

# Race, Equality, and the Burdens of History

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## Who owes reparations?

The question whom to pay raises another puzzle: who should pay? It is clear that nobody, today, is guilty of the crimes that are being charged. Often that observation is regarded as sufficient to rebut demands of compensation. U.S. Congressman Henry Hyde famously noted, for example, that

the notion of collective guilt for what people did 200-plus years ago, that this generation should pay a debt for that generation, is an idea whose time has gone. I never owned a slave. I never oppressed anybody. I don't know that I should have to pay for somebody who did generations before I was born.<sup>29</sup>

There is no doubt that Congressman Hyde's premise is correct. He and his audience never owned slaves. A different approach, taken by Mari Matsuda, also plays into the hands of those who emphasize the distance between themselves and slaveowners. She describes the people who owe reparations as "defendants" who are "*current beneficiaries of past injustice*."<sup>30</sup>

<sup>27</sup> Roy L. Brooks, "The Debate Over Slave Reparations," ABCNEWS.com. Accessed on June 16, 2001.

<sup>28</sup> Feagin, *Racist America*, p. 266.

<sup>29</sup> Henry Hyde, quoted in *Reparations for Slavery*, edited by Ronald P. Salberger and Mary C. Turck. (Lanham: Rowman and Littlefield, 2004), p. 142.

<sup>30</sup> Mari J. Matsuda, "Looking to the Bottom: Critical Legal Studies and Reparations," in *Critical Race Theory*, edited by Crenshaw, p. 70 (emphasis added).

Yet this premise, too, seems implausible. Just as people living today are in no way responsible or blameworthy for historic injustices, it is also far from obvious that people today benefit, on balance, from distant wrongs. But why even raise the spectre of people today "benefitting" from past wrongdoing in order to defend reparations? A negligent doctor who removes the wrong kidney and a driver who injures a pedestrian while distracted by a shooting star can owe their victims compensation regardless of whether or not the doctor or driver gained any benefit. The negligence speaks for itself. Why might it be important to insist that people continue to enjoy the benefits of past injustices for which they are in some way blameworthy?

Perhaps the answer is rooted in the difficulties of proving that historic wrongs have, in fact, caused harm to people living today. As I discuss later in this chapter, the link between the wrongful act and the harm is crucial. However, a wrongful act, in itself, is insufficient – merely having been speeding on the road before an accident is insufficient reason to justify compensation. So, instead of showing that the duty to compensate flows from an act that made a person worse off, now some defenders of reparations argue that later generations wrongfully *benefitted* from the injustices of their ancestors. But as I have argued, it is not at all clear that anyone, today, benefitted from slavery.

If it is not those who continue to benefit from slavery (or who were themselves slaveowners) who owe reparations, then who does? When defenders of reparations press their claim in court they often do so against institutions. Sometimes the target is a corporation, as recent suits in New York illustrate. One corporation, FleetBoston Financial Corporation, was the successor to another bank that had loaned money to a major slave trader. The predecessor of another defendant, Aetna, had sold insurance policies to slaveowners insuring against the death of their slaves. The third defendant, CSX, is the successor to various companies that owned railroads that had been constructed in part by slave labor.<sup>31</sup>

This is a familiar picture in law generally because corporations are often held liable despite the fact that none of their current officers or employees was individually negligent or intended to cause harm. Instead, we treat corporations *as if* they were persons, just as I argued we do when

<sup>31</sup> *Wall Street Journal*, March 27, 2002, B. 10.

we look for institutional racism by attributing intentions to collective bodies such as legislators or police departments.<sup>32</sup> The question we ask is a hypothetical one: *if a single agent had done what the institution (e.g., a corporation) did*, would that person be held responsible? If the answer is “yes,” then we go on to the next stage, and ask what is the correct remedy. It’s the institution that is being personified – and therefore held liable – not any person.

Whatever the *legal* merits of these cases,<sup>33</sup> the moral argument that reparations are owed for slavery by successor corporations may seem doubtful. The conduct of the corporations was legal at the time. Nor were those corporations uniquely, or even mainly, responsible for the injustices. It is, therefore, not clear how they failed in their duty toward slaves at the time or why they should be held accountable today.

Governments, however, are a different story, and the argument for holding them responsible is more promising. If a government failed in its duty to protect its citizens against racial oppression, then perhaps it now has a duty to repair the harms it caused by that failure. If governments have responsibilities that private citizens and corporations do not have, then this could be true independent of what might be owed by current citizens or existing corporations.

The argument that governments could owe reparations therefore depends on the idea that government owes citizens many things that we do not owe each other as individuals. Governments owe citizens justice, for example, including a fair trial and, we usually assume, a decent public education. These facts, assuming they are accepted, open up space to argue that a government might also owe another form of justice: compensation for the lingering effects of its historic injustices.

This idea is reinforced by the fact that ignorance on the part of government is no excuse. Whatever officials may have thought in the past, *we know today* that slavery violated equality and denied the basic rights of slaves. For that reason, we might reasonably conclude, compensation is owed by *government* for the lingering effects of the injustices the government perpetuated. As when corporations are held liable, we would then go on and ask at the next stage how such compensation is to be paid. Those answers might vary, just as governments can fulfill their duties

<sup>32</sup> Treating corporations “as if” they were persons is described by Ronald Dworkin in *Law’s Empire*, pp. 167–175.

<sup>33</sup> One major hurdle is the fact that statutes of limitations protect against lawsuits over events that happened so many years ago.

to provide public education in different ways. From the perspective of justice and what government owes, however, that issue is of secondary importance. Paying the debt of compensation is what matters most.

It is interesting that this argument has not gotten attention, while others that depend on individuals' benefitting have. The reason may be that so much of the discussion of reparations has been framed by lawyers who, quite naturally, want to make a legal argument. Because governments' legal liabilities under tort law are limited by sovereign immunity to those causes of action the government itself authorizes, and suits for reparations have not been explicitly authorized, there is little prospect of winning in court on these grounds. My concern here is not with law, however, but with justice, and the fact that governments have not allowed reparations as a tort claim does not rebut the arguments considered here.

The advantage of this approach for defenders of reparations is that it does not depend on showing that somebody today is benefitting from slavery or that anyone living today was morally blameworthy for having slaves or for segregation. Nor does it assume someone possesses something slaves' descendants are legitimately entitled to have returned to them, as with restitution. The fact that no *persons* living today could have caused the harm is irrelevant. Governments can be held responsible for the lingering effects of historic injustices they caused generations ago, because governments transcend the generations. So Matsuda may have been right in thinking that those who owe reparations are "perpetrators." Her mistake was in thinking that the perpetrators were people (or even institutions) who *benefitted* from the historic injustices, rather than governments.

Which government would owe reparations? It was states, after all, that imposed slavery and passed laws governing how it worked in practice. The national Constitution, on the other hand, was not blameless: it protected slavery until 1808. Congress also supported slavery with fugitive slave laws and allowed slave states into the union, and the national government later allowed segregation and inequality by failing to enforce the Fourteenth Amendment, with its guarantee of equal protection of law, against the states until the latter half of the twentieth century. So although there are questions about who – which government – should pay the reparations, a case can be made that both states and the national government were, in part, responsible.

I believe this is the best argument available to the defender of reparations (it is also relevant to the argument for an apology for slavery, as I argue later in this chapter). It avoids the objection that descendants of

long-dead perpetrators of injustice are themselves innocent, did not cause the injustice, and are not benefiting from it. The response to those oft-heard objections is that those individuals are not the ones who owe the debt; it is their government's burden. Governments that created or enabled slavery and segregation were responsible for it and, therefore, have the duty to repair the lingering effects of their past wrongs.

Although this is a good start, the idea that governments might owe reparations does not show they in fact do owe them. Assuming that adequate answers can be found to the puzzles I have just posed we have still not reached the heart of the problem, namely, that the case for reparations assumes that historic injustices continue to harm current generations of African-Americans, and do so in ways that warrant compensation. This, I will argue, is a problem without a solution.

### **Tracing the effects of ancient wrongs: The problem of the baseline**

Defenders of reparations must answer the question of how much, and in what ways, past injustices of slavery and racial oppression harmed not the slaves but their descendants. Without that, the case for reparations collapses. There is nothing now that needs to be repaired. But what test or measure should be used to determine the level of compensation to current descendants of slaves?

The basic answer, as I have suggested, is to repair the harm. John Locke explained that by saying that the "damnified" victim is entitled to receive from the offender "as much as may make satisfaction for the harm."<sup>34</sup> How are we to understand the idea of providing "satisfaction"? We can look to the law for guidance, where tort law is well-developed. In an important 1880 British case, Lord Blackburn wrote that the goal is to "put the party who was injured, or who has suffered, in that same position as he would have been had he not sustained the wrong for which he is now getting his compensation."<sup>35</sup> This same idea was put in more modern language in a recent New Jersey case involving medical malpractice. The patient's damages are to be decided, said the Court, "by comparing the condition plaintiff would have been in, had the defendants not been negligent, with plaintiff's impaired condition as a result of the

<sup>34</sup> John Locke, *Second Treatise of Government* (London: Dent and Sons, 1924), Chapter 2, paragraph 5.

<sup>35</sup> *Livingstone v. Rawyards Coal Co.*, 5 App. Cases 25, 39 (House of Lords) (1880).

negligence."<sup>36</sup> Both of these judges are saying, in effect, that damages depend on comparing the actual world with another, hypothetical one. They are determined by the difference between the condition of the injured person after the injury and the hypothetical condition the person *would have been in* had the injury never occurred.

But how then can that difference between the two worlds, one actual and one hypothetical, be determined? One answer is a subjective test: assess the cost of the injury from the perspective of what the victim would willingly accept as compensation. Suppose the injury is loss of a finger. Deciding whether the victim has been given "satisfaction for the harm" would vary from person to person, depending on how much the person suffered and how important the finger was to the person. Assuming the pain and suffering were the same, the loss of a finger might be much more damaging to a concert violinist than to a mathematician or gardener. *How much* it mattered to each would be decided by the level of compensation required to make the victim indifferent between the actual world and the hypothetical world. Only then can it be said that the victim is in "that same position as he would have been had he not sustained the wrong for which he is now getting his compensation," as Lord Blackburn put it. If the victim prefers the injury-plus-compensation world to the one in which the injury never occurred, then the level of compensation was too high. If the victim still wishes the injury had not occurred despite the compensation, then the victim has not yet been adequately compensated.

This subjective approach captures the intuitive idea behind reparations as a form of compensatory justice. But it also raises immensely difficult questions. For one thing, the amount of compensation demanded could vary depending on when a victim is asked the question. *Before* an injury, a potential victim might well demand more to undergo an injury than that same person would claim after the injury has already happened. If that is true, then the question arises as to which of the two times is the right one to choose. The subjective test does not, by itself, provide an answer.<sup>37</sup>

An alternative "objective" decision procedure would first identify the nature of all the possible harms to people and then assign some level of economic or other compensation for each one. In the example of the lost finger, the damages would presumably include medical bills

<sup>36</sup> *Berman v. Allen*, 404 A.2d 8, 12 (1979) (New Jersey Supreme Court).

<sup>37</sup> Robert Nozick raises the question, though without providing an answer. See Nozick, *Anarchy, State, and Utopia*, pp. 152-153.

and lost income as well as pain and suffering. Then, having identified the damages, we could assign a monetary or other value to each of them. This approach is *objective* because we are not deciding the level of compensation based on the victim's own preferences but instead from the outside, so to speak. But subjective and objective tests aim at the same goal, which is to put the injured party into the position she would have been in but for the wrong. We might even expect that much of the time the objective and subjective tests would reach the same conclusion if the particular circumstances of the injured person are considered. I will not pursue these questions further here, however, and simply assume the goal of reparations is to return the injured party to the position she would have been in according to one of those tests. The crucial question on which I want to focus is how we are to decide when that has been achieved in the case of ancient wrongs done by slavery and racial oppression.

Randall Robinson thinks that it is important, as we think about the question of damages, to focus on the loss of African language and culture that took place as a result of slavery. Robinson speaks of how with "sadistic patience" slavery "asphyxiated memory, and smothered cultures, has hulled empty a whole race of people." In doing so, every "artifact of the victims' past cultures, every custom, every ritual, every god, every language, every trace element of a people's whole hereditary identity" was destroyed.<sup>38</sup> Janna Thompson also emphasizes how African-Americans were "deprived by slavery and other injustices of their African heritage."<sup>39</sup> But the question is not whether *slaves* were harmed by slavery but whether their descendants were harmed generations later, by the loss of African culture. It is far from obvious that descendants of slaves were harmed *simply* by slavery's depriving them of their ancestors' cultural heritage. Consider adoption. I have two friends who recently adopted a baby girl who had been abandoned and brought her to the United States from China. Assume that the girl will grow up as an Asian-American, knowing about Chinese culture and language only as an outsider, and only to the extent that she chooses to learn about it. To make the case closely analogous to slavery, we should consider the plight of that adopted daughter's great-, great-, great-grandchild, now fully assimilated but still physically identifiable as Asian-American. Was that descendant of my friends' adopted daughter harmed by the loss of her culture? It seems to me that she was not.

<sup>38</sup> Robinson, *The Debt: What America Owes Blacks*, p. 216.

<sup>39</sup> Thompson, *Taking Responsibility for the Past*, p. 139.



It is not as if she were *without* a culture. What she has is a different one than she would have had but for the adoption. Similarly, it is not as if the descendants of slaves have no culture at all. If that had been the consequence of slavery, there would be little doubt that slavery harmed African-Americans gravely. But African-Americans are the heir to a rich cultural tradition, which is in many ways a fusion of many diverse cultures, including African. They know a great language, English, and have access to rich artistic and cultural traditions in the United States.

Is the real claim, then, that the descendants of slaves were harmed by having a superior African culture replaced with the inferior hybrid American culture? If the point is that being transplanted into another culture is itself a harm, then almost all living Americans were also victims. I could claim reparations against the English for driving my ancestors from Ireland to America, Jews could claim reparations against Cossacks for driving their ancestors from Eastern Europe, and so forth. Indeed, *any* ancestor who decided to leave for America could be said to have "harmed" their descendants by "depriving" them of their "heritage."

Our question, recall, is about damages and requires comparing the hypothetical world in which the ancient wrong did not occur with the actual world in which it did happen in order to decide on the level of compensation that is due. It is often difficult enough to assess damages when the person who was directly injured is the one claiming damages. How could a contemporary African-American begin to think about whether she is owed compensation for being an African-American rather than an African? She would have to imagine herself, literally and culturally, as a different person. It is not clear that the question even makes sense in this context.

This problem, of determining damages, is in fact deeper than I have so far suggested. As I noted, determining compensation proceeds in two stages. Each stage rests on a counterfactual "baseline" that envisions what would have happened in the absence of the injustice. In the first stage, the correct baseline, which describes the hypothetical world in which the wrong did not occur, must be identified. In the injured finger case, we assume the baseline was no loss of the finger. But in the slavery case, I will argue, we cannot simply say that there was no slavery and then leave it at that. Initial identification of the baseline is far more complicated and, indeed, it is not at all clear when looked at carefully that we are able to determine what the correct baseline is.

The second stage requires historical speculation, which raises another problem. In the case of physical injury, we assume that the victim would

not have lost his finger in some other accident pending compensation. In the case of ancient injustices done to ancestors, it is much more complicated: we must imagine how the world without slavery would have evolved over the generations, all the way down to the current day. We need, in other words, to bring the hypothetical baseline up to date in order to determine the position the descendants would have been in had that hypothetical baseline been real. However, I will argue that there appears to be no rational basis on which to decide among the possible baselines.

Here are four possible baselines that might be chosen:<sup>40</sup>

1. Compare the current situation with one in which there had never been any migration or slavery and the ancestors of current African-Americans *remained* in Africa and lived typical African lives.
2. Compare the current situation of African-Americans with the baseline of where they would now be had their ancestors been forcibly brought to this country but then treated as free and equal citizens, perhaps after a period of indentured servitude.
3. Compare the current situation with one in which (like other immigrant groups) the slaves were merely *allowed* to come if they could find their own way but then were treated as free and equal citizens once they got here.
4. Compare the current situation with how African-Americans would have fared had somebody *helped* their ancestors to come as citizens by providing free transportation to the African ports and on to America where they were treated as free and equal citizens.

The choice is unavoidable since a decision to select one baseline will determine whether or not there are damages at all, as well as how much compensation is owed. Some baselines might even suggest descendants of slaves actually benefited from the historic injustices imposed on their ancestors.

The question to ask is "why *not* choose the first option," which imagines that there had been no slavery *and* that the ancestors of current African-Americans remained in Africa? We might think the most natural baseline is whatever was most likely to have actually occurred had there been no slavery. But that would be the one in which the slaves remained in Africa

<sup>40</sup> For a discussion of the problem of baselines in the context of original acquisition of unowned property, see John Arthur, "Property Acquisition and Harm," *Canadian Journal of Philosophy*, Vol. 17, No. 2 (1987), pp. 337-348.

since without slavery, there would almost surely not have been massive immigration of Africans to the European colonies of North America. It is even less likely there would have been forced migration, or subsidized migration without slavery. Only by allowing slavery did governments create incentives for the ancestors of living African-Americans to be brought here.

On that assumption, using that baseline, the argument for reparations appears to collapse unless the cultural argument I criticized could somehow be sustained. The average income of a sub-Saharan African today is roughly \$745 per year, far below the poverty line in the United States, and the typical life expectancy in Africa is decades shorter than that of contemporary African-Americans. By almost every objective measure, the average African-American is better off. The possible exceptions, namely, those African-Americans living in poverty and in crime-ridden cities, are not in that situation due just to slavery, though slavery may have played a part in causing the problems. As we saw in Chapter 5, the explanation includes family breakdown, crime, and poor educational achievement along with broader economic shifts away from low-skill manufacturing jobs. How it might be possible to argue from that possibility to a specific debt of reparation is far from clear, although I argue in the last section that it is more plausible as the ground for an apology.

Choosing the realistic baseline that might have resulted in Africans coming to North America does not yield the conclusion that reparations should be paid to living descendants of slaves. To get that conclusion the baseline must be one of the others, in which Africans came but were treated as free and equal citizens on arrival or soon thereafter. Yet, none of those were practical since slavery was the financial motive that drove the whole process. The only way to justify reparations, then, is to ignore what was practically possible and imagine a world in which people came on their own or were brought but not as slaves. But why choose those baselines over the historically realistic one? Defenders of reparations cannot say that the *reason* for choosing that baseline is that it is the one that will justify reparations because that would simply beg the question. That is the issue we hope to answer.

But *even if* we were to take that historically unrealistic baseline and assume the Africans got to American soil without slavery, the reparations argument faces other serious obstacles that grow out of the baseline. Presumably, the level of contribution to payment of reparations would reasonably be based on the relative importance of each negligent actor or its contribution to the injury. Yet the contribution of the U.S. national

and state governments to slavery was only a fraction of the total. As I noted earlier, African slavetraders, European merchants, and European governments either actively helped capture and trade the slaves or enabled the slave trade to North America to continue. Indeed, without so much assistance by other people and governments, American slavery would likely not have happened. U.S. laws permitting slavery were only a part of the story. That means, in turn, that even if we had reason to think slavery harmed the distant descendants of slaves, the compensation owed by the governments of the United States might be a very small part of the whole.

Additionally the baseline must be brought up to date. In other words, to determine whether or not the living descendants of slaves are entitled to reparations, we must do more than identify the correct baseline. We need to describe it in enough detail to determine the difference between what would have happened and what did. Only then could we hope to say, with any degree of confidence, what needs to be done to repair the harms caused by slavery. I want to make two points about such speculations. One is practical, the other moral.

To see the practical point, recall the difference between restitution and reparation. If we were restoring a particular object, such as an heirloom, to its owner then we can feel confident that it – the heirloom – should be returned. The descendant would have had it but for the theft. But justifying restitution for the value of the exploited labor power, we saw, is much more speculative. In the case we are now considering, reparation for damages, the injustices slaves suffered were mainly denials of powers, specifically *liberty, rights, and opportunities* rather than theft of property.<sup>41</sup> This was the major wrong done to slaves and this, we are assuming, somehow harmed future generations. We therefore need to imagine what would have happened to the slaves had they been given the rights and opportunities that others enjoyed, and then what would have happened throughout all the subsequent generations right down to the present. Do we know whether those people, now assumed not to be slaves, would have taken advantage of those rights and opportunities, and if so how? Would they have worked hard or chosen leisure? Would they have succeeded on a par with the average of other groups, have done better, or have done worse? It is impossible even to get a grip on how we should answer these questions.

<sup>41</sup> As I discussed above, slavery essentially involves the denial of the powers slaves are entitled to exercise.

The moral point concerns not the practical impossibility of tracing what would have happened under the chosen baseline, but the baseline itself. Slavery was unjust primarily because it was slavery. It denied people the power to control their own lives by denying rights and opportunities they should have been given. Reparations for slavery therefore differ from the return of an inheritance or some other form of restitution. The inherited item simply passes from the original owner to the new one. But rights to work, own property, and other opportunities are not like that. They are not a right to receive any given amount of money or property, but are instead the *right to an opportunity* to work and earn. The fact that a person did not *actually do* the work is relevant to the claim that the person should receive what could only have come as a result of actually having worked. Insofar as we believe that income is deserved in virtue of having actually earned it, there is a gap between the denial of the *opportunity* to work and the right to the product of the work. We do not punish people until they have actually done something wrong because they don't deserve it. Why should we reward people or compensate their heirs for work that was not done but might have been? My point is not that violating rights, liberties, and so forth is inconsequential, or even that it cannot deserve compensation. Rather, the question that must be answered is *how much* compensation is owed for the denial of the *rights or opportunities to work and earn*. This compounds even further the problem faced by anyone who claims reparations for historic injustices. Any baseline must respect the fact that people do not deserve income simply because they did not have the opportunity to work for it.

As I have suggested, the proposal to pay reparations raises problems without solutions. Defenders of reparations confront serious problems and objections of many different varieties. Most importantly, we cannot identify a uniquely correct baseline, cannot describe its course through history with sufficient specificity, and cannot deal adequately with the fact that slavery's injustice was mainly that it denied liberties, rights, and opportunities to slaves.

That does not, however, settle the question of the debt that slavery and segregation have left. Slavery was an injustice of enormous proportions. Although providing restitution or reparation poses insuperable problems, that does not exhaust the possible responses. What it does, though, is to suggest that the question needs to be refocused. If we reject restitution and reparations, then what *is* to be done? Should the history of slavery and racial oppression be simply ignored?

### Apologies, guilt, and remorse

Restitution and reparation each provides compensation: *restitution* by returning what was owed; *reparation* by making the victim whole for a past wrong. Neither of those, I argued, is the right response to slavery. Apologies are also a response to past wrongdoing, though they do not involve compensation. For that reason, apologies do not make the same demands. Although an apology is owed, there is no necessity to identify property that was taken or the lingering effects of an ancient wrong. But that does not mean that apologies are insignificant.

Between 1931 and 1945, the Japanese Empire used Korean women as sex slaves for their military. Called “comfort women,” up to 200,000 were forced to work at “comfort stations” for soldiers fighting in China. In 1995, the Japanese government agreed, as part of a commemoration of the end of World War II, to support the Asian Women’s Fund and offer \$9,000 to each of the living victims. The government also agreed to attach to the payment a private letter from the Prime Minister apologizing for what the Japanese government had done. Despite the fact that many of the women were poor, the vast majority rejected the money because the apology was not officially offered by the government. (Japan has still not officially apologized to the women.) It was significant to those women that the government refused to apologize.

Both institutions and persons can apologize. Why, first, would it matter if a *person* apologizes? Apologies do not provide compensations in the literal sense. No apology could possibly have compensated the women for what was done to them in the sense of making them “whole.” Perhaps nothing could. What an apology does do, however, is to “address” the wrong first by simply recognizing that it took place.<sup>42</sup> One cannot apologize sincerely without acknowledging the past action was done and that it was wrong. An apology is not merely an expression of regret for another’s suffering or even for *another’s having been wronged*. It is an expression of *guilt for having done the wrong*.

Apologies are also expressions of remorse as well as acknowledgments of guilt. Both of these are *moral* emotions, which distinguishes them

<sup>42</sup> My discussion of apologies is indebted to Kathleen Gill, “The Moral Functions of an Apology,” in *Philosophical Forum*, Vol. 31, No. 1 (Spring 2000), pp. 11–27; Rodney Roberts, *Injustice and Rectification* (New York: Peter Lang, 2005); John Rawls, *A Theory of Justice, Revised Edition*; and Trudy Govier, *Forgiveness and Revenge* (London: Routledge, 2002).

from other feelings such as anger or grief.<sup>43</sup> Anger and grief are typically associated with physical sensations such as trembling, tightness in the stomach, inability to speak, and shortness of breath. They are also usually accompanied by behavioral manifestations such as weeping or (in the case of anger) a raised voice.

Guilt and remorse are different, for two reasons. First, they need not be accompanied by physical sensations. Unlike pain or even anger, a guilty or remorseful person will often not feel any associated physical sensations.

Second, these moral feelings demand a moral response. We expect persons who feel guilt and remorse to believe, and when appropriate to admit, that they failed to live up to a moral norm. If the bad feelings about what was done are not moral but instead limited to fear of punishment or some other undesired consequence, then the person does not feel genuine guilt or remorse. The person might *regret* what was done, but regret is not a moral emotion. We can regret having made the wrong purchase or having made a wrong turn, as well as having done something wrong. We can also regret mistakes we made or even the harms we might have caused unintentionally, by accident. Remorse and guilt are different from regret. We feel remorse because we believe what we did is properly judged wrong and we are blameworthy for having done it. In that way, guilt and remorse ride piggyback on standards of right and wrong. An amoral person would feel neither guilt nor remorse.

If that is correct, and guilt and remorse are moral feelings, then how can an institution such as a government or nation be said to "feel" anything like guilt or remorse? In considering that question, it is important to notice that while it makes sense to say that a person is *in fact* guilty but does not feel guilty, it is not possible for a person to be remorseful without the accompanying emotion. In other words, a person can be guilty without the moral feeling often associated with guilt, but cannot be remorseful without feeling remorse.

That suggests that a government might in fact *be* guilty, even though it cannot feel guilt. The reason goes back to what I have said about attributing responsibility to collective bodies such as corporations and governments. I argued that we can attribute institutional racism to legislative bodies, for example, by treating the legislature as if what it did were done by a single person. I argued that it is part of our legal and

<sup>43</sup> My discussion of moral emotions is indebted to John Rawls, *A Theory of Justice, Revised Edition*.



political practice to “personify” institutions in that way. We do that even though we are not (necessarily) convinced that any single individual is guilty personally.

So although it is common to think of corporations and governments as being guilty for their past wrongdoings, we need not also assume that the government has any of the feelings that are usually associated with guilt in persons. Remorse is different; it is more closely tied to persons because it must include feelings. As I said, one cannot be remorseful yet not feel remorse. That does not mean, however, that remorse plays no role in understanding past injustices and how people should respond to them. As I emphasized in Chapter 4, members of groups, whether familial, religious, civic, racial, or ethnic, often identify with their group. That means, in turn, that when people do belong to a nation and they identify with it, it may be reasonable for them to feel remorse and guilt at what the nation’s government has done in the past. Although people today may not even have been alive when the injustice was done, it was done by their government, and in that sense, it was done in their name. The point, then, is that when members of a nation identify with the group and their government has done an injustice, then it is both possible and reasonable for them to feel remorse. Though they are not individually guilty or blameworthy, and do not have personal feelings of guilt for what was done, moral feeling for what was collectively done in their name can be appropriate.

Finally, though it is true that an institution cannot literally *feel* remorse, we might think that an institution such as a government could *express* remorse, just as it could express racism. That is possible for the same reason we can hold a corporation or government guilty: we can treat it as if it were a person. So, not only might individuals feel remorse for what their nation did in their name, but the institution that represents the people – the government – can be guilty and can express remorse. In saying that, we are again treating the government as if it were a person, just as we often do with institutions. We can also reasonably say, in the same spirit, that a government that has not acknowledged its guilt by expressing its remorse, say with an apology, has not yet fulfilled its responsibility to acknowledge its past wrongdoing. It should express such remorse, and the victims are entitled to an apology.

Given that it is both possible and often reasonable for governments to apologize, the next question is why it might be important. Why do apologies matter? Assuming that the victims feel resentment at the wrong they suffered, the first thing to say is that the apology will tend to reduce



such feelings and possibly even lead to reconciliation.<sup>44</sup> The fact of the victims' having been wronged will not be forgotten or erased, of course. That is impossible, as critics of apologies often stress. But insofar as the moral emotion of resentment is based on the lack of respect and concern that was manifested by the wrong, an apology can "balance" that by showing respect for the victims now. In that sense, the Japanese government's refusal to apologize publicly may have been experienced by the Korean women as a continuing refusal to show them respect as equals or as persons, just as it had refused to do 50 years earlier when it enslaved them as "comfort women." That fact may partly explain why so many women rejected the apology that was offered.

In acknowledging the wrong and expressing remorse, the apology also does something else. It formally recognizes the perspective of the victims and acknowledges the validity or merit in that perspective. If the victims were chosen on the basis of their membership in racial, ethnic, or other groups with which the victims identify, as persons, then the apology affirms the validity of their perspective not just as individuals but as members of that group. By apologizing, the apologizer confirms the value of who they are as members of the group to which the apology is given.

An official apology for slavery would be both an acknowledgment of guilt by the government and an expression of remorse for what the government and what its people, as a nation, did. There are precedents for such actions by the U.S. government. The United States apologized for internment of Japanese Americans, and, in 1993, the U.S. Congress passed a resolution acknowledging the "overthrow of the Kingdom of Hawaii" 100 years earlier. The resolution went on to say that Congress offered "an apology on behalf of the United States" for the overthrow.<sup>45</sup> More recently, the United States Senate apologized for its failure to enact antilynching laws. It is important that these apologies were not offered on behalf of any individual persons, living or dead. It was the United States that owed the apology, as a nation represented by its government.

Although an apology for slavery would do nothing to compensate for or undo past injustices or change the material or other conditions of slaves' descendants, it would change the moral relationship. The government

<sup>44</sup> Trudy Govier has a helpful discussion of these issues in *Forgiveness and Revenge*, especially in Chapter 8.

<sup>45</sup> U.S. Public Law 103-150.

would have acknowledged its wrong and affirmed the perspective of the victims of slavery. It is also an expression of the remorse felt by members of the community at its historic moral failings.

Furthermore, in making the apology, as Govier notes, the "wrongdoer provides the victim with reasons to forgive."<sup>46</sup> Such an apology can benefit the victim, the offender, and their relationship.

The *victim* benefits because she is replacing negative emotions of anger and resentment with more positive emotions and escaping a fixation with the past and potentially obsessive desires for revenge. The *offender* benefits because he is assisted to make a fresh start, released from the stigma of negative labels and assured that he is no longer an object of moral hatred. Clearly their *relationship* will improve as anger, resentment, and distrust are replaced with acceptance and growing understanding.<sup>47</sup>

This assumes, of course, that the apology is accepted, enabling the moral relationship to be altered between the victim and the offender. *Accepting* an apology is a form of forgiveness, signifying that the moral ledger has been brought back into balance. Whether significant numbers of black citizens and leaders would accept such an apology would probably depend on many factors, including who does it and how it is done. Sincerity would be vital.

There is one further important implication of such an apology for slavery that I want to emphasize. Roughly, it can be expressed with the thought that offering an apology puts the apologizer in the "debt" of the victim. Having expressed guilt and remorse, it is reasonable to expect that the offender will take additional appropriate actions in light of the new moral relationship that now exists between the victim and offender. If appropriate actions do follow, that will tend to confirm the apologizer's sincerity. If they do not, then the supposed expression of remorse may be reasonably interpreted as a sham.

Thus, the apologizer can be expected to pay special heed in the future to avoid wronging the victim. ("You said you were sorry, yet you did *this* to me!" is a serious charge.) The apologizer might also be expected to review carefully other aspects of the relationship to be sure that there are no additional moral failings that have gone unnoticed.

It is important also to note that an apology may provide much, if not all, of what many who demand reparations seek. Janna Thompson, for

<sup>46</sup> Govier, *Forgiveness and Revenge*, p. 48.

<sup>47</sup> Govier, *Forgiveness and Revenge*, p. 48.

example, claims that reparations should take the form of “special consideration” given to the plight of black families. Reparative considerations, she writes, “give us grounds for giving priority to black Americans over people whose disadvantages do not stem from injustices.”<sup>48</sup> It seems to me, however, that the argument for this need not rely, as she and so many others say, on repairing the harms to living descendants of slaves or on returning their property. An apology, together with an appropriate sense of remorse and commitment to justice and equality for descendants of slaves, may also require what she and other defenders of reparations want. Certainly an apology and appropriate remorse for slavery could at least suggest that “special consideration” be given the descendants of slaves as Thomson recommends.