

# RATIONALIZING INDIRECT GUILT

Scott A. Anderson<sup>\*†</sup>

## INTRODUCTION

This Essay attempts to say something useful about how the emotion of guilt is of some interest for those who think about the design and scope of legal and state institutions, including particular laws. I will argue that some feelings of guilt,<sup>1</sup> which at first may seem irrational, may nonetheless signal the existence of ethical failures. These failures will sometimes be best addressed by collective responses, including legal and institutional changes. In turn, such changes can be expected to reduce the burden of guilt that encumbers us sometimes. It is worth noting at the outset that guilt is not one of the emotions psychologists currently classify as “primary” or, therefore, expect to find universally in humans.<sup>2</sup> So the discussion here will, it seems, have a local character to it and should not be read as making timeless claims about human beings as such. That said, a role for the emotion of guilt is embedded deeply enough in the ethics we have inherited in the West that it would require an ambitious set of revisions to our ethical views to explain how we might live as well without it. Though, as we will see, this too is disputed.<sup>3</sup>

Many of the issues raised in this discussion will be instantiations of issues that arise generically when one thinks seriously about emotions as a part of normative theorizing. Other issues will pertain to guilt, but not to most other emotions. Ultimately, I will suggest that part of the interest in thinking about the emotion of guilt with respect to law and institutions is to guide us towards a more interesting understanding of agency than is common when thinking about the relationship of individuals to institutions. In turn, we shall see how the legal and institutional context in which an agent lives may affect what she is responsible for, and thus, the extent to which agents have good grounds for feeling guilty.

---

\* Assistant Professor of Philosophy, University of British Columbia; Ph.D. 2002, University of Chicago; B.A. 1987, with highest distinction, Indiana University. This Essay is the successor to a talk presented at the University of Chicago Law School conference “Emotion in Context: Exploring the Interaction between Emotions and Legal Institutions” in May 2008.

† The author wishes to thank Susan Bandes for the opportunity to take part in this event, and the audience for helpful discussion. Thanks go also to Chad Flanders and Martha Nussbaum for helpful comments. This Essay was written while the author was, earlier, Law and Philosophy Fellow and, later, Visiting Scholar at the University of Chicago Law School, whose support is gratefully acknowledged.

1. I will use “guilt feelings,” “feelings of guilt,” “feeling guilt,” and “feeling guilty” interchangeably throughout, as context and felicity of expression seem to work best to me.

2. See, e.g., JONATHAN H. TURNER & JAN E. STETS, *THE SOCIOLOGY OF EMOTIONS* 14–15 (2005) (comparing statements of “primary emotions”). Of twenty typologies of the primary emotions surveyed, only two list guilt as a primary emotion. *Id.*

3. See *infra* note 9 and accompanying text.

## I. RESPONSIBILITY AND GUILT

A. *Two Puzzles About Guilt*

This argument requires first some independent discussion of the emotion we call guilt, which is frequently associated with a particular feeling—feeling guilty. This feeling is to be distinguished from the formal legal notion of guilt, which is, roughly, the condition of being found to have violated the law (leaving open the question of what sort of law is at issue—whether municipal, divine, moral, etc.). Unlike the formal notion, the emotion of guilt can be highly subjective. The facts which determine whether an agent has the emotion of guilt will be quite particular to that agent and possibly difficult to verify intersubjectively. But despite such subjectivity, there seem to be some general facts that characterize guilt.

There are some emotions, sometimes designated as “moods,” which can befall a person without any specific source or object; these might include euphoria, anxiety, or boredom. Guilt is not like that. Rather, the feeling of guilt seems to take an intentional object: if one feels guilty, one feels guilty *about something*. On a standard understanding of the genesis of guilt feelings, guilt issues from an individual’s belief or suspicion that there has been some sort of mistake, lapse, or other failure in her actions. Often, the feeling arises after acting in light of a reevaluation of her action, or in the wake of learning of its consequences. It is commonly thought that the function of guilt feelings is practical in its upshot: the displeasure associated with feeling guilty provides a kind of incentive to act in accordance with morality or authority, or else to make amends after acting badly, in order to reduce such bad feelings.<sup>4</sup> I will call guilt that one feels as a result of ethical faults with one’s own actions “direct” guilt because of the direct relationship between the faultiness of one’s action and the feeling of guilt in its wake.

Yet not all of the things we commonly cite as grounds for guilty feelings establish such a direct relationship. Common are cases where one

---

4. See Robert L. Trivers, *The Evolution of Reciprocal Altruism*, 46 Q. REV. BIOLOGY 35, 50 (1971) (providing an evolutionary explanation of this role); Herbert Morris, *The Decline of Guilt*, 99 ETHICS 62, 66–67 (1988) (offering a legal theorist’s description: a person who feels guilt “holds to beliefs of a certain kind, feels a certain way, and is disposed to feel and act in certain specific ways”). Morris describes guilt further:

First, one has internalized norms and, as such, is committed to avoiding wrong. . . . Further, in feeling guilt one turns on oneself the criticism and hostility that one would have visited upon others had they done wrong. . . . Finally, in feeling guilty one feels burdened until steps are taken. One feels obliged to confess, to make amends, to repair, and to restore.

*Id.*

feels guilty due to one's actions or circumstances when any of the following conditions hold:

*Guilt for side effects*: one has been a cause (part or whole) of some harm to another, though one recognizes oneself to have acted rationally, without mistake, aiming to do what is best, morally speaking;<sup>5</sup>

*Collective guilt*: one recognizes oneself to be a member of a group that has done harm to others, though one has neither caused, directed, endorsed, nor perhaps even benefited from such harming;<sup>6</sup>

*Survivor guilt*: one has received a benefit relative to others which, though undeserved, was neither requested nor desired, nor something one could transfer to those who did not receive it.<sup>7</sup>

I will call these cases and their variations cases of "indirect" guilt because the relationship of the ethical fault with an agent's actions and the guilty feelings that result from them is indirect or otherwise obscure.<sup>8</sup> The existence of indirect guilt raises puzzles for us insofar as guilt is supposed to have a practical import. In these cases, it would seem, the individual feeling guilty has acted without flaw, and no particular restitution or remediation by the agent would seem to be required. If guilty feelings nonetheless arise frequently without practical import, then it seems there is no good rational explanation for such feelings, and one would do well to extirpate them if possible. Here it seems a mistake has been made in the feeling, rather than in the activity that leads up to it.

A different puzzle arises when we ask what importance should be assigned to the phenomenological feeling of guilt. No doubt the unpleasantness of feeling guilty can be given a functional explanation, along the lines of its being a motivation to avoid wrongdoing, to make

---

5. See *infra* Part II.A (discussing guilt for side effects).

6. See *infra* Part II.B (discussing collective guilt).

7. See *infra* Part II.C (discussing survivor guilt).

8. My classification of cases here is similar to that of Herbert Morris. See Herbert Morris, *Nonmoral Guilt*, in *RESPONSIBILITY, CHARACTER, AND THE EMOTIONS: NEW ESSAYS IN MORAL PSYCHOLOGY* 220, 221–22 (Ferdinand Schoeman ed., 1987) (distinguishing "moral" from "nonmoral" guilt). To my category of "indirect" guilt, Morris's conception of nonmoral guilt adds feelings of guilt for mere thoughts ("states of mind"). *Id.* at 226–32. To Morris's category of nonmoral guilt, I would add guilt for what I describe above as "side effects." See PATRICIA S. GREENSPAN, *PRACTICAL GUILT: MORAL DILEMMAS, EMOTIONS, AND SOCIAL NORMS* 177 (1995) (describing "cases of guilt without *wrong*" arising from dilemmas such as a young man's choice between "abandoning his dependent mother and failing in his duty to join the French resistance").

amends in the wake of wrongdoing, and to serve as a kind of balancing in the wake of harms to others. This may in turn be useful for achieving reconciliation down the road. But does morality require such feelings of us? Recently, Gilbert Harman argued that serious guilt feelings are not integrally related to morality since, he claims, basically moral people may never feel such feelings, and yet can act well consistently.<sup>9</sup> If such feelings are not needed for moral behavior, then it seems reasonable to seek to do without them: the real pain they entail is not necessarily balanced by any corresponding benefit. So at least some people (*viz.*, those who can act well without the additional motivation) should attempt, if possible, to silence or disregard such feelings.

Harman seems to be in a minority among writers on this subject, but his protest points to a genuine, general difficulty for attempts to theorize the role of feelings or emotions in ethics, law, or any normative subject. The problem is this: emotions seem to have both rational and irrational components. Insofar as emotions have a rational part—they may, for instance, involve judgments of value—then we can see how to make sense of their practical import. But their rational part would seem to be equivalent to something we might express as a belief, which one might hold whether or not one feels any particular emotion, and *qua* belief would also be liable to rational criticism and accommodation within the network of other beliefs an agent has. So the rational aspect of an emotion would seem to be no more valuable than would be a belief having the same cognitive content. But since emotions are also to some extent irrational, they would seem to be less valuable than beliefs and more likely to create practical problems for the agent. Anger might make one act rashly; grief might inhibit one from seeking out valuable opportunities; guilt feelings might cause one to be excessively cautious or self-obsessed; and in all cases, one might feel certain emotions and come to their associated judgments in ways that resist reconciliation with one's larger complex of beliefs. Moreover, some emotions, such as guilt, are almost always experienced as a painful, unwanted feeling, which lowers the utility of anyone who actually feels them. Hence, any explanation of the value of emotions in terms of the function of their rational content equally justifies holding beliefs with the same content; accordingly, given the problems that the irrational parts of emotions can cause for agents engaged in practice, it is unclear why one should prefer the emotion to the belief.

---

9. Gilbert Harman, *Guilt-Free Morality*, 4 OXFORD STUD. IN METAETHICS (forthcoming June 2009) (manuscript at 6, available at <http://www.princeton.edu/~harman/Papers/Guilt.pdf>).

These two puzzles are related to each other as follows. The first puzzle suggests that an agent's guilty feelings do not offer a reason to act in any particular way. If one can feel guilty about things that are well beyond one's control, then it is unclear why one should treat guilt as a specially ethical emotion; it would seem to be unaccountable, more like a tension headache than a signal of moral failure. The second puzzle suggests that an agent's feeling guilt is not necessary for her to act in the way that a basically decent, well-functioning moral agent would. One might suppose that the irrational aspect of guilt may provide an additional incentive for agents to act well (since they will likely come to feel the threat of guilty feelings as a threat of punishment for bad behavior), but it is not obvious, as Harman argues, that one need be encumbered by such feelings in order to act well.<sup>10</sup> If Harman's self-description is to be believed (and assuming he counts as a basically decent, well-functioning agent), then it seems that guilt plays at most a helping role in guiding moral conduct, rather than an essential one.

If so, then there is reason to investigate the emotion of guilt more deeply. If, contrary to Harman's recommendation,<sup>11</sup> we refuse to attempt to cast away feelings of guilt entirely, then we need to rationalize guilt, especially its indirect forms, while showing what role the emotion has that is distinct from the role of its plain cognitive content. By suggesting we *rationalize* guilt, I am suggesting that we look for some semantic value within our guilt feelings that depicts some describable facts either inside the agent's psyche or outside in the world around the agent. Just as certain sounds, signs, and feelings, among other things, provide informational content to an individual, one's emotions can be understood to have content, thus raising the question of their appropriateness in context.<sup>12</sup> Such semantic content can then come into judgments about our situations in the world and possibly provide useful information about them. As a result of such efforts at rationalization, we may have a better grip on our emotions, so to speak, in that we may be both better able to act appropriately on them

---

10. *Id.* at 7.

11. *See id.* at 10. "[Nontrivial] guilt . . . might be worth [feeling miserable] . . . if susceptibility to guilt made people act better. But there is no evidence that susceptibility to nontrivial guilt is needed to make people act morally." *Id.*

12. Other forms of inquiry might seek to rationalize emotions such as guilt in other ways. For instance, psychologists and cognitive scientists may seek to explain their physiological basis either in psychological terms, or in terms of naturalistically describable external phenomena related to evolutionary success. It might turn out, for instance, that humans are "hard-wired" to feel fear when confronted with visual images of snakes or to feel anxious at the sound of a baby's crying. Guilt might likewise be rationalizable by showing it to be useful or valuable for human flourishing, either individually or collectively. A functional explanation need not be in competition with describing its semantic content, but neither can one assume that a true functional explanation would line up with the best semantic analysis of the feeling.

and better able to determine when such feelings are or are not appropriate to one's circumstances. Whether or not guilt feelings are a universal feature of humanity, the propensity for such feelings seems to be something common to most people (although its realization may depend on contingent circumstances). The possibilities for clarifying our guilt feelings suggests that there is also room to change our understanding of the grounds for guilt and room to grow or shrink its importance.

### *B. Western Thought About Guilt*

The first obstacle to rationalizing indirect guilt is that there are two somewhat opposed understandings of the emotion of guilt, even in its ordinary, direct form: one couched in the legalistic Judeo-Christian tradition, the other couched in attempts to escape this tradition by turning towards naturalism. So first we need either to choose between these two understandings or find a semantic interpretation of guilt that can be supported by both.

In the legalistic tradition, guilt is a bad or negative feeling one has about oneself in the wake of one's moral transgressions. This might be conceived as a kind of self-flagellation for sin, defined as a violation of God's laws. The legalistic essence of this emotion derives from the fact that the occasions for guilt are determined by reference to formal standards: to be in violation of those standards is grounds for guilt, and the pains involved in feeling guilty are integrally related to that sort of failure.<sup>13</sup> Of course, these standards shift over time. The Bible features no shortage of claims that people are held guilty for "the sins of the fathers,"<sup>14</sup> and the concept of "original sin"—the sin that one is born into as a human—is foundational to much of Christian thought.<sup>15</sup> But over the course of the development of Christian thought, the trend seems to be towards a focus on guilt as a mark of failure with respect to the goodness of one's will or one's intentions, with a similar trend in secular Western ethics attaching moral responsibility to the choices, acts, or even thoughts of individuals, judged

---

13. One can regret failures of all sorts, such as errors of computation that cost one money, errors of practical calculation that spoil a vacation, errors of performance that cause one to lose a competition, etc. The pain of a guilty feeling, on this view, is restricted to and in some way encapsulates failures in thought or conduct that violate certain kinds of rules, so it would appear to differ from the ordinary sort of regrets that come from nonmoral failures.

14. See, e.g., *Leviticus* 26:39; *Isaiah* 14:21; *Jeremiah* 32:18 (referring to "their fathers' iniquities," "their fathers' sin," and "sins of fathers," respectively).

15. See generally S. Harent, *Original Sin*, in *THE CATHOLIC ENCYCLOPEDIA* (1911), available at <http://www.newadvent.org/cathen/11312a.htm> (discussing the history of original sin in the doctrine of Roman Catholic teaching).

by their conformity with the (moral) law. In this trend, figures like Abelard (in the Catholic tradition)<sup>16</sup> and Kant (in the secular tradition)<sup>17</sup> count as exemplars. Although Kant may have had little use for the emotion of guilt, or the idea of a divinely commanded moral law, he epitomizes the general tendency of the Judeo-Christian tradition towards the view that nothing external to the will can determine it. Hence, Kant posits that individuals are responsible for what they will, relative to the moral laws or principles that are thought to govern human activity.<sup>18</sup> The emotions of guilt, and sometimes shame, are the names we give to those feelings that arise in the wake of one's moral failings with respect to the law.

An oft-noted challenge for the Judeo-Christian tradition is the worry of determinism: if this understanding of guilt relies on thought about moral responsibility, which in turn attaches responsibility to particular acts of the will, it appears to risk incoherence if the metaphysical freedom required for such willing is unsupportable.<sup>19</sup> If we can make no sense of moral responsibility, then guilt too seems inappropriate. This worry has prompted some to develop an alternative way of understanding guilt that is compatible with the rejection of the metaphysics underlying the theological or rationalist legal conceptions.<sup>20</sup> Peter Strawson has attempted to explain guilt as a natural response to our sense of community, and the feelings we have towards others in our communities, rather than as a response to a judgment of nonconformity to law.<sup>21</sup> Strawson argues that it is in our

---

16. JOHN MARENBO, *THE PHILOSOPHY OF PETER ABELARD* 325 (1999).

Properly speaking, sin is guilt—contempt of God, the evil will which makes us guilty before God. Sin in the sense of guilt cannot be passed on from parents to their children, since newborn children, lacking reason and so free will, cannot incur guilt. In this way, Abelard preserves his central notion of sin as something freely chosen by the individual.

*Id.* (citation omitted).

17. "There is no possibility of thinking of anything at all in the world, or even out of it, which can be regarded as good without qualification, except a *good will*." IMMANUEL KANT, *GROUNDING FOR THE METAPHYSICS OF MORALS* 7 (James W. Ellington trans., 3d ed. 1993).

18. "The will is a kind of causality belonging to living beings insofar as they are rational; freedom would be the property of this causality that makes it effective independent of any determination by alien causes." *Id.* at 49. And, "[w]hat else, then, can freedom of the will be but autonomy, i.e., the property that the will has of being a law to itself? . . . [A] free will and a will subject to moral laws are one and the same." *Id.*

19. Contemporary worries about determinism stem largely from a form of scientific outlook towards the natural world. See, e.g., John Martin Fischer, *Freedom and Foreknowledge*, in *GOD, FOREKNOWLEDGE, AND FREEDOM* 86, 86–87 (John Martin Fischer ed., 1989) (noting a similar worry that plagues theologically oriented thinkers, in which God's omnipotence and omniscience pose a challenge similar to that of material determinism).

20. PETER STRAWSON, *Freedom and Resentment*, in *FREEDOM AND RESENTMENT AND OTHER ESSAYS* 1, 13 (1974).

21. *Id.*

natures to be emotionally engaged by certain kinds of interactions with others—harms done and benefits bestowed being the two most central cases.<sup>22</sup> Suffering harm breeds resentment towards the perpetrator; seeing harm done breeds indignation towards the same. Causing harm gives rise to guilt, which Strawson describes as a “self-reactive attitude” which is, in part, a sense that others would be justified in regarding one with resentment or indignation.<sup>23</sup> On this view, to be responsible for an action is to be an agent of the sort that others judge appropriate as an object of certain emotional responses, such as gratitude or resentment, indignation or admiration. To the extent that one wants and expects to be treated with love, admiration, respect, friendship, or the other forms of communal interaction, others will expect one to feel a certain way towards oneself when one harms another. Guilt, then, turns out to be part of a family of feelings that produce a collective sense among interacting people of belonging to the same “moral community.”<sup>24</sup>

For some it has been useful to emphasize the difference between the rationalist/theological understanding of guilt, and that derived from the more naturalized approach to moral responsibility.<sup>25</sup> But for present purposes, it is possible to find a common theme in their understanding of guilt. Both approaches emphasize the connection between an individual and something more substantial and stable outside the individual: in the legalistic approach, the more substantial thing is God, or the moral law; in the naturalizing approach, it is the “moral community,” or perhaps humanity itself, as the evolutionarily determined species whose fitness for survival is directly the cause of the individual members of that species. Both see guilt feelings as prompted by one’s sense of a rupture between oneself and something that is the proper focus of one’s moral attention, whether God, the moral law, or the community. On the former view, sin or moral failure amounts to a breaking of one’s connection to God or the bounds of morality (showing one to be unaccountable in some basic way); on the latter view, activity that is insufficiently responsive to the interests of

---

22. *Id.* at 5.

23. *Id.* at 5, 14.

24. *See id.* at 21 (discussing guilt in the moral community); *see also* PAUL RUSSELL, FREEDOM AND MORAL SENTIMENT: HUME’S WAY OF NATURALIZING RESPONSIBILITY 81 (2002) (arguing that Strawson, in his thinking about the “moral community,” may be viewed as a close follower of David Hume).

25. *See, e.g.*, John Deigh, *Reactive Attitudes Revisited*, in MORALITY AND THE EMOTIONS (Carla Bagnoli ed.) (forthcoming 2010) (on file with author) (arguing that several recent appropriations of Strawson’s account import complex normative cognitions into it to do the explanatory work, whereas “[b]y contrast, on Strawson’s account, the [reactive] attitudes do real work in explaining the practice [of attributing moral responsibility]”).



others distances oneself from others in the community. As a result of either sort of distancing, guilt can be understood as a feeling of self-rebuke, remorse, or despair for the rupture between oneself and that to which one sought connection. (Hereafter, I will refer to this external object of attachment as one's "moral community.")

The essence of guilt as a loss of connection is expressed elegantly by the legal theorist Herbert Morris:

There is, next, the pain that comes from separating ourselves from the union that we value. To be cut off from what we love is intensely painful, and the pain of separation involved in guilt resembles this. But there is more involved, for I have suggested that in union, best exemplified by love, there is an intensely satisfying feeling of wholeness or completeness. In seeing oneself as cut off from others one feels a sense of incompleteness, as a lover who loses a loved one may feel that a part of him has been taken away or torn from him. The person feels that peculiar pain and uneasiness when feeling guilty of cutting off a part of himself. . . . In cutting oneself off from others one comes to see oneself as being cut off, not whole, as if one had destroyed what one loved and thus also destroyed a part of oneself. This image of cutting off and being cut off, not whole, finds support in our view of the guilty person as not being able to function as a whole person could and does, not being able to enjoy life fully, being as it were cut off from experiencing the world in satisfying ways.<sup>26</sup>

Morris's description here echoes that of Freud, describing the way society creates a sense of guilt in its members in order to bind them into solidarity with, and solicitude for, the good of the whole:

[Civilization] favours every path by which strong identifications can be established between the members of the community, and it summons up aim-inhibited libido on the largest scale so as to strengthen the communal bond by relations of friendship.<sup>27</sup>

And:

[T]he inclination to aggression is an original, self-subsisting instinctual disposition in man, . . . [which] constitutes the greatest

---

26. Herbert Morris, *Guilt and Suffering*, in *ON GUILT AND INNOCENCE: ESSAYS IN LEGAL PHILOSOPHY AND MORAL PSYCHOLOGY* 89, 99–100 (1976).

27. SIGMUND FREUD, *CIVILIZATION AND ITS DISCONTENTS* 65 (James Strachey ed. & trans., 1961).

impediment to civilization. . . . I may now add that civilization is a process in the service of Eros, whose purpose is to combine single human individuals, and after that families, then races, peoples and nations, into one great unity, the unity of mankind.<sup>28</sup>

Thus civilization, and a tendency to make ever larger collectives, is pitted against human aggression as its nemesis. In order to further the tendency of expanding collectives, civilization finds a way to stem such instinctive aggression. That mechanism is the conscience or “super-ego,” and the sense of tension it generates in its domination of one’s ego is what Freud identifies as “guilt.”<sup>29</sup> The prompt to such guilt turns out to be a fear that one will lose one’s connection to that which one loves:

To begin with, if we ask how a person comes to have a sense of guilt, we arrive at an answer which cannot be disputed: a person feels guilty (devout people would say ‘sinful’) when he has done something which he knows to be ‘bad.’ . . . We may reject the existence of an original, as it were natural, capacity to distinguish good from bad. What is bad is often not at all what is injurious or dangerous to the ego; on the contrary, it may be something which is desirable and enjoyable to the ego. Here, therefore, there is an extraneous influence at work, and it is this that decides what is to be called good or bad. Since a person’s own feelings would not have led him along this path, he must have had a motive for submitting to this extraneous influence. Such a motive is easily discovered in his helplessness and his dependence on other people, and it can best be designated as fear of loss of love. If he loses the love of another person upon whom he is dependent, he also ceases to be protected from a variety of dangers. Above all, he is exposed to the danger that this stronger person will show his superiority in the form of punishment. At the beginning, therefore, what is bad is whatever causes one to be threatened with the loss of love. For fear of that loss, one must avoid it.<sup>30</sup>

In children, the love one fears to lose is that of one’s parents, but in adults, the same emotion exists, “changed to the extent that the place of the father or the two parents is taken by the larger human community.”<sup>31</sup>

---

28. *Id.* at 81.

29. *Id.* at 84.

30. *Id.* at 84–85.

31. *Id.* at 85.

For most of us, I suspect that there will be a generally positive response to the suggestion that guilt is a manifestation of a fear of separation from the “human” or “moral community.” However, as Freud warns when he first discusses the “golden rule,” there is something decidedly unappealing and perhaps perverse in a requirement to treat strangers and enemies as though they were one’s friends and loved ones, if only because it would seem to devalue the real sense of love one has for those with whom one has shared experience and earned trust.<sup>32</sup> But, as Freud suggests, there seems to be a continually increasing demand from society for greater integration and subordination of one’s individual aims to those of the whole.<sup>33</sup> In fact, it seemed to Freud that our sense of guilt was liable to increase well beyond what was healthy, as modern society inculcates heightened fear of any divergence of private and public interest; such oversensitivity would count as genuinely neurotic and pernicious.<sup>34</sup>

In this light, one might regard the existence of indirect guilt as guilt run amok, in which people come to feel guilty about things they can do nothing to alter or affect. Or, to the extent that one can do something about them, it would seem to demand a kind of self-abnegation that undercuts much of the point of ethics. The tendency of this desire to connect to a larger moral community seems able to create obligation nearly without bound. We might take as emblematic of this tendency the early writings of the philosopher Peter Singer, which suggest that one can be as responsible for bad events that one fails to prevent when one might have, as one is for bad events that one aims to bring about.<sup>35</sup> This unadorned consequentialism, combined with the scope of human suffering in the world, can give rise to a way of seeing the world in which there is virtually no end to what one might be called upon to give up in order to solve other people’s difficulties. Yet one need not look so far away to find grounds for oppressive guilt. Many U.S. parents seem to feel nearly unlimited pressure to assure that their children develop successfully, happily, and healthily, and risk incurring substantial guilt if their children are denied any good thing.<sup>36</sup> Correspondingly, one may find a potentially unlimited well of guilty feelings if one instead

---

32. *Id.* at 65–67.

33. See J. David Velleman, *A Rational Superego*, 108 *PHIL. REV.* 529, 531 (1999) (describing Freud’s theory of the superego). Velleman critiques Freud’s theory of guilt and moral authority by arguing that Freud’s theory of the superego cannot ground its moral authority without revision in a more rationalist direction. *Id.* at 551. Specifically, Velleman notes that “the child possesses an evaluative faculty that is independent of the received values preserved in his superego.” *Id.* at 554.

34. FREUD, *supra* note 27, at 98.

35. Peter Singer, *Famine, Affluence, and Morality*, 1 *PHIL. & PUB. AFF.* 229, 231 (1972).

36. See generally JUDITH WARNER, *PERFECT MADNESS: MOTHERHOOD IN THE AGE OF ANXIETY* 13, 15, 31, 55 (2005) (noting the prevalence of oppressive guilt felt by modern mothers).

chooses to pursue more self-interested projects. In short, if the point of guilt is to connect the individual to her moral community, the cost of such connection might be the loss of our ordinary notions of moral responsibility, replaced with a generalized angst of bad conscience.

Indeed, it has seemed to some writers, such as Bernard Williams, that the tendency of recent philosophy, especially its consequentialist and utilitarian strands, has been to posit false and pernicious degrees of connectedness between individuals and the “moral community.”<sup>37</sup> These thoughts suggest that if we are to rationalize indirect guilt, we can use the idea that guilt represents a kind of disconnection from one’s moral community, but we will also need to circumscribe the grounds for such guilt, lest it turn into a generalized angst. If guilt represents a breach in the connection between an individual and her moral community, then an appropriate check on the scope of guilt would depend on one’s ability to understand how individuals are connected to such a basis for morality, and what it takes to maintain or to break such connections. In order to better understand the possibilities for specifying the nature of this connection, it will be useful to think with Williams briefly about the difficulties involved in describing how individuals are connected to the effects of their actions.

### C. Constraining the Extent of Moral Responsibility

In a series of papers and particularly in his book *Shame and Necessity*, Williams attempts to reconfigure understanding of responsibility to tie it more closely to a sense of agency that arises out of the complex, continuing development of human beings as they develop projects and commitments from which further choices flow.<sup>38</sup> Williams’ picture of agency is noteworthy for, among other things, the way in which it attempts to chart a

---

37. BERNARD WILLIAMS, ETHICS AND THE LIMITS OF PHILOSOPHY 212 n.7 (1986). Williams writes testily, “[s]ome utilitarian writers aim to increase a sense of indeterminate guilt in their readers. . . . As moral persuasion, this kind of tactic is likely to be counterproductive and to lead to a defensive and resentful contraction of concern.” *Id.* (citation omitted). I thank Chad Flanders for drawing my attention to this passage.

38. See BERNARD WILLIAMS, SHAME AND NECESSITY 21–22 (1993) [hereinafter WILLIAMS, SHAME AND NECESSITY] (explaining how a “capacity to understand people as being agents” developed over time, using Homeric poems as an example). *Shame and Necessity* is the culmination of Williams’ views on agency expressed in a series of essays. See BERNARD WILLIAMS, *Ethical Consistency*, in PROBLEMS OF THE SELF: PHILOSOPHICAL PAPERS 1956–1972, at 166 (1973); BERNARD WILLIAMS, *Morality and the Emotions*, in PROBLEMS OF THE SELF: PHILOSOPHICAL PAPERS 1956–1972, at 207 (1973); BERNARD WILLIAMS, *Persons, Character and Morality*, in MORAL LUCK: PHILOSOPHICAL PAPERS 1973–1980, at 1 (1981); BERNARD WILLIAMS, *Conflicts of Values*, in MORAL LUCK: PHILOSOPHICAL PAPERS 1973–1980, *supra*, at 71 (1981); BERNARD WILLIAMS, *Practical Necessity*, in MORAL LUCK: PHILOSOPHICAL PAPERS 1973–1980, *supra*, at 124; and BERNARD WILLIAMS, *Moral Luck*, in MORAL LUCK: PHILOSOPHICAL PAPERS 1973–1980, *supra*, at 20 [hereinafter WILLIAMS, *Moral Luck*].

middle course in determining the extent of an agent's responsibility for events in the world.<sup>39</sup>

On the one hand, responsibility is not based merely in the movements of one's will toward or away from particular objects. So, for instance, an agent who confronts a serious moral dilemma, in which every choice open to the agent is likely to bring serious harm to someone who is owed better, does not get to wash her conscience clean of the harms she may cause by reminding herself that she did the best she could. Instead, the unfortunate effects on those harmed by her choice are simply beyond her control. These excuses may of course be true, but the agent will bear responsibility for the bad effects of her choice as much as for the good outcomes. The bad effects were not "unavoidable" in the sense needed to escape responsibility: the agent could have avoided them by choosing differently. But the agent facing a dilemma chooses which good things to aim at, as well as what bad effects to bring about or permit. Otherwise, there would be no sense in calling such situations "dilemmas," rather than merely close decisions.

On the other hand, on Williams' view, agents should not hold themselves, nor each other, responsible for the generalized lot of things that fall in the category "could be altered by me." Williams famously derided the principle of "negative responsibility"—that "if I am ever responsible for anything, then I must be just as much responsible for things that I allow or fail to prevent, as I am for things that I myself, in the more everyday restricted sense, bring about."<sup>40</sup> Hence the sense of undifferentiated guilt that utilitarianism appears to license (if one does not strive always to improve the general lot of humanity) does not get a grip on Williams' agents.

In between these extremes Williams attempts to stake out an approach to thinking about what an agent is responsible for—what agents, "in the more everyday restricted sense, bring about."<sup>41</sup> Williams attempts to support what we might call a "common sense" view of agency and responsibility largely by defending this view from modification in light of certain standard philosophical positions that tend to undermine it.<sup>42</sup> Although Williams does not describe it this way, the common-sense-ness of it stems from his holding that persons are by and large the agents of those

---

39. See WILLIAMS, *Moral Luck*, *supra* note 38, at 28 ("In [cases involving moral luck], the relevant consciousness of having done the harmful thing is basically that of its having happened as a consequence of one's acts, together with the thought that the cost of its happening can in circumstances fairly be allocated to one's account.")

40. Bernard Williams, *A Critique of Utilitarianism*, in UTILITARIANISM: FOR AND AGAINST 77, 95 (Bernard Williams & J.J.C. Smart eds., 1973) [hereinafter Williams, *A Critique of Utilitarianism*].

41. *Id.*

42. See *id.* at 93–99 (discussing agency and responsibility as understood by utilitarianism and consequentialism).

events we might name them as having performed or brought about in ordinary descriptions of those events. For instance, the following would seem all to be on par, for Williams, as attributions of responsibility to agents:

- Lisa took the bus home.
- Hemingway wrote *The Sun Also Rises*.
- John forgot his wife's birthday.
- Telemachus accidentally left the door to the closet ajar, allowing the suitors access to Odysseus's weaponry.
- Carol debased herself in front of her superiors.
- Lincoln won the election of 1860.
- Gauguin developed into one of the great post-impressionist painters.

These sorts of claims, if they are true of their subjects, are true because of facts about what the agent does or, in the more opaque or contingent cases, are true because of who the agent *is*. Although surely forgetting a birthday or accidentally giving one's opponents an advantage are not things agents can intend to do, they can be the result of being forgetful or occasionally careless. Debasing oneself is not something one aims to do either, but one can aim to do acts that are debasing, and thus debase oneself. And although Lincoln and Gauguin achieved success for acts that they could only have hoped would succeed, the success they gained is certainly a significant part of who they were, just as it grew out of facts about who they were.<sup>43</sup> As Williams famously argued, the success (or failure) of many endeavors depends on what he calls "intrinsic luck," by which he means a kind of luck involved in the uncertain process of fathoming oneself, one's desires and capabilities, and then acting based on this understanding to undertake the sorts of grander projects and commitments that (if one is lucky) result in successful realization of one's aims.<sup>44</sup> So, the sorts of facts about Gauguin or Lincoln that allow them to succeed as artist or politician are facts to which we attribute their success, and hence are intrinsic to the justifiability of their choices to pursue art or politics.<sup>45</sup> Yet in advance of such success, they could not be said to assure it; hence the riskiness and contingency of their choices.

---

43. See WILLIAMS, *Moral Luck*, *supra* note 38, at 25–26 (distinguishing "intrinsic" from "extrinsic" luck by whether an outcome reflects features internal to an agent's being or is due to factors wholly beyond her ability to predict or control).

44. *Id.* at 22–27.

45. See *id.* at 23 (using Gauguin's choice to pursue an artist's life to illustrate how some outcomes that depend on luck—in particular, intrinsic luck—are nonetheless ones for which the agent can be seen as responsible).

The subtlety of Williams' views here defies adequate elaboration in this space. The idea of intrinsic luck, and how it plays a role in attributions of responsibility, is particularly tough to sort out. The point we can take, though, is that attributions of responsibility to agents for actions can survive some intercessions by luck or contingency, at least where such intercessions arise from qualities "intrinsic" to an agent or the process of the agent's reasoning to action. Thus we are not forced to restrict attributions of responsibility merely to acts of will or manifestations of one's considered intentions. Williams is right, I think, that if we were to make the intervention of luck or contingency a bar to attributions of responsibility, the result would force so great a revision of our understanding of "who did what" that our grasp of the ordinary course of human history would nearly evaporate.<sup>46</sup> There is (almost) always a gap of some sort between what one intends and what actually happens, and into that gap bad luck may intercede to muck things up. But where there's a possibility of bad luck, there's also good luck involved if the bad luck fails to materialize. Hence we are (as it seems the Stoics sometimes believed<sup>47</sup>) unable to connect ourselves usefully to anything that happens outside the will, and can only ever be held responsible for what we will. Whether or not this disconnect should bring us calmness and happiness, or theoretical parsimony, it would disallow us from making sense of the events in human history as being the particular doings of particular agents. Individuals would have no more agency than do molecules of water in a wave. But neither need we expand the concept of responsibility to encompass the full panoply of consequences an agent could conceivably affect just because—due to extrinsic, contingent factors—one is in some position to affect them.

It is hard to establish a principle by which to distinguish those events in the world that may be attributed to agents as their doings and those that should be denied such attribution. Clearly such things as intention, planning, social conventions/norms/laws, and the limits of physical possibility play some role in making such judgments. But, as rules of "strict liability" in some areas of law suggest, there are occasions on which individuals can be held responsible for events in the world (such as legal infractions or tortious harms) even though the individual did not intend, want, or benefit from them, and may have been very poorly placed (if at all able) to stop them.<sup>48</sup> Williams argues rightly, I think, that there is no single,

---

46. *Id.* at 21–22.

47. *See, e.g.*, EPICETUS, THE ENCHIRIDION (Elizabeth Carter trans., c. 1750), available at <http://classics.mit.edu/Epicetetus/epicench.html> ("Things not in our control are body, property, reputation, command, and in one word, whatever are not our own actions.").

48. *See, e.g.*, SANFORD H. KADISH & STEPHEN J. SCHULHOFER, CRIMINAL LAW AND ITS

all-purpose answer to the question of how to determine conditions of responsibility for events in the world; rather, one's purposes in asking about responsibility will guide such an inquiry.<sup>49</sup> For purposes of rationalizing indirect guilt, however, I will consider whether we can accommodate the common-sense attributions of responsibility supported by Williams by taking an approach to agency that deemphasizes the place of luck while emphasizing some of the ways that events in an agent's life may be seen as reflections of that agent's choices, character, or other properties "intrinsic" to that agent.

I will argue we can solve some of these puzzles raised by indirect guilt in a reasonable fashion by accepting certain enlargements to our understanding of agency that could help account for some of our intuitions about "who did what" while still blocking the expansion of agency to the more extreme consequentialist compass. The expanded idea of agency I will describe is intended to respect several of the considerations set forth above while also being plausible in its own right. These considerations are:

1. Events for which an agent is held responsible must be caused in part by something the agent did or failed to do.
2. Events for which an agent is held responsible must have some causal dependence on facts that are intrinsic to the individual (in the sense elucidated in the discussion of Williams above).

These considerations are very weak, in that they do not rule out much. But in combination with the roughly drawn picture of the meaning of guilt I have drawn from Morris and Freud, they will help us give a rational interpretation of some kinds of indirect guilt.

## II. RATIONALIZING INDIRECT GUILT

### A. *Guilt for Side Effects*

Consider first the sort of guilt that agents sometimes feel for events that result as a byproduct or side effect of some act of theirs, when the act was itself justifiable. This category encompasses several sorts of cases. First are cases of moral dilemma, in which an agent finds herself confronted by a

---

PROCESSES 235–55 (7th ed. 2001) (discussing strict liability in criminal law); Charles E. Cantu, *Distinguishing Strict Liability in Tort from Strict Products Liability: Medusa Unveiled*, 33 U. MEM. L. REV. 823, 826–28 (2002–2003) (summarizing the grounds in tort law for assigning strict liability).

49. WILLIAMS, SHAME AND NECESSITY, *supra* note 38, at 67.



choice situation where all her alternatives will predictably lead to some egregious harm to another person. Although the agent chooses the option that is best, by whatever moral standard is appropriate, she still feels guilty about the harm that befalls another as a result of her choice. For instance, a manager may have to choose which of several hardworking employees to lay off when forced to cut back on office staff by a downturn in the economy. It would not be unheard of for someone to feel guilty for how one's choice adversely affects the laid-off employee, no matter how conscientiously it was made, nor how far beyond one's control the circumstances were that made such action necessary. Second are cases in which an agent harms another seriously while engaging in an activity for which the risk of such harm was rightly calculated to be quite small, and where the activity was, on the whole, antecedently justified by the values of the possible outcomes, weighted by their likeliness. In either of these scenarios, the agent's action itself may well be justified, but has undesirable consequences which the agent knows will or might follow from it. A third sort of case includes actions that give rise to consequences that were entirely unforeseen by the agent, where such ignorance itself is not blameworthy.<sup>50</sup> If an action is justified, then even if it has deleterious consequences, why would it make sense for an agent to feel guilty about those consequences? Per hypothesis, no other action the agent might have taken would have been better justified antecedently.

The analysis offered here gives some insight into how we might rationalize these guilt feelings. First, if we take guilt to represent a separation from one's moral community, then it is not hard to see how one might find oneself alienated from others by virtue of making such grim or damaging choices. Real, serious dilemmas are relatively rare, but when they occur, one can certainly find oneself gravely at odds with some of those whose interests one winds up sacrificing. Moreover, independently of any sense of a breach with particular individuals, one may find it hard to see oneself as a member in good standing of a defensible moral community when one recognizes that the "best one can do" is still pretty awful. Or, one may feel strongly alienated when one realizes that the actions that reason indicates are warranted are nonetheless deeply flawed, as when a driver inadvertently strikes a pedestrian who was inattentive to the traffic. So such occurrences of indirect guilt appear apt to signal to an agent that she faces serious difficulties in coordinating her own activities with those of others in

---

50. If the agent acts in blameworthy ignorance of possible consequences of her action, then her action might not have been justified to start with. At the very least, it would be clear that the agent was acting negligently or recklessly, and that would suffice to make her responsible for the harmful results that occur.

ways that give all a secure and equitable entitlement to happiness (or happiness in proportion to virtue).<sup>51</sup>

To explain why guilt is appropriate here, though, we would also need to see reason for the agent to regard these ruptures with the moral community as occasions for self-reproach, as personal failures. In these cases, it is at least possible that an expanded understanding of agency will help explain grounds for an agent's guilt. The grounds for guilt I am suggesting here arise from a sense of possibility most agents have with respect to how the world might be, and how the various possible choices one makes over the course of a life are liable to affect how things turn out. Hence, agency should be viewed on a longer time scale than merely the choosing of an action in a particular situation. Instead, barring special circumstances, to be an agent is to be responsible for how one came to be in the situations in which one finds oneself, given that prior decisions affect later possibilities for action and/or for avoiding unwanted consequences of action. If an agent might have avoided facing a dilemma through better planning, more careful attention to circumstances, and perhaps better coordination of alternatives, then it is not unlikely that he will feel a kind of indirect guilt for having wandered into the situation to start with, or for not being better able to meet the competing obligations involved in the situation.

Although not all dilemmas nor all unwanted consequences are avoidable, agents often can and do manage to avoid such situations through strategy. Thus even if at the time of action the agent may be unable to do better, she may still regret and take responsibility for choices leading up to that situation which might have been better made. One who finds it impossible to honor her conflicting promises might be faulted both for underperforming but also for overpromising. Similarly, if the harms result from a lack of skill or a lack of foresight with respect to the possible consequences, the agent may have reason to think that better self-cultivation and diligence would have made it possible to perform better under the circumstances. Again, although it is not always possible to prevent misfortune from marring the results of one's activities, there are often things one might do to avoid misfortune later. Failure to do those things may be an appropriate basis for feeling guilty if that failure contributes to being in regrettable situations later. So a driver who inadvertently causes an accident, unless she comes to regard it as inevitable, will often still have grounds to fault herself for being less adept at avoiding it than she might have been.

---

51. This is as Kant would have it. See Paul Guyer, *Kant, Immanuel*, in ROUTLEDGE ENCYCLOPEDIA OF PHILOSOPHY (E. Craig ed., 2004), <http://www.rep.routledge.com/article/DB047SECT11> (discussing Kant's definition of the highest good as "happiness in proportion to virtue").

The upshot here is that in some cases where one does the best one can in choosing actions in a narrow context, one might still fault oneself for failing to do as well as possible when agency is understood to involve a longer process of self-cultivation.<sup>52</sup> When dilemmas and accidents reveal a breach between oneself and one's moral community, the emotional response of self-reproach appears to be much more similar to that of direct guilt than one might have suspected.

### B. Collective Guilt

In a second range of cases of indirect guilt, individuals sometimes feel guilty for belonging to a collective entity of some sort that has acted badly towards others in the past. Such actions may even have taken place before an agent's birth, in which case, her sense of guilt arises from acts which she never had any opportunity to alter or prevent. Obvious instances of this sort include the guilt that some descendants of European colonial settlers feel for the way those settlers and their descendants abused and dispossessed original inhabitants of their lands and way of life, the guilt some American whites feel for the slavery of blacks in the earlier days of the U.S., or the guilt felt by many Germans who grew up after World War II for the acts committed by their parents and grandparents against Jews and others in the war. When descendants of the bad actors are under consideration, the disconnect from ordinary thought about guilt seems quite severe because the guilt-feeling party could have done nothing that would have prevented the grounds of the guilt she feels. Yet these examples are just the most extreme versions of the generic situation in which one feels guilty for the acts of a group of which one is a member, not because one makes any causal contribution to those acts, but merely because of one's belonging to the group. How could such guilt be rational?

Here, we are required to think about the nature of collective agency, and its relationship to individual agency.<sup>53</sup> This is a difficult topic, on which

---

52. The practical import of such guilt is thus to prompt individuals not only to act better but more importantly to *be* better—that is, to develop greater wisdom and skill as agents. In this analysis, I diverge from the character-based sentimentalist response to side effects urged by someone like Adam Smith, discussed usefully in Chad Flanders, “*This Irregularity of Sentiment*”: *Adam Smith on Moral Luck*, in *NEW VOICES ON ADAM SMITH* 193, 193–218 (Leonidas Montes & Eric Schliesser eds., 2005). Such sentimentalism seems to me premised on the view that actual improvement of the agent's abilities to act is not possible because luck takes the results out of the agent's control. Against this position, I am inclined to side with the view that cases of actual, intrinsic “moral luck” are relatively rare, and do not deserve as much credence as they have received in the philosophical literature. Here, I second the skepticism about moral luck voiced in David Enoch & Andrei Marmor, *The Case Against Moral Luck*, 26 *L. & PHIL.* 405, 417–19 (2007).

53. I will use the term “collective agent” to refer to agents composed of multiple individuals.

much philosophical energy has been expended, and I can contribute little to it here.<sup>54</sup> The main matters, however, are not so hard to fathom: we have no great difficulty making intelligible claims about corporate or collective agents and attributing actions to them. There is nothing especially mysterious, for instance, in interpreting statements such as “the jury agreed on an appropriate sentence,” “Fairview High School won the state football championship,” or “White southerners enforced racial segregation well into the 1960s.” In these cases, the acts attributed to these agents could only be done by multi-person agents, although this fact is not necessary for an act to be attributed to a multi-person agent. For example, corporate agents can also do many things that individuals can do, like file a lawsuit. The actions described also carry consequences for which these collective agents can be assigned responsibility. We also find it easy enough to think about many collectives as having desires, beliefs, intentions, abilities, interests, rights, and reputations. For example, “General Motors had hoped to avoid a lawsuit.” Finally, we can typically make reliable judgments about membership in such collective agents, as well as judgments about the instantiation, survival, and dissolution of such agents.

The difficulties here arise principally when we start trying to pass from judgments about the collective itself to judgments about the members of that collective. This issue becomes especially thorny when, for instance, questions arise as to the responsibility of particular individuals for acts taken by a collective, and subsequently, questions about punishment or demands for restitution to be laid upon individuals. But for the issue confronting us about feelings of guilt, many of these tougher questions need not be addressed. If feelings of guilt stem from a sense of loss of connection to the moral community, then the realization that one is part of a collective that has acted unjustly will suffice to explain why feelings of guilt are

---

There may well be significant differences in the logic of action for different sorts of collections, which others may distinguish with terms such as “groups,” “corporations,” “organizations,” or “classes.” Such agents may also be distinguished by differences in their intentions, which may be described with such terms as “shared,” “joint,” or “collective.” Without downplaying the significance of these distinctions, I will suggest that my discussion here need not address such distinctions to make sense. I note also that the terms *agency* and *agent* here are used in their philosophical senses, which do not necessarily correspond to the meanings of the same words when used in law.

54. For representative discussions, see, e.g., Margaret Gilbert, *Who's to Blame? Collective Moral Responsibility and Its Implications for Group Members*, in SHARED INTENTIONS AND COLLECTIVE RESPONSIBILITY 94, 114 (Peter A. French & Howard K. Wettstein eds., 2006) (exploring the relationship between the blameworthiness of a collective and the personal moral responsibility of its members); Christine List & Phillip Pettit, *Group Agency and Supervenience*, 44 S.J. PHIL. 85, 85 (2006) (exploring the relationship between a group's agency and the agency of its members); John Searle, *Collective Intentions and Actions*, in INTENTIONS AND COMMUNICATIONS 401 (Philip Cohen et al. eds., 1990) (arguing that collective intention cannot be described as a function of individual intention).

reasonable. I will assume here at least a minimal cosmopolitanism for the individuals in question, who see that their ethical concerns extend beyond the membership of the collectives to which they belong, and include at least those persons who are affected by the actions of one's collective.<sup>55</sup> Insofar as individuals wish to live ethically with respect to persons outside their actual communities, they are likely to feel that harms committed by any collective agent of which they are a part create a breach between themselves and those who are harmed by their collective's activities.

No doubt, this sort of breach between an individual and the moral community depends on the extent to which that individual identifies with the collective that created the breach. The nature of such identification is open to investigation. In the sort of cases imagined above, the identification may be due to one's voluntarily taking a position in an association (for instance, a job in government or a multinational corporation), or may be due to one's genetic or cultural connection to a group into which one is born. It is not necessary, I think, that one hold a position of power or any office in a collective to be associated with it in a way that makes guilt possible. Rather, the minimum required seems to be some sense that one's own good, happiness, or flourishing (either historically or prospectively) are dependent on one's belonging to that collective. When this condition obtains, an individual may reasonably worry that much that she values about her life depends for its existence and maintenance on her participation in a collective agent that has harmed or oppressed others. Or, in terms of the fear of rupture, one may worry that many of the things one values about one's life depend on some collective(s) to which one belongs remaining unreconciled with those it harmed to produce what one values. Such reconciliation would seem to require a rather full acknowledgement of that collective's past history and its resulting inequities, and such acknowledgement may well demonstrate that one's life and values are built upon the unjust harms done to others.

The possibility of feeling guilty for wrongs committed by a collective to which one belongs might seem to be quite open-ended, if not limitless. But this is not so. If such guilt marks a breach, then it will arise only if in fact one's group is ethically estranged from others it unjustly harmed or exploited. If after time two groups come to let bygones be bygones, then it seems unlikely that their members will retain feelings of guilt due to the now-nonexistent breach. Moreover, this analysis does not indicate a cause for feeling guilt when a collective agent profits merely in the wake of misfortunes of others, or from harms in the past committed by groups other

---

55. That is to say, I take it that most of us regard our "moral communities" as being larger than the actual communities that number us as members.

than one's own. If one's group did not exercise agency with respect to the harms or injustice, then it is not clear that benefits derived from that misfortune would constitute a cause to feel disconnected from the disadvantaged group. (So, for instance, readers who find some distant histories to be of interest because of the barbarity of the people described in them need not feel guilty for the pleasure or value they find in the accounts of those barbarities.) More perversely, this analysis would suggest that if there are no survivors of the wrongs perpetrated by a collective, then the current members of that collective have no one in particular to feel estranged from. Accordingly, there would be no basis for guilt with respect to any person or group one might conceivably be connected to now. Surely to "exterminate the brutes" successfully should not be a remedy for guilt. However, we might take such a situation as the far endpoint of the grounds for guilty feelings; if one belongs to a collective that has destroyed another, leaving no one to whom one might be reconciled, then such a loss of the possibility of connection is cause for significant guilt that offers no clear hope of expiation.

Still, one might worry that the individuals who feel guilt for the wrongs of a collective should not count themselves responsible for those wrongs because the wrongs were none of their doing. Hence, by the considerations we adduced from Williams, feeling guilty would be inappropriate. One can see the circumstances into which one is born (into a collective that has acted badly) as extrinsic luck—something that happens externally to one's agency rather than internal to it. One can no more determine what group one is born into than what epoch. Although this much is true, the way historical wrongs by a collective affect an individual member's possibilities for agency is not typically itself sheer contingency or luck. One may suppose that it was for the sake of the individual success and well being of a group's members that one's collective wronged its victims. Thus, for instance, one's material prosperity and security may not be contingently dependent on the fact of these past wrongs, but rather constitute the purpose (or part of the purpose) for which such wrongs were committed. If so, then the conditions that are likely to undergird one's agency, one's possibilities for success in life, and one's self-esteem are likely to appear deeply tainted; the poisonous tree produces poisoned fruit. So, I suggest, individual agents may reasonably feel guilt for wrongs done by a collective of which they are a part insofar as those wrongs determine, in this strong, noncontingent way, one's own possibilities for self-respect in life and for success in achieving goals one finds valuable.<sup>56</sup>

---

56. This analysis would also suggest that one way to avert such guilt is to rebel against one's society's values and standards of success when such values and standards are implicated in one's group's bad actions; this is especially so when one lacks the power to instigate other changes in one's group's behavior.

*C. Survivor Guilt*

Our third sort of indirect guilt is the hardest to rationalize, and it may in fact remain at some distance from direct guilt. But we can make some headway in explaining it and give some sense as to why it seems to many like a form of guilt. This is the sort of guilt we sometimes call “survivor guilt,” which typically occurs when one has escaped a harmful fate that befalls one or more others who are in relevant respects no different than oneself. For instance, if one is a passenger who survives a plane crash that takes the lives of many of the other passengers, or if one survives one’s service in a military conflict when many others in one’s unit die in combat, one may find that such favorable luck creates a hard burden to bear. Relatedly, one may encounter the same or a similar phenomenon when one reaps a great reward accidentally, such as winning a large lottery.<sup>57</sup> In such cases, there is no suggestion at all that one’s own actions or qualities contribute in any way to the harms that befall others; nothing one could have done differently would have predictably altered the situations of those less fortunate. And in the case where one survives while others perish, one’s unearned benefit is not such that it could be more equitably distributed. So feelings of guilt in these circumstances fail to meet the considerations described earlier. Yet, they seem phenomenologically much like direct guilt. Does our analysis so far help us to better understand why survivors and beneficiaries of windfalls feel something like guilt with some regularity?

Direct guilt is often the result of having failed to treat others justly, where such injustice may be thought of as a species of unfairness.<sup>58</sup> On the analysis I have been using, we can interpret feeling guilty in this context as a signal that the agent has broken faith with others in her moral community. The sense of guilt the agent feels no doubt will have a relationship to the agent’s sense that she herself is the cause of that break by virtue of the unjustness of her action: it is not merely the inequitable distribution of goods after the action which creates the distance, but the fact that the agent chose to create such a situation.

If that is so, then it seems that mere happenstance could not generate the same sort of moral rupture. To some extent, I think that is true. Nonetheless, being the beneficiary of good fortune can in fact alter the conditions of one’s relationships with others and give one a visceral reason

---

57. See Lois Gould, *Ticket to Trouble*, N.Y. TIMES, April 23, 1995 (Magazine), at 38, available at 1995 WLNR 3809042 (offering anecdotal evidence of the problems associated with winning lotteries and other windfalls).

58. See JOHN RAWLS, *JUSTICE AS FAIRNESS: A RESTATEMENT 6* (Erin Kelly ed., 2001) (arguing that fairness is the essence of justice).

to question whether qualities and factors that tie one's life together really can be counted as one's own. When one owes one's life, health, happiness, position, or some such to blind fate or to something even less fair (say, favoritism by the powerful), in a way that is quite different from others, one can easily feel distance between oneself and those whose lives conform more to the practices and expectations of the mainstream. In at least a metaphorical sense, the "rules that apply to everyone else" prove not to apply to the very lucky agent. And in cases where one wins a great windfall, it may turn out that the actual rules that govern most people's lives (such as that one must work to earn a living) do in fact cease to apply to oneself.

Survivor guilt differs from more conventional guilt in several crucial ways—principally, in the lack of an active role played by the party that would explain the rupture with her moral community. It also differs in that there is frequently no aggrieved party who would fault the lucky one for her good fortune; if anything, most people would more likely celebrate such fortune, and treat it as a boon. Nonetheless, the above understanding of how even good luck can interfere with one's sense of connection to others suggests that there is in fact a real similarity among the bases for "survivor guilt," direct guilt, and the two types of indirect guilt already surveyed. It may also bear a similarity in its practical upshot: although fortunate survivors do not owe recompense to the unfortunate, they may find that their burden is lessened if they act to share the benefits of their good fortune with others. Such actions may take many different forms, from charitable giving to comforting those who fared much more poorly through no fault of their own. But the aim of such action would seem similar to that carried out in the wake of actions that merit conventional guilt—namely, to move oneself back into some form of parity or at least ethical relationship with those who were not so fortunate.

### III. INSTITUTIONAL AND LEGAL RESPONSES TO INDIRECT GUILT

If we ask what law and institutions can do to prevent or ameliorate feelings of direct guilt, we might expect an answer of the following sort: while law and social institutions may be called upon to help curb guilt-inducing behaviors (i.e., bad behavior), their incentivizing efforts are akin to what direct guilt itself may be useful for. We take it that feelings of direct guilt are generally warranted by the misbehavior of the party who feels them. Hence, there is no good reason to seek to minimize feelings of direct guilt except by minimizing the bad behavior that prompts it. Yet it seems a different story when we consider whether laws and institutions can play a



role in ameliorating, avoiding, or undoing indirect guilt (or guilt-like) feelings. Insofar as they can curb behavior that gives rise to indirect guilt, they may be of some value. But indirect guilt is rarely due to an individual's faulty choice about how to act, so it is not clear what law or institutions can do to curb, alter, or improve individual action to ameliorate indirect guilt. At least sometimes the behavior that gives rise to indirect guilt occurred in the past and does not continue. Yet the problematic feelings are felt now by people not responsible for the past acts. So, in some distinction to direct guilt, the main function of laws and institutions with respect to indirect guilt may be to help to create or revive relations of ethical connectedness between individuals and their moral communities, rather than to regulate behaviors that induce indirect guilt. And to some extent, it may be the job of law and institutions to try to assuage feelings of indirect guilt directly, by demonstrating that they have no practical point.

In cases of guilt for side effects, where agents confront dilemmas or choices that may result in unwanted consequences of otherwise justifiable actions, there are several possible ways that laws and institutions may help diminish the force of such emotions, once rationalized. It was suggested above that better planning, strategizing, and skill development may make agents better able to avoid coming into situations where they confront dilemmas or unwanted side effects to their actions. We may expect the person of practical wisdom (Aristotle's *phronimos*<sup>59</sup>) to be better able to avoid these difficulties than the ordinary human reasoner. However, institutions may be able to compensate for individual failure at some of these more complicated parts of practical reasoning. For instance, well-functioning institutions may be better able than individuals to make risk and reward calculations. This is especially true when these calculations involve rather small probabilities of rather large payoffs or harms, or when the harms of action affect parties not immediately present to the actor. Thus, states are well advised to determine rules to guide individuals with regard to behaviors such as driving after consuming alcohol or purchasing safety features for one's car or other hazardous machinery. In so doing, states can set standards for how much risk of harm individuals should be allowed to impose on third parties for their activities.

It is important to note, however, that the answer to the question "how much risk should be allowed?" is unlikely ever to be "zero." The cost of reducing risk below a certain threshold is simply too inefficient. This consideration is important for helping individuals properly handle the after-

---

59. See ARISTOTLE, *NICOMACHEAN ETHICS*, Book VI, chs. 5–13, at 89–99 (Terrence Irwin trans., 2d ed. 1999) (discussing the "phronimos," the "prudent" or "practically wise" person who constitutes the ideal of the virtuous agent in Aristotle's work).

effects of when an action that they take goes awry. No doubt an individual who engages in lawful conduct that nonetheless harms others has grounds to feel guilty for causing such harms. But if the individual lives where institutions rationally regulate risky activities in accord with socially defensible goals (i.e., the maximization of the common welfare), then she can rightly say that the harmful conduct she engaged in was within the bounds set by her society, and that the risks she had imposed on others were reasonable, in light of the broader set of social goods at stake. So, for instance, states in the United States restrict the blood alcohol content that an operator of a motor vehicle may legally have, but do not set this level to zero, allowing most people to have some alcohol and then legally drive a vehicle.<sup>60</sup> If someone causes an accident having had some alcohol, but while still within the legal limits, she may feel more guilt than she would have if she had had nothing to drink before causing a similar accident. But the existence of a rationally drawn legal standard can provide some moral shelter, by indicating that her intended course of action was rationally acceptable to society, and that in general the rewards of acting as she did overall outweigh the infrequent harms imposed on others. Similarly, if there were clearer, widely shared standards for what parents owe their children, and what benefits are strictly supererogatory, parents might find the role of parenting less onerous without significant setbacks to the futures of their children. And if such setbacks did occur, having met the standard might also protect the parents from some measure of the potentially considerable guilt they might otherwise feel. Hence, a well-drawn rational rule regarding acceptable risks may not eliminate all grounds for guilt in the wake of unwanted consequences, but it may set their incidence to an optimal level, and give those who are unlucky in this regard some means to defend themselves against feeling too much guilt.

Institutions and laws can also help individuals avoid a number of serious practical dilemmas. Consider dilemmas that arise when agents commit themselves to others to do more than their resources allow, with the result that they are forced to choose which of their commitments to break. To the extent possible, and other things being equal, individuals should aim to avoid making commitments they have reason to think they will be unable to fulfill. Law might occasionally help guard individuals against such over-committing by preventing them from making commitments they are unlikely to be able to uphold, as it does in setting lending standards that require proof of a likelihood of being able to repay a loan. But sometimes

---

60. Blood Alcohol Content (BAC), <http://drunkdrivinglaws.org/bloodalcoholcontent.html> (last visited Apr. 4, 2009) (stating that legal BAC is generally .08 or higher, but varies from state to state).

such conflicts arise for prudent agents due to bad luck or to external agents who intervene to create such dilemmas.<sup>61</sup> In such cases, having rules that instruct individuals on how to proceed can remove, or at least temper, the dilemmatic aspect of such situations. This is especially true if the rules can be explained as promoting goods of the same sort as those that are at issue in the dilemma.

For a schematized example of this sort, we can imagine a situation in which a community health-care worker faces requests by some of her most marginalized patients to provide goods that are distinctly unhealthy, such as cigarettes or even recreational drugs. As a health-care worker, giving such items seems contrary to the point of her occupation, which is to provide care that does not harm her patients. On the other hand, such items may facilitate her ability to interact amicably with such patients, and also might show respect for their autonomy, thereby helping her to provide overall better care for them. Although it may be impossible to decide, *a priori*, in which direction such dilemmas should be resolved, the health-care worker might be aided considerably by having an institutional rule to govern her choice in such a situation. Since the point of such a rule is to provide the best net outcome with respect to the goal at issue—patient health—she may adhere to it, relieved of her responsibility for such decisions (assuming the rule is not manifestly indefensible).<sup>62</sup>

Of course, rules and institutions can also play a part in generating dilemmas when they prescribe or forbid action in ways that run contrary to what an individual agent thinks best or thinks is demanded of her. And it is perhaps optimistic to hope that well-designed rules and institutions will, in sum, reduce the quantity of occasions on which agents find themselves torn by competing obligations. But it is not a senseless hope. Not all serious ethical dilemmas involve choices of actions where calamity looms, but this seems to describe most of the most pressing cases; it is the threat of imminent calamity that often precludes an agent's having the time and wherewithal to seek out a creative, and possibly collective, resolution to

---

61. An example of this latter sort is given by Williams' discussion of Jim and some South American villagers, in Williams, *A Critique of Utilitarianism*, *supra* note 40, at 98–100.

62. A bit of confirmation of this claim, from the opposite direction, can be gleaned from a recent study of jury decision-making in cases where jurors are given explicit instructions that they may “nullify” the instructions they are given, and vote for an acquittal contrary to the commands of law. See Irwin A. Horowitz et al., *Chaos in The Courtroom Reconsidered: Emotional Bias and Juror Nullification*, 30 *LAW & HUM. BEHAV.* 163, 179 (2006) (“[T]he present study suggests that at least some instructions designed to describe and legitimate jurors’ nullification powers can indeed result in a kind of “chaos”—a greater susceptibility to emotionally charged, biasing information.”). When jurors were made aware that they were unconstrained by the necessity of following their instructions, they were more likely to give sway to their emotional reactions. *Id.* at 176.

the dilemma. If so, then there is reason to hope that efficient institutional mechanisms to safeguard individuals from many of the most obvious potential calamities (e.g., desperate poverty, hunger, disease, threats of violence) will make it easier for individuals to avoid some of the most stark and guilt-inducing dilemmas to which we are susceptible. Unsurprisingly, the most easily defensible solution to most “trolley problems”<sup>63</sup> is to put in place reasonable systemic precautions to stop them before they happen.

When guilt arises because of one’s membership in a collective that acts (or has acted) wrongly, there is some chance an agent can stem the feeling of guilt by dissociating herself from that group. For instance, she may take a different job, join a different church, or relocate to a different community or state, thereby severing ties to the institution she finds condemnable. However, this is not a foolproof solution, and often it is quite costly for the agent. Furthermore, this solution may fail to disgorge her guilt entirely, especially if certain of her entrenched qualities are hers on account of her history with that group. For instance, when her education, habits, tastes, friends, or good memories owe their existence to a group or collective whose bad behavior the person now rues, there is no obvious way for a person to jettison these “ill-gotten gains.” Nor need it be obvious what she could do to make restitution on her own. Sometimes restitution is possible, at least symbolically, as when, say, a European American champions efforts to develop and disseminate Black American history and culture. But this sort of solution does not fit the underlying problem properly: no one individual’s response to a larger collective’s failings should be expected to alter the relationship between that collective and those it has wronged. Only the collective can achieve this effect through actions or remedies instantiated at that level of organization.

Hence, legal and institutional solutions are generally the only viable options for redressing the sources of guilt from wrongs committed by a collective agent. Just as individuals who wrong others may be required to acknowledge guilt, apologize, compensate, reform, or accept punishment, collectives that have harmed others may similarly take part in these sorts of remedies. In some cases, determination of these things may be made through higher-order institutions. For instance, states may sanction corporations or organizations under their jurisdiction. In other cases, the

---

63. Much contemporary ethical theory aims to give reasons for acting one way or another when faced with dilemmatic questions, such as whether one should intervene to prevent a runaway trolley from killing five innocent bystanders if, in so doing, one knows that it will kill one other innocent bystander instead. See PHILIPPA FOOT, *The Problem of Abortion and the Doctrine of Double Effect*, in VIRTUES AND VICES 19, 23 (1978) (introducing the “trolley problem”).

collective that has acted badly is larger than any group having jurisdiction over it, or else is too loosely formed to count as a juridical person against which the state can impose common legal liabilities. For example, a collective agent could be a racial or ethnic group, without officers or structure, and hence difficult for the law to treat as a single entity. In these latter cases, the response to a collective's wrongdoing will have to develop more organically, perhaps out of a shared sense of guilt and shared desire to make amends by the members of the collective. But institutionalizing the response—say, by creating organizations that can represent the collective, act on its behalf, and make commitments for it or regulate its behavior going forward—can serve to help redress past wrongs. One may take lessons from the successes (and failures) of the South African Truth and Reconciliation Commissions in allowing those who perpetrated human-rights abuses under conditions of apartheid in South Africa to be reconciled with those who suffered them.<sup>64</sup>

Lastly, laws and institutions may be useful in preventing or responding to survivor guilt. Insofar as the sorts of incidents that give rise to it are preventable, well-functioning institutions can seek to reduce the severity and frequency of accidents that lead to catastrophes. But since survivor guilt arises from others' misfortune (among other forms of inequitable fortune) that is to some extent uneliminable, we need remedies for times when it occurs. The options here are more limited, however. If, as I have suggested, the source of such guilt feelings is a sense of rupture between an individual and her moral community—here, because she has been comparatively favored by life's "unfairness"—then I am not sure that this sort of break is repairable by someone besides the individual. If we take the prosaic case of someone who survives a plane crash that kills others (assuming the crash is not her fault), there is no sort of redistribution or

---

64. Speaking about truth commissions more generally, Martha Minow writes:

When the societal goals include restoring dignity to victims, offering a basis for individual healing, and promoting reconciliation across a divided nation, a truth commission may be as or more powerful than prosecutions. The commission can help set a tone and create public rituals to build a bridge from a terror-filled past to a collective, constructive future. . . . [T]he institutional framework created by a society can either encourage desires for retribution or instead strengthen capacities for generosity and peace.

Martha Minow, *The Hope for Healing: What Can Truth Commissions Do?*, in TRUTH V. JUSTICE: THE MORALITY OF TRUTH COMMISSIONS 235, 253 (Robert I. Rotberg & Dennis Thompson eds., 2000). There has been voluminous discussion of the successes and failures of the Truth and Reconciliation Commissions in South Africa in particular. For representative examples, see generally AFTER THE TRC: REFLECTIONS ON TRUTH AND RECONCILIATION IN SOUTH AFRICA (Wilmot James & Linda Van De Vijver eds., 2001); JAMES L. GIBSON, OVERCOMING APARTHEID (2004); TRUTH AND RECONCILIATION IN SOUTH AFRICA: DID THE TRC DELIVER? (Audrey R. Chapman & Hugo Van Der Merwe eds., 2008).

reconfiguration of responsibilities between survivor and victim that would be just to the survivor, or even useful to the victim. One must sometimes simply come to grips with the role that extrinsic luck plays in making things go well or badly for people. When luck yields a positive windfall to some, it is not unreasonable for laws and institutions to seek to level down somewhat the scale of benefits that some gain by luck. This leveling is justified on the grounds that the very fortunate are better able to support common purposes than those less lucky, and there is no diminishment in incentives to productivity when one taxes luck as opposed to effort or skill. But it would clearly be unworkable for society to try to reverse all gains and losses created by luck. It may be part of the function of the guilt felt by the fortunate to remind them that their happy situation does not correspond tightly to their merit (as Kant thinks it should),<sup>65</sup> and that those less happy may likewise not merit their unhappiness. But if so, there will likely remain a psychological burden for the fortunate to bear to reconcile the arbitrariness of their situation with their sense of achievement and connection to those less fortunate. For such people, charitable giving, volunteering, and supporting egalitarian public institutions are all ways they may try to establish or maintain a sense of connectedness to those less favored by fortune.

#### CONCLUSION

This analysis of indirect guilt suggests that, once we have rationalized these forms of guilt (to the extent possible), laws and institutions provide reasonable responses to some of the failures that give rise to such guilt. In each case, I have indicated how such guilt can be seen as a kind of breach between an individual and the moral community (or other source of ethical justification) to which she wants to be connected, and how such breaches can in some cases be prevented, and in other cases repaired. Although the simple feeling of guilt from one of these indirect causes is not itself an immense ethical problem for society, such feelings do alert us to possibilities that ethical progress can be made.

Two other lessons can be gained from this discussion. First, indirect guilt shows a sense that many of us have that we can be ethically implicated in what happens to others due to factors that are beyond our immediate control. If we expand our notion of agency to include our self-cultivation and our participation in larger collectives, this helps to explain part of that

---

65. See Guyer, *supra* note 51 (“[Kant] holds that since what virtue does is precisely to coordinate our mutual pursuit of ends, and happiness arises from the realization of ends, maximal happiness would inevitably follow maximal virtue under ideal circumstances.”).

sense. Contemporary ethical philosophy tends to think of agency principally in terms of a heroic individual choosing among sets of given, pre-defined courses of action. Consequently, it often fails to understand how indirect guilt could be rational. A more sensitive ethics will regard agency as something that has both instantaneous and temporally extended aspects. It will also see agency as embedded in contexts in which one's ability to act well will be conditioned on how the various collectives in which one inevitably participates stand with respect to other groups and communities. One may have good reason to feel guilty about things one could not or would not have changed, viewed narrowly. But we also have ways to escape or reduce guilt by cultivating one's abilities over time as an ethical agent, and by collective action to guard against some of the sources of indirect guilt. In these regards, our feelings of guilt may tell us something that our pure, rational beliefs are more likely to miss.

Second, I have suggested that laws and institutions can help put bounds on the degree to which many people feel guilty for events they can at most indirectly affect. Throughout this Essay I have largely assumed that a longing for connection to one's moral community is itself reasonable, and if not morally obligatory, then at least morally valuable. Although I would not deny this assumption, there are also limits to its value. If not careful, one can lose oneself in the process of trying to achieve connection with others. Part of the function of institutions and rules can be to create clearer lines of responsibility, including bounds on it, so that individuals need not feel that their obligations to others are unlimited. In this process, law and institutions can temper potentially excessive demands on individuals, and create space for individuals to pursue more individualistic or narrowly social aims. But more generally, I share Williams' worry that generalized, nonspecific feelings of guilt tend to erode our sensitivities to the ethical qualities of the particular actions we take. There is a danger in overemphasizing individuals' desires to feel connected to the broader moral community.<sup>66</sup> As a species, we are perhaps not in danger of overweighting the importance of the moral community, but some individuals do seem liable to be overtaxed by nonspecific guilt. But even more problematic are those who argue for a sort of universal obligation to promote the interests of humankind (or even sentient life) in general, without specific attention to how particular agents affect particular others in particular ways of acting. This way of understanding what the moral community demands of us is susceptible to abuse. It is my

---

66. *See supra* notes 37–46, 49 and accompanying text (discussing the philosophy of Bernard Williams).

hope that showing how some forms of indirect guilt can be rationalized will point out a moderate route between, on the one hand, a parsimonious understanding of responsibility associated with the Judeo-Christian tradition and Kant, and on the other, the indiscriminate understanding of responsibility associated with consequentialism.