendship), for example, is inconceivable without an active

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298 As I argued in the Introduction, Costco, Inc., has a joint project that unites officers, directors and other employees of the corporation.
commitment operating between friends. In other instances, the background culture provides a default answer – perhaps even one that is hard to overcome. Thus, for example, it is difficult – though not impossible – to conceive of a co-parenting arrangement in our culture as something that would not involve a live commitment that licensed demands for loyalty, engagement and deindividuation. But in still other instances, the background culture is silent with respect to whether the group will involve an active commitment of its members, and so the matter is one that the group can decide for itself.

While the status of a group’s commitment is a binary variable – the commitment is active or dormant – the strength of the commitment a group demands can admit of many variations. In general, there are three sources of variation in the strength of commitment. First, the strength of members’ commitments may vary simply on the basis of the kind of group in question. Fraternities or political campaigns, for example, may expect – and be known to expect – a strong commitment on the part of their members. They will claim much in the way of members’ time and energy, and also demand much in the way of members’ solidarity with the group. But other groups – perhaps the nation-state, or large non-profit or advocacy organizations that solicit donations in exchange for nominal memberships (think here, for example, of the membership card one receives as a result of contributing to the ACLU) – expect that the majority of their members will contribute little to the group’s shared project, and experience only a very weak sense of affiliation with the group.

See, e.g., Richard White, Friendship and Commitment, 33 J. Value Inquiry 79, 81 (1999) (“At the outset, we could insist that the relationship between friendship and duty is analytic. For to be someone’s friend implies by definition that we have a set of specific obligations to that person … that we would not owe to everyone.”).
Second, there may be much variation in the level of commitment expected even within the same kind of group. For example, some university departments will count on a strong commitment from their faculty members, who may be expected to show up at the office regularly, collaborate frequently with their colleagues, carry on lively conversations by the water cooler about current scholarship, form in-house workshops to read and offer feedback on one another’s work, and so on. Other departments may operate with a far more cloistered model of scholarly life: faculty members may regularly keep their office doors closed, or even work from home; there may be little socializing or sharing of scholarship; and the department may expect little in the way of committee work in order to protect its faculty members’ research time.

Third, there may be a formal hierarchical structure within the group that is associated with a hierarchy in members’ levels of commitment. For example, employees of a corporation may be expected to commit to it in proportion with their place on the corporate ladder, while shareholders may be expected to commit to the corporation in proportion with their relative ownership share.

In articulating these three ways in which members’ commitments may vary within and between groups, I have assumed that it is possible to measure the extent of expected or actual commitment. I will not offer a methodology for doing so here, leaving that task to sociologists and social psychologists. Instead, I rely on the following two assumptions: First, the at least a rough sense of the strength of commitment a group demands is known to the individual contemplating membership, and can be gleaned by experts, if not by the common person; and, second, we can arrive at least at a relative ordering of commitments along the dimension of their strength (if not an absolute measure of their strength).
Once we have determined the strength of the commitment expected of group members, we can then judge whether a member has fulfilled the duty of recognition upon which her commitment rests. In particular, the weight she should accord the interests of her fellow members in light of their shared project is determined by the strength of the commitment the group expects of her, as I argue in the next Part. Thus we will be licensed in concluding that a member has violated her commitment to the group where she consistently fails to accord the obligations owed to the group their requisite strength.

While the normative force of the obligations of membership depends upon the group’s expected strength of commitment, I note here that a member may expect more of herself than the group expects of her. This enhanced sense of commitment will have special relevance when we turn to assessing the magnitude of the member’s responsibility for a group transgression in the next chapter.

IV. Which Members of the Group Bear a Commitment to It?

I have been speaking as if all of a group’s members are bound by the obligations of membership. In this Part, I advance some qualifications that are intended to delineate the members who may reasonably be expected to bear a commitment to the group.

First, the member’s commitment may be expected only of those individuals who qualify for moral agency: Because the obligations of membership turn foundationally on the duty of recognition, they are incurred only by those from whom we may legitimately expect recognition – that is, those who may be reproached where they fail to accord us the recognition that is our due. It follows, then, that those who fail to satisfy the criteria
for moral agency – young children and the mentally incompetent, for example – do not owe us recognition. As such, they cannot be said to bear the obligations of membership, notwithstanding their formal membership in the group.

Further, one may be said to bear a commitment to the group only if one possesses a genuine right of exit. It would be unfair to require one to uphold obligations that one did not voluntarily incur \textit{and} from which one could not be released, at least if one wanted to be freed of one’s bonds to the group.\textsuperscript{300} The reason for this has something to do with the role of consent, or at least that of affirmation, in allowing the obligations to have force in the first place.\textsuperscript{301} But the duty of recognition also functions to justify the requirement of a right to exit: A group that would continue to subject some individuals to the obligations of membership even though these individuals desired to leave the group would fail to recognize these individuals in a full-bodied way. It is not clear that this failure of recognition wouldn’t permit the individuals in question to repudiate the obligations that the group would seek to press against them.

It is worth noting that I take a right of exit to be necessary, but not a right of entry. More specifically, I believe that a group can involve a joint project – and hence mandate a commitment of its members – independent of whether the group is one that the individual can choose to join. The relationship between siblings, or that between grown children and their ailing parents, is instructive. Individuals do not choose to have siblings;

\textsuperscript{300} On the other hand, it might not be problematic to require continued adherence to obligations that one could not escape if one would have agreed to group membership if given the opportunity.

\textsuperscript{301} To be clear, to say that X is a necessary condition for Y is not to say that X is what grounds Y. Thus the claim here is not that what grounds members’ obligations to one another is that they have consented to these obligations. It is instead that the obligations would be unjustifiable without consent; nonetheless, the obligations are justified in light of the duty of recognition, as I argued above.
nor do they choose the identities of the siblings they happen to have. Similarly, individuals do not choose to have parents; nor do they choose the identities of the parents they happen to have. Nonetheless, an individual does not first have to demonstrate her assent to being committed to her siblings or parents before they may claim a kind of allegiance from her. Instead, the brute existence of the relationship already licenses their claims. Likewise, citizens of states involving shared projects, members of organized religious communities, and so on, can demand a commitment of one another notwithstanding the accident of birth or other contingency that landed any of them in the group.

With that said, for the reasons I have articulated, the group must afford its members a genuine opportunity of withdrawal if others are to be licensed in seeking to enforce the obligations of membership. To be sure, there are some groups from which exit seems impossible and yet whose obligations seem nonetheless to remain in force. Samuel Scheffler has argued that special obligations – like those that arise in the family context – are among these. It is true that one can never sever the biological or historical

\footnote{By “parents,” I have in mind more than the biological relationship between a pair of individuals and their offspring. I take it that the claim that one could choose not to have biological parents is a non-starter, given the non-identity problem and the current state of reproductive technologies. The idea here is instead that one cannot choose whether one will be raised by a set of individuals who will occupy the social role of parents. And, where one has been raised by a set of parents (rather than, for example, the State in, say, a foster home), one comes to bear, I here contend, a corresponding set of obligations, including an obligation to provide care and support to one’s parents as they age and grow frail.}

\footnote{As I argue in Chapter 5, not all states involve a shared project.}

\footnote{Compare ROBERT C. SOLOMON, LOVE: EMOTION, MYTH AND METAPHOR 227 (1981) (“To love is to … take on responsibilities. But one accepts … those responsibilities because one wants to, not because one is obliged to.”).}

\footnote{Samuel Scheffler, Relationships and Responsibilities, 26 PHIL. & PUB. AFF. 189 (1997).}
ties one bears to one’s family. But it is not clear that the normative elements of the relationship between family members are inescapable. After all, one often hears of estranged siblings, or estranged parents and children. Where one estranged family member declines to “be there” for another (whatever “being there” entails), I take it that we do not think the former has shirked some obligation to the latter. Instead, I believe that we allow that, in such cases, the obligations of membership do not obtain.\footnote{To be sure, one might reproach one or the other estranged party for having allowed the estrangement to occur. But the reproach then has a different content – e.g., a failure to have attached the appropriate weight to familial relationships.}

In short, I believe that one can be said to bear obligations to one’s fellows only if one is not compelled to remain with them in the group. Further, for the right of exit to be more than merely formal, the group cannot deprive members of the resources necessary to exercise their right to sever ties with the group. Thus, the group cannot keep its members in such abject poverty that exit is not a real possibility. This proviso may seem most appropriate for the nation-state, which has the capacity to engage in resource distribution. But it could hold as well for some business associations – say, where other members threaten to retain or freeze the assets of the member seeking exit such that that member is without adequate means to leave. The proviso is not, however, meant to suggest that the group must furnish the resources necessary for exit, or that a member must avail herself of the right of exit only if exit poses minimal hardship to her.

Further, the set of individuals who bear the obligations of membership consists not simply of those who qualify for moral agency and enjoy a genuine right of exit for the group. In addition, I now contend, the set of committed members are those for whom the following three statements will be true: (i) they self-identify as belonging to the group;
(ii) they are identified by other members as belonging to the group; and (iii) they are recognized by outsiders as belonging to the group. Henceforth, I shall refer to these members as paradigmatic members of the group.

The stringency around who is to count as a paradigmatic member is intended to allay concerns about the fairness of imposing the obligations of membership upon an individual whose membership in a group is contested. This is not to foreclose the possibility that non-paradigmatic members might also bear the obligations of membership. Thus, for example, purely self-serving denials of membership will not be sufficient to abolish the commitment of the member who is recognized by fellow members and outsiders as belonging to the group. But what of the individual who genuinely and in good faith renounces her membership even while other members and outsiders refuse to acknowledge her renunciation? Or the person who never belonged to the group but whom insiders and outsiders mistakenly take to be a member? What should be said about the member who self-identifies and whose membership is recognized by other members, but whom outsiders refuse to recognize as affiliated with

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307 Canada, for example, refuses to acknowledge a renunciation of Canadian citizenship, which might preserve the obligations of Canadian citizenship even for one who attempted to disavow being Canadian.
308 This is not an uncommon situation in the case of ethnic groups. For example, in Arthur Miller’s novella, Focus, the non-Jewish protagonist, in virtue of his Semitic appearance, is taken to be a Jew by Jews and non-Jews alike in his neighborhood. He is then targeted by an anti-Semitic faction. Here, the responsibility he is made to bear for the acts of other Jews is wrongheaded not only because, like all acts of anti-Semitism, the inference of guilt is illicit, but also because he is not even really part of the group that his attackers (wrongly) believe ought to be held responsible.
the group? And what of the deluded person who wrongly believes herself to be a member and has convinced outsiders of her membership?

I suspect that none of the individuals in the four examples presented in the previous paragraph is a member of the group, and that if any of them nonetheless bears an obligation to the paradigmatic members of the group, it is not for the reasons underpinning the account of membership obligations that I have advanced. More generally, these considerations suggest that the analysis for non-paradigmatic members may well turn on highly contextual factors over which it may not be possible to generalize. For that reason, I contemplate only paradigmatic members here.

It is worth underscoring that paradigmatic membership as just defined need not be coextensive with a group’s formal membership criteria. I believe that there are two reasons to prefer the criteria underpinning paradigmatic membership over those defining formal membership. First, a group’s formal membership criteria may be under- or over-inclusive. For example, the group may have a qualification for membership to which its members no longer adhere. Think here of a fraternal organization whose charter recognizes only male members, but whose membership has chosen to admit women nonetheless, without amending the charter. Thus there may be de facto members who would not qualify as formal members, though they are no less subject to the obligations of membership than are other individuals who meet the group’s formal membership criteria.

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309 Think here of the revered campus athlete who was present at a team party at which fellow team members participated in a sexual assault, knew of the assault and did nothing to stop it, and yet whose fans – including, perhaps, the victim -- tenaciously believe that he had nothing to do with the crime.
On the other hand, satisfaction of the group’s formal criteria might not be sufficient to create the kind of commitment to the group that is the hallmark of paradigmatic membership. Thus, for example, a computer may determine that an individual qualifies for membership in some group for which enrollment of qualified members is automatic – think here of the individual who formally belongs to a group in virtue of her lineage, though she is unaware of that lineage and hence of her membership. In such a case, I suspect, we would think it inappropriate to fault her for failing to abide by the obligations of membership.

In short, I conceive of the set of members who legitimately bear a commitment to the group as those who self-identify, and whom other members and outsiders alike identify, as members of the group. Delineating membership in this way has the added advantage of allowing us to deal with groups that have a hierarchical membership structure. In these groups, some members will enjoy greater entitlements and power relative to others. In some cases, we might reasonably think the hierarchy so strict or steep as to exempt the subordinate members from the obligations of commitment.

Consider, for example, members who feel so disempowered that they do not perceive the group as one that encompasses them. Thus, Langston Hughes wrote, “America never was America for me,” though he was officially a citizen of the United States. Those who occupy more power within the group might be blind to the structural inequities that prevent the less powerful from participating, and the group as a whole may expect a commitment from these less powerful paradigmatic members that is no smaller

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than that demanded of the more powerful. Nonetheless, these less powerful members
would not qualify as paradigmatic members just so long as they thought their
disempowerment served to exempt them from the obligations of membership.

More generally, disempowered members would be excluded from the category of
paradigmatic membership where (a) the subordinated member did not conceive of herself
as bound by the commitment; (b) her fellow members did not expect the commitment of
her; or (c) outsiders thought it unfair to impose the commitment upon her (even if she
accepted it, or her fellows expected it). Thus, for example, the obligations of membership
might not extend to the janitor in a large corporation or the member of a disfavored sub-
group within a larger group with a discriminatory structure. In other cases, however, a
member’s relative subordination would not impugn her status as a paradigmatic member.
Thus the mid-level manager of a corporation would not fall outside the set of
paradigmatic members, notwithstanding the fact that she did not sit atop the corporate
hierarchy, if she viewed herself, and other members as well as outsiders to the group
viewed her, as bound to the group.

The general idea is that a member’s relative subordination need not exclude her
from the class of paradigmatic members. Rather than identify the necessary and sufficient
conditions under which members enjoy the kind of status within the group that
legitimates the normative expectations other may impose upon her, I appeal to a
conjunctive principle that is most reliably applied on a case-by-case basis: Again,
a person qualifies for paradigmatic membership only if she is so viewed by herself, by
her fellow members and by outsiders.
Because the test for paradigmatic membership is conjunctive, one might be concerned that it is overly demanding. One could imagine, for example, an individual who resented her relative subordination within the group, or who begrudged the fact that the group failed to undertake a course of action for which she had advocated, and who therefore denied that she owed the group the obligations of membership. If her resentment were unwarranted, we might want to impose the obligations of membership upon her notwithstanding her denial. A disjunctive test might better capture our intuitions here: She would bear the obligations of membership just so long as she were viewed by herself or her fellows or outsiders as bound to the group. On the other hand, a disjunctive test would legitimate expectations of commitment from any subordinated member just so long as, say, other members of the group believed that the subordinated member owed them the commitment. I think it better to err on the side of under-inclusiveness, as the conjunctive test does, than on the side of over-inclusiveness, as the disjunctive test might. The costs of having a commitment imposed upon one who does not qualify for paradigmatic membership will, I expect, become more salient when we turn, in the next chapter, to a discussion of the way in which the member’s commitment grounds an assignment of shared responsibility.

Finally, while I have been conceiving of paradigmatic membership in binary terms – one either is or is not a paradigmatic member – we should allow that, once a member qualifies for paradigmatic membership in light of the conjunctive test, there is latitude regarding the strength of the obligations that may be expected of her. Put another way, the strength of the obligations of membership should depend upon the extent to which she qualified for paradigmatic membership. In keeping with considerations of fairness
motivating a conjunctive rather than disjunctive test for paradigmatic membership, one might have thought that we should set the expected level of commitment at whichever was lowest – the expectations of other members, outsiders or those of the member herself. Here, however, I am more concerned about the possibility that members will self-servingly downgrade the strength of commitment expected of them. I propose instead the following scheme: Whether or not an individual qualifies as a paradigmatic member depends on the conjunctive test described above. Once we have ascertained that she so qualifies – that is, once we have determined that she views herself, and other members and outsiders view her, as a member of the group – then we may presume that the obligations of membership will accrue to her to the extent that her fellows expect them to. Privileging the normative expectations of the member’s fellows over those the member sets for herself or those set for her by outsiders has the following two virtues. First, doing so avoids the problematic implications that would arise where the member fails to accord the obligations sufficient weight. Second, this way of proceeding recognizes that insiders will have a better sense of the group culture and the member’s position within group, and hence the strength of commitment the group demands of the member, than will outsiders. At the same time, the deference accorded to insiders on this score is merely presumptive and hence defeasible. I leave open the possibility that the member could seek a reduction in the expected strength of commitment where she could demonstrate that her fellows had over-stated the extent to which she owed them the obligations of membership.

V. Conclusion
This Chapter has attempted to advance a normative conception of membership in a group by describing the obligations to which membership gives rise (which, together, constitute the member’s commitment); articulating the source of the member’s commitment – *viz.*, an application of the general duty of recognition to the group context; identifying the ways in which the member’s commitment can vary across different groups; and delineating the set of individuals belonging to the group who may legitimately be expected to bear a commitment to the group (*i.e.*, the group’s paradigmatic members).

By way of conclusion, I here summarize the key obligations of membership, the key features of groups, and the key features of the individuals to whom the obligations of membership apply:

**Obligations – Members Should:**

1. Open themselves to the group perspective;
2. Support the group’s joint project;
3. Work to ensure the continued vibrancy of the group’s claim on its members; and
4. Seek to change the group before withdrawing from it.

**The Group’s Commitment May Be:**

1. Active or dormant; and
2. Of a magnitude that varies depending on the kind of group it is, the particular culture of the group and the member’s role within it.
The Individuals Who Are Legitimately Subject to the Group’s Commitment:

1. Are mature, mentally competent individuals;

2. Enjoy a genuine right of exit from the group; and

3. Qualify as Paradigmatic members -- *i.e.*:
   a. They recognize that they bear a commitment to the group;
   b. They may incur special normative pressure from their fellows to respect that commitment; and
   c. They are legitimately subject to outsiders’ expectations that they will respect the commitment of group membership.

With a conception of the normative elements of group membership in hand, we may now turn to the dissertation’s promised account of shared responsibility.
In May, 2010, Johnson & Johnson recalled 136 million bottles of children’s medicine.\textsuperscript{311} This was Johnson & Johnson’s fifth recall in less than a year, including one “stealth” recall where the company hired contractors to pose as customers and buy up the entire supply of adulterated Motrin stock then on store shelves, rather than electing to report the problem to the FDA or announce a recall to the public.\textsuperscript{312} Johnson & Johnson’s problems have been traced to criminally unsafe production practices at its McNeil subsidiary in Fort Washington, PA.\textsuperscript{313} Who should be held responsible for these practices?

In order to get at an answer to that question, imagine that we could identify all of the employees involved in the contamination of the recalled drugs, and all of the executives who were charged with overseeing and ensuring the safety of the drug production. If only these individuals were prosecuted and punished, we might well feel as if something were amiss. In particular, targeting only the individual wrongdoers would imply that the offense is exclusively theirs. But Johnson & Johnson is in the business of serving the health and safety of consumers. If its drugs are adulterated, some blame for

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\textsuperscript{312} See, e.g., Lindsey Layton, Drug company tried to buy up defective Motrin before recall, MINNEAPOLIS STAR TRIBUNE, May 27, 2010.

\textsuperscript{313} See, e.g., Heavey, supra note 311 (describing the federal government’s threat of criminal prosecution).
\end{flushleft}
the offense seems to extend beyond the blame borne by the individual offenders.\textsuperscript{314} It is perhaps for this reason that government officials have threatened criminal action against the company itself, citing “systemic” failures and a “culture of mediocrity.”\textsuperscript{315}

But on what moral grounds could Johnson & Johnson be said to deserve prosecution and punishment?\textsuperscript{316} In Chapter 1, I sought to cast doubt on the notion that the collective could be held morally responsible in its own right. If I am right, then cases like the Johnson & Johnson recall in which the collective’s transgression could not be reduced fully to the wrongful contributions of its individual members would pose a problem. For, from the impossibility of collective moral responsibility, it would not necessarily follow that the collective’s members must bear the remaining responsibility for the collective’s acts (i.e., whatever surplus of responsibility remains after we discharge our outrage upon the company’s individual wrongdoers). It could instead be that there is a kind of residue when it comes to acts of collective wrongdoing— we might issue an emotional response that then hovers in the space of corrective justice, never finding a warranted target. Or we might instead withhold that response, convinced of its futility. Either way, the residue would constitute a kind of cosmic injustice, as the transgressions of collectives failed to receive the complete force of our responsibility apparatus, which we bring to bear when

\textsuperscript{314} See, e.g., Layton, supra note 312 (quoting Rep. Darrell Issa (R-CA): “It is a moral outrage for a company specifically marketing its products for children to allow a culture of neglect and irresponsibility to taint the medicines that parents and physicians trust to help children get well.”); Heavey, supra note 311 (“When a parent gives her child a Tylenol Product or other children's medicine produced by Johnson & Johnson, they are relying on the 120-year-old reputation of a company who claims that it puts “the needs and well-being of the people we serve first,”’’ said the committee's ranking Republican, Representative Darrell Issa.”).

\textsuperscript{315} See, e.g., Heavey, supra note 311.

\textsuperscript{316} It may well be that the government threatened criminal liability simply as a matter of deterrence.
full-fledged moral agents commit similar transgressions. Assigning responsibility to the collective’s members would allow us to expend the residue, but doing so would satisfy the quest for corrective justice only if the members deserved the assignment. On the other hand, the collective’s members might deserve to bear responsibility even if the collective were a full-fledged moral agent. In short, the conclusions of Chapter 1 provide motivation for the question of members’ responsibility, but they do not answer that question. Only an analysis of the relationship between collective action and members’ contributions to that action can do that. Providing that analysis is the goal of this Chapter.

The account I advance here shares the ambitions of the accounts surveyed in Chapter 2: It aims to furnish a justification for having members of a group bear responsibility for the group’s acts in virtue of some feature that members, but not outsiders, share. It differs, however, from the accounts surveyed in Chapter 2 in the ground of responsibility it posits. Specifically, the central claim of this chapter is that members of a group are responsible for the group’s transgressions in virtue of their commitment to the group. Building on the groundwork regarding the normative source of commitment that I advanced in Chapter 3, I argue here that a member’s commitment deprives her of an entitlement to be judged apart from her fellow members, and justifies our holding her responsible for the group’s acts, whether or not she participated directly in those acts.

I rely throughout on the notion of the paradigmatic member that I developed in the last Chapter – briefly, the member who conceives of herself, and who is considered by her fellows and outsiders alike, as bearing a commitment to the group. Nonetheless, this Chapter marks a notable departure from Chapter 3. I argued in Chapter 3 that any
group with a genuine joint project at its core entailed a set of obligations. Yet I restrict the account of shared responsibility to institutional groups, for only institutional groups are structured to have acts performed in their name. Only institutional groups, that is, organize themselves – deliberately – to have the acts of some of their members count as acts of the group. Consider, for example, the claim that “the law firm of Milberg Weiss engaged in class action fraud.” Notwithstanding the fact that only some of Milberg Weiss’s partners participated in the fraud, we do not perform the illicit imputation involved in attributing, say, one romantic partner’s fraud to the other (assuming that the latter is innocently ignorant of the fraud). The imputation in the Milberg Weiss case is permissible because Milberg Weiss is organized such that the acts of one partner, when of the kind that the firm typically conducts, are to be understood as the acts of the partnership. 317 (Recall from the Introduction that ascribing some act to the group is not yet to assign responsibility for it to the group’s members, especially those of its members who did not participate in the group act.)

Why would individuals pursuing a joint project choose to organize themselves as an institutional entity? Possible explanations include the expressive power enjoyed by a united front (e.g., the ACLU), a desire to create an entity that endures in the face of turnover in its constituent members (e.g., a fraternal organization), the limited legal liability enjoyed by incorporated entities, and so on. It is not clear to me that the rationale behind institutionalizing one’s group affects the considerations to be advanced, and so I do not explore these further.

317 This is a somewhat crude way of portraying the basis upon which a group member’s act becomes an act of the group. I provide a more careful formulation in what follows.
Far more relevant are the structural features that allow us to ascribe acts to a group in the first instance, and the ways in which these features connect the institutional group’s members to the group’s acts, independent of their participation in the acts in question. I shall have much to say about these in what follows.

Part I lays the groundwork for the account of shared responsibility. There, I offer some comments about the general structure of a responsibility assignment. These comments urge a finer parsing of responsibility assignments than those typically found in the literature. The disentanglement I provide there is intended to show just where a member’s commitment to the group fits into the responsibility assignment, and just how that assignment can be sensitive to distinctions between the strength of commitment of various group members.

Part II is the centerpiece of the dissertation as it provides the promised theory of shared responsibility. I elaborate the account of shared responsibility by way of an analogy to the project of joint parenting, and the responsibility assignments that project entails for the parties to it. The analogy is intended to elucidate the normative features – including the normative pressure to stand in solidarity with one’s fellows – that go hand-in-hand with participation in a joint endeavor.

Throughout Parts I and II, I contemplate only the member who has neither supported nor opposed the group transgression, and only those transgressions that are contemporaneous with the member’s tenure in the group. In Part III, I relax these constraints, and consider the responsibility of the member whose dissatisfaction with the group’s conduct has prompted her disengagement (though not formal withdrawal) from the group, as well as the responsibility of the member for historic injustices.
I. ANALYZING AN ASSIGNMENT OF RESPONSIBILITY

How is it that a member of a group who did not participate in a transgression of the group may nonetheless be held responsible for that transgression alongside the transgression’s direct participants? More pointedly, how we can make sense of the notion that both the perpetrator and opponent of a group transgression may properly be held responsible for it? Part I.A clears the way for doing so by offering an analysis of responsibility assignments that allows us to identify the factors affecting their magnitude. Once we see that we need not assign responsibility equally to bystanders, opponents and perpetrators, it is hoped, much of the seeming implausibility of the claim that they share responsibility will be removed.

Theorists typically identify two elements in a responsibility assignment – the object for which one is held responsible, and the reason for which one’s conduct is reproachable (or laudable, as the case may be). But it is likely more useful to distill four elements from a responsibility assignment – first, the act for which one is held responsible; second, the connection one bears to that act; third, the features rendering that connection reproachable; and, fourth, the magnitude of the responsibility assignment. For

\footnote{See, e.g., Christopher Kutz, Complicity: Ethics and Law for a Collective Age 4 (2000) (distinguishing the “object” of accountability – \textit{i.e.}, “the harm or wrong for which [an individual] is reproached – from the “basis” of accountability – \textit{i.e.}, “the grounds for holding the subject accountable”). Cf. Meir Dan-Cohen, Responsibility and the Boundaries of the Self, 105 Harv. L. Rev. 959, 963 (1992) (distinguishing between “object-responsibility” and “subject-responsibility” where the former points to an event or result and the latter points to a feature of one’s person that caused the event or result); Jeff McMahan, Collective Crime and Collective Punishment, 27 Criminal Justice Ethics 4, 6 (2008) (referring to the “bases, conditions or criteria of collective guilt”).}
the sake of brevity, I shall refer to these four elements, respectively, as the object, connection, ground, and magnitude of one’s responsibility.

To begin with the first three elements: In the standard case of murder, the object of the killer’s responsibility is the killing, the connection is her causal relationship to the killing, and the ground of her responsibility is her mental state – viz., her intention to kill the victim. Similarly, in cases of an employer’s vicarious liability for her employee’s negligently caused harm, the object of responsibility is the harm caused, the connection is the employment relationship, and the ground of responsibility is the employee’s negligence. Returning to terrain addressed in Chapter 2, we can analyze the non-causal accounts of shared responsibility advanced by Brook Jenkins Sadler and Christopher Kutz in these terms as well: For each, the object of responsibility would be the group act, the (purported) connection borne by the member who does not participate in the group act would be the teleological one of providing an explanation or logos for that act, and the ground of the responsibility judgment would be the manifestation of one’s will in the group act.

Now, one reason to analyze a responsibility assignment in terms of object, connection, ground and magnitude is that disentangling the elements of connection and

319 See PROSSER AND KEETON ON TORTS 499 (5th ed. 1984) (“The foundation of the action [against the employer] is still negligence, or other fault, on the part of [the employee]; and all that the law has done is to broaden the liability for that fault by imposing it on an additional, albeit innocent, defendant.”). Since the time of Prosser and Keeton’s writing, doctrine has been revised to incentivize on-the-job programs that would deter employees from committing job-related torts or crimes. Thus, for example, corporations will be less likely to face prosecution for crimes committed by employees on their behalf, and will enjoy sentencing reductions where they are prosecuted and convicted, if they have implemented compliance or ethics programs at work. See, e.g., Philip A. Wellner, Note, Effective Compliance Programs and Corporate Criminal Prosecutions, 27 CARDOZO L. REV. 497 (2005).
ground from the cruder category of a reason allows us to see that the magnitude of a responsibility judgment varies according to the ground, and not the connection. More specifically, the amount of reproach, and perhaps too the severity of the sanction, turn on both the nature of the act for which one is held responsible and the ground of blame, but not on the strength of one’s connection to the act. Thus, Anglo-American law correctly treats the perpetrator and accomplice who each intend a crime as equally guilty though the former is more causally responsible, or at least more directly causally responsible, for the crime’s commission. Similarly, an employer’s vicarious liability turns on the extent of the employee’s negligence (thus the employer may invoke a defense of contributory negligence on the part of the plaintiff), and not on the extent or adequacy of the employer’s oversight.  

But there is a second, and even more important reason, for analyzing a responsibility assignment in light of these four elements: The knee-jerk response to an account that holds individuals responsible for a transgression in which they did not participate is one of horror, for the assumption is that the account in question will treat these non-participants just as it treats the transgression’s perpetrators. It is, I suspect, in

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320 See id. (stipulating that the employer may be “innocent” and may even have done “all that he possibly can to prevent” his employee’s negligence). But cf. EEOC, Notice #915.002, Enforcement Guidance on Vicarious Employer Liability for Unlawful Harassment by Supervisors, June 18, 1998, available at http://www.eeoc.gov/policy/docs/harassment.html (describing two Supreme Court cases in which “the Court held that an employer is always liable for a supervisor’s harassment if it culminates in a tangible employment action. However, if it does not, the employer may be able to avoid liability or limit damages by establishing an affirmative defense that includes two necessary elements: [first] the employer exercised reasonable care to prevent and correct promptly any harassing behavior, and [second] the employee unreasonably failed to take advantage of any preventive or corrective opportunities provided by the employer or to avoid harm otherwise.”).
large part because of this knee-jerk response, and the assumption undergirding it, that accounts of shared responsibility have been deemed “perverse”\textsuperscript{321} or “barbar[ic].”\textsuperscript{322} After all, it is all too easy to recoil from the suggestion, say, that the American who protested the war in Iraq is nonetheless responsible for abuses committed in its course if the suggestion is taken to entail a moral or legal equivalence between the American protester and the military members who actually committed the abuses in question.

The problematizing assumption arises because we adopt an unduly restricted view of the elements upon which the responsibility assignment is to be based. More specifically, we focus on the object of responsibility to the exclusion of the ground for assigning it; our minds then jump to the sanctions normally imposed on one who is assigned responsibility for that object. Since the typical person assigned responsibility is the agent of the object of responsibility – that is, the person who intentionally committed the act or caused the event for which responsibility is assigned – the sanctions we contemplate are those normally imposed upon her.\textsuperscript{323} But, because the non-participant likely does not deserve those sanctions, this way of thinking prompts us to infer that the non-participant deserves no sanctions. We therefore conclude that the non-participant is off the hook.

To avoid the missteps in the argument just articulated, we need to realize that sanctions are not one-size-fits-all. Two considerations will help us arrive at that

\textsuperscript{321} George P. Fletcher, \textit{The Storrs Lectures: Liberals and Romantics at War: The Problem of Collective Guilt}, 111 \underline{Y}ALE L.J. 1499, 1546 (2002).
\textsuperscript{322} H.D. Lewis, \textit{The Non-Moral Notion of Collective Responsibility}, in \underline{I}NDIVIDUAL AND \underline{C}OLLECTIVE \underline{R}ESPONSIBILITY 119, 121 (Peter A. French ed., 1972).
\textsuperscript{323} Compare Christopher Kutz, \textit{Causeless Complicity}, 1 \underline{C}RIM. L. \& PHIL. 289, 290 (2007) (arguing that cases of causal responsibility are the \textit{paradigmatic} cases, but not the only cases, where moral responsibility accrues).
realization: First, we should recognize that the answer to the question of whether an
individual bears responsibility for some act, and the response appropriate for her, turns at
least in part on the nature of the relationship between the individual and that act. When
we fail to disjoin our practices of assigning responsibility from those of imposing
liability, we are tempted to ignore or trivialize crucial elements of that relationship.
Second, we need to appreciate the incredible richness and variety in our arsenal of both
material and emotional sanctions, with which we can ensure that our responses are
calibrated in light of the nature not only of the object of responsibility but also of the
connection and ground the responsible party bears to that object. Chapter 5 aims to
explore some of the implements in this arsenal. In what follows here, I spell out the
relationship between the non-participating paradigmatic member and the group
transgression and, in so doing, attempt to establish that she may be held responsible for
that transgression without the sanctions typically and correctly heaped upon the direct
perpetrator.

II. PARADIGMATIC MEMBERS’ RESPONSIBILITY FOR A GROUP TRANSGRESSION

Applying the analytic structure of a responsibility assignment just articulated, we
arrive at the following principle of group-based shared responsibility:

The object of responsibility for the paradigmatic group member is the group
act, the connection she bears to it is the causal one of allowing the group to
function as an agent, and the ground of her responsibility is her commitment
to the group.

And, as I shall argue, consonant with the observations above, the magnitude of the
member’s responsibility varies both according to the egregiousness of the group act and
the strength of her commitment to the group, but not according to how much responsibility she bears for the group’s agency.

In this Part, I elaborate in turn on each of the four elements of group-based responsibility just enumerated. Now, it may be that only some members will have participated directly in the group transgression – by, say, engaging in cruel and inhuman interrogation techniques on behalf of one’s military, inducing fraudulent reliance to perpetrate a fraud on behalf of one’s firm, mandating excessive toxic waste dumping and thereby having one’s corporation wage environmental damage, and so on. Contemplating the responsibility these members bear in virtue of membership alone is complicated by the fact that they also bear a least some individual responsibility for the group’s acts. To keep things clean, then, I restrict my focus in this section to the paradigmatic member who did not participate directly in the group transgression at issue. We may imagine that she was not on the scene, did not help to plan, instigate, recruit or command others to participate, and perhaps did not even have foreknowledge of the committed transgression.

A. The Object of Responsibility
As indicated above, my claim is that the object of the paradigmatic member’s group-based shared responsibility is the group’s transgression, whether or not the paradigmatic member participated in that transgression. To establish that claim, I first rule out other possible objects of responsibility, and then seek to diagnose our resistance to this object of responsibility.

Where her group transgresses, for what might we hold the paradigmatic member responsible? One candidate is her membership in the group. This possible object of
responsibility is captured in the common sentiment experienced when one contemplates another’s membership in a transgressing group: “How could she possibly have joined, or continued to be a part of, such a group?” There is nothing illusory about membership as an object of the paradigmatic member’s responsibility, and the moral valence of her membership – that is, whether it is good or bad – will indeed turn upon the moral nature of the group’s acts. But membership is a personal object of responsibility: When we judge an individual for her membership in a particular group, we are engaging in a straightforward act of ascribing individual responsibility. Put differently, we are assessing her on the basis of what her membership says about her. Our assessment thus ends with the expressive dimensions of her membership; it does not contemplate a more material role in the group’s transgression.

But perhaps there is more for which we may hold the paradigmatic member responsible than the mere taint of an association with a transgressing group. In Part II.B.2, I shall argue that group members secure the group’s capacity to act and to have acts attributed to the group. Perhaps then the appropriate object of responsibility is the group’s agency. On this thought, paradigmatic members would be held responsible not for the group transgression itself, but instead for a causal precursor of the transgression – in particular, the group’s capacity to act. But the group’s capacity to act is itself morally neutral (unless, perhaps, the group is hell-bent on evil from the moment of its inception).

In much the same way that the biological parents of a serial killer do not, at least simply in virtue of their biological contributions, deserve our reproach, so too the paradigmatic members of a group do not, at least solely in virtue of their contributions to the group’s agency, deserve our indignation. Put differently, we are interested in identifying objects
of responsibility where we are interested in holding responsible, and we are interested in
holding responsible only when our reactive attitudes have been activated – that is, when
there has been some act or event of ethical consequence. The conferral of agency upon a
group is without such consequence.

Can we, then, hold the paradigmatic group member – and, in particular, the
paradigmatic member who did not participate directly in the group’s transgression –
responsible for the transgression itself? We have already seen the chain of reasoning for
thinking that we cannot. To recap: When we contemplate our responses – both emotional
and material – to the (direct) perpetrators of that transgression, we are led to the thought,
correct though it is, that non-participating members are not appropriate targets of those
same responses. But we then conclude – and here is where we go wrong -- that non-
participating members thus cannot bear responsibility for the group’s transgression. The
error arises because we allow our judgments about the nature of the response warranted
by the crime to govern fully our determination of who ought to be held responsible for
the crime. But this is to put the cart before the horse, and to leave something crucial out
of the picture.

The missing piece is the paradigmatic member’s relationship to the group act,
forged as a result of her commitment to the group. In particular, that commitment
connects her to the group act, and confers upon her a normative status that grounds her
responsibility, as we shall see in the next two subsections. Further, that commitment
cabins the magnitude of her responsibility in a way that renders our response to her
significantly less severe than that which the direct perpetrator faces. In short, the
plausibility of holding a member responsible for a group act in which she did not
participate is an outstanding question – one that cannot be answered before undertaking the explorations to which I now turn.

B. The Non-Participating Paradigmatic Member’s Connection to the Group Transgression

Groups have no material existence. Though certain material objects function as symbolic representations of the group – for example, the American flag signifies the United States; the tilted “E” stands for Enron -- groups are disembodied. And yet they are recognizable to us as entities that exist in our midst and act in our world. How can this be?

In this Section, I first consider an answer to that question that Morris Cohen proposed, and argue that that answer in incomplete. I then seek to fill in the picture by describing two structural features that allow the group to act and, in so doing, connect group members to the group’s act. Next, I clarify the role of these structural features in grounding an ascription of some act to the group. Finally, I argue that the member’s contribution to these structural features, though necessary for an assignment of responsibility for the group transgression, do not themselves justify that assignment.

1. Securing the Group’s Agency – an Initial Account

In an effort to account for the possibility that groups can act in their own right, Morris Cohen argued a century ago that members secure an independent existence for their group – that is, they allow their group to exist over and above the members who belong to it – by harboring a concept of the group in their minds and incorporating a
sense of themselves as members of the group in their hearts.\textsuperscript{324} Thus, he wrote, “the unity of France or of the Catholic Church rests in the mode of thought and action which millions of Frenchmen and Catholics habitually follow. If by an impossible event they should all simultaneously lose all memory and habitual manner of responding, the French nation and the Catholic Church would cease to exist.”\textsuperscript{325}

Cohen thus stakes the group’s existence in two prerequisites: First, the group must be recognizable for a string of individuals unbroken through time -- that is, the group exists and persists only through “a continuous current of individual minds;”\textsuperscript{326} second, adherents of the group must inhabit a stance – Cohen’s “habitual manner of responding” – that flows from the group itself. The first prerequisite is not satisfied by group members alone. After all, we continue to conceive of groups long defunct, and outsiders and members alike can conceive of contemporary groups. Let us focus, then, on the second prerequisite.

Individuals who belong to a group do indeed, as a result of their membership, frequently adopt traditions and display attitudes and beliefs that pertain to the group, and which they share with other group members. In this way, membership confers upon members a distinct persona -- members may thus act in the world with the mindset and

\textsuperscript{325} Id. Ronald Dworkin makes a similar point about the way members sustain the moral agency of corporations, though he denies the metaphysical existence of the corporation. See Law’s Empire 171 (1986) (“The personification is deep: it consists in taking the corporation seriously as a moral agent. But it is still a personification not a discovery, because we recognize that the community has no independent metaphysical existence, that it is itself a creature of the practices of thought and language in which it figures.”).
\textsuperscript{326} Cohen, supra note 324 at 683.
trappings given by their group. For example, the response that one offers to an event *qua* individual need not be the same as the one that one offers *qua* member.\(^{327}\)

In a moment, I shall take issue with the notion that the indicia of membership are “habitual,” as Cohen believes. For now, however, I want to focus on a piece of the puzzle of group ontology that Cohen’s account fails to clarify: Cohen helpfully explains how it is that a group can persist as the group that it is, but he fails to illuminate a more foundational question – *viz.*, how the group came to be the group that it is.

I contend that every institutional group has two foundational structural elements upon which its agency depends: First is the group’s *calling card*, or the set of characteristics that render it identifiable; second is the group’s *rule of recognition*, or the principle or procedure that governs when action performed by some of the group’s members ought to count as action of the group itself. I elaborate upon each of these in turn, with an eye to drawing out the ways in which members do contribute to these, and the obligation that they bear to do so.

2. *Features Sustaining the Group’s Agency*

a. The Group’s Calling Card

A group must possess a calling card – *i.e.*, some set of discernible characteristics – if we are to be able to identify the group at all, which we must, if we are to attribute action to it. To some extent, the group is what it does, such that its ability to act both presupposes its identifiability and in turn embellishes its identity. But the group’s identity

\(^{327}\) To this extent, Margaret Gilbert is correct to describe membership as a capacity or role with a set of attitudes and beliefs that may be distinct from those an individual adopts outside of that role. *See generally* discussion of Gilbert in Chapter 1.
is not exhausted by its acts. Its identity may derive as well from commitments it espouses, practices it influences its members to adopt, features endowed by the past and present members associated with it, and so on. Thus, for example, Georgetown University is the nation’s oldest Catholic and Jesuit university, the home of the Hoyas, and the alma mater of the forty-second President of the United States.

In what does the identity of a group consist? An exhaustive account of the properties attaching to a group would include not only such features as its purpose, central activities, prominent members, and so on but also contingent and relational facts that are relatively trivial when it comes to identifying the group. Thus, it is true of Georgetown both that it is the home of the Hoyas and that it is located roughly 230 miles from the Empire State Building. Clearly, only the former is taken to be an identifying feature of the University, though. Which features will count as identifying and which will be peripheral to the group’s identity is likely a matter of convention, and one that will vary depending on the nature of the group. Thus, we may distinguish between sports teams on the basis of their scoring records, law schools on the basis of their areas of specialization (or, more insidiously, on the basis of their U.S. News and World Report ranking), corporations on the basis of the products or services they offer, and religious institutions on the basis of their core beliefs. It is not my purpose here to articulate necessary and sufficient conditions for what should count as an identifying characteristic of a group rather than merely a peripheral one; I take it that the distinction between these two kinds of characteristics is a matter of common sense, anyway (though their may be difficult or contentious cases).
In some groups, members sustain the group’s identity in just the ways that Cohen describes. They help determine the group character, and they enact or make manifest that character by assuming a group-based persona, responding in group-given ways, actively serving as the voice of the group, and so on.

But I do not believe that it is accurate to describe this shift of perspective – from the personal to one’s group-based persona -- as one that follows from “habit,” as Cohen does. First, to call a response habitual is to imply that it is automatic. But membership need not, and I believe does not, supplant one’s private identity. Indeed, it is because of the gap between these two identities that one can gain critical distance upon the attitudes and practices common to members of one’s group, and it is in the retreat from one’s membership persona to one’s private person that one finds safe harbor, at least within the space of one’s conscience, from acting as the other members of one’s group act.

But though membership is less than a habit of mind and being in this respect, it is more than habit in another, for members are expected to respond in character, and they may be reproached by their fellow members when they fail to do so. As such, whereas habits are largely self-emanating and thus avoidable at will, the dispositions and practices of membership are dictated by the group, and mutually reinforced by members one upon the other. In short, it is not habit that sustains the continued identity of the group, as Cohen would have it, but instead the member’s commitment, which is at once more deliberate and demanding.

With that said, the precept that “ought implies can” might lead one to wonder whether the obligation to contribute to the group’s identity survives in all groups – especially large groups with diverse aims and a time span that greatly exceeds the
relatively short duration of the member’s tenure. For instance, what would it mean to say that a citizen should contribute to the identity of her multiple-centuries-old nation-state, which has a well-established identity already? And if she can have no real impact on the identity of her nation-state, should she be under an obligation to seek to do so?

To answer these questions, we should note two ways in which a member’s contributions to her group’s identity may fail to make an individually identifiable causal difference. First, the member might seek to assert a vision for the group (or some part of it) that fails to have uptake. Still, the mere attempt may come to be definitive of the group, in both process and substance: The group’s hospitality to divergent visions may itself be among its distinguishing features. And, the group may come to be known as one with a minority faction characterized by something like this member’s vision. So, the fact that the member fails to affect the group in the way she sets out does not entail that she does not affect the group’s identity in other ways.

It is, however, possible that the member’s contribution to the minority position is itself causally inefficacious -- for example, if there are many other members harboring the same dissident vision such that her contributions fail to alter discernibly any aspect of the group’s character. Cases of over-determination, then, represent the second way in which a member may fail to make an individually identifiable causal difference to the identity of the group. Here too, however, it is wrong to deny that the member bears causal responsibility for the group’s identity: For one thing, contributing to the identity of an already established group may require no more than conceiving of oneself as a member of the group, for this continuous conception, as Cohen teaches us, extends the group
through time and thereby ensures its persistence.\textsuperscript{328} Second, it does not matter that there may be more members than needed to enliven the group in this way. Since there is no principled way of identifying which member’s contribution to the group is superfluous, none may claim to be immune from responsibility for what the group is simply because she does not herself make a discernible difference to its identity. Though I may never succeed in leaving \textit{my} mark on the groups to which I belong, my membership nonetheless combines with others’ to leave \textit{a} mark – a crucial, indelible mark that secures the group’s existence as the entity that it is.

b. The Group’s Rule of Recognition

The \textit{rule of recognition} is a principle or procedure that governs when action performed by individual members ought to count as action of the group itself.\textsuperscript{329} For some institutional groups, like the nation-state, the rule of recognition may be embodied in a formal decision procedure. For example, in the United States, there is a specific procedure for authorizing military engagement, which prospectively converts the aggressive acts of a set of citizens into acts of the U.S. military, and hence the United States itself.\textsuperscript{330} For other institutional groups, the decision procedure can be as simple as a

\begin{itemize}
\item \textsuperscript{329} As I shall argue below, the rule of recognition is authoritative only for the group’s members; outsiders are in some cases permitted to ascribe acts to the group that it would disclaim, or to deny that the group is the rightful agent of some act for which the group claims authorship.
\item \textsuperscript{330} See U.S. Const. Art. I, Sec. 8 ("The Congress shall have the power to … declare war…."). Cf. Restatement (Third) Law of Agency § 1.03, Manifestations, comment (c) ("In private-sector organizations, actual authority originates both with the statute through which the organization achieves a legally recognized form and with the organization's constitutional documents. These provide the skeleton or essential
formal delegation of authority to an individual who is thereby empowered to act on behalf of the group within a specified range of activities.

I borrow the term “rule of recognition” from H.L.A. Hart, who defines it as a second-order rule of a legal system dedicated to specifying the condition(s) that first-order rules – those that dictate conduct – must possess in order to count as valid.\textsuperscript{331} Hart’s concern is thus to describe a kind of rule whose purpose is to identify when some other rule(s) promulgated by members of the group ought to be considered authoritative for the group. My use of a rule of recognition is different to the extent that the purpose of a rule of recognition, as used here, is to determine when some act(s) committed by members of the group ought to be considered acts of the group.\textsuperscript{332} Notwithstanding this difference,

architecture for beginning to determine which acts committed by human actors should be attributed to the organization.).

Action can, of course, be attributed to a group even if it has not been committed in accordance with the group’s rule of recognition. I elaborate on this possibility below.\textsuperscript{331} H.L.A. HART, THE CONCEPT OF LAW 94 (1994) (“a ‘rule of recognition’ … will specify some feature or features possessions of which by a suggested rule is taken as a conclusive affirmative indication that it is a rule of the group to be supported by the social pressure it exerts.”).

\textsuperscript{332} In his account of collective responsibility, Peter French invokes the notion of “recognition rules,” which he likens to Hart’s rules of recognition. PETER A. FRENCH, COLLECTIVE AND CORPORATE RESPONSIBILITY 43 (1984). French’s recognition rules form one part of what he calls the “Corporation’s Internal Decision Structure,” (or “CID”) which is the corporation’s apparatus for intentions. See, e.g., id. at 48. French’s project is, then, to identify a set of acts and intentions appropriately ascribed to the corporation, and thus to yield an assignment of collective responsibility. I have already advanced reasons for rejecting French’s notion of intentionality. See Chapter 1. In this note, I identify two respects in which French’s project differs from mine: First, French’s project aims to find a ground for blaming the collective entity, and not its members. In other words, it is an articulation of an account of collective, not shared, responsibility. Second, it posits the CID as the ground of the collective’s responsibility; as we shall see in what follows here, however, I ground members’ responsibility not in their assent to the group’s rule of recognition, but instead in their commitment to the group (of which their assent is just one manifestation).
Hart’s understanding of a rule of recognition is congenial for my purposes in the following two ways.

First, Hart allows for both express and unstated rules of recognition – that is, not just those that have been formally articulated (for example, the Supremacy Clause in the U.S. Constitution) but also those that are latent in the practices of officials with the authority to determine what the law is. As an example of the latter, consider that a judge’s exclamation of “Overruled!,” and its acceptance as authoritative by the parties before her, rests upon a shared acknowledgment of the validity of the criteria by which the judge determines the admissibility of an objection, and the valid authority of the judge to make such determinations.

The rule of recognition of a group may well be articulated formally -- consider, for example, a corporation’s bylaws, which enumerate the acts its officers may undertake on its behalf, or an explicit agreement empowering some individual to undertake a specific act on behalf of the group. But the group’s rule of recognition need not be formalized – where group members jointly acknowledge that an act performed by some group members is an act of the group, we may assume that an implicit rule of recognition is in play. In this way, the rule of recognition converting individuals’ acts to acts of the group may emerge as much from the group’s practices as from formal texts.

The second aspect of rules of recognition relevant here is their hierarchical organization. For Hart, where a system contains more than one rule of recognition, and where these are not entirely consistent, the competing rules of recognition will be organized hierarchically, with an “ultimate rule” providing criteria for assessing the validity of rules subordinate to it even while “there is no rule providing for the
assessment of [the ultimate rule’s] own legal validity.”\textsuperscript{333} The authority of this ultimate rule rests only in the fact that it is accepted as the ultimate arbiter by those who operate within the system.

As with legal systems, it is entirely possible, and it will frequently be the case, that groups will possess more than one rule of recognition regarding which actions are to count as their own. Where the terms of these rules conflict, the well-functioning group will find a way to organize the competing rules hierarchically, and so we may find, in the group context as in Hart’s context, an ultimate rule.

What must the opportunity to contribute to the group’s rule of recognition entail? Or what must contributing to its ultimate rule entail, where there is more than one rule of recognition and these are organized hierarchically? In the most basic case, members will actually forge the contents of the ultimate rule. More often, however, paradigmatic members will come into a group after its ultimate rule has been articulated. The opportunity for contribution can nonetheless be secured for these latecomers insofar as they help to ensure the vibrancy, and hence continued validity, of the group’s rules of recognition by appealing to them in practice, or displaying deference to those who are empowered to apply them.

To make matters more concrete, it will be useful to imagine the group’s rules of recognition as a kind of complex chain of command, where the entries in the chain are rules of recognition, rather than individuals. The group’s ultimate rule sits at the top, and this rule will give rise to one or more subsidiary rules, each of which may itself break

\textsuperscript{333} Id. at 107; see generally id. at 105-110.
down further into one or more rules subsidiary to these, and so on. A rule of recognition, no matter its place on the hierarchy, can give rise to an act of the group.

In the case of a corporation, for example, the ultimate rule will consist of the corporation’s charter and bylaws, and these will specify the corporation’s organizational structure at its highest level (e.g., by identifying the various divisions or units into which the corporation is organized). Each division will itself possess a chain of command and set of policies – perhaps set by the charter and bylaws, or perhaps set by the division itself – that together constitute the rules of recognition for that division. A provision in the corporation’s bylaws might state that only the corporation’s directors may amend the charter or bylaws. A vote of a majority of directors in favor of some bylaw amendment counts as an act of the corporation (viz., the act of amending the bylaws) because of the bylaw provision just described. This is an example of a high-level rule of recognition that can produce a group act. But so too can low-level rules of recognition. Thus, the job description of a low-level employee functions to make those acts the employee carries out in accordance with the job description acts of the corporation.

In contributing to the group’s rule of recognition, there are three ways in which a paradigmatic member can be connected to the group’s act. First and most straightforwardly, the paradigmatic member will help articulate the group’s ultimate rule. Because all of the group’s acts can be traced back to the group’s ultimate rule, the paradigmatic member who contributed to the ultimate rule will bear a connection to all of the group’s acts.

But suppose now that the paradigmatic member is denied the opportunity to contribute to the group’s ultimate rule. For example, consider a high-level employee in
the research and development (R & D) unit of a corporation – call her Mary. Mary is not permitted the opportunity to contribute to the corporation’s charter or bylaws. Suppose further that the bylaws specify that, once a head is found for each unit, that person is charged with deciding upon the unit’s structure, organization and policies. As a result, although Mary can have some input into the rules of recognition governing the R & D unit, the corporation’s organizational structure blocks her from influencing the rules of recognition governing the other corporate units. Imagine now that negligent lapses in the corporation’s manufacturing practices have led to defects in the product that Mary developed, and that these defects have caused consumer injuries. Again, the defects have resulted because of negligence on the production floor, and not because of a flaw in the product’s design. Mary, as we have already seen, has had no input in the corporation’s safety practices -- the decisions regarding the organization and policies of the manufacturing unit of the company were not ones in which she did, or was expected to, participate.

From an individualist stance, it would be difficult to find a meaningful causal connection between Mary and the injuries consumers have sustained. True, consumers thought they were buying the product Mary had developed. In reality, they were buying a defective version of that product, and Mary is not causally responsible for the product’s defects. (We could make the example more powerful still if we imagined that Mary had developed the product (e.g., a children’s pain reliever) a decade ago, and that she has long since moved on to another product line. The product has been sold safely from the time of its introduction to the market until now, when inadequate sanitation practices
resulted in the product defect (e.g., the unintended addition of metal filings to the medication liquid, as happened with a recent Children’s Tylenol recall).

Given the fact that we cannot trace a direct pathway along our rule of recognition chain between Mary and the corporate wrongdoing, we might be inclined to say that no such connection exists. We would then conclude that Mary (and other members of the corporation outside of the manufacturing unit) bore no responsibility. But that would be to misunderstand the nature and role of the paradigmatic member’s connection on my account.

More specifically, one might have thought that the rule of recognition functioned within an account of shared responsibility to transmit assent from the paradigmatic member’s endorsement of some rule of recognition to an endorsement of any act eventuating from that rule of recognition or one subsidiary to it. On this thought, where the paradigmatic member has agreed to some decision procedure, she has thereby agreed to be bound to the outcome of that decision procedure (viz., the group act). But that is not how I conceive of the relevance of the paradigmatic member’s contributions to the group’s rules of recognition.

Instead, participating in the group’s rule of recognition – at any level – is meaningful for two other reasons. First, the member who was denied participation in any of the group’s rules of recognition might occupy a status so disempowered that we would be led to doubt whether she even qualified for paradigmatic membership. So, an entitlement to participate in some of the group’s rules of recognition (and an expectation that one does so) furnishes one indication that the member is taken to bear obligations to the group, including the obligation that grounds the member’s shared responsibility, as
we shall see – *viz.* the obligation to stand in solidarity with one’s fellow members when the group is judged.

Second, even if a member is foreclosed from participating in the rule of recognition pathway from which the group transgression arose – even, that is, if we cannot forge a direct connection between her participation in some rule of recognition and the group wrong – her participation in some other set of the group’s rules of recognition furnishes as much of a connection as is needed on my account. For it may be that the group acts eventuating from the rules of recognition to which the member does contribute facilitate commission of the wrongdoing. Thus, for example, Mary’s efforts in setting the organizational structure of the R & D unit may have led to research and product developments that, say, generated revenue that was used to set up the plant where the safety lapses occurred. More generally, by participating in one pathway of the group’s rule of recognition, the paradigmatic member may well grease the joints, as it were, of the other pathways. This is the second way in which contributing to the group’s rule of recognition can create a connection between the paradigmatic member and the group act. (Again, contributing to the group’s ultimate rule was the first way).

Finally, insofar as a group’s identity stems in large part from what it does, Mary’s contributions to some of the group’s rules of recognition have fed the group’s calling card, and thereby enhanced its identifiability as the corporation that manufactured the defective product. Indeed, even the member who is foreclosed from participating in any of the group’s rules of recognition but who contributes to the group’s calling card can, on the basis of that contribution alone, be said to bear a connection to the group act. Again, we might worry that the member’s exclusion disqualifed her from paradigmatic
membership. But the infirmity would then reside not in the absence of a connection but instead in the possible failure of recognition that her exclusion conveyed.

In short, shared responsibility requires a connection, but that connection can arise even if there is no direct pathway tying the member from some rule of recognition in which she participated to the act of the group. Instead, the connection arises just so long as the member may contribute to some of the group’s rules of recognition, or just so long as she may contribute to the group’s calling card.

4. The Role of the Rule of Recognition in Act Ascription

Recall the transmission account that I considered in the last sub-section – again, an account that grounds the member’s responsibility for some group act in the fact that she assented to the decision procedure that resulted in the act. That account takes the content of the group’s rules of recognition at face value – an act is an act of the group just so long as the group deems it so. (If the fact that the group considered some act to be its own did not entail that outsiders should so consider it, then the transmission account could not license an ascription of a group act to the group member simply on the basis of her having assented to some rule of recognition from which the act emerged.) Granting the group’s rules of recognition that kind of authority over insiders and outsiders alike is consistent with Hart’s understanding. While Hart acknowledges that those outside a system of rules have no reason to take those rules as normative for them, he also contends that those outside the system have no reason to doubt insiders’ determinations that some rule counts as a rule of their system. Assuming, that is, that insiders correctly apply their rules of recognition, there is no practical difference between what these insiders believe
to be the rules of conduct to which they must, as members of the system, adhere, on the one hand, and the actual set of rules of conduct to which they must, as members of the system, adhere. In this sense, the system’s rule of recognition claims a kind of authority over insiders and outsiders alike: Outsiders have no reason not to take at face value the system’s statement that some rule is a rule of the system.

By contrast, I do not see why insiders should have authority over outsiders to determine which acts ought to count as acts of the group. Consider, for example, a terrorist group that lays claim to a suicide bombing against citizens of Country X that was not performed on behalf of the terrorist group and that the terrorist group did not order or knowingly assist. Suppose further that the terrorist group has the following rule of recognition: Any act of terrorism committed against citizens or symbols of Country X shall count as an act of our group. Outsiders to the group would not, I take it, blithely go along with the terrorist group’s claims of self-authorship. Our schemas for action attribution typically require that the author of an act bear some causal relationship to that act; where no such relationship can be found, we have no reason to take the group’s asserted authorship as fact. Conversely, consider a case in which the group disclaims some act, because that act is inconsistent with the group’s rules of recognition. In Chapter 5, for example, we shall see that many Americans who neither supported nor opposed the war in Iraq may be inclined to deny that they are blameworthy for abuses committed in its course, presumably because they adhere to an implicit rule of action attribution according to which implication requires participation. Yet, as I shall argue there, there are reasons to conceive of these Americans as blameworthy notwithstanding their disavowals.
My purpose here is not to articulate the conditions or grounds that permit outsiders to override the group’s rules of recognition and abide instead by some other scheme of action attribution. Indeed, I don’t even seek to ascertain whether this other scheme is itself a rule of recognition – perhaps one that the members of a local moral community, or even the world community, share – or instead a matter of metaphysical fact. As I stated in the Introduction, there are deep and thorny puzzles around act ascription, and I don’t seek to resolve them here. We may simply note that we often do ascribe an act to a group that the group disavows; that we do so provides sufficient evidence that the group’s rules of recognition are not fully controlling when it comes to act ascription.

At the same time, there will always be something within the group’s rules of recognition that licenses our ascription – typically, an agency relationship. In other words, at a minimum, ascribing an act to a group would seem to require that the individual who performed the act was empowered to carry out that kind of act for the group. (That he was so empowered might not be sufficient, from the group’s perspective, to count the act as its own where, for example, the group had some ancillary rule according to which the agent’s act would not count as an act of the group if performed after hours. The point is that outsiders can take the agency relationship to be relevant to ascribing acts to the group without embracing all of the agency relationship’s qualifications. And, where outsiders feel licensed in disregarding some qualification to which the group adheres, they may think it appropriate to ascribe to the group an act that the group disclaims.) And so long as some element of the group’s rules of recognition
grounds the ascription, there will be a connection between the ascribed act and each group member, in one or more of the three ways I identified in the last sub-section.

To recap: In virtue of the element(s) of the rule of recognition outsiders took to be relevant, outsiders would determine that there had been a group act. Members of the group would then be connected to the group act in one or more of the following ways:

1. The member will have contributed to the group’s ultimate rule, thereby forging a connection between her and any group act;

2. The member will have contributed to some rule(s) of recognition that do not lead directly to the group act, but the products of which have made the group act possible (as where Mary’s work has furnished the resources that made possible the plant at which the negligent production practices occurred); or

3. The member will have contributed to some rule(s) of recognition that led to acts that helped to secure the group’s calling card, and in so doing the member has helped make all of the group’s acts possible.

5. The Role of the Connection in the Paradigmatic Member’s Shared Responsibility

We have seen two ways in which paradigmatic members contribute to the group’s agency – by helping to secure and sustain the group’s calling card, and/or by participating in the group’s rule of recognition. These are more important kinds of contributions than are, say, the contributions that the biological parents, or even the actual parents, of an
adult serial killer make to the serial killer’s agency. For the serial killer is an agent in his or her own right; while, during childhood, the eventual serial killer’s nascent agency was fostered and shepherded by her parents, their role is greatly diminished, if not eradicated, once the serial killer reaches the age of maturity (assuming, at least, that she has the mental competencies that qualify her for parental emancipation). The group’s agency, by contrast, is forever parasitic on the contributions of its members; put another way, the group is an agentially static entity and it thus owes its agency, in an unwavering amount, always to the members who confer upon it its distinguishing characteristics and enable it to determine which course of action it shall pursue.

But despite the relatively important role that paradigmatic members play in allowing the group to act, and thereby functioning as causal precursors to the group’s transgression, I do not believe that members’ contributions to the group’s agency justify our holding them responsible. My claim, then, is that these contributions serve to connect paradigmatic members to the group act, but they do not themselves constitute the ground of paradigmatic members’ responsibility. I defend that claim in two steps: In this subsection, I appeal to intuition in an attempt to demonstrate that members’ contributions to the group’s agency do not function in the way that they need to if they are to ground a responsibility assignment; in the next Section, I advance a positive argument for conceiving of members’ commitment to the group, rather than the contributions flowing from this commitment, as the ground of their responsibility.

I indicated earlier that, when assigning responsibility to someone, the magnitude of our response will turn on the egregiousness of the act ascribed to them as well as the nature of the ground for ascribing it, but not on the strength of their connection to that
act. If paradigmatic members’ contributions to the group’s agency are the ground of their responsibility, then we should expect the responsibility of any member to vary in some direct way according to the magnitude of his or her contributions. But a quick appeal to intuitions will disappoint this expectation.

Consider, for example, the paradigmatic group member who significantly contributes to the group’s identifiability though he views himself as a marginalized member of the group, feels alienated from its goals and purposes, and only minimally intends to participate in the group’s calling card and rule of recognition. For example, consider Martin Luther King, Jr.’s, responsibility for racist acts committed by the U.S. government during his time as a civil rights leader. Though King contributed significantly to the group’s identifiability – and hence played a large role in securing a causal precursor to the group’s agency --, it is counterintuitive to hold him more responsible for the acts of his group than we do his fellow group members whose contributions to the group’s identifiability are less significant.

Conversely, consider the group member whose contributions have little discernible effect on the group’s calling card, though she is an ardent and vocal participant in the group. Perhaps she asserts a vision of the group that fails to be taken up, or perhaps she is among a massive chorus of voices heralding the existing character of the group and so her voice fails measurably to impact the identity of the group. I doubt we would deem the causal inefficacy of her contributions a reason to diminish her responsibility, especially if the group act for which we seek to assign responsibility is consistent with the vision of the group that she, along with others, endorses.
These appeals to intuition are not intended to be decisive; indeed, the reader who rejects the analysis of a responsibility assignment offered in Part I will find that they do no more than beg the question. In the next Section, however, I offer independent reasons for thinking that members’ contributions to the group’s agency are not themselves the ground of members’ responsibility.

C. The Ground of the Paradigmatic Member's Responsibility

We can begin to comprehend the nature of the relationship between paradigmatic member and group act if we liken it to the relationship between a parent and the acts of his or her young child. The analogy requires a fairly long digression, but it is sufficiently instructive, I hope, to warrant the detour. I elaborate the analogy and its implications for the account of shared responsibility in three steps: First, I argue that the commitment involved in a joint project – especially the joint project of parenting – requires the member to accept responsibility for the group’s acts. I then extend the analysis to argue that this commitment also permits outsiders to assign the member responsibility for the group act. Finally, I consider some qualifications on the member’s duty to accept, and the outsider’s permission to assign, responsibility.

1. Accepting Responsibility Independent of Participation

Consider that a parent will bear only distant causal responsibility where his young child breaks a neighbor’s vase. Nonetheless, insofar as he is responsible for his child, he bears at least some responsibility for his child’s acts. Now, sometimes the parent’s
responsibility will be merely forward looking – where, for example, he exercised due
care. In that case, he will incur an obligation of repair, but will not be an appropriate
object of blame. But the very duty of care evidences his responsibility for what his child
does in the here and now, and not just after the fact. Put another way, a child’s agential
(and moral) immaturity entails that the child’s acts are not entirely her own; her parents
are charged with ensuring that she acts within certain constraints, and where they fail to
do so, moral responsibility accrues.

The example is helpful because it illuminates not just the connection paradigmatic
members bear to the acts of their group but also the ground of their responsibility. It is
true that parents, in virtue of their relationship with their child, are causally responsible
for their child’s capacity to act: Most parents provide the biological materials and
conditions that lead to their child’s creation, and all parents (or at least all minimally
decent parents) nurture and sustain the child’s growth and development. Further, their
causal responsibility for their child’s capacity to act entails causal responsibility – albeit
more distant – for what their child does. But the ground of a parent’s responsibility
resides not in her having furnished her child with the prerequisites for action – after all,
the biological parent who gives her child up for adoption furnished some of these too, and
yet won’t be held responsible for harms the child subsequently causes -- but instead in the
expectations that emerge from the social role of parent. That role engenders a set of
obligations – of sustenance and nurturance and guidance – and those obligations ground
the parent’s responsibility for his or her young child’s acts.

We should pause to note how unusual this arrangement is. First, outside of the
context of associations – of which the family is paradigmatic, as we saw in Chapter 3 --
obligations typically arise in exchange for some set of benefits. Parenting can unquestionably be a source of tremendous joy and fulfillment, but to conceive of one’s parental obligations as the price of parenting’s benefits is to misconstrue grossly the nature of the endeavor.

Relatedly, outside of the family context, one typically incurs responsibility for some act or event of which one was not a proximate cause again in exchange for some set of benefits. Thus, desert-based rationales for respondeat superior (the vicarious liability of an employer for the negligent acts of her employee), where they do not rely upon the employer’s purported control of her employee, adduce in their defense the benefit received from having an underling: “[I]t is a great concession that any [person] should be permitted to employ another at all, and there should be a corresponding responsibility as the price to be paid for it….“\(^{334}\) By contrast, there is, at least traditionally, a descriptive expectation – and perhaps even, at the collective level, a normative one – that adults will produce children whom they then raise; procreation and parenting are thus taken to be social goods. The opportunity to parent a child, then, is no “great concession,” and so a parent’s responsibility for her child’s acts cannot be taken as the “price to be paid” for parenthood. Instead, the source of a parent’s responsibility for her child’s acts is not the benefits she receives from parenting but instead the obligations that parenting entails.

Further, those obligations ground a parent’s responsibility whether or not the parent adequately fulfills them. Indeed, unless one relinquishes her role as parent altogether, her failure to parent adequately only adds to the magnitude of the response.

\(^{334}\) Prosser and Keeton on Torts 500 (5\(^{th}\) ed. 1984). To be sure, this is the doctrine of respondeat superior in its classic form; there have been numerous refinements that have served to protect employers from liability.
elicited by some harm her young child causes, for we then hold her responsible not just for the harm caused but also for her own delinquency. In that way, a parent cannot disclaim responsibility for the kind of child she has, or the kind of acts in which her child engages, by adverting to her disengagement from the duties of parenthood.

Earlier, I stated that, where a parent exercises care, the only responsibility he will bear where, say, his child breaks a neighbor’s vase, is of the forward-looking variety; he may rightly be called upon to replace the vase, but he may not be blamed for his child’s carelessness. When it comes to the group context, however, we are interested in determining whether, and if so why, we may assign backward-looking responsibility to paradigmatic members for acts of their group, especially when they did not participate in these acts. So, it will be helpful to consider whether something analogous is common to our practices of assigning parents responsibility for acts of their children.

In a two-parent household, I believe that it is appropriate to conceive of child-rearing as a joint project undertaken by the two parents together. Put differently, the two parents together constitute a group, and their child is their joint project. As such, the obligations of membership (as well as a myriad of other obligations unique to the project of joint parenting) described in Chapter 3 obtain between the two parents. Now, imagine a household consisting of parents P and Q and their child, C. P is unduly lenient – P fails to establish and enforce the kinds of boundaries that minimally acceptable parenting requires; Q, on the other hand, adopts a balance between rigidity and indulgence that is, at least when viewed in isolation from P’s practices, perfectly acceptable. Imagine

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335 Might the balance Q strikes be reproachable because Q has not adjusted that balance in light of P’s laxity? C might not be as unruly were Q to seek to offset P’s laxity by being more stringent than Q is naturally inclined to be, or more stringent than good
further that C is unruly, and that an omniscient child psychologist can tell us that C’s
unruliness is the direct result of P’s lenience. Although P and Q’s union is perfectly
egalitarian, and each partner is generally disposed to hear constructive criticism from
the other, suppose finally that Q has had no success in reforming P’s disciplining
practices despite repeated urgings.

The question now is, would it be appropriate to hold Q responsible, in the
backward-looking sense, for acts (or harm) caused by C’s unruliness? I believe that it
would be. First, what is at issue here is whether Q is responsible for C’s acts, not whether

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parenting involves, on Q’s conception of it. But it is not clear that Q should have to
deviate from his conception of good parenting because of P’s deficiencies. We might
think that the importance of parenting to one’s sense of self is sufficiently great to defeat
any obligation to parent in a way that doesn’t comport with one’s conception of what a
good parent should be or do (assuming that one’s conception is not unreasonable).

And, even if we do think that, all things considered, Q ought to have ratcheted up
his disciplining to compensate for P’s deficiencies, we will still have arrived at a ground
of responsibility consistent with the account to be advanced here: The obligation to
depart from parenting practices one affirms in order to take up a set of practices one
would – in the abstract – reject (and possibly even deplore) can best be understood, I
believe, as a specific version of the more general obligation of self-abnegation that
membership so centrally involves. Where Q has failed to alter his parenting practices, we
should then view the ground of his responsibility for C’s unruliness in his failure to
undertake the manifestation of self-abnegation that membership in this group requires. The egalitarian nature of P and Q’s union is invoked here as a simplifying assumption. The crucial point is that P and Q should each be entitled to critique the other’s parenting,
and to have the other genuinely consider that critique. I am concerned that this
entitlement will be significantly undercut if the joint parenting relationship is
inegalitarian. In particular, there may be all kinds of insidious effects on Q’s willingness
to seek to reform P’s conduct if Q occupies a subordinate position relative to P. But in the
group setting, for which P and Q’s union is an analog, power disparities need not
undermine less powerful members in the way that they do less powerful members of an
intimate relationship. As such, it need not be the case that each group member possess an
equal say regarding the group’s calling card, rule of recognition, or course of conduct in
order to secure the entitlement of dissenters to be heard.

I do not consider whether Q is responsible for P’s conduct since their union does not
constitute a super-entity on behalf of which each partner acts. In this respect, the parent-
child relationship diverges from the member-group relationship, though I cannot see that
this divergence impugns the force of the analogy in any way.
Q is a good parent. The latter question goes to Q’s individual responsibility, and warrants a positive response (at least on the bare facts I have given). But the answer to the former question depends not on the nature of the practices Q alone adopts but on those that both parents adopt, either singly or together.

Now, one might think that Q incurs responsibility for P’s parenting practices as a result of epistemic barriers that the typical onlooker faces in trying to divine parental responsibility: Deprived of the opportunity to see what goes on within the household, the onlooker has no reason to assign responsibility to one parent rather than the other (assuming that a hypothetical onlooker has already correctly surmised that the child’s unruliness is attributable to the parenting the child receives). But even if we could know that P’s parenting deficiencies were the primary cause of C’s unruliness, we would still have reason to blame Q, for the parent’s partnership entails that neither is entitled to the kind of individualized assessment that would inculpate P while absolving Q. To appeal for such an assessment would be to contravene the nature and spirit of the enterprise.

More specifically, the nature of joint parenting is such that it would likely be impossible to conclude that P bore exclusive causal responsibility for the child’s unruliness. On the hypothetical as described, P’s laxity is a significant contributor to the child’s unruly conduct -- our omniscient child psychologist can tell us that, had P not been so lenient, the child would be significantly less unruly. But P’s laxity, or its effect on C’s conduct, may well result from other factors for which Q bears responsibility. For example, perhaps P’s laxity carries more sway over C’s conduct because P undertakes a greater share of the childcare burdens, on the basis of a division of labor to which both P and Q have agreed; or perhaps Q has undermined his credibility in C’s eyes (as a result,
say, of hypocrisy or inadequate love), so that C is inclined to place greater trust in the (far more capacious) limits that P sets; or, again, perhaps Q represents P as the more dominant parent, and so C deems P’s guidance more authoritative. More generally, joint parenting consists of a complex network of interactions and though we may be able to determine that the absence of some feature would entail the absence of some trait in the child, we need not – and, indeed, likely ought not -- conclude that its presence is the sole cause of that trait. P’s contribution may be crucial, but that it is not to say that it is alone sufficient.

Further, the spirit of joint parenting renders unseemly calls for an individualized assessment. Having embarked upon the joint project of parenting, P and Q have joined their fates. No longer is each a free agent (to invoke the sports metaphor, not the libertarian’s understanding of personhood); no longer may each exist just for himself. To be sure, each chose to undertake this joint project with the other and each can, in principle, withdraw from parenting jointly, and thereby regain his status as a distinct object of evaluation. But, in the day-to-day life of parenting, not only withdrawal, but even its contemplation, constitutes a nuclear option, for the endeavor cannot persist, at least on solid ground, if its participants conceive of exit always as a live and compelling possibility.338 Nor can it persist if P or Q insists upon a defensive posture, wherein each heaps recriminations upon the other, and publicly disclaims responsibility for the other’s parental failings. P and Q do not parent C severally and sequentially, but together, at once, and as one.

338 Cf. Anne Alstott, What We Owe To Parents, BOSTON REVIEW, Apr-May 2004 (arguing that society’s failures to adequately support parenting, while insisting that parents provide “continuity of care,” effectively imposes a “No exit” restriction on the parent in the parent-child relationship).
Here, the duty of recognition that I articulated in Chapter 3 entails two sets of obligations. In acknowledgment of the great import that the joint project bears for each, P and Q must devote themselves to parenting, in good faith and with an abiding aspiration to make the joint endeavor work. But part of what it is to make the joint endeavor of parenting work is precisely to embrace and insist upon the *jointness* of the endeavor. Thus the second set of obligations: P and Q must each recognize, and manifest a recognition to the other, that so far as joint parenting goes, they are in it together, for good or bad, in the ups and downs, through thick and thin and over all of the clichés that capture -- appropriately, as it turns out -- what it is to bear a commitment to another.

To return to the terms in which I analyzed the structure of a responsibility assignment above, we may say that the features constituting the *nature* of joint parenting partly comprise the *connection* Q bears to C’s unruliness and the acts manifesting it, while the features constituting the *spirit* of joint parenting form the *ground* of Q’s responsibility. More specifically, Q is connected to C’s unruliness and the harm it causes -- although it is P, and not Q, who primarily causes this unruliness -- for Q plays an integral role in the network of interactions that facilitate or otherwise create the conditions for P’s laxity to have the effect that it does. But the ground of Q’s responsibility for the harm C creates in her unruliness does not lie in Q’s contributions to P’s laxity. (Consider, for example, that there may be other individuals – extended family members or paid childcare workers --who influence C’s environment in such a way as to allow P’s laxity to play the role it does, and yet we would likely exempt them from blame.) The ground of Q’s responsibility lies instead in the normative position Q occupies relative to C and relative to P. Put another way, Q’s responsibility lies in the
social role Q bears in relation to C -- which, as we saw above, grounds a forward-looking responsibility --, and in the commitment Q bears to the project of joint parenting with P --, which grounds a backward-looking responsibility.

It is important to note that the ground of Q’s responsibility is not the relationship between P and Q that existed before they decided to parent C (i.e., in the traditional case, an intimate, spousal relationship); instead, it is the endeavor of joint parenting. In other words, Q incurs responsibility for P’s parenting missteps because P and Q are partners in parenting, and not partners in the more global sense. Indeed, the only thing binding P and Q together might be the enterprise of joint parenting – for example, P and Q might have separated or divorced and yet decided to continue parenting jointly, or P and Q might have embarked upon the enterprise of joint parenting with no preexisting relationship between them and no intention of forming one – and that would be reason enough to hold either one responsible for C’s bad behavior. It is, then, the project of joint parenting, and not some other relationship between P and Q, that grounds Q’s responsibility.339

With these insights about parenting in hand, we are now ready to return to the subject of group-based shared responsibility. We can transpose the lessons adduced so far in the following way: Paradigmatic membership is like parenthood in the sense that it is

339 In this respect, the account I offer here differs from that of Margaret Gilbert, for Gilbert would contend that P and Q’s decision to co-parent inaugurates a plural subject – specifically, a plural subject of parenting. Acts P or Q undertakes in the service of parenting redound to the plural subject, and from there may be ascribed to either parent. As such, on Gilbert’s account, it would be appropriate to hold Q responsible for P’s conduct. This understanding of the enterprise of joint parenting seems to me unhelpfully far-fetched: We don’t conceive of joint parents as one plural parent – indeed, there are many reasons to continue to view them as separate individuals. In particular, doing so allows us to assess what kind of parent each of P and Q is, and this seems too important a basis of assessment to abandon in favor of Gilbert’s conceptual scheme. For this reason, along with the metaphysical concerns I advanced in Chapter 1 and the phenomenological concerns I advanced in Chapter 3, I think the account I offer here is preferable.
constituted at least in part by a commitment that is both a source of the paradigmatic member’s obligations to the group and a ground of her responsibility for what the group does. More specifically, the paradigmatic member’s obligations to the group consist of her contributions to the group’s agency, and these connect her to the group’s transgression – whether or not she participated in that transgression – in much the same way that Q’s contributions to C’s agency and to the joint endeavor of parenting connect Q to C’s harmful acts. But the ground of the paradigmatic member’s responsibility, like the ground of Q’s responsibility, lies not in her helping to furnish the causal precursors for the harm caused but instead in her commitment to her fellows, which, like joint parenting, demands some amount of deindividuation, and thereby permits us to assign responsibility to her for what the group does.

More specifically, both paradigmatic members and joint parents bear a commitment that requires the participant in the joint venture to forsake her claim to act for herself and only herself and this is so in three respects. First, members, as well as co-parents, are legitimately subject to pressure by their co-venturers to act in the best interests of the joint venture. Thus members of a university department may seek to insist that their colleagues act with a certain regard for the department to which they all belong, and thus Q may urge P to adopt better parenting practices. Second, although members, like joint parents, always retain a genuine right of exit, the cohesion of the group, and perhaps its success as well, require that members psychologically suspend their insistence upon this right; members should not proceed with one foot always outside the door but instead with two feet planted firmly within the terrain of the group.
The two obligations just described are familiar from Chapter 3. But there is a third obligation – the one most relevant to the account of shared responsibility – that I mentioned only in passing there. This is the obligation to forego pleas to have one’s responsibility assessed on an individualistic basis. Just as Q betrays P if he disclaims responsibility for P’s laxity, so too the member of an institutional group betrays her fellows if she disclaims responsibility for the transgression they committed on behalf of the group. Thus, the member who does not participate in a group transgression is not entitled to join outsiders in righteous indignation; she must stand instead with the transgression’s participants, in recognition not just of their shared membership in the entity on behalf of which the transgression was committed but also of their shared contributions and commitment to that entity.

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340 Paul Kahn draws out a stronger parallel between parenting and one’s commitment to the nation-state. Paul Kahn, Putting Liberalism in Its Place (2005). The nation-state, for him, not only “claims the loyalty” of its participants, id. at 63, but also, like parenting, prompts participants to act out of love on its behalf, id. at 40.

341 This way of putting the obligation to stand in judgment alongside one’s fellows bears resonance with Larry May’s account, which posits solidarity as the ground of members’ shared responsibility. It will thus be worth calling attention to points of divergence between my account and his here: First, May treats informal groups, like mobs, separately from institutional groups, like the corporation, and he invokes the notion of solidarity only in his treatment of the former. More specifically, he argues that whereas there are formal structures within institutional groups that transform the intentions or actions of some members into intentions or actions of the group, the notion of solidarity is needed to transform the intentions or actions of mob members into intentions or actions of the group. See Larry May, The Morality of Groups: Collective Responsibility, Group-Based Harm, and Corporate Rights (1987). Second, May’s goal is to justify ascribing to the mob as a whole actions of only some of its members, and he does this by way of relations of solidarity among members. Importantly, then, solidarity is a ground of collective responsibility, not shared responsibility. Indeed, May explicitly disavows the project of inferring members’ responsibility from an assignment of collective responsibility. See id. at 82 & 83. Finally, May presumes that collective responsibility accrues only if each member of the collective acted culpably, and he thus seeks to find a way of interpreting the individual acts of the mob’s members as either direct or indirect.
A comparison with shared praise elucidates further the obligation to stand with one’s fellows in judgment. One might have thought that the requirement to accept blame for some group wrong in which the member did not participate entails, as its corollary, a requirement to accept praise for some group achievement in which she did not participate. But that is not entirely right. Instead, what follows more straightforwardly from the obligation to refrain from disclaiming blame where one has not participated in the group’s transgression is an obligation to desist from seeking singular glory where one has participated in the group’s achievement.

The commitment of the member, that is, requires that she recognize that once an act is an act of the group, it is hers as well as her fellows’. Thus she must disavow any claim to have her responsibility assessed as a lone individual. In the case of a group transgression in which the member did not participate, then, she bears an obligation to refrain from pleading her innocence. In the case of a group feat in which the member did participate, she bears an obligation to refrain from spotlighting her individual contributions to the mob’s harmful acts. He locates the necessary interpretive device in mob members’ solidarity:

[T]he solidarity felt by each member creates either reflective or pre-reflective intentions within the mob members that enable these mob members to engage in concerted action. Here we have the intentional basis for the contributions of each member of the group to any harmful result for which the group is collectively responsible, that is, the solidarity relationships that allowed each member to aid others in joint action. Even those members who do not directly cause or indirectly facilitate the harmful act, share in the collective responsibility for it because they could form a subgroup to prevent the ensuing harm by withdrawing their aid or actively opposing the others.

*Id.* at 81 (emphasis added). On May’s account, then, each member contributes to the harm, by commission or culpable omission; on my account, by contrast, paradigmatic members may have done everything in their power to oppose the group transgression and yet may still share responsibility for it.
contributions. In short, she may not seek to draw attention to herself at the expense of her fellows.

By contrast, the member does her fellows no injustice where she demurs praise for some group feat in which she did not participate, and instead seeks to identify those individuals most responsible for the feat as the true and worthy recipients of acclaim. For, although she would hold herself out as an object of individual assessment, she might well do so in the service of fostering greater solidarity between the other members and herself. Put differently, the duty of recognition, which grounds the member’s commitment, is consonant with the member’s efforts to deflect credit onto her fellows where she deems them more worthy.\(^{342}\)

In short, disavowing praise is not morally equivalent to disavowing blame. The relevant consideration is whether the paradigmatic member seeks to be judged apart from his fellows. Thus, the counterpart to the paradigmatic member who shirks blame for some group act in which she did not participate is the paradigmatic member who seeks to deflect praise from other members onto himself, in light of his more proximate or

\(^{342}\) While the member does not contravene the duty of recognition she owes the feat’s primary contributors in seeking to single them out, doing so might well contravene the obligations she owes other members of the group, especially if they had already accepted the praise bestowed upon them. By identifying the feat’s participants, the member who disavows praise also exposes a roguishness on the part of the other members of the group who were not as gracious as she. Her obligation to consider their interests furnishes a counterweight to her felt obligation to highlight the contributions of the feat’s immediate participants. Indeed, the obligation she owes her fellows might rule out even a simple demurral that did not include an identification of the feat’s immediate participants (e.g., an “oh, no, it wasn’t me” response to praise without an accompanying statement about who did participate in the achievement). Already, by disclaiming her own participation, she suggests that other group members may not have participated either, which can cast their acceptance of praise in a suspicious, if not unseemly, light.
substantial contributions to the group’s accomplishment. An individualized assessment of that kind cannot be reconciled with the obligations the member owes his fellows.

2. Assigning Responsibility Independent of Participation

The foregoing argues that the paradigmatic member must accept blame for a group transgression. But I believe that the considerations marshaled thus far also serve to justify the claim that outsiders are licensed in assigning blame to the paradigmatic member. In virtue of her commitment, the paradigmatic member has participated in the life of the group. (Again, I assume here that the paradigmatic member has not disengaged from the group; I consider the disaffected member in the next Part.) She has therefore forged a connection to the group’s acts, including its transgression, even if only the remote connection of helping to sustain the group’s identity. And, because causal connections and relations between groups and their members are so complex, we may not be able to rule out the possibility that the member played a significant causal role in the group’s transgression, just as we could not rule out the possibility that Q played a significant causal role in securing the effects of P’s laxity on C. At the same, it is a truism that causal responsibility is not moral responsibility.

But the duty of recognition provides the ground for outsiders’ assignments of blame, just as it does for the members’ acceptance of blame. For one thing, what it is for outsiders to recognize the paradigmatic member might be to recognize her as, among other things, a member of the group. We can see this most clearly perhaps in the parenting example: Suppose that C’s teacher, T, who has seen a good amount of P and Q’s parenting styles, pulls Q aside one day in an effort to assure Q that she (the teacher)
recognizes that it is P’s laxity that is causing C’s unruliness and that, as far as the teacher is concerned, Q is blameless. Q might well be taken aback, offended even. T’s aside violates the unity that should exist between P and Q. If Q is aggrieved by T’s comment, as I believe he is entitled to be, this need not be simply because T has criticized someone whom Q holds dear. It may just as well be because T has implied that T believes Q to be the kind of person who would welcome T’s remark and the opportunity to escape shared responsibility that it affords. T’s remark implies, that is, that Q is the kind of person who would shirk his duty to recognize that the consequences of the joint parenting project are P and Q’s together, and that they should therefore be judged for these consequences together.

All of this suggests that it would be wrong for C’s teacher to seek to recruit Q into a scheme of individualized assessment – wrong because it fails to respect the allegiance Q owes P in virtue of their joint project and the obligations it entails. Put differently and in more general terms: Where all else is equal (and in the next sub-section, I shall indicate when it is that all else is not equal), it is permissible to assign responsibility to members of a joint project because doing so recognizes them by recognizing their commitment to the joint project. Indeed, in some cases, it would be wrong not to hold an individual responsible for an act of her group, because her commitment to the group demands no less than that she be held responsible. Again, this will especially be so in the case of groups that demand a very strong commitment of their members. And we should expect that our impulse to assign responsibility to members of a group independent of their participation will be most keenly felt – our reactive attitudes will be most activated – in just such cases, since the presence of a strong commitment will typically entail that
the member’s agency is bound up with that of the group. Membership in such a group becomes central to the member’s identity, and so outsiders are licensed in seeing the member in the group’s act, again independent of her participation in that act.\footnote{343}

Finally, we have reason to recognize individuals’ commitments not just as a way of recognizing them, but as a way of recognizing the value of these commitments more generally. This is especially true in the case of associations, which play so central a role in what might be called the good life. As Avia Pasternak writes, “people who act in solidarity get the opportunity to relate to each other in a specific sense, because they share a common fate for their actions, whether in success or failure. This specific sense of relating to others is an essential human experience, part of the range of human interactions that are constitutive of our social nature.”\footnote{344} Given the good of associations, each of us might bear an obligation to others to foster their existence and operation, which might entail respecting members’ efforts to deindividuate, including their renunciation of individualized assignments of responsibility. And, insofar as the thick, valuable relationships that develop in associations frequently develop as well in other kinds of groups (business partners, for example, may initially forge a relationship for purely instrumental reasons but, over time, they may develop the kind of thick, overlapping interests and concerns that would eventually qualify them as friends), we would then

\footnote{343} Alternatively, our impulse to assign responsibility broadly might also be keenly felt in cases where the commitment is relatively weak, but the group act so egregious that it seems to implicate all of the group’s members independent of their participation. These cases track the insight I offered in Part I, where I argued that the magnitude of one’s responsibility turns in part on the nature (e.g., the egregiousness) of the object for which one is held responsible.

have reason to respect the commitments of members in these other kinds of group too. In other words, each of us has a duty to secure the good of group affiliations by insisting upon the obligations of membership, whether for our own groups or others’. Thus outsiders affirm, and help secure, the value of group memberships by insisting upon the responsibility assignment that befits membership in a group.

3. Recognizing the Limits (and the Power) of Shared Responsibility

Insofar as the justification for assigning responsibility to the non-participating member rests, as I just argued, upon a specification of the duty of recognition, one might well wonder whether that duty could not also be specified in a way that would lead to the opposite result. In particular, if recognizing someone entails appreciating her in all of her particularity, then it would seem to follow that what is required is precisely an individualized assessment of her responsibility. Thus, in articulating the claim that we are permitted to assign responsibility to group members independent of their participation, I was careful to state that the permission arises only if all else is equal. Sometimes, however, features of the member qua individual – e.g., her personal commitments, other group affiliations, etc. – will make it the case that all is else is not equal. In particular, where it becomes apparent that other constituent features of the member’s identity dwarf the contribution to her identity resulting from membership in the group in question, we should expect these other features to undercut the warrant for holding her responsible for the group transgression. In such cases, it would seem that recognition requires that we forbear from having her share responsibility.

Nothing in the account is meant to foreclose this possibility. Indeed, we shall see in
Chapter 5 that some dissidents – in particular those who vocally and steadfastly opposed the group transgression in a timely fashion – might well be exempt from blame. Their exemption rests on just the kind of particularized assessment that the concern urges.

What the account does do is open up conceptual space for the possibility that membership alone might ground responsibility, at least in those cases where there are no countervailing considerations. Put differently, the account provides a reason – albeit one that can be defeated – for assigning responsibility for a group transgression to participants and non-participants in the transgression alike. Specifically, and in sum, members warrant blame for a group transgression independent of their participation in that transgression because they harbor (or should harbor) a commitment to the group, because holding them responsible honors that commitment, and because assigning responsibility just in light of membership affirms the good of membership generally.

That there is a ground of shared responsibility – even a defeasible one -- that arises independent of the member’s participation in the group act represents a significant advance, I believe, over the strict individualist accounts that (unduly) dominate so much of the law and our everyday moral thinking. Further, that ground renders perspicuous what the accounts of shared responsibility surveyed in Chapter 2 obscured: The benefits or feelings of pride one experiences as a member of a group; the fact that one’s identity is bound up with that of the group; and the role one plays in setting or reinforcing the culture or structure of one’s group are not themselves the features that constitute the ground of one’s shared responsibility. Rather, these are products or artifacts or evidence of that ground, which is nothing other than the member’s commitment. It is for this reason that the member could not evade responsibility simply because she happened not
to benefit from or feel proud of her group; or incorporate her membership into her identity; or play a role in constituting or perpetuating the group’s culture or structure. The commitment precedes these features and is their normative source, as well as that of the member’s obligation to accept responsibility for the group’s transgression. And it is the member’s commitment, we have seen, that provides a justification for our holding her responsible for that transgression.

**D. The Magnitude of the Paradigmatic Member’s Responsibility**

The last Section sought to leverage support for the claim that paradigmatic members share responsibility for group transgressions for the same reasons that one parent shares responsibility for the effects of the other’s parental failings. But one might be inclined to think that only an overly demanding conception of membership could sustain the parallel between parenting and paradigmatic membership. After all, P and Q’s relationship is imbued with a love and depth of commitment, and these features sustain the normative pressure on each to align himself with the other, and abandon requests for an individual assessment. But love and abiding commitment are not features one typically finds in the relationship between a paradigmatic member and her group. The extent of deindividuation demanded by the joint parent might, perhaps, be likened to that demanded of the adherent of an extremist religion or ultra-nationalistic group, but it
hardly fits the profile of the member of a university department or citizen of the modern democratic nation-state.\footnote{But cf. Kahn, supra note 340 at 12 (arguing that the modern nation-state demands bodily sacrifice of its citizens).}

To allay these concerns, we need to add the last piece to the puzzle – an inquiry into the way in which the magnitude of a member’s responsibility varies according to the commitment the group demands of her. In this Section, I argue that the magnitude of the paradigmatic member’s commitment need not be as great as the magnitude of the pressure exerted upon the co-parent (or at least that of the parent who is in a long-term committed relationship with her co-parent);\footnote{Former intimates who have separated or divorced after a child is in the mix may well be entitled to exert, and subject to incur, far less pressure than what they exerted or incurred during the course of their intimate relationship. Indeed, the parents’ separation will likely necessitate a negotiation of the extent to which parenting will continue to be a joint venture, whereas parenting before the separation was likely presumed by both parties to be a joint venture, attended by the normative pressures I have described.} moreover, the magnitude of these pressures need not be the same across all groups. And, where the strength of commitment is less, we will see, so too is the magnitude of responsibility it is appropriate to assign to the paradigmatic member.

As we saw in Chapter 3, there are two broad sources of variation in the amount of commitment expected of paradigmatic members. To recap briefly, the strength of commitment the group expects of a paradigmatic member may vary in light of the kind of group it is; the culture it adopts (its expectations for cohesion, solidarity, expenditures of time and other resources, etc.); and the position within the group hierarchy (if any) that the member occupies.

Further, no matter the level of commitment expected by the group itself, individual members may vary with respect to the level of commitment they expect of
themselves. Thus, some members may view the expected level of commitment as fully consonant with their strength of attachment to the group, and they may contribute no more or less, and exhibit no more or less solidarity, than what the group expects. Other members, as a result perhaps of a sense of dissatisfaction with the group, may believe that it expects more of them than it deserves; these members may contribute less than the group expects, and insist more upon their separateness from the group than is consistent with the overall spirit of the group. Finally, some members may willingly exceed the group’s expected level of commitment; they may throw themselves into the life of the group, and feel as if their fates are especially strongly entwined with that of the group.

What are the implications, then, of these varying levels of commitment for the paradigmatic member’s responsibility? In the analysis of the structure of a responsibility assignment I offered above, I noted that the magnitude of an individual’s responsibility varies according to the nature of the act for which she is held responsible and the ground of her responsibility. Applying that analysis here, I contend that the paradigmatic member’s responsibility is proportionate either to the strength of commitment the group expects of her or to the strength of her commitment, if her commitment exceeds that which the group expects of her. More specifically, the expected level of commitment sets the threshold for the paradigmatic member’s responsibility but her responsibility will be greater than that set by the threshold where her commitment is greater than that which the group expects of her, as I shall now argue.

To that end, let us consider the theoretical possibilities that arise once we determine that paradigmatic members’ commitment to the group ground their responsibility for the group’s transgressions: First, we could adopt a fully psychologized
notion of commitment, in which case the paradigmatic member’s responsibility would vary strictly according to the strength of her commitment; second, we could reject a psychological conception of commitment, and restrict the magnitude of the paradigmatic member’s responsibility to the magnitude of the commitment the group expects of her. Finally, we could adopt a hybrid approach – as I do – and set the threshold level of responsibility at a level that corresponds to the threshold commitment the group demands of paradigmatic members but, where the paradigmatic member experiences a commitment greater than that demanded by the group, we would enhance her responsibility to a degree proportionate with her enhanced commitment. Let us consider the cogency of each of these alternatives in turn.

On the first alternative, the disaffected member – that is, the paradigmatic member who experienced a weaker commitment to the group than that expected of her – would be held responsible just to the extent of the strength of her commitment; if she experienced no commitment to the group, she would be off the hook altogether. Something like this lies at the core of the accounts, surveyed in Chapter 2, that predicate members’ shared responsibility upon their positive identification with the group. But, as we saw there, it is often counterintuitive to absolve or implicate someone solely on the basis of their felt connection to the group. After all, non-members might strongly identify with the group and yet not bear responsibility for the group’s acts, while members might psychologically disengage from the group and yet rightly be held responsible.

A non-psychologized notion of commitment helps to justify our intuitions in these cases: If an actual commitment – that is, a set of obligations and expectations demanded by the group – at least partly underpins the responsibility assignment, then it makes sense
that we should resist holding responsible the outsider whose connection to the group is solely psychological, while seeking to impose responsibility on the member who denies any psychological connection.

Perhaps, then, the way to proceed is to adopt the second alternative, and fix responsibility solely to the group’s expected level of commitment: members who experienced a commitment greater than the expected level would not thereby come to incur any more responsibility than would those whose level of commitment met or fell below the group’s threshold. The problem with this possibility is that it ignores the expressive dimensions of a member’s commitment. When we contemplate the responsibility of a non-participating paradigmatic member, we ought to consider not just the fact that her membership entailed that she would relinquish, to an extent compatible with the group’s expected commitment, her entitlement to be judged apart from the group; we ought also to consider – and I believe we do also consider – the fact that she felt an especially strong connection to the group. Thus, for example, we think it correct to respond more harshly to the Nazi supporter than to the indifferent German citizen even if neither participated in any acts of persecution. Part of the disparity in our response may flow from a sense that the supporter bears a stronger causal connection to acts of persecution than does the indifferent citizen, since the former’s support may have emboldened or otherwise encouraged those who carried out the Nazis’ agenda. (And to the extent that this is correct, it supports holding more committed members more responsible, as my account does.) But part of the disparity in responses likely stems as well from a sense that the supporter is a worse person independent of the effect of her
support on the acts in question. “How could you have felt so committed to a group that would engage in such atrocities?” is a typical question that runs through our minds.

Since the second alternative cannot accommodate or make sense of this harsher response, we are left, as I believe we should be, with the third alternative: We ought to set the minimum for our response to the paradigmatic member at a level that corresponds to the group’s expected level of commitment, for a paradigmatic member ought not to be exculpated because she failed to participate in the life of the group or experience the alignment of interests that lies at the core of the commitment that constitutes paradigmatic membership. (Setting the threshold in accordance with the group members’ expected sense of commitment aligns with the position I argued for in Chapter 3, according to which the strength of the obligations of membership is defeasibly set by the group itself, rather than the individual member or outsiders to the group.) But where the paradigmatic member experiences a commitment to the group greater than that which the group expects, it is appropriate to hold her more responsible than we hold the paradigmatic member whose commitment is less than or equal to that which the group expects of her, for the more committed member expresses a deeper allegiance with the group through her stronger commitment. Through this enhanced commitment, she signifies that she is prepared to relinquish her entitlement to be judged apart from the group to an extent greater than that which the group demands of her. While her willingness to incur more responsibility than is required of her, qua non-participating paradigmatic member, is not itself a reason to hold her more responsible, the support for
the group that this willingness communicates is such a reason. In other words, she deserves additional reprobation because she expresses, through her stronger commitment, additional approval of the group even as the group transgresses.

E. Summary

In this Part, I have sought to argue that members who did not participate in a group transgression may nonetheless bear responsibility for that transgression in virtue of their commitment to the group. That commitment furnishes, or at least should furnish, a connection between the member and the group act – in light of the commitment, the member should seek to contribute to the group’s capacity to act and, in so contributing, the member comes to bear a connection to the acts the group undertakes. Further, the member’s commitment includes an obligation to forsake an individualized assessment; instead, members must stand together as they are judged. Outsiders in turn may assign responsibility to the group member in light of her commitment, as a way of honoring and enforcing the commitment; recognizing the way in which her membership is bound up with who she is; and affirming the good of group memberships generally.

III. Some Murky Cases

In this respect, Kutz and Jenkins Sadler are correct to think that the ground of one’s responsibility has something to do with a manifestation of one’s will. They are wrong, however, to suppose that it is the group’s act through which one’s will is manifested, for it is often incorrect to think that one’s will is manifested in a group act that one opposes, as I argued in Chapter 2. I presume here that the support of the paradigmatic member is unwavering even in the face of the group’s transgressions. In seeking to operationalize my account in Chapter 4, I shall have to contend with the question of vicissitudes in members’ strength of commitment to the group.
In articulating the account of shared responsibility, I restricted my focus in two ways: First, I contemplated only those cases in which the paradigmatic member fulfills the obligations of membership to the extent expected of her (and perhaps to an even greater extent). Second, I considered shared responsibility only for those transgressions that are committed during the paradigmatic member’s tenure in the group. I begin to extend my focus in this Part. More specifically, I here consider the case of the disaffected member, and the case of the member who is made to bear responsibility for a transgression committed before or after her tenure in the group. My interest in this Part lies not so much in the complications that the cases to be discussed raise as it does in the way that they shed further light on the dissertation’s account. For that reason, I do not pursue some of their finer points.

1. The Disaffected Member

Paradigmatic members who feel that their group has embarked upon a course of conduct that they oppose may well choose to disengage. These members do not renounce their membership, but they no longer inhabit it to the extent they did in the past, when the group’s acts better conformed to their conception of it. The disengaged member may well be the dissident member turned cynic: Failed efforts at reform may have induced battle fatigue and, from there, complacency and estrangement may easily take root. Thus, for example, Nathan Zuckerman describes his evolution from fresh-faced activist to alienated citizen in Philip Roth’s *Exit Ghost*:

I had been an avid voter all my life, one who’d never pulled a Republican lever for any office on any ballot. I had campaigned for Stevenson as a college student and had my juvenile expectations dismantled when Eisenhower trounced him . . .; and I could not believe what I saw when a creature
so rooted in his ruthless pathology, so transparently fraudulent and malicious as Nixon, defeated Humphrey in ’68, and when, in the eighties, a self-assured knucklehead whose unsurpassable hollowness and hackneyed sentiments and absolute blindness to every historical complexity became the object of national worship and, esteemed as a “great communicator” no less, won each of his two terms in a landslide. And was there ever an election like Gore versus Bush, resolved in the treacherous ways that it was, so perfectly calculated to quash the last shameful vestige of a law-abiding citizen’s naïveté? … The despising without remission that constitutes being a conscientious citizen in the reign of George W. Bush was not for one who had developed a strong interest in surviving as reasonably serene – and so I began to annihilate the abiding wish to find out. I canceled magazine subscriptions, stopped reading the Times, even stopped picking up the occasional copy of the Boston Globe…. I had banished my country….349

Yet, although Zuckerman may have chosen to banish his country, his country does not banish him – indeed, Zuckerman remains an iconic American citizen. In this country, the disaffected member is not only a trope but also a celebrated type, for he embodies the commitment to a diversity of ideas and freedom of expression that America holds so dear. But even groups that do not welcome disengagement may yet tolerate it, depending on where they set their expected level of commitment. Further, because exit is a genuine possibility, the decision to stay within the group is meaningful. (Perhaps the decision bespeaks inertia more than anything else, but inertia hardly fits within the canon of mitigating factors.) To be sure, the disengaged member might deny that he is still a member of the group, in which case he would fail to satisfy the criteria for paradigmatic membership described in Chapter 3, and could therefore escape responsibility. But I suspect that many disengaged members do not renounce membership itself. Zuckerman, for example, has banished his country from his consciousness, but he has not banished himself from his country. And, even for those members who think their disaffection

amounts to a renunciation of membership, it remains open to us to determine whether shared responsibility might not still be appropriate, as it was in the case of the non-paradigmatic member in Chapter 3 who denied membership solely on self-serving grounds. In general, the disengaged member ought to be assessed just like other paradigmatic members are, with the magnitude of his responsibility corresponding to the group’s expected level of commitment (or to the strength of his commitment, if it exceeds the expected level, as it might in a group that sets a very low bar).

This way of conceiving of the disengaged member distinguishes my account from other accounts that have identified a different object of responsibility for the member who has declined to live up to the obligations of membership, including the obligation to accept responsibility for a group transgression in which she did not participate. David Enoch, for example, argues that we should reproach the citizen who does not take responsibility for a wrongdoing of her country in which she did not participate, but he insists that the object of reproach is not the wrongdoing itself but instead the citizen’s failure to recognize that acts of her country are related to her agency. More specifically, Enoch contends, even those acts in which the citizen does not participate fall “within the penumbra of her agency,” and she thus bears a “moral duty to take responsibility for it.”\textsuperscript{350} Disengagement is thus itself a wrong, on Enoch’s account, but it is the only wrong we may impute to the citizen who declines to take responsibility for her country’s transgression. In this way, Enoch’s account would deny that the disengaged citizen bears responsibility for the group transgression (while, again, my account would find that the disengaged citizen does bear responsibility.)

\textsuperscript{350} David Enoch, Being Responsible, Taking Responsibility, and Penumbral Agency (unpublished manuscript, on file with author).
By way of providing reasons to prefer my account to Enoch’s, consider the citizen who is thinking about whether she should take responsibility for a transgression of her country. Presumably, what will count as taking responsibility will vary according to the egregiousness of the act for which one takes responsibility – more may be owed by Americans for detainee abuse than, say, for having inflicted fast food upon the world. But the magnitude of responsibility the citizen comes to bear if she does not take responsibility is fixed independent of the egregiousness of her country’s offense. On Enoch’s account, where the citizen chooses not to take responsibility, we may reproach her for failing to live up to the normative requirements of citizenship, but again that failure is not sensitive to the particular kind of offense she has declined to incorporate into her citizenship. This seems problematic for two reasons. First, it allows the citizen to choose whether to take responsibility on the basis of the relative burdens each choice yields: If the country’s act is really terrible, such that more will be required by taking responsibility than by shirking the normative requirements of citizenship, then the citizen can, on that basis, choose to shirk the normative requirements of citizenship. And nothing in Enoch’s account would allow us to judge that it is worse to decline to incorporate into one’s agency very bad acts of one’s country than it is to decline to incorporate moderately bad acts. Certainly the spatial metaphor of penumbral agency licenses no such thing, for there is no reason to think that the distance an act of one’s country lies from one’s core agency depends on how bad the act of one’s country is. Second, independent of the opportunities for instrumentalism that Enoch’s account invites, the way in which we assess the generic citizen’s responsibility (or her disclaimers thereof) should vary according to the nature of the offense in question. The point of the discussion
on analyzing responsibility assignments in Part I was precisely to establish that we do, and should, measure responsibility according to both the relationship between the responsible agent and the wrong as well as the severity of the object for which responsibility is assigned. My account is sensitive to both of these factors, while Enoch’s omits the second. For all of these reasons, I think it preferable to assign responsibility

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351 Against an account like mine that would conceive of the generic citizen as blameworthy, Enoch offers the following hypothetical: Consider two citizens of the same country at the same time, Proud and Detached. Neither Proud nor Detached has participated in some national transgression, but Proud routinely experiences pride in her country’s achievements, while Detached does not. If both Proud and Detached disclaim responsibility for the national transgression, Proud has done something worse. Enoch thinks that, relative to an account that would hold that Proud and Detached bear responsibility independent of their taking responsibility, his account can better explain why it is worse for Proud to disclaim responsibility than for Detached to do so: Harboring pride in her country’s achievements, Proud has already taken responsibility for her country’s acts. Thus, when her country transgresses, she evades a responsibility that is already there. But Detached, not having yet taken responsibility for his country’s achievements, does not evade a responsibility that is already there.

By contrast, on an account where Proud and Detached are deemed to bear responsibility independent of their taking it, Enoch thinks that we cannot make sense of the claim that Proud has done something worse than Detached in disclaiming responsibility. I do not agree. For one thing, Proud may bear a closer causal relationship to the transgression than does Detached: Proud’s pride may have provided moral support to the transgressors, even if the pride was rooted in achievements totally unrelated to the transgression. Americans engaging in the torture of Iraqi detainees may be motivated in part by the belief that they are seeking to protect a nation that not only they but other proud citizens hold dear; indeed, the presence of others who share their pride might well reinforce that pride, insofar as the convergence of opinion about the nation’s pride-worthiness helps persuade each proud citizen that he or she must be correct in his or her opinion. (This, anyway, is the suggestion we encountered in Chapter 2, in the discussion of accounts that ground shared responsibility in the ways in which interlocking intentions can provide teleological warrant for the group act.) Second, our more severe response to Pride may just result from our super-imposing upon the responsibility Proud and Detached each deserve in virtue of their citizenship an enhancement in Proud’s case for experiencing an attachment to the nation-state stronger than that demanded of her. That is precisely the way in which I argued, in Part II.D, that we should understand the magnitude of responsibility accruing to someone like Proud, whose commitment to her group is stronger than that demanded by the group.
to the disengaged citizen (or the disengaged member of another institutional group) for the group transgression, and not (or not simply) for the citizen’s disengagement.

2. Commitment and Responsibility Over Time

Finally, there is the question of group-based shared responsibility over time: How ought we to respond to paradigmatic members when it comes to group transgressions committed before or after their tenure in the group?

The account I offer here cannot be used to justify holding individuals responsible for group transgressions that occur after their tenure in the group. These individuals did contribute to the group’s agency and thus they do bear a connection to the group’s transgression. But, because they no longer belong to the group, they are not subject to the normative pressure to stand in solidarity with the transgression’s participants. Further, their prior commitment to the group cannot be read as an expression of support for the group in its present manifestation – that is, as the group that would commit, and has committed, the transgression in question. The ground of responsibility that my account identifies, then, does not apply in the case of future transgressions.352

But the situation is different when it comes to historic transgressions – *i.e.*, those that occurred before current members joined the group but for which the group has not yet been made to account. Contemporary members’ contributions to the group’s calling card bestow continued life upon the group that transgressed; in other words, these

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352 This is not to say that there are not other grounds that would sustain an assignment of responsibility to past members for transgressions occurring after their tenure in the group. For example, where the transgression results from a group culture that past members established or preserved, they may bear some responsibility for that transgression.
members extend the group that transgressed into the present. Further, their commitment to the group signals support for the group that it is—i.e., the group that committed the transgression in question. In this way, then, the commitment of contemporary members can rightfully be read as an expression of support for a transgressing group. Finally, where the transgression occurred in the recent past, and the group’s current member include some senior members who belonged to the group at the time of its transgression, it is not clear that matters differ, in a morally relevant way, from the garden-variety group transgression in which not all members have participated. The intuition that matters are different rests, I believe, upon the faulty notion that members have some control over the acts their group undertakes during their tenure— but not those it undertakes before—and it is this control that really grounds the members’ responsibility. But members may bear responsibility for an act of their group even if there was no possibility that they could have prevented the act’s commission. (Recall Mary, from Chapter 3, who had no control over the production unit at her company, and hence could neither have contributed to, nor prevented, the faulty production practices leading to the tampered medicines.) Responsibility rests on members’ commitment, and there is no reason to think that the commitment applies with lesser force between senior and junior members than between members of roughly the same vintage. The group is the same group, and the joint project is the same joint project. The normative pressure on paradigmatic members to

353 Indeed, we might think that the duty of recognition extends beyond the grave such that current members owe solidarity not just to living senior members but also to individuals long dead who enjoyed membership to the time of their deaths. It is doubtful, on the other hand, that current members owe the obligations of membership to individuals who belonged to the group at the time of its transgression but who have since left the group. In leaving the group, they renounce any claim on others’ adherence to the obligations of membership, including members’ obligations to accept responsibility for the group’s transgression.
stand together is no less compelling for historic transgressions than contemporary ones. For all of these reasons, it is appropriate to assign responsibility to contemporary paradigmatic members for historic transgressions in just the same way that it is appropriate to assign responsibility to them for contemporary transgressions.\footnote{354 It may, however, be the case that the sanctions it is appropriate to impose upon members for historic injustices will be different from those it would be appropriate to impose upon them for contemporary transgressions. In particular, where the transgression’s victims are no longer alive at the time of judgment, creative ways of restoring them to justice will have to be found.}

\section*{IV. Conclusion}

When we disentangle the elements of a responsibility assignment, we see that there is nothing mysterious, let alone perverse or barbaric, about assigning responsibility for a group transgression to paradigmatic members who do not participate in that transgression. These members incur responsibility as a result of their commitment to the group, and the magnitude of their responsibility will vary according to the greater of the group’s expected level of commitment or their felt commitment.

When it is our own group that transgresses, then, we can neither avert our eyes nor look on in horror, for neither willful blindness nor righteous indignation is a stance available to us. To see the group transgression is, of necessity, to see that we are implicated in it. We needn’t have played a role in the transgression, for the role we play in the group itself furnishes warrant enough for our blame.
CHAPTER 5
MEMBERSHIP RESPONSIBILITY AND THE REACTIVE ATTITUDES

“[I]f today I heard that some American had committed suicide rather than live in disgrace, I would fully understand....”

-- J.M. Coetzee, Diary of a Bad Year

I. INTRODUCTION

It is now horrifyingly apparent that American prosecution of the war in Iraq, and its attendant detention policies, have been rife with abuses. American soldiers killed Iraqi civilians by throwing them into the Tigris, or shooting them in “massacres” at Haditha and Mahmoudiya, or running them over in supply-carrying convoys intent on moving through traffic. During raids, it became “very common” to shoot the family dog in front of the family who owned it, and routine to “destroy” the family’s property with no subsequent compensation. Detainees died after having been exposed to extreme temperatures, or subjected to stress positions, in one case, an Iraqi prisoner suffered

355 J.M. COETZEE, DIARY OF A BAD YEAR 43 (2007) (reflecting on American shame in the face of abuses committed in the course of the war in Iraq.).
356 Dexter Filkins, The Fall of the Warrior King, N.Y. TIMES (Oct. 23, 2005).
359 Id.
a lethal heart attack after he was forced to do long sessions of jumping jacks with a sandbag over his head.\textsuperscript{362}

Cries of ignorance, perhaps once possible, are now unavailable and unavailing. The pictorial evidence has been too graphic, the pleas for judicial relief too numerous, and the revelations by journalists and veterans too widespread and wrenching, for any of us to invoke the Bush Administration’s penchant for secrets and deceit as sources of our immunity.\textsuperscript{363} The question of responsibility therefore presses upon us: What responsibility do individual Americans bear for these transgressions?\textsuperscript{364}

For most commentators and scholars, the answer is “none,” at least if we are referring to the responsibility of Americans who did not directly participate in the crimes in question. Instead, the tendency is one of deflection (onto, for example, George W. Bush),\textsuperscript{365} or submersion (by the Obama Administration, which implores the American public to move forward).\textsuperscript{366}

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\begin{itemize}
\item \textsuperscript{361} Seth Hettena, \textit{Iraqi Died While Hung From Wrists}, AP, Feb. 17, 2005.
\item \textsuperscript{362} Greenwald, \textit{supra} note 360.
\item \textsuperscript{363} For examples of statements issued by the Bush Administration intended to deny its role in these abuses, see, for instance, Dan Froomkin, \textit{Pack of Liars}, White House Watch, Dec. 12, 2008, \textit{at} washingtonpost.com.
\item \textsuperscript{364} While I alternately refer to the acts in question as “abuses” or “transgressions,” it may be worth noting that others view these acts as sufficiently egregious to warrant the label “war crimes.” \textit{See, e.g.}, JEREMY BRECHER, JILL CUTLER, AND BRENDAN SMITH, \textit{eds.}, \textit{IN THE NAME OF DEMOCRACY: AMERICAN WAR CRIMES IN IRAQ AND BEYOND} (2005). \textit{Cf.} Neta C. Crawford, \textit{Individual and Collective Moral Responsibility for Systemic Military Atrocity}, 15 J. POLITICAL PHILOSOPHY 187 (2007) (arguing that the killing of Iraqi civilians by American soldiers at Haditha and Ramadi constitute “systemic atrocities,” – \textit{i.e.}, those that are unintended but foreseeable, resulting from the constraints of a larger social structure rather than any individual’s intentional act).
\item \textsuperscript{365} \textit{See, e.g.}, Andrew Sullivan, \textit{Dear President Bush}, The Atlantic (Oct. 2009), \textit{available} at \textit{http://www.theatlantic.com/doc/200910/bush-torture/1}.
\item \textsuperscript{366} \textit{See, e.g.}, Shailagh Murray, \textit{A Commission on Enhanced Interrogation? Obama Rebuffs Idea}. Washingtonpost.com (Apr. 23, 2009), \textit{at}
\end{itemize}
These responses find support in a conception of responsibility familiar to us from criminal law, in which individual causal responsibility is seen to be the sine qua non of culpability. Yet, as a handful of scholars have recently argued, the collective nature of crimes of war escapes the bounds of the individualist paradigm of criminal law. These

http://voices.washingtonpost.com/44/2009/04/23/a_commission_on_enhanced_inter.html

367 For a statement embracing the principle of individual culpability in international law, see the Appeals’ decision in Prosecutor v. Tadic, before the International Tribunal for the former Yugoslavia (ICTY): “The basic assumption must be that in international law as much as in national systems, the foundation of criminal responsibility is the principle of personal culpability: nobody may be held criminally responsible for acts or transactions in which he has not personally engaged or in some other way participated (nulla poena sine culpa).” Prosecutor v. Tadic, Case No. IT-94-1-A (Int’l Crim. Trib. for the Former Yugoslavia Appeal Judgment, July 15, 1999), at ¶ 186 (footnotes omitted). Resistance to accomplice liability in domestic law is a prominent place exhibiting reverence for the principle of individual culpability as, for example, in Joshua Dressler, Reassessing the Theoretical Underpinnings of Accomplice Liability: New Solutions to an Old Problem, 37 HASTINGS L.J. 91 (1985).

368 See, e.g., Mark Osiel, The Banality of Good: Aligning Incentives Against Mass Atrocity, 105 COLUM. L. REV. 1751, 1768 (2005) (“Among U.S. scholars in the field, only Fletcher and Drumbl have thus far entertained the possibility that the first principle of domestic criminal law--personal culpability--may have to be modified or abandoned, if international law is ever to successfully ‘adapt[ ] . . . the paradigm of individual guilt to the cauldron of collective violence’ epitomized by mass atrocity.’”) (quoting Mark A. Drumbl, Pluralizing International Criminal Justice, 103 MICH. L. REV. 1293, 1309 (2005) (hereinafter Pluralizing), and citing id. and George P. Fletcher, Collective Guilt and Collective Punishment, 5 THEOR. INQUIRIES L. 163, 168-69, 173-74 (2004)); see also Mark A. Drumbl, Collective Violence and Individual Punishment: The Criminality of Mass Atrocity, 99 NW. L. REV. 539, 542 (2005) (hereinafter Collective Violence) (“The dominant discourse determines accountability through third-party trial adjudication premised on liberalism's construction of the individual as the central unit of action. This means that a number of selected guilty individuals squarely are to be blamed for systemic levels of violence.”) (footnote omitted); George P. Fletcher, The Storrs Lectures: Liberals and Romantics at War: The Problem of Collective Guilt, 111 YALE L.J. 1499 (2002). Cf. LARRY MAY, CRIMES AGAINST HUMANITY: A NORMATIVE ACCOUNT 246-49 (2005) (advocating collective responsibility as a supplement to individual responsibility in “situations of group-based harm, [where] many members of the society may have chosen to play a role in the climate that has been instrumental in nurturing the harmful conduct.”); LARRY MAY, WAR CRIMES AND JUST WAR 247-56 (2007) (offering a qualified defense of joint criminal enterprise as a kind of collective responsibility where
authors have sought to cast the net of responsibility more widely, to ensnare not just the immediate perpetrators of war crimes, but also the facilitators and not-so-innocent bystanders to these crimes. Nonetheless, even these more encompassing accounts apportion blame and sanction strictly in accordance with the actor’s participation in the crime in question. In this way, those who have called for a more inclusive understanding of responsibility for atrocity have remained faithful to the principle of individual culpability embodied in international criminal law.

By contrast, the account presented in the last chapter – the account of membership responsibility -- takes seriously the notion that individuals may bear responsibility for the transgressions of their group even where they do not bear the hallmarks of individual culpability. The task of this chapter is to adapt the account of membership responsibility to provide an argument for the claim that American citizens bear responsibility for crimes committed in the course of the “war on terror” – with a specific focus on American

the responsibility of each member turns on his having an intention to participate in the collective injury).

George Fletcher’s interest in collective guilt is, as we shall see, intended not to implicate those who acquiesced in atrocity but instead to mitigate the responsibility of those who committed it. Fletcher, supra note 368 at 1541-42. Drumbl is prepared to countenance group-based responsibility, but only if individual group members are permitted “the subsequent opportunity … to affirmatively demonstrate why they should be excluded from the liable group.” DRUMBL, supra note 6 at 204. Accordingly, group members who resisted or spoke out against mass atrocity would be exempt from having to contribute to a collective sanction levied against other members of the group, on Drumbl’s account. Id. at 208. Similarly, others who have entertained the notion of collective sanctions in this context contemplate internal rights of contribution, which would allow the group to apportion the sanctions in light of members’ relative amounts of wrongdoing. See, e.g., Osiel, supra note 268 at 1842-1859 (advocating the imposition of collective civil sanctions on military units, the justness of which is purportedly secured by allowing military officers to redistribute the sanction internally so that it is levied in accordance with individual guilt). Cf. Darryl Levinson, Collective Sanctions, 56 Stan. L. Rev. 345 (2003) (advocating collective sanctions within criminal law, but anticipating that the sanctions will work themselves out internally, to cohere with principles of individual culpability).
military activities in Iraq -- and to explore the implications of membership responsibility in this context.

More specifically, the citizens whose responsibility shall concern us here are those who did not participate in the war effort. They need not have supported the war; indeed, some of them may have actively sought to protest the war, and the abuses committed in its course when these came to light. Further, the abuses that raise questions of shared responsibility should be those that are ascribable to the United States in the first instance. As I mentioned in the Introduction, there may be deep and thorny questions around when an act carried out by some member(s) of a group counts as an act of the group. The various transgressions committed in the course of the war in Iraq are emblematic of this set of problems. I do not seek to articulate here the conditions under which it is appropriate to ascribe a transgression carried out by some American(s) to the United States. But I think we can marshal some examples to see which transgressions clearly count as acts of the individual but not of the group; which would function as paradigmatic acts of the nation-state; and which represent borderline cases. Thus, for example, I take the rape at Mahmoudiya, in which a soldier entered the home of an Iraqi family, raped a 14-year-old girl and then killed her and her family, to be an instance of a soldier acting on his own.\footnote{See, e.g., James Dao, \textit{Ex-Soldier Gets Life Sentence for Iraq Murders}, N.Y. TIMES, May 21, 2009.} Though the war provided the circumstance for his offense, his acts were completely disconnected from any military mission and could not, I believe, legitimately be ascribed to the United States.\footnote{On the other hand, even this case might, in some measure, stem from a culture that denigrates the worth of Iraqis, and the denigration could itself be attributed to the U.S. military. Nonetheless, I submit that if any transgression committed by U.S. soldiers}
military interrogations and renditions of detainees by the CIA would, I submit, count as American transgressions. These acts were sanctioned by the highest levels of government and were considered (however mistakenly) to be in the service of the country’s interests. Finally, cases like the torture at Abu Ghraib or the Blackwater shootings in Nisour Square are more difficult to assess. There is some controversy about whether the young soldiers implicated in torture at Abu Ghraib were acting in line with, and perhaps even in light of, military directives licensing enhanced interrogation techniques, or instead whether (as the Bush Administration insisted) their acts were simply the unauthorized excesses of a “few bad apples.” The Blackwater shootings render a group ascription problematic because the Blackwater soldiers were private security guards, and there may be difficult questions around when the conduct of an independent military contractor -- or that of its agents -- ought to redound to the United States. For purposes of avoiding these difficulties, I focus here only on those against Iraqis in the war in Iraq is an instance in which it would be illegitimate to ascribe the transgression to the group, this is one such case. But cf. Ira S. Bushey & Sons v. United States, 398 F.2d 167 (2nd Cir., 1967) (holding United States liable for damage to a privately-owned ship committed by an off-duty drunken U.S. sailor on the ground that the United States should have expect disorderly drunken conduct from its sailors, and taken precautions to ensure that their disorderliness not give rise to property damage).

Stephen Grey, The Agonizing Truth About CIA Renditions, Salon.com, Nov. 5, 2007, at http://www.salon.com/news/opinion/feature/2007/11/05/rendition (“In the course of investigating the rendition program for the past four years, I have interviewed victims, CIA pilots, case officers who have actually carried out renditions, senior CIA officers who directed such operations and officials at the White House who were involved in authorizing such measures.”).

See e.g., Scott Shane and David Johnston, U.S. Lawyers Agreed on Legality of Brutal Tactic, N.Y. TIMES, June 6, 2009 (“Previously undisclosed Justice Department e-mail messages, interviews and newly declassified documents show that some of the lawyers … went along with a 2005 legal opinion asserting that the techniques used by the Central Intelligence Agency were lawful. That opinion [gave] the green light for the C.I.A. to use all 13 methods in interrogating terrorism suspects, including waterboarding and up to 180 hours of sleep deprivation…”).

transgressions, like torture committed in the course of an official interrogation and the CIA renditions, that may uncontroversially be ascribed to the United States.

The first Part of this chapter sets forth the argument that U.S. citizens are legitimate targets of blame for transgressions of this kind. But what exactly does responsibility of the American entail? How can it be squared with a national mood that seems impervious to guilt for these transgressions, or with a righteous sense of innocence on the part of those who sought to do all they could to halt the war and voice outrage over its abuses? And what kind of sanctions does responsibility for these non-participants license?

The remainder of the chapter seeks to answer these questions. It explores the implications of the account of membership responsibility, as a way of elucidating both the magnitude and implications of Americans’ responsibility, and the implications of bearing membership responsibility more generally. To that end, in Part II, I contemplate the emotional responses appropriate to Americans who did not participate in the transgressions in question. I end the chapter, in Part III, by gesturing to a series of material sanctions that correspond to the kind of responsibility I believe Americans rightly bear.

375 John Parrish has recently written an article in which he seeks to argue that Americans bear responsibility for illegal killings and other injuries suffered by Iraqi civilians and he too contends that dissidents bear responsibility for what the state did in their name. John M. Parrish, Collective Responsibility and the State, 1 INTERNATIONAL THEORY 119 (2009). Nonetheless, the kind of responsibility Parrish contemplates is forward-looking – it is not responsibility as blame but instead responsibility as an obligation of repair, independent of individual blameworthiness. Id. at 121-22, 140. The account I go on to advance, by contrast, is intended to establish that individual citizens warrant blame for U.S. war crimes in Iraq.
II. AMERICANS’ RESPONSIBILITY AND HUMAN RIGHTS’ VIOLATIONS IN IRAQ

The touchstone of responsibility in the account developed in the last chapter is a commitment demanded by membership in an institutional group with a joint project, even one whose purpose is capacious enough to admit multiple – and perhaps even competing – conceptions of it. Applying that account here, I want to argue that each citizen is expected to harbor a commitment to the nation-state, and this commitment provides a ground for holding each citizen responsible for the nation-state’s acts, no matter the extent of her participation in or opposition to those acts. This is not to say that citizenship furnishes an insuperable ground of blameworthiness – we shall see that there may be cases in which dissent functions as a sufficiently weighty counterpoint to membership responsibility to exempt the dissident from blame. The point is rather that blame attaches in virtue of citizenship in the first instance; whether and to what extent the license to blame ought to be undercut in virtue of the citizen’s dissent are matters I shall explore in Part II.

As a preliminary matter, it may be useful to recall the understanding of membership articulated in Chapter 3, and to transpose that understanding to the context of citizenship. First, the account to be advanced is restricted to citizens who qualify as moral agents. The agency requirement follows from the conditions under which it would be permissible to hold an individual responsible for her own acts. Citizens who do not satisfy the criteria for individual responsibility ought not to bear responsibility derived exclusively from their group affiliations. Henceforth, I shall use the term "citizen" as shorthand for all mentally competent, adult citizens.
Second, an assignment of responsibility is appropriate only if the citizen enjoys a genuine right of exit. The exit requirement follows from a more general understanding of responsibility, wherein one may not be made to bear responsibility where one could not have done otherwise. Typically, the opportunity to “do otherwise” is taken to entail that the party whom we hold responsible is one who had control over the act for which she is held responsible. I operate with a less stringent understanding of the conditions under which responsibility is appropriate. In particular, citizens can come to bear responsibility on my account even if they could not have prevented the act for which they are held responsible. But it must be the case that the ground of their responsibility – citizenship itself – is escapable. More to the point, responsibility is appropriately assigned to the citizen only if she is permitted to emigrate and is not unduly deprived by the state of the resources necessary to do so. I take it that it is relatively uncontroversial to assume that Americans possess genuine rights of exit.

Finally, as with the notion of paradigmatic membership articulated in Chapter 3, I shall privilege a normative delineation of citizenship over a formal delineation. In particular, the citizen whose responsibility I contemplate here is the one who conceives of herself as bound by the obligations of citizenship (which I take to include the analogs of the obligations of membership articulated in Chapter 3), and whom other citizens and outsiders expect to fulfill the obligations of citizenship. Thus the account to be advanced might well fail to reach the U.S. citizen who has lived abroad for some considerable amount of time. Notwithstanding the fact that she retains her formal membership in the nation-state, she might not conceive of herself as any longer bound by the obligations of
citizenship or, even if she does so conceive of herself, outsiders and other citizens might no longer expect her to fulfill the obligations of citizenship. Similarly, individuals who have been granted formal citizenship but are denied inclusion in the joint project of the nation-state would not be subject to the normative pressures that ground responsibility. Think here of Blacks in the Jim Crow south, or Jews in the early years of the Nazi regime, who still enjoyed formal citizenship but nonetheless experienced significant political disempowerment.

While formal citizenship may not be sufficient to qualify the individual for shared responsibility, it is likely necessary. This is because many of the obligations of citizenship are obligations from which the non-citizen is quite noticeably excluded – serving on a jury, casting a ballot on election day, enlisting in the military and so on. It is difficult to imagine that a person who is visibly foreclosed from participating in these central forms of American citizenship could nonetheless expect herself, and be expected by others, to fulfill the obligations of membership. I shall therefore assume that formal U.S. citizenship is a necessary condition for responsibility, though only satisfaction of the normative understanding of paradigmatic citizenship will be sufficient for a legitimate assignment of shared responsibility on the account I go on to advance.\(^{376}\)

The defense of the claim that citizens – as just delineated - bear responsibility proceeds in three steps: I first offer some general comments about the nature of citizenship on my account, and the way in which it grounds responsibility. I then argue

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\(^{376}\) The point is not to deny that permanent residents, or other non-citizens who bear a connection to the United States, might not also share responsibility for American transgressions. It is only to deny that their responsibility can be grounded in the account I go on to advance.
that citizenship in the United States provides a suitable locus – indeed, perhaps the most suitable locus – for a finding of membership responsibility within a large institutional group. Finally, I provide some further details about Americans’ responsibility for abuses committed in the war in Iraq.

**A. Citizenship and Commitment**

I argue here that each citizen bears a commitment to the nation-state, and this commitment provides a ground for holding each citizen responsible for the nation-state’s acts, no matter the extent of her participation or opposition. More specifically, the citizen’s commitment to the nation-state contains a normative dimension that requires the citizen to accept responsibility for her nation-state’s transgressions.

To get a better handle on the normative dimension of commitment, it will be useful first to contemplate other, more intimate contexts of commitment. Consider the marital union, for example. Individuals in a marriage must act with a certain regard for their union. While exit is a real option, each nonetheless bears an obligation to the other to refrain from actively entertaining that option, at least while less disruptive options exist. And, each is obligated to the other to present a united front to the world, for maligning one’s spouse to others would degrade the union and violate marital trust.

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377 Cf. HERBERT MORRIS, ON GUILT AND INNOCENCE 124-25 (1976) (arguing that a husband’s intention to commit adultery, even if never acted upon, constitutes a betrayal of one’s spouse because marriage “is defined partly by each partner being prepared to exercise restraint out of love and respect for the other. The man’s intention reveals that he is no longer prepared to abide by this condition.”).
Similarly, individuals in a joint business partnership must each also operate with a certain regard for the joint venture, and commit themselves to working out the kinks of the operation before contemplating dissolution. And, where one partner is empowered to, say, manage the partnership’s business, the other partner may not publicly disparage the result, and disavow responsibility for it. To do so would be to make a fool of the producing partner, and to exhibit a reproachable lack of loyalty.

Now, we should note that the strength of the obligations each member of the joint venture bears to the other(s) will depend on the strength of the commitment the joint venture expects of its members. Thus spouses typically have greater obligations of fidelity to each other than do business partners since a marriage typically demands more of the individuals comprising it than does a business venture. Nonetheless, some amount of fidelity follows from membership in the partnership just as it does in the marital union. More to the point, some amount of fidelity follows from membership in the nation-state, as well. While I will go on to discuss ways in which fidelity in the context of citizenship might differ in the nature of some of the obligations it entails relative to the notions of fidelity at work in a marriage or business partnership, I want for now to focus on obligations of fidelity that are constant – albeit with differing strengths – across these three contexts.

The citizen harbors a commitment to the nation-state and that commitment obligates him in special ways to his fellow citizens. The citizen has an obligation (though not an insuperable one) to operate with a certain regard for the ways in which his acts reflect on the nation-state. He must demonstrate a loyalty that requires, among other things and again not insuperably, that he not seek to emigrate because he disagrees with
his country’s conduct or policies before first seeking to press for change. Most relevant here, the citizen’s commitment entails that he recognize that he does not enjoy the standing of an outsider to condemn the acts of his nation-state as if he bore no connection to them. Instead, he must recognize that the nation-state’s acts are his as well as his compatriots, and that their shared citizenship licenses an assignment of responsibility to each (though not one that cannot be undercut in whole or in part of light of countervailing considerations, we shall see). To do otherwise is to denigrate the shared venture; it is to demonstrate an atomism incompatible with citizenship.

Importantly, the commitment that grounds the citizen’s responsibility is a normative component of citizenship. That commitment may well have attendant psychological effects – in particular, it may be accompanied by a feeling of loyalty toward one’s fellow citizens and the nation-state itself. Indeed, the commitment entails a normative expectation that the citizen will experience just these feelings. But the psychological concomitants of the citizen’s commitment are not themselves the ground of his responsibility. If they were, a citizen could deny responsibility simply by disclaiming any psychological attachment to the nation-state. Instead, the disaffected citizen bears an amount of responsibility for the nation-state’s transgressions that corresponds to the strength of the commitment citizenship entails, regardless of whether

378 But see Farid Abdel-Nour, National Responsibility, 31 Polit. Th. 693, 703 (2003) (contending that citizens’ national responsibility “only extends to the actions that have historically brought about the objects of their national pride.”) (italics in original); Meir Dan-Cohen, Responsibility and the Boundaries of the Self, 105 Harv. L. Rev. 959 (1992). Both Abdel-Nour and Dan-Cohen argue that citizens can share responsibility for the nation-state’s acts in virtue of actual feelings of national identification – in particular, acts that elicit pride or shame on the part of the citizen. The problem with these accounts is that they risk implicating outsiders who unwarrantedly identify with the country in question, or else exculpate disaffected insiders.
he has fulfilled his commitment by harboring the feelings of loyalty that the commitment demands.

That citizenship has the normative cast invoked here is a contingent, and not a conceptual, matter; citizenship need not function in this way everywhere and at all times. As I argued in Chapter 3, the strength of commitment demanded of members of a group varies, inter alia, in light of the group culture. Thus, I allow that citizenship in some socio-political entities might involve a dormant or very weak commitment, in which case the obligations of membership may be defeated by just about any countervailing obligation or entitlement. Citizenship in some of the states of the Union might well be of this kind. But I believe that citizenship in most nation-states comprehends a sufficiently robust normative dimension to license an assignment of shared responsibility for national transgressions on the basis of membership alone. While I focus in the next Section on the relevant features of the American experience, I assume that analogous applications of the account of membership responsibility will be warranted for other nation-states that impose upon their citizens non-trivial obligations of membership.

B. Americans’ Commitment to the United States

There are multiple ways in which one could draw out the joint project of the United States. For our purposes, it will suffice to focus on the shared ideological elements of membership in the nation-state, which are brought to light with special force in a pervasive quasi-spiritual understanding of the nation’s mission, and the connection to martyrdom that this understanding yields.
At the time of the nation’s founding, Americans conceived of themselves as a chosen people, and their purpose as a kind of “errand into the wilderness.” The image of America as “a city on a hill” – a phrase borrowed from Jesus’s Sermon on the Mount – figures in a continuous stream of political speeches, from the earliest Puritan settlers to modern-day political figures as diverse as John F. Kennedy and Ronald Reagan, with riffs on the phrase provided by, among others, George H. W. Bush (“a thousand points of light”), Wesley Clarke (“a beacon of hope and a source of inspiration for people everywhere”), and John Kerry (“we have moved closer to the America we can become – for our own people, for the country, and for the world.”). In the wake of the attacks of September 11, 2001, America set for itself what some have called the “imperial mission” of delivering the canons of American ideology to the world at large, a mission toward which “God is not neutral,” as former President George W. Bush intoned to the American people.

Religious elements pervade the conception of American citizenship, seen most readily, perhaps, in the steps required of foreigners who wish to become U.S. citizens. The process of Americanization, as the 1997 Jordan Report on naturalization stated,

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382 Fouad Ajami, Hail the American Imperium, U.S. News and World Reports 28 (Nov. 5, 2002). See also W.J. Bennett, Why We Fight: Moral Clarity and the War on Terrorism (2002); W. Berns, Making Patriots (2001), Dinesh D’Souza, What’s So Great About America (2002). See generally Smith, supra note 379 at 191-210.
should “cultivate” immigrants in a “shared commitment to the American values of liberty, democracy and equal opportunity.” Peter Spiro, a noted theorist of citizenship, has contended that this recommendation makes “America look[] more like a religion, allowing for conversion of belief in the place of any need of lineage.” (As an aside, it might be worth noting that the current process for receiving permanent residency requires the applicant to swear under oath that she is not, and has never been, a member of the Communist party – a rather quaint requirement in the post-9/11 era, but one that underscores that what it is to belong here is to commit to a particular ideology.)

If the United States was founded in a higher calling, it makes sense that its citizens should be willing to die for its sake, or so political theorists have argued. The original delineation of American citizenship – who was in and who was out – was itself determined with an eye to national security. Membership in the early years of the nation would be conferred to any White person born in the United States as a way of “guarantee[ing] … the manpower for the nation’s defense.” And, today, military service is the quickest and surest route to naturalization for those not born here: “In times of peace, one year’s honorable service in the U.S. armed forces qualifies an alien for naturalization; during periods of military hostilities, including now the post 9/11 period, an alien becomes eligible on enlistment….”

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385 Id. at 47.
386 Cf. David Weissbrodt and Laura Danielson, Draft Chapter 12 of the Immigration Nutshell, at http://www1.umn.edu/humanrts/immigrationlaw/chapter12.html (last visited Nov. 19, 2010) (“Individuals belonging to the Communist Party or other totalitarian groups (INA § 101(a)(37)) … may not obtain naturalization. INA § 313(a)(4).”).
388 Id. at 38.
Moreover, the connection between military service and citizenship is not just pragmatic. As Paul Kahn has argued, for example, the prospect of self-sacrifice is foundational in the American political culture, both in the sense that the United States was born in revolution, and that the United States is sustained by the government’s continued authority to demand that Americans kill or be killed on its behalf. To make his point, Kahn invites us to consider the naturalization oath of allegiance, which, in requiring the individual seeking American citizenship to pledge that she will “bear arms on behalf of the United States when required by law to do so,” conveys, Kahn notes, the “sovereign demand on citizenship as an open-ended willingness to sacrifice.” And it is not just for immigrants-cum-citizens that the obligation to die for America is made salient; other theorists have noted that, among the duties that all American citizens bear, “[a]bove all others is the duty to bear arms and to face the mortal hazards of the battlefield.” Yet the prerogative of the sovereign to demand its citizens’ deaths likely makes sense only within a nation-state that claims a commitment of its citizens of the kind at issue here. The notion that Americans should be willing to kill and die for

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390 PETER SPIRO, BEYOND CITIZENSHIP: AMERICAN IDENTITY AFTER GLOBALIZATION 97 (2008). See generally GEORGE KATEB, PATRIOTISM AND OTHER MISTAKES 7 (2006) (“How is patriotism most importantly shown? Let us not mince words. The answer is that it is most importantly shown in a readiness, whether reluctant or matter of fact, social or zealous, to die and to kill for one’s country.”).
391 David Luban has offered a critique of the state cast as jealous god, demanding its citizens’ lives when its own existence is threatened, and fighting wars against other states with near impunity. David Luban, State Criminality and the Ambition of International Criminal Law, in ACCOUNTABILITY FOR COLLECTIVE WRONGDOING (Tracy Isaacs and Richard Vernon eds., forthcoming 2011). While I find his critique compelling, my purpose here is simply to describe, and not evaluate, the cultural phenomenon in question.
America is, then, a strong piece of evidence in support of the claim that American citizenship has a normative cast.

Of course, it cannot be gainsaid that the prospect of being called to the battlefield is remote for most Americans; we are far more pre-occupied with the travails of our private lives than with the burdens of citizenship. Nonetheless, there are moments in Americans’ lives – moments of “extraordinary politics,” as Bruce Ackerman refers to them – when Americans are called upon to transcend the pursuit of self-interest in deference to the needs of the country or their compatriots.393 Indeed, the obligation to act with an eye toward the national interest – whether in times of war or peace -- is, in America, a national trope, figuring in presidential addresses (“Ask not what your country can do for you, but what you can do for your country”) and patriotic slogans (“I only regret that I have but one life to give my country”).

Briefly put, it is hard to imagine an America where commitment to the nation-state is not a feature of the citizen’s identity that sits comfortably alongside, and sometimes even transcends, other sources of affinity, as confirmed by the fact that Americans rank higher than any other people on patriotic sentiment.394

With that said, one might think that a willingness to engage in sacrifice – whether mortal or more mundane – is just one part of the story. Perhaps just as central to citizenship in the United States is an entitlement – even an obligation – to protest where one thinks the government is going astray. Two worries might arise in conjunction with this thought: First, dissent seems contrary to the understanding of citizenship I have just

394 See, e.g., Jack Citrin, Political Culture, in UNDERSTANDING AMERICA: THE ANATOMY OF AN EXCEPTIONAL NATION 147, 154 (Peter Schuck and James Q. Wilson eds., 2009).
advanced. Second, dissent seems contrary to the understanding of fidelity that I advanced above, wherein fidelity demands that the group member not air grievances outside the group. In response to these worries, we should note that the tension to which they point is only illusory: The practice of dissent, far from being taken to rend the fabric of national unity, is reckoned as a paradigmatically American form of enacting one’s citizenship, and construed as part of the project of national stewardship. Thus, dissent can function as a means to fulfilling the obligation to act with an eye toward the interests of the group. And, dissent need not undercut the citizen’s loyalty so long as she intends her protest as a means to convert her compatriots to her preferred path for the group, rather than an effort to join the chorus of indignant outsiders. Put differently, the ideal citizen will strenuously press her objections when she is in the exclusive company of her compatriots, but later steadfastly stand with her fellows to be judged with them even for the conduct that she deplored. And, so long as dissent has the nation-state’s welfare as its objective, the citizen does not betray her compatriots in undertaking it.

395 Consider, for example, Justice Brandeis’s stirring defense of the right to dissent in his concurrence in Whitney v. California, 274 U.S. 357 (1927), a case challenging the defendant’s conviction for her membership in the Communist Labor Party: “Those who won our independence believed … that the greatest menace to freedom is an inert people; that public discussion is a political duty; and that this should be a fundamental principle of the American government. They recognized … that the path of safety lies in the opportunity to discuss freely supposed grievances and proposed remedies. … Recognizing the occasional tyrannies of governing majorities, they amended the Constitution so that free speech and assembly should be guaranteed.” Id. at 375 (footnote omitted). Cf. Andrew Mason, Special Obligations to Compatriots, 107 ETHICS 427, 444 (1997) (“The idea that we have a special obligation to our compatriots to participate fully in public life has been thought to include or entail various specific obligations, such as an obligation … to keep a watchful eye on government and speak out when it acts unjustly.”)
C. Americans’ Responsibility

I have argued that American citizenship is pervaded by a deep, quasi-spiritual commitment to the nation-state, made most plain in the duty of citizens to bear arms and lay down their lives for the United States. And, even if one resists the idea that ultimate sacrifice lies at the heart of what it means to be an American, one should still acknowledge that the expectations of loyalty and lesser sacrifices, imposed on behalf of the United States or one’s fellow Americans, condition the American identity, and bespeak an important kind of commitment that entails membership responsibility.

In short, Americans are bound to one another to stand in solidarity when the nation-state is judged. The commitment of each entails that each accept responsibility for acts of any of the others that are ascribable to the nation-state. Thus the citizen must accept responsibility for American war crimes in Iraq. To do otherwise would be to belittle her commitment, and to betray a piece of herself in the process.\footnote{Avia Pasternak has advanced an account of citizenship as an associative obligation that resonates well with the conception of citizenship articulated here. Avia Pasternak, *The Distributive Effect of Collective Punishment*, in *Accountability for Collective Wrongdoing* (Tracy Isaacs and Richard Vernon eds., forthcoming 2011). Nonetheless, I do not agree with Pasternak that her account can justify an equal distribution of burdens among citizens. Instead, it seems to me that the “solidary” nature of citizenship would be disrupted if each citizen were to carry an equal burden independent of the extent of his or her participation in the state transgression in question. Far from fostering solidarity, an insistence upon an equal distribution in the face of differential contributions to the wrong might instead prompt friction between citizens, as those who did not participate in the wrong rightfully awaited exoneration – or at least relief from the sharing of burdens – from those who did participate. My account, by contrast, seeks to be sensitive to the different kinds of relationships citizens can have to a transgression of their nation-state, and to adjust the magnitude of responsibility accordingly. At the same time, it views citizenship as an inescapable ground of responsibility, and in that way may well honor the good of citizenship that Pasternak helpfully identifies, without fomenting the resentments to which, I worry, her account may give rise.}
The foregoing provides insight into not only the generic American’s responsibility for abuses in Iraq but that of the opponent of the war as well, for the dissident also harbors a commitment to the nation-state. Indeed, as we have seen, it is in virtue of this commitment that many dissidents enact their opposition. They believe that the pursuit and conduct of the war in Iraq grossly betray values they take to be fundamental and sacred to their beloved country, and their opposition is intended to restore America to its rightful path (or their conception of it, anyway). Were they not so committed to the United States, they might well have sought to leave it. Having stayed, however, they must accept that its acts redound to each of them.

In Chapter 4, I argued that two factors govern the magnitude of a responsibility assignment. First, and most obviously, responsibility turns on the nature of the injury in question. Thus, the murderer is more blameworthy, ceteris paribus, than is the thief. Second, the magnitude of a responsibility assignment varies according to the nature of the relationship of the individual assessed to the injury for which we seek to assign responsibility. Thus, for example, Kitty Genovese’s assailant bears more responsibility for her death than do the residents of Kew Gardens; the former intends her death, while

\[397\] Cf. William Galston, In Defense of a Reasonable Patriotism 2 (2010) (manuscript on file with author) (‘Reasonable patriots will work harder to correct the flaws of their own country than the flaws of other countries, because they care more about their own country and feel more deeply implicated in its shortcomings.’).

\[398\] Juha Raikka is one who has argued that even those who dissociate themselves from their group’s wrongdoing may nonetheless warrant blame for that wrongdoing. Juha Raikka, On Disassociating Oneself from Collective Responsibility, 23 SOC. TH. & PRACTICE 93 (1997). In brief, Raikka argues that dissidents come to bear responsibility for group acts that they oppose where they must participate in, or otherwise support, an evil practice to oppose that same or another evil practice. Raikka’s account is not as far-reaching as my own, and it is particularly unhelpful here, because it is far from clear that American opponents of the war in Iraq need participate in any evil practice to voice their opposition.
the latter recklessly refuse her rescue, and thereby contribute to her death.\textsuperscript{399} Earlier, I referred to these two factors, respectively, as the \textit{object} and \textit{ground} of responsibility.

Thus, regarding American responsibility for abuses in Iraq, we may say that the magnitude of the citizen’s responsibility corresponds to the nature of America’s acts, as well as the nature of the relationship between the citizen and the abuses in question. It is clear that the perpetrators of these abuses bear responsibility to a far greater extent than does the generic citizen, who was stateside, going about his daily business, with news of the war in Iraq as a backdrop. The point of the last two sections, however, is to establish that even this citizen bears some responsibility for these abuses, simply in virtue of his citizenship. More specifically, as I argued in Chapter 4, the default magnitude of his responsibility will correspond to the strength of the commitment that America demands. The amount of responsibility he rightfully incurs can be adjusted up or down. As we saw in Chapter 4, an enhancement is in order where the citizen experiences a commitment to the nation-state greater than that demanded of him, since the expressive component of his additional sense of commitment is a further ground of responsibility. On the other hand, and as we shall see in Part II, dissent can function to diminish the magnitude of the American’s responsibility. Two assumptions round out this part of the account. First, I assume that it is possible to measure the extent of expected or actual commitment, but I do not offer a methodology for doing so here, leaving that task instead to sociologists and

\textsuperscript{399} Though the Kitty Genovese case has remained emblematic for social psychologists, it now appears that only a few of her neighbors would have heard the assault, and these neighbors would not have had a view onto the scene that would have allowed them to see the gravity of the assault. Rachel Manning, Mark Levine & Alan Collins, \textit{The Kitty Genovese Murder and the Social Psychology of Helping: The Parable of the 38 witnesses}, 62 AMER. PSYCHOLOGIST 555 (2007). In any case, at least one of her neighbors did call the police to report it. \textit{Id}. 

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psychologists. I assume further that, in the United States, the expected minimum strength of commitment is the same for all citizens who have reached the age of majority.400

**D. Patriotism – A Potential Objection**

Now, the claims about a normative commitment to America just advanced echo some of what one finds among theorists exhorting loyalty to country more generally. Since patriotic loyalty has been the subject of philosophical attack, it will be useful to entertain some of the debate around patriotism to determine the extent to which it impugns the account of membership responsibility. The first thing to note on that score is that I intend the claims I offer about commitment to the United States to be conceptual, not moral: What it is to understand American citizens’ relationship to the nation-state is to recognize the normative expectations American citizenship engenders. I do not take a stand on whether nation-states should be organized such as to demand commitments of this kind. But where they are so organized, we may evaluate their members on the basis of whether these members live up to the obligations of membership.

Even if I do not here champion patriotic loyalty, however, it would be highly problematic for my account if patriotism (or something like the commitment of citizenship, to the extent that commitment differs from patriotism) were a vice, as some theorists have recently argued. For it would be morally spurious to seek to defend the claim that citizens were responsible for the acts of their countries where the ground of the

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400 As I noted in Chapter 3, the strength of commitment expected of the group member might vary in conjunction with her position within the group. I allow that certain roles within the United States -- the presidency, to take an obvious example -- carry with them enhanced expectations of commitment.
ascription – viz. patriotism or citizens’ commitment to the nation-state – is itself morally odious. Accordingly, we must confront patriotism’s critics.

For some of these critics, what is troubling about patriotism arises at the level of distributive justice, where patriotism is alleged to entail that one prefer redistribution to the domestic rather than global poor. These critics may well be right that such a preference is troubling, but it is not clear to me that it is necessitated by every form of patriotism. In any case, the obligations entailed by commitment to the nation-state need not include distributive preferences, nor have they been described to include these preferences.

With that said, patriotism does undoubtedly involve a kind of partiality and other critics of patriotism have objected to the partiality it involves independent of the distributive justice consequences of that partiality. On their accounts, the partiality of patriotism is intellectually and morally dubious, at least if one adheres to the principles of Enlightenment thinking, and so should be repudiated no matter its consequences. And, because the citizen’s commitment also entails a kind of partiality – the citizen owes her fellows a set of obligations that she does not owe outsiders – the critique of the partiality of patriotism would extend to the partiality of citizenship as well. For that reason, it will be worth entertaining the objections.

Importantly, the critics of patriotism are not prepared to reject all forms of partiality. Doing so would commit them, for example, to denying that parents have reason

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401 See, e.g., Martha Nussbaum, *Patriotism and Cosmpolitanism*, BOSTON REVIEW OF BOOKS, Oct./Nov. 1994. Nussbaum’s critique covers more than issues of distributive justice – for example, she discusses the impoverishment in our capacity to understand ourselves if we don’t enjoy a robust appreciation of ways of life elsewhere – but she does press the distributive justice concern forcefully.
to treat their own children differently from other children – a claim likely to diminish the plausibility of their accounts. Instead, these theorists seek to argue first that the partiality of patriotism is qualitatively different from the partiality of family members to one another, and then contend that their objections to patriotism apply only to the former, and not to the latter.

Simon Keller, for example, argues that love of country is unlike love for one’s children because the former requires that one believe that one’s country possess good features while the latter does not.\footnote{Simon Keller, \textit{Patriotism As Bad Faith}, 115 ETHICS 563 (2005).} Given this alleged difference, patriotism, but not parenting, Keller argues, invites bad faith insofar as the patriot’s love can be sustained only if she retains her beliefs in her country’s good-making features, and retaining these beliefs may require that the patriot discount or even outright reject evidence that counts against them.

It is not clear what kind of “requirement” Keller thinks belief in the good-making features of one’s country is. There are two possibilities here: Keller might hold that the belief is a \textit{necessary pre-condition} of the patriot’s love of country or else that it is a \textit{cause} of that love.\footnote{The ambiguity arises because Keller seems to waver between these two possibilities. In introducing his conception of the patriot, for example, Keller seems to think that belief in the good-making features of the patriot’s country is a cause of the patriot’s attachment: Truly patriotic loyalty is entangled with a conception of the beloved country as having certain valuable characteristics, characteristics that make it, in some minimal way at least, genuinely worthy of patriotic love. Patriotism, on the common understanding of it, always takes itself to be grounded in the relevant country’s possession of certain specified, reasonably determinate qualities that the patriot takes to be genuinely valuable…. \textit{Id.} at 574. But later he argues that bad faith arises because the patriot’s love of country is not in fact grounded in her beliefs about the country’s purported good-making features; Put differently, it is not clear whether the claim is that the patriot can love...}
her country *only if* it contains good-making features or *only because* it contains good-making features. If the former, the belief would make the patriot’s love possible, and its absence would undermine patriotic love. But it is only the latter that would motivate or explain the patriot’s love of country. (By analogy, were I very sick now, I could not be sitting at my computer writing this, but my being well is not what motivates me to write this, or explains why I am writing it. So, my good health is a necessary pre-condition for my writing this but it is not the cause of my writing it.)\(^{404}\) And – crucially – it is only the claim that the patriot loves her country *only because* of its good-making features that would distinguish patriotic love from parental love.

More specifically, if the patriot loves her country *only because* of its good-making features then her love of country is conditional in a way that parental love, at least in its ideal form, is not. And, conditional love of one’s country might well render one susceptible to bad faith (especially, perhaps, because extricating oneself from one’s country involves material hardships that extricating oneself from, say, a friendship that has gone sour does not). But if the patriot’s love of country has the country’s good-making features function simply as necessary conditions for that love, then it is not clear that her love is conditional, or that it would tend to bad faith. On this possibility, the claim is that one’s country cannot be thoroughlygoingly bad if it is to sustain the patriot’s love. Might the same not be said about the love of a parent for her child – that that love

\(^{404}\) The example borrows heavily from one Jonathan Dancy uses in introducing the notion of a switching argument. *Jonathan Dancy, Moral Reasons* 65 (1993).
too might crumble were the child to be unremittingly bad? Or if the love were not to crumble, it is not clear that bad faith would explain its persistence: “I see that my daughter is just a bad apple, but I can’t help loving her. She’s my child, after all,” the parent of this child might say. And would it be so absurd for the patriot to say an analogous thing, especially if the country became evil after the patriot’s love of country had been established? Can we not, for example, imagine a German whose love of country arose before Hitler took power insisting (perhaps lamenting, perhaps celebrating the fact) that his love of the Fatherland survives even a regime hell-bent on evil?

All of this to say that the patriot’s love of country looks to be no more dependent on the country’s good-making features than a parent’s love for her child is. Accordingly, the patriot’s love seems to turn no more on bad faith than does the parent’s. So one could reasonably take issue with Keller’s contentions that patriotism is problematic because it leads to bad faith exaggeration of the beloved’s merits, and that patriotism can be distinguished from parental love on this score.

In short, then, if Keller’s claim is that patriotic love is unlike parental love insofar as the former, but not the latter, is grounded in a belief that the object of affection is worth loving, then the claim is implausible. Rather, it looks like the patriot loves her country for the same reason that the parent loves her child – because it is hers. And, if that’s right, then patriotism and parental love rise and fall together – the former

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405 After all, the parent’s love might not have taken root if, from the moment of the child’s entry into the world, it was clear that she was thoroughly evil. It is only because young children cannot express an evil nature, or because we are primed to attribute wrongdoing in young children to an absence of knowledge or control rather than malice, that every child enjoys a period of presumed innocence. Were parents able to discern an evil character at the moment of birth, and were they to see manifestations of that character in infancy, it might well be that they would find themselves incapable of loving their own child.
attachment makes one no more susceptible to bad faith than the latter. The fact that the citizen’s commitment, like patriotism, entails partiality is then no embarrassment, (let alone “an intellectual and moral mistake,” as George Kateb has argued).^{406}

### III. Membership responsibility and the Reactive Attitudes

In the last Part, I sought to argue that Americans share responsibility for U.S. abuses committed in the course of the war in Iraq, and that the ground of their responsibility survives attacks challenging the loyalty that patriotism (and commitment, on my account) demands. Nonetheless, Americans who did not support the war in Iraq are likely to resist the idea that they bear responsibility for abuses committed in its course. Even were they to encounter the foregoing arguments, they might nonetheless maintain – with full honesty – that they are not responsible for American war crimes committed in Iraq. More specifically, the citizen in question might lack the unpleasant sensation of guilt, and she might also resist the belief that she has acted wrongly. Her response provides an occasion to assess the relationship between bearing guilt, experiencing guilt, and feeling guilt – or, put more generally, the relationship between responsibility, the reactive attitudes, and their accompanying sensations.

This foray into the reactive attitudes is intended to explain a divergence in Americans’ self-conception and the conception of Iraqis regarding Americans’ responsibility for war crimes arising from the war in Iraq. To that end, I undertake an exploration of the moral psychology of guilt and resentment, especially as these emotions

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^{406} Kateb, *supra* note 391 at 3.
pertain to understandings of responsibility for war crimes among members of the
perpetrator and victim populations.

I seek to argue here that although, in paradigmatic cases, blame is appropriate
only if the blamed individual would be warranted in experiencing guilt, there is a separate
strand of cases in which guilt need not be the hallmark of blameworthiness. Instead, an
assignment of responsibility – that is, a finding of blameworthiness – may be appropriate
even where guilt is not called for. This is not an uncontroversial claim. As I have just
suggested, the warrant for guilt is, on some conceptions of responsibility, taken to be a
condition for the propriety of an assignment of blame;\(^{407}\) and, on some conceptions of the
reactive attitudes, there is, at the very least, a very strong connection between bearing
guilt and feeling guilt.\(^{408}\) How, then, can we arrive at a justified assignment of
responsibility where the citizen – in full appreciation of her relation to the wrong --
neither responds to herself with guilt nor has any kind of guilt sensation?\(^{409}\) Put
differently, how can we make sense of a situation in which it might be appropriate for the
Iraqi to resent the American, and not unreasonable for the American to be impervious to
the sensation of remorse, and – in cases where the American has engaged in steadfast and
strenuous dissent – the cognitive component of remorse too?

\(^{407}\) See, e.g., Gary Watson, \textit{Responsibility and the Limits of Evil: Variations on a
Strawsonian Theme}, in \textit{Responsibility, Character and the Emotions} 256, 257
(Ferdinand Schoeman ed., 1987). (“Strawson’s radical claim is that these ‘reactive
attitudes’ (as he calls them) are \textit{constitutive} of moral responsibility; to regard oneself or
another as responsible just is the proneness to react to them in these kinds of ways under
certain conditions.”).

\(^{408}\) See, e.g., \textit{Morris}, supra note 377 at 102 (“When feeling guilty we characteristically
suffer pain that is partly constitutive of the feeling.”).

\(^{409}\) As we shall see, the issue is not that the individual in question may be emotionally or
psychologically impaired (e.g., because she is depressed, or megalomaniacal). It is
instead that, though perfectly well-functioning, she does not experience guilt in
conjunction with a full apprehension of her wrongdoing.
To answer these questions, I begin with the case of the generic citizen. The generic citizen invokes the absence of guilt feelings – his own, as well as those of most of his compatriots -- as a defense against the account of citizen responsibility presented in Part I: “Were we who didn’t participate morally responsible,” this imagined citizen might argue, “at least many of us would feel guilt. But most of us do not feel guilt, so it is doubtful that we are morally responsible.” In Part II.A, I inquire into his response.

I then turn, in Part II.B, to the case of the dissident. The dissident need not deny that citizenship is a ground of responsibility. She may nonetheless maintain that her dissidence functions as a defense. More specifically, the dissident may believe that her acts of resistance more than offset her commitment to the United States, and so exempt her from responsibility. As such, she does not perceive herself as having acted wrongly and, accordingly, feels no guilt. I attempt to make sense of her experience of her relationship to U.S. transgressions in light of resentment that victims of these transgressions might direct toward her.

Finally, in Part II.C, I offer some general thoughts about the implications of assigning responsibility on a non-participatory account for our thinking about the reactive attitudes.

Some words about terminology first: By “morally responsible,” I shall mean “appropriately subject to blame,” which I take to mean the same thing as “blameworthy.” (The task of elucidating the conditions for blameworthiness lies at the core of this Part.)
judgment that one has breached an expectation whose authority one recognizes. Whether that experience is also constituted by guilt feelings, or at least accompanied by guilt feelings in the vast majority of cases, is a question I shall have occasion to consider in what follows. For now, it is sufficient to note that by “guilt feelings” I shall mean the phenomenological correlates of the judgment involved in experiencing guilt – typically, pain, sadness, etc.

A. Membership Responsibility and the Emotions

The generic citizen – the one who neither supported nor opposed the war – may insist that he is an inappropriate object of resentment, notwithstanding his commitment to the United States. His defense would proceed not by marshaling considerations intended to rebut or outweigh that commitment, as the dissident’s defense does; instead, he may just maintain, without any false consciousness, that the notion that he must accept blame fails to connect emotionally. Underlying his position is the thought that our emotions are presumptive guides to moral truth: Contemplating his commitment, he nonetheless feels no guilt over American war crimes in Iraq; he thus concludes that he bears no responsibility. What might explain his response? I seek to answer this question in this

410 Cf. Gabriele Taylor, Pride, Shame and Guilt: Emotions of Self-Assessment 85 (1985) (“To feel guilty, [an individual] must accept not only that he has done something which is forbidden, he must accept also that it is forbidden, and thereby accept the authority of whoever or whatever forbids it.”). Though Taylor here speaks of “feel[ing] guilt,” she clearly has the cognitive component of guilt in mind and so her description fits what I have referred to as the judgment involved in the experience of guilt.

Section, and then offer some suggestions for how it is that the generic citizen might come to experience guilt.

One explanation for the absence of guilt would arise where the generic citizen suffers from some kind of psychological or emotional impairment (e.g., depression, narcissism, etc.). This possibility is reasonable, but uninteresting. It is clear that our emotions are not infallible guides to moral truth; we do not always respond to moral wrongs with the emotions that we ought. One citizen’s failure to respond to abuses in the war in Iraq portends little for the cogency of the claim that he is nonetheless responsible. By contrast, a widespread absence of guilt – which is characteristic of the national mood these days – is more arresting. It is this mood, personified in the generic citizen here, that invites inquiry. In this Section, I explore the implications of the absence of felt guilt for the account of membership responsibility.

Others who have contemplated the absence of guilt among members who did not participate in a group transgression have raised the possibility that the responsibility of these members is not strictly moral responsibility – i.e., responsibility understood as appropriate liability to blame. For these theorists, the experience of responsibility for wrongs of one’s group in which one did not participate is a highly personal response to a tragedy in which one chooses to see one’s agency, though one in fact bears no guilt for the wrong. Given that the experience of responsibility is optional on this possibility, the

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412 Compare Ariel Dorfman, Forward: The Tyranny of Terror: Is Torture Inevitable in Our Century and Beyond?, in TORTURE: A COLLECTION 8 (Sanford Levinson ed., 2004) (“[Torture] presupposes, it requires, it craves the abrogation of our capacity to imagine others’ suffering, dehumanizing them so much that their pain is not our pain. It demands this of the torturer . . . but also demands of everyone else the same distancing, the same numbness, on the part of those who know and close their eyes, those who do not want to know and close their eyes.”).
generic citizen who disclaims responsibility is then one who has simply opted not to conceive of his agency in this way.

Karl Jaspers is among the exponents of this possibility. Thus he argues that the citizen who neither participated nor acquiesced in the Nazi regime bears not moral guilt but *metaphysical guilt* – a kind of guilt arising though its bearer could not have prevented the wrong no matter his efforts to that end. Jaspers writes of Germans who survived the war: “We did not go into the streets when our Jewish friends were led away; we did not scream until we too were destroyed. We preferred to stay alive, on the feeble, if logical, ground that our death could not have helped anyone. We are guilty of being alive.”413 Similarly, Larry May, who offers a subtle reconstruction of Jaspers’ account, agrees that, where a group member did not participate in the group harm, and where she could not have prevented it, “moral responsibility, at least understood on the model of individual moral guilt, would be inappropriate.”414 Finally, Herbert Morris refers to the *non-moral* guilt the American who visits Hiroshima shortly after World War II might experience – non-moral because its bearer is, by hypothesis, without fault for the Hiroshima bombings.415

Importantly, for each of these theorists, whether the non-participating group member conceives of herself as bearing responsibility is a matter over which she alone has authority. For Jaspers, the German citizen’s metaphysical guilt is something no one else can “prescribe” or “anticipate”;416 whereas others may sit in judgment where

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414 LARRY MAY, SHARING RESPONSIBILITY 152 (1996).
416 Supra note 412 at 68.
political or legal guilt is concerned, “[j]urisdiction for [metaphysical guilt] rests with God alone.”\textsuperscript{417} May also seems to recognize the optional character of metaphysical guilt. Identification with the group is the ground of moral taint for May, and he acknowledges that the degree, or even the presence, of such identification may be up to the individual. Thus, he notes that, “for members who are only on the fringe of the community… the group identification may be so weak as to not generate feelings of metaphysical guilt.”\textsuperscript{418}

For Morris, non-moral guilt also rests upon identification with the wrongdoer; in particular, he argues that it arises where the individual who is blameless nonetheless identifies with the one who is blameworthy, whether a family member or even just a fellow human being.\textsuperscript{419} Reasonably enough, then, he contends that “[w]e may not ask of ourselves or of others that guilt be felt in these situations.”\textsuperscript{420}

Underlying each of these accounts is the thought that an individual has full discretion about whether she will harbor the identificatory ties upon which the experience of responsibility is purportedly predicated. Since these ties may not be mandated from without, on these theories, neither may the sense of responsibility that they yield.

These theorists may well be right that identification is discretionary in some cases; it is not, however, discretionary in the context of an institutional group like the United States, as I sought to argue in Part I. Instead, as we saw there, American citizenship has a normative dimension that compels the citizen to recognize the way in which her identity is bound up with that of the nation-state, and to accept responsibility for its acts as a result. But if I am right that the generic citizen bears responsibility for

\textsuperscript{417} Id. at 26.
\textsuperscript{418} Supra note 413 at 153.
\textsuperscript{419} E.g., Morris, supra note 414 at 240.
\textsuperscript{420} Id. at 237.
America’s acts, how are we to understand his inability to connect emotionally to his responsibility status?

A more promising explanation for the generic citizen’s seeming imperviousness to guilt would rely upon an account of the natural history of guilt. Guilt, as Herbert Morris notes, “is a painful state.”421 One can trace the unpleasant sensation accompanying guilt by way of an evolutionary account that looks to the practical effect of our emotional life. On such an account, the unpleasantness of guilt is useful for its power to regulate behavior. We come to associate certain courses of conduct with this pain and refrain from pursuing them in order to avoid suffering this pain.422 From an evolutionary standpoint, it makes sense that guilt should have naturally evolved in connection with wrongs in which we played a causal role, given that the unpleasantness of guilt functions to deter us from future wrongdoing. The natural history of guilt thereby privileges those acts in which our agency is substantially implicated; correspondingly, for acts in which our causal role is remote or non-existent, guilt may not be activated.423

421 Morris, supra note 377 at 89.
422 Compare Joseph Butler, Upon Resentment, in Fifteen Sermons 131 (1949) (arguing that, where virtue fails, individuals may nonetheless be deterred from pursuing wrongdoing by the anticipated unpleasantness of the resentment their wrongdoing would elicit).
423 Given that I offer an evolutionary understanding of guilt here, it might be useful to explicate its relationship with the evolutionary account of guilt offered by Alan Gibbard. Gibbard begins by noting that humans are social animals, and that their emotions function to reinforce the cooperation and reciprocity that facilitate survival of the species. Guilt on this account is then the experience one ought to have in the face of those of one’s acts that reveal that one is insufficiently motivated to engage in cooperation and reciprocity. Conduct eliciting guilt on the part of the guilty party will elicit anger on the part of others and others’ anger will tend to induce the guilty party to make amends, thereby restoring faith that one is suitably prepared to cooperate. Alan Gibbard, Wise Choices, Apt Feelings: A Theory of Normative Judgment 135-38 (1990).

Gibbard’s account, like the one I offer, then, sees in guilt a functional connection between one’s acts or omissions and the warrant for guilt. On the other hand, for Gibbard,
In short, it may well be the case that guilt was naturally designed for, and is paradigmatically about, causal responsibility. But we should resist the inference that the natural history of guilt renders it both impossible and inappropriate for one to experience guilt for acts in which one hasn’t participated.

Instead, I believe that there are several prospects that could render guilt both intelligible and accessible to the generic citizen. First, it is worth noting that individuals do sometimes respond with guilt to acts in which they haven’t participated, and it is at least arguable that their responses are not unreasonable. Consider, for example, contemporary Germans’ reactions to the Holocaust. Scholars report that with each passing generation Germans have appeared to experience more guilt over the Holocaust rather than less. The internet is rife with anecdotal evidence of contemporary German

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the individual who should feel guilt need not have caused any harm, since one can, presumably, show oneself insufficiently motivated to cooperate simply by appearing slothful which, in and of itself, need yield no harmful consequences for others. Nonetheless, what is significant in the similarity between Gibbard’s and my account is that both imagine a special place for guilt in the constellation of acts the agent has or has not done. Gibbard puts the point succinctly: “Above all, [guilt] is tied to the voluntary.” Id. at 296. But there remains as well a significant difference, for I say nothing -- and indeed am agnostic about -- the role of guilt in the survival of the species whereas Gibbard rationalizes guilt in virtue of its value to the survival of the species, treating the survival of the guilty party as noteworthy insofar as it conduces to the species’ survival. See e.g., Michael Berenbaum, *The Impact of the Holocaust on Contemporary Ethics*, in *Ethics in the Shadow of the Holocaust: Christian and Jewish Perspectives* 235, 235 (Judith H. Banki and John T. Pawlikowski eds. 2001). In an interview with the Shoah Foundation on the occasion of the fiftieth anniversary of the liberation of the concentration camps, then President of the Central Council of Jews in Germany, Paul Spiegel, stated that he had feared the anniversary would mark the end of German commemoration of the Holocaust but that, if anything, the opposite has proven true. See Dr. Matthias Hey, *The Day of Remembrance for the Victims of National Socialism*, available at http://www.fasena.de/download/gedenk/Day%20of%20Remembrance.pdf (last visited March 1, 2010).
guilt.\textsuperscript{425} And, some of the Nazis descendants have gone so far as to commit suicide or seek sterilization, apparently precipitated by guilt over their forbears’ deeds.\textsuperscript{426}

Now, one might argue that these responses allow the transgressions of one’s predecessors an unwarrantedly large role in determining one’s own responsibility. But it isn’t clear how one could defend the assertion about warrant. After all, the responses in question are not taken to be exotic or undue within Germany (though they may not be taken to be required either). There is no reason in principle to reject the possibility that warrant may have socio-cultural determinants.\textsuperscript{427} In short, our relatively close counterparts seem to have overcome the purported impossibility of experiencing guilt in the face of a wrong for which they do not bear causal responsibility, and the guilt they experience cannot simply be chalked up to neurosis or some other psychopathology.


\textsuperscript{427} Gibbard, for example, explicitly allows that warrant will vary from, for example, guilt to shame cultures. \textit{See supra} note 423 at 42.
Further, there are other kinds of cases in which we can reasonably feel guilt even if we can’t see the wrongfulness of the conduct with which we are charged. Consider, for example, two friends who legitimately disagree about whether, say, some comment one made to the other is genuinely offensive. The comment’s recipient might insist that his friend offer an apology. But the friend might refuse, insisting that the wounded party is being hypersensitive, and that a reasonable person would not take offense so easily. Though the disagreement begins with a debate about the warrant for offense, it might well end – if the two are committed to each other in the right ways – with the utterer’s issuing the apology even if the utterer remains unconvinced that her friend ought to have found her comment offensive. And this resolution need reflect no insincerity (let alone brow-beating). For the apology, though phrased perhaps as, “I was wrong to say X,” might well reflect the utterer’s genuine sentiment that “I was wrong to hurt you,” where the cause of the hurt – whether by the utterance of X, or some other act that the utterer takes to be a more legitimate source of offense – is, at the end of the day, immaterial. And the utterer can trade on this ambiguity – without concern for trickery or condescension – in order to offer a sincere, and heartfelt, admission of wrongdoing.428

428 Now, one might worry that the offended party would find inadequate an admission of wrongdoing if he were to understand it in the elliptical sense. A satisfactory admission, the worry might go, would involve the speaker’s conceding the wrongness of saying X tout court, and not the wrongness of saying X just insofar as the other finds X hurtful. But this would seem to demand too much. Given the disagreement about the offensiveness of X, and the desire friends have to move beyond the argument, the injured party might forego insisting upon the speaker’s repudiating X, and the speaker might forego an insistence that the injured party abandon the notion that saying X is wrong. There is then a kind of fiction in which each party engages – the injurer offers an apology for an act that she does not believe is generally wrong, and the injured party accepts the apology at face value, without seeking to convert the injurer to his view that uttering X is wrong.
In a similar vein, the generic citizen could, in virtue of the account of membership responsibility, appreciate that the Iraqi is licensed in blaming him, and he could experience guilt simply in virtue of being a legitimate target of resentment. Alternatively, or in addition, the generic citizen’s felt guilt might flow from something of a second-order – in particular, the generic citizen’s guilt over his incapacity to experience guilt in the face of his non-participatory responsibility. And, having found a source of guilt that relates to the wrong, the generic citizen has all the motivation he needs to respond in the ways that he ought, and the ways that he would respond were he capable of guilt of a more straightforward kind. This guilt has non-participatory responsibility for abuses in the war in Iraq as its object, even if not its source, and yet it appears that the generic citizen is on all fours for purposes of expressing acknowledgment of the wrong and performing the attendant acts of contrition.

The foregoing is intended to undercut the generic citizen’s resistance to blame, and point the way to his experiencing guilt in the here and now. But there are more long-term ways in which we can each of prime ourselves to more readily experience guilt in the face of group wrongs in which we did not participate. As a general matter, we should recognize that our moral sentiments are not fixed; instead these may be subject to a conscious process of evolution, through which we can come to acknowledge wrongs to which we were previously blind. Progress in our views about equality between the races and the sexes is exemplary here. More generally, one’s vision of the facts – that is, the salience one assigns to the facts, and the construction one makes of them -- may well be mutable. We should not, then, presume that our current emotional sensitivities bespeak a
set of eternal truths. Instead, I believe that our capacity to experience emotion can, does and often should evolve over time.

This idea draws support from mental-state dependent accounts according to which the warrant for guilt, resentment or indignation is sustained by an accretion of moral responses built up through intersubjective assent over time. Thus, for example, on the kind of holistic account that David Wiggins offers, our moral responses are themselves the product of a kind of evolutionary process. On this process, we begin with brute subjective responses and yet, in discovering that others experience the same responses in the face of the same properties, we gain an ever more refined set of responses and come to talk meaningfully about what responses a particular object warrants and, beyond that, identify the features of the property that fit it to a certain response. On such an account, one could see how the fabric of morality could evolve to encompass, and sustain, a moral emotional response to cases of non-participatory responsibility. Just as the astronomer infers what might be just beyond the realm of what she can glean through her instruments on the basis of what her instruments can tell her, or just as the quilter in an ever-evolving pattern can imagine how the quilt might come to look several rows hence, so too the mental-state dependent theorist might identify existing justifiable responses that, perhaps together with some yet-to-be-experienced responses, provide the warrant for the kind of response required, on his account, to make it the case that non-participatory responsibility counts as wrong.

And even the theorist of a realist stripe could acknowledge the possibility of our expanding moral and emotional horizons. Thus, for example, John McDowell, who

analogizes moral properties to real secondary properties like color,\textsuperscript{430} nonetheless allows that intersubjective contestation and affirmation play a role in gauging a particular response’s propriety: An explanation of our evaluative responses, McDowell argues, should permit room for the responses to be subject to criticism, which “means that there is no question of just any actual response pulling itself up by its own bootstraps into counting as an undistorted perception of the relevant special aspect of reality. … [Instead] there may be something to be learned from people with whom one’s first inclination is to disagree.”\textsuperscript{431}

In short, in the face of the generic citizen’s contention that most of us do not feel guilt, then, perhaps the best response is that we should, and that we need not travel too far beyond our current emotional horizons to arrive at an acknowledgment of responsibility that calls forth guilt as its practical, and practicable, result. Indeed, one might go even further and argue that what the account of membership responsibility entails, if nothing else, is an obligation to enlarge our emotional capacities precisely in order to be able to respond with the feelings of guilt that are the proper corollaries of our legitimate liability to blame for the wrongs of our groups. The idea is not that we deserve reproach if we are presently unable to see or feel guilt for group transgressions in which we have not participated. It is instead that the account of membership responsibility reveals a source of blame to which many of us are currently blind. And, insofar as that source of blame is


\textsuperscript{431} \textit{Id.} at 120.
legitimate, we may become warranted targets of reproach if we do not endeavor to have our emotional life “catch up,” by training ourselves to feel guilty as a result.\footnote{Compare Nancy Sherman, Taking Responsibility for Our Emotions, 16 J. SOC. PHIL. & POL’Y 294, 296 (1999) (describing Aristotle’s view that “we may not be able to choose how we will emotionally react to something at a given desired moment, but that we indirectly contribute, through previous actions and habits, to our emotional dispositions” and hence come to bear responsibility for our emotional reactions). Sherman herself powerfully advances a view according to which we can train our emotions. Importantly, her position is not that our beliefs can evolve such that we feel in contexts we didn’t previously, but that our emotions themselves can change. Thus, for example, she describes an individual who has come to “feel compassion for members of an ethnic group and concern for their struggles” as a result of his having “cultivated that concern through efforts at imaginative transport and empathy – efforts at conceiving of what it would be like to be them, standing in their shoes, facing those struggles.” Id. at 301. The progress this individual has made, like the progress that can be made through the psychoanalytic process that Sherman goes on to describe, depend crucially on a series of affective experiences, and not merely cognitive ones.}

In short, there is reason to think it not only intelligible, but also reasonable, and perhaps even required for one to acknowledge and experience guilt in the face of non-participatory responsibility. To recap, some of us do feel guilty for acts of our group in which we have not participated, and this guilt is not taken to be undue. The guilt of the Nazi children and grandchildren is illustrative. Further, even if we cannot presently feel guilty for American wrongdoing, the account of membership responsibility might nonetheless prompt us to feel guilt in relation to American wrongdoing, just as we feel guilty when we offend a loved one even if we cannot see the offensiveness of our conduct. Finally, the account of membership responsibility points the way toward an expansion of our moral horizons. Even if we are currently incapable of feeling guilty for group transgressions in which we have not participated, we should seek to develop our emotional capacities so that the transgressions of our groups come to elicit guilt independent of our participation in them.
B. Dissidence and Divergent Viewpoints

The foregoing was intended to establish that even though many of us do not experience guilt over American transgressions in which we have not participated, the account of membership responsibility provides reason to think we should, and experiences of other kinds of non-participatory responsibility suggests that we could. So much then for the thought that the widespread absence of felt guilt among American citizens in some way impugns the justifiability of blaming them.

The dissident is situated differently from the generic citizen. She might well agree that citizenship itself generally grounds the citizen’s blameworthiness, but she believes that her dissidence functions to exempt her from the responsibility that her citizenship would otherwise ground. She has arrived at this judgment of her responsibility because she has synthesized the dimension of her identity that flows from her citizenship and the dimension of her identity that flows from her dissidence and arrived at a coherent conception of herself in which her dissidence is much more definitive of who she is. But though each of us is empowered to perform this synthesis and arrive at a self-understanding that makes sense of the disparate and sometimes conflicting strands of our identity, there may be multiple, equally reasonable ways of performing this synthesis. Where there are, none of us is entitled to have our preferred synthesis prevail; others are entitled to conceive of us differently, so long as their conception is no less reasonable than the one we harbor of ourselves. As such, the dissident cannot expect that her self-understanding will govern the Iraqi’s conception of her; he is entitled to believe that citizenship looms larger as a constituent element of an American’s (or anyone’s) identity.
than do acts opposing the policies or practices of one’s government. And, so long as he does hold this belief, he will harbor resentment toward the American citizen, no matter how valiant her efforts at resistance. And, if his weighting of the significance of the bonds of citizenship relative to that of the dissidence’s resistance is reasonable, his conception of the dissident – and the resentment it engenders – will not be undue.

The divergence just described arises from differing conceptions of the dissident’s individual identity. But there is a second possible source of separation between the dissident and the Iraqi that arises from a divergence between the conception of America that each harbors. As we have seen, the dissident may undertake opposition to the war in Iraq because she conceives of an America in which the nature of the prosecution of the war in Iraq is distinctly un-American. Indeed, it might be precisely because she harbors a vision of America as different from, and better than, it has been in recent times that she is motivated to resist, and thereby restore her beloved nation-state to her imagined conception of it. But just as she must recognize that her self-conception holds no authority for others, so too she must recognize that her conception of America must also yield, at least sometimes, to that of outsiders. Thus an Iraqi might detect a cultural imperialism in the quest to “liberate” his country, and an exceptionalism in the potential impunity with which high-ranking U.S. officials have violated the laws of war, that strike him as unmistakably American. Rooted in his perspective on America, the Iraqi might find the dissident’s commitment to America all the more reproachable.

Importantly, for each of the sources of resentment just described – the first rooted in divergence over the dissident’s identity, and the second rooted in divergence over the identity of America – there could be cases in which one or the other party is mistaken:
The dissident could harbor a kind of false consciousness, or the Iraqi might operate with an unduly prejudiced mindset. In these cases, evidence could be invoked to bring the mistaken party to see things differently. Where it turned out that the dissident was mistaken – where, that is, she does bear a blameworthy connection to American transgressions that persists notwithstanding her efforts at dissent -- she would occupy a position akin to that of the generic citizen. Contrition would then be the only proper response for her to exhibit. At the other extreme, it could be that the Iraqi has failed to appreciate the dissident in all her particularity – where, that is, he had unduly overlooked the extent to which the dissident’s protests should overshadow her membership responsibility – in which case the dissident would be free to disclaim. Nonetheless, she need not do so. Compassion might instead yield a more humanitarian response, such that the dissident would allow the Iraqi to proceed with his resentment without seeking to demur.

While it may be easy to adjudicate between the competing conceptions in some cases, I see no reason to think that every case is of this kind. Individuals and nations are complex, multi-faceted entities, admitting of multiple constructions and narratives, and there may well be several of these that each synthesize the constituent elements equally plausibly. In short, there may be an unbridgeable gap between the dissident and the Iraqi, and it is in the face of this gap that resentment may rightfully take hold.

Where there is an insuperable divergence regarding the dissident’s blameworthiness, we might well want each party to recognize it, and proceed with humility. Thus, we might ask that the dissident resist disclaiming responsibility, and the Iraqi withhold contempt, despite the fact that each holds fast to his or her respective
beliefs about the dissident’s relationship to the United States. But we might also allow that there are situations in which forbearance is too much to demand. Thus, for example, the Iraqi who had lost a family member in the Haditha massacre might, given his loss and also his not completely baseless belief in American prejudice against Muslims of middle-eastern descent, be permitted his resentment.

Here, a kind of cognitive dissonance arises. To inhabit the dissident’s perspective on America and herself, the Iraqi must abandon a stance of righteous anger through which he might seek to vindicate the worth of his lost loved one, or the Iraqi people as a whole. He must instead contend with the notion that he cannot find an outlet in blame for his loss and injury that corresponds sufficiently to their (perceived) magnitude. He would then incur not just the pain of his tragedy but the profound burden of self-restraint in

433 A recent lawsuit brought by former Guantanamo detainees against Britain alleging that MI5 and MI6 agents colluded in the plaintiffs’ torture provides something of an example of mutual forbearance. See, e.g., John F. Burns & Alan Gowell, Britain To Compensate Former Guantanamo Detainees, N.Y. TIMES, Nov. 16, 2010. Britain has agreed to settle, but its Justice Minister has insisted that “the deal ‘involves no concession of liability’ in respect of the torture accusations, and ‘no withdrawal of the allegations made by the former detainees.’” Id. In short, for an award reputed to run into millions of dollars, id., the detainees appear to have agreed to disagree with the British government’s assessment of its responsibility.


435 In principle, there may also be cases in which a dissident might be permitted to disclaim, given how violative an ascription of blame for national transgressions is to her vision of her nation-state and herself. I assume here, however, that the transgressions committed against Iraqis are so egregious that it wouldn’t be plausible to think that the Iraqi victim’s resentment ought to give way to the American dissident’s self-conception.
stifling his own sense of the injury and deferring to that of one of his (apparent) injurers. Should we really reproach him for spurning this path? Given the additional pain of forbearance, is he not entitled to presume the legitimacy of his own perspective, and proceed with resentment?

Ideally, individuals should be given some latitude in making sense of tragedies that befall them. That latitude ought not to be so great that it permits blaming innocents. But where one possible interpretation is more comforting than another and the two are equally plausible, the more comforting interpretation should prevail. Here, then, the Iraqi should be permitted his resentment. Correspondingly, the dissident must, at least outwardly, accept that she is an appropriate object of blame. Just as the dissident bears an obligation of loyalty to her fellow members to refrain from disavowing the group act, so too she bears an obligation of humility to the victims of her group’s transgression to do the same: She conveys her respect to the transgression’s victims by countenancing the possibility that their judgment of her blameworthiness is correct, and by proceeding with the contrition that would follow if it were correct.

I have been describing different responses the dissident can offer, depending upon whether her responsibility is partially or wholly mitigated in virtue of her dissent. But who is to determine whether her dissent has any effect on the quantum of responsibility she should bear and, if so, what its effect should be? I submit that the account of membership responsibility licenses the victim in presuming the blameworthiness of the members of the group that has committed the transgression. Thus, the Iraqi may presume that an American is blameworthy, and the American bears the burden of rebutting the presumption.
An interaction between an Iraqi and an American who sought to oppose the war should, then, proceed as follows: First, the dissident is not entitled to lead with an effort at exculpation. As a result of her obligations to her fellow citizens, she should speak in the first-person plural in acknowledging the transgression’s commission: *We did this to you, and each of us – including me – has reason to be sorry.* She may then seek to distinguish her conduct: *I want you to know that I never agreed with the war, and sought to prevent it by .... And I responded to news of abuses committed in the process of the war effort by ....* She should offer any evidence that would mitigate her membership responsibility with humility, agreeing to be bound by the Iraqi’s assessment of the evidence’s effect. And, by the same token, the Iraqi, for his part, should engage in a good faith assessment. Recognition, we have seen, demands mutuality: The dissident recognizes the Iraqi by submitting to his judgment, and the Iraqi recognizes the dissident by seeking to appreciate her in her particularity.

Where the Iraqi has carefully weighed the dissident’s protest activities against the responsibility that her citizenship alone confers, and determined that some warrant for blame remains, the dissident must proceed with contrition, even if she thinks the Iraqi’s determination incorrect. There is no higher authority to whom to appeal, no refuge in an interest in preserving her self-conception that the dissident may invoke, no further dissociation that she may seek.

The foregoing is intended to suggest that the warrant for resentment need not rest exclusively on an undeniable wrongdoing. It can instead arise where an individual conceives of the harm he has suffered as a wrongful injury, and where his understanding of the harm is warranted, even if one could reasonably arrive at a contrary understanding.
It follows, then, that resentment can be justified even when the target of resentment cannot recognize her wrongdoing, and this not because she is constitutionally impaired in some way (as a psychopath is) but because she rejects the victim’s interpretation of her relationship to the wrong. 436

In short, resentment is a meaning-creating emotion, 437 and the circumstances in which it is appropriate are not always clear. Where there is genuine uncertainty about its warrant, it may well be the case that we ought to defer to the interpretation of the injury that confers meaning on the party most in need of making sense of his situation. 438

436 What of indignation? Here too, the account of membership responsibility licenses a presumption of blameworthiness for all citizens, and the dissident bears the burden of exculpation. And here too the dissident’s assessment of her responsibility may diverge from that of the world community, where the world community attaches less weight to dissent than does the dissident. Finally here too the divergence may be insuperable, where the two conceptions are plausible. But the warrant for deference to the blaming party is not as great – victims, I presume, have greater need to have their perspectives vindicated than do onlookers. Recognition would then counsel in favor of mutual forbearance, with the member of the world community withholding blame and the dissident declining to disclaim.

437 The philosophical literature on resentment contains a debate about whether resentment is, all things considered, a useful emotion or instead one that is self-debasing. Compare Annette Baier, *Hume on Resentment*, 6 HUME STUDIES 133 (1980) (arguing that resentment, for Hume, functioned to call attention to, and thereby reduce, imbalances in power) and Jeffrie C. Murphy, *Forgiveness and Resentment*, in *FORGIVENESS AND MERCY* 16 (Jeffrie C. Murphy and Jean Hampton eds., 1988) (“Resentment … is a good thing for it is essentially tied to a non-controversially good thing – self-respect.”) with FRIEDRICH W. NIETZSCHE, THE GENEALOGY OF MORALS 24 (Douglas Smith trans. 1999) (“While the noble man lives for himself in trust and openness..., the man of *ressentiment* is neither upright nor naive in his dealings with others, nor is he honest and open with himself. ... he has a perfect understanding of how to keep silent, how not to forget, how to wait, how to make himself provisionally small and submissive.”). To the extent that I here promote resentment as an important implement in allowing the victim of atrocity to make sense of his lot, I align myself with those who defend the usefulness of resentment.

438 Compare BERNARD WILLIAMS, SHAME AND NECESSITY 70 (1993) (arguing that it may be appropriate for victims of a harm to hold responsible the agent who *unintentionally caused* the harm even though the agent is not a wrongdoer: “Those who have been hurt need a response; simply what has happened to them may give them a right to seek it, and where can they look more appropriately than to you, the cause?”). Christopher Kutz has
**C. Responsibility and the Reactive Attitudes Revisited**

In the course of exploring the emotions attached to membership responsibility, I have argued that resentment may be appropriate even though guilt is not (the case of the dissident), and that one can have grasped the facts undergirding the ascription of responsibility, and yet fail to feel guilty, or have the experience of guilt (the case of the generic citizen). As I have characterized them, then, these cases sit uncomfortably alongside several core ideas within philosophical understandings of moral responsibility. In particular, these cases challenge, first, the idea that judgments of moral responsibility are constituted by a particular triad of reactive attitudes and, second, and more fundamentally, these cases challenge the notion that blameworthiness presupposes guilt. I elaborate upon these implications here.

In the literature linking responsibility and the reactive attitudes, it is nearly a gospel truth that guilt, resentment, and indignation co-travel. More specifically, on

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also argued that we should assess accountability by adopting the perspective of the victim, in addition to the perspective of the agent as well as that of an innocent onlooker. **CHRISTOPHER KUTZ, COMPLICITY: ETHICS AND LAW FOR A COLLECTIVE AGE 146-65 (2002).** But Kutz does not contend that we should privilege the victim’s perspective relative to the other two, and so provides little basis for assigning responsibility in cases where those judging accountability reach diverging conclusions about the “perceived salience” of the group member’s contribution. *Id.* at 158.

439 **See, e.g.,** Peter F. Strawson, *Freedom and Resentment, in PERSPECTIVES ON MORAL RESPONSIBILITY 56-57* (John Martin Fischer and Mark Ravizza eds., 1993) (referring to resentment and indignation as “kindred” reactive attitudes, and to guilt as the “correlate” of these two); **BERNARD WILLIAMS, SHAME AND NECESSITY 89** (1993) (“What arouses guilt in an agent is an act or omission of a sort that typically elicits from other people anger, resentment or indignation.”). R. Jay Wallace has argued that the reactive attitudes should consist *only* of guilt, resentment and indignation. **R. Jay Wallace, Emotions and Expectations, in FREE WILL: CONCEPTS AND CHALLENGES 136, 145** (John Martin Fischer ed., 2005). **Cf. ALAN GIBBARD, WISE CHOICES, APT FEELINGS: A THEORY OF NORMATIVE**
these accounts – which we may call Strawsonian after Peter Strawson’s seminal paper –
one and the same act is supposed to induce guilt in the person who carries it out,
resentment in its victim, and indignation in third parties who learn of it. But I have argued
that, in the case of membership responsibility, the supposed triad of guilt, resentment and
indignation dissolves: The dissident, for example, may be an appropriate object of
resentment even if she need not conceive of herself as guilty. In other words, there may
be asymmetries between the self-reactive attitudes and other-directed reactive attitudes.

Moreover, it is not just the Strawsonian understanding of responsibility that faces
a challenge in light of the prospect that blameworthiness and guilt need not co-travel. It is
a commonplace across the literature on responsibility that it is a necessary condition of
X’s being morally responsible for Y that it be appropriate for X to experience guilt in
relation to Y. But the account of membership responsibility I have advanced dispenses
with the supposed connection between moral responsibility and the appropriateness of

JUDGMENT 147 (1990) (“We judge a deed blameworthy if we accept norms that prescribe
guilt and anger for such a deed.”).

440 See, e.g., Alan Gibbard, supra note 439 at 126 (“a person is to blame for something if
it would make sense for him to feel guilty for having done it…. “); Stephen Darwall,
(Modern) Moral Obligation and the Will 25, available at
http://weblaw.usc.edu/academics/assets/docs/darwall.pdf (“Guilt feels like the (second-
personal) response to blame: an acknowledgment of one’s blameworthiness that
recognizes both the grounds of blame and, more importantly for us, the authority to level
it (even if only to God). To feel guilt, consequently, is to feel as if one has the requisite
capacity and standing to be addressed as responsible.”). Susan Wolf captures the position
in question thusly: “guilt is the emotion one feels or should feel in proportion to how
much one judges oneself blameworthy. The Moral of Moral Luck, Sept. 13, 2001,
available at http://www.law.berkeley.edu/centers/kadish/moralluck.pdf. Though Wolf
distances herself from the claim that the amount of guilt one should feel varies strictly in
relation to one’s faultiness, she nonetheless remains committed to the notion that one
should feel guilty where one is blameworthy. Cf. R. Jay Wallace, Responsibility, in FREE
WILL: CONCEPTS AND CHALLENGES 185 (John Martin Fischer ed., 2005)
(“blameworthiness does require the belief that some reactive emotion would be
appropriate. Without at least this degree of connection, we lose the idea that judgments of
blameworthiness are … ways of holding a person morally responsible.”).
guilt. More specifically, on my account, one need not experience guilt in relation to some wrong in order to bear moral responsibility for it; sometimes, the fact that others would be licensed in expressing their resentment toward us is enough to ground our moral responsibility.

To put the point succinctly, then, the account of membership responsibility implies not only a dissolution of the guilt-resentment-indignation triad. The account also exposes the implicit primacy accorded to guilt, relative to the other two members of the triad, and it invites us to unseat guilt from its pride of place, and replace it with resentment instead. In the face of legitimate disagreement about the warrant for blame, it is, then, victims, and not wrongdoers, whose perspectives should prevail.

IV. CONCLUSION: WHAT WE OWE IRAQIS

The upshot of Part II is that we may be implicated in wrongs in ways that we do not feel and do not see. We ought then to be open to the possibility that we bear more responsibility than we think. In particular, as Americans, we ought to contemplate that we owe Iraqis all of the trappings that would accompany a recognition of our liability to blame. I end this chapter by beginning to conceive of just what this recognition ought to entail.

Both supporters and opponents of the war in Iraq have deliberated about our obligations to Iraq, but their disquisitions do not contemplate obligations to individual

\[\text{\footnotesize{\textsuperscript{441} See, e.g., Noah Feldman, What We Owe Iraq: War and the Ethics of Nation Building (2004); Jean Bethke Elshtain, The Ethics of Fleeing: What America Owes Iraq, 170 World Affairs 91 (Spring 2008) (arguing that America’s obligations to Iraq ought to satisfy the ethics of \textit{jus post bellum}, and advocating in particular that the United States}}\]
Iraqis. The task of this section, by contrast, is to explore ways in which Americans can manifest an acknowledgement of responsibility in ways that are meaningful to Iraqis. What follows is a handful of suggestions. My purpose is not to provide a comprehensive program of contrition, but to gesture to some of the possibilities, in an effort to draw out the practical upshot of membership responsibility.

First, I believe that restitutionary obligations – that is, obligations to make whole that are decoupled from blame -- may appropriately be assigned to all Americans, no matter their support or opposition to the war. These are obligations of a purely forward-looking kind. Because these obligations do not entail blame, dissidents may not seek to be excused from them. Instead, these obligations fall upon all Americans just in virtue of their citizenship.

Second, apologies and corresponding demonstrations of remorse may legitimately be expected of all Americans whom Iraqis reasonably believe to be blameworthy. Thus, the generic citizen should exhibit contrition whether or not he can muster the internal phenomenological states that normally accompany displays of guilt. So too should the dissident whose dissent has been judged an inadequate counterweight to her membership responsibility. And even the exonerated dissident might nonetheless apologize, or otherwise display contrition, as a sign of solidarity with her compatriots and in light of the special effect, qua citizen, that her expression of regret will hold relative to a similar expression of regret issued by an outsider.

Finally, while the account of membership responsibility most straightforwardly entails individual responses, some acts of contrition are most powerful when offered by
the nation-state. Most obvious among these is the national apology: An individual’s apology does not have the renunciative effect of an apology issued by the United States itself. When the country, or its government, apologizes, however, it at once claims ownership of the wrong, acknowledges it as a wrong, and implicitly promises to forswear like action. Thus, even though responsibility rests with the citizenry, and not the nation-state itself, the nation-state is the appropriate voice for the issuance of an apology, since the acts for which it apologizes are those of the nation-state itself.

There are other implements of contrition that are also better yielded at the national level. One example that has already been raised in public discourse is the convening of a truth commission. Educational initiatives might complement the findings of such a commission. For example, history texts could report not just the account of American conduct in Iraq yielded by a truth commission but also present divergences between that account and the Iraqi understanding, where such divergences arise and the Iraqi understanding has some plausibility.

More generally, America’s stance should reflect its citizens’ acknowledgment of responsibility. Thus, for example, as the country debates whether to declassify previously unreleased photos of torture, or forestall a suit against a subsidiary of Boeing airplanes used for the CIA renditions, it should recognize that we no longer have the luxury of undertaking a calculus that contemplates only national interests. In light of what is already known about the Bush Administration’s policy of torture, we must weigh not

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443 In a recent op-ed, Philip Gourevitch appears to restrict his assessment in just this way, and thereby arrives at a defense of Obama’s refusal to release the photos. See Philip Gourevitch, The Abu Ghraib We Cannot See, N.Y. TIMES, May 23, 2009.
only our own security, but also the significance of visual evidence and legal redress for Iraqis and humanity at large.

The details of these proposed measures are not as important as the attitudinal shift they are intended to manifest. To be sure, concrete gestures of apology can be tremendously meaningful to Iraqis and the world community as a whole, but they are only credible if the way that we think and speak about the war in Iraq reflects a genuine recognition of our blameworthiness. That recognition may at times demand a paradigm shift: We might have to transcend our own conception of ourselves, our place within America, and America itself, to see ourselves as outsiders see us. And many of us may have to develop emotional capacities that track our non-participatory responsibility. But what we owe Iraqis, fundamentally, is a willingness to assume this other perspective, and to act and even to feel – at least in our interactions with those who legitimately blame us – in ways that credits it as true.
**BIBLIOGRAPHY**


W.J. Bennett, *Why We Fight: Moral Clarity and the War on Terrorism* (2002).


Ronald Dworkin, Law’s Empire (1986).


David Enoch, Being Responsible, Taking Responsibility, and Penumbral Agency (unpublished manuscript, on file with author).

Amitai Etzioni, Are Particularistic Obligations Justified? A Communitarian Examination, 64 Rev. of Politics 573 (2002).

Joel Feinberg, Collective Responsibility, 65 J. Phil. 674 (1968).


Dexter Filkins, The Fall of the Warrior King, N.Y. Times (Oct. 23, 2005).


Hegel’s *Phenomenology of Spirit* (Howard P. Kainz trans., 1994).


DAVID HUME, A TREATISE OF HUMAN NATURE (David Norton and Mary Fate Norton eds. 2000).


PAUL KAHN, PUTTING LIBERALISM IN ITS PLACE (2005).


GEORGE KLOSKO, POLITICAL OBLIGATIONS (2005).


Christopher Kutz, Causeless Complicity, 1 CRIM. L. & PHIL. 289 (2007).


DAVID LUBAN, LEGAL MODERNISM (1997).


Jeffrie C. Murphy, *Forgiveness and Resentment*, in *FORGIVENESS AND MERCY* 16 (Jeffrie C. Murphy and Jean Hampton eds., 1988).


**Bernard Williams, Shame and Necessity** (1993).
