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The Relevance of Apology to Reparations for Historical Injustice

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ABSTRACT *This article explains the centrality of apology to an adequate account of reparations. I look in depth at what goes on in apology. As I have previously argued, apology is an expressive action through which we seek to mark adequately the significance of our own wrongdoing. I claim that apology so understood is not merely ornamental. I defend the role of apology against criticisms that it is insufficient, unnecessary, or irrelevant to historical injustice. Apology, I claim, has an essential role in an adequate account of corrective justice. Corrective justice is sometimes rejected as a basis for reparations because of the inapplicability to historical injustice of the narrow financial compensation model found in tort law. However, as numerous theorists have argued, compensation cannot be the whole story of corrective justice. The contribution of this article is to defend an apology model of corrective justice. According to the apology model of corrective justice, the most fundamental normative effect of wrongdoing is the incurring of penitential obligations, the existence and persistence of which do not depend on the persistence of compensable harm to identifiable individuals.*

1. Reparation and Apology

According to the 10-point plan for reparations put forward by the Caribbean Community (Caricom) Reparations Commission (CRC), European governments were intimately involved in mass enslavement. As owners and traders of enslaved Africans, European governments created the legal, financial, and fiscal policies necessary for enslavement, and they explicitly understood enslavement (and the mass uprooting and transporting of the enslaved) as in their national interests. They refused compensation to the enslaved at the point of emancipation, while compensating former slave owners for the loss of legal property rights in slaves. They have refused to acknowledge their responsibility for these crimes or to compensate victims and their descendants.¹ For the purposes of this article, I will take these claims as historical fact. Assuming it to be historical fact that past European governments were responsible, on a massive scale, for treating African human beings as a mere resource to be adopted as property, I will be asking what current European governments should now do in response.²

For the CRC, the first requirement is ‘a full and formal apology’: ‘All the ancestors who were destroyed or affected by colonialism, their descendants alive today, and future generations require a full and formal apology’. They continue: ‘Only a full and formal apology can allow for the healing of wounds and the destruction of cultures caused by colonialism (enslavement and other forms of oppression of peoples)’; and: ‘A full apology accepts responsibility, commits to non-repetition, and pledges to repair the harm caused’. They criticise European governments for having offered only ‘statements of regret’ that fall short of acknowledging responsibility for wrongdoing.³

On the CRC view, apology is a necessary and central way in which we acknowledge responsibility for wrongdoing. That is, acknowledgement of one's responsibility for wrongdoing is a necessary and central part of responding adequately to one's own wrongdoing; and it is through apology that such acknowledgement properly takes place.

In this article, I defend this claim about the relevance of apology to cases of historical injustice. I will outline and defend the claim that apology is central to the broadly backward-looking approach to addressing injustice that I will term *corrective justice*. I will call this the *apology model of corrective justice*. And I will defend the applicability of the apology model of corrective justice to historical injustice. The apology model is an account on which it makes sense to see apology as a necessary and central part of a required reparative response to mass enslavement. I will argue that what is most important in apology is its *penitential* aspect. A penitential response to wrongdoing normally involves undertaking onerous or costly work to benefit one's victim, where this work cannot be viewed narrowly as (financial) compensation for persisting harm. I argue that this penitential response should be seen as an expressive action – an attempt to mark a situation of serious wrongdoing in an adequate and proportionate way.⁴

2. Corrective Justice and Its (Ir)relevance to Historical Injustice

In a highly influential discussion of responsibility for injustice, Iris Marion Young rejects what she calls the 'liability model'. For Young, the liability model needs to be replaced by a 'social connection' model. The criticism is not that the liability model is inherently problematic in simpler cases, but rather that it is inapplicable to complex cases of historical or structural injustice. She says: 'one cannot for the most part trace a direct linear causal relationship between particular actions or policies and the relatively disadvantaged circumstances of particular individuals or groups'.⁵ A necessary condition for the applicability of the liability model, she thinks, cannot be met. I will take the target of these criticisms of the liability model to be the broad idea of *corrective justice*. As the article proceeds, I will argue that apology has its natural home in the corrective justice model; hence, the dismissal of corrective justice is directly relevant to the argumentative aims of this article.

Corrective justice, as I will understand it here, is an account of responding adequately to wrongdoing that has the following features. It starts by identifying *primary* obligations of interpersonal morality, such as the requirement not to treat others as mere property, and then claims that *secondary* obligations necessarily arise from the wrongful violation of those primary obligations. These secondary obligations have four essential (and interconnected) features. First, they are *always and only incurred by wrongdoing* for which one is responsible: that is, fault-involving violations of the primary obligations of interpersonal morality. Second, they are *borne specifically by the wrongdoer* (or, in exceptional cases, by someone standing in for the wrongdoer). Third, they are owed, at least primarily, *to the victim* of the wrong. Fourth, they are obligations to *set right* the wrong for which one was responsible – however such setting right is understood. While sharing this basic structure, competing models of corrective justice give different accounts of how to set right the wrongs for which one is responsible. The model of corrective justice that underpins tort law centres on financial compensation; for the apology model, as I will defend it, one sets one's wrongdoing right through expressive actions that are adequate and proportionate to mark the significance of that wrongdoing.

Corrective justice so understood assumes a background of moral relations between parties to wrongdoing. First, there is an initial tie that can be represented as a primary obligation (e.g. X may not treat Y as mere property). While these primary obligations apply to all parties (so it is also the case that Y may not treat X as mere property, or Z, or A or B or C), they can nevertheless be seen as ties between individual parties: *any* person X owes it to *any* person Y as an *individual* not to treat them as mere property. Second, there is some action or inaction or activity that counts as a violation of that primary obligation. And then third, there is a special tie that arises between wrongdoer and victim in virtue of a secondary obligation having been incurred. If X violates their primary obligation to Y, secondary obligations necessarily arise: given that X is the author of the wrong done to Y, X owes it to Y in particular to set right the wrong X did to Y.

Writers such as Young have claimed that the corrective justice model is irrelevant to large-scale historical injustice. Perhaps because apology has been deemed insufficiently important as a response to wrongdoing, such critics tend to have directed their arguments at the version of corrective justice found in tort law.⁶ In tort law the corrective response in question is financial compensation. A plaintiff can only bring a case in tort law for a *compensable harm*. The plaintiff needs to establish (a) that they have suffered harm, that is, that their actual *interests have been set back* in comparison to the counterfactual situation they would have been in had the harm not occurred; (b) that the defendant was the *cause* of that harm; (c) that they caused the harm wrongfully, through the violation of primary obligations; and (d) that there is some level of compensation that can address the harm, returning the victim's level of wellbeing as closely as possible to the level at which it would have been had the harm not been caused.

Clearly victims have a significant interest in being able to make a tort law case that issues in a legally binding and enforceable demand for financial compensation. However, in relation to historical injustice, critics argue that it is rarely possible to identify (i) compensable harms (ii) that persist among identifiable members of present generations descended from the original victims, (iii) that were wrongfully caused by agents who themselves persist into the present, (iv) such that, by the terms of corrective justice, those persisting agents owe the persisting victims secondary obligations to compensate for the harm caused. If we are trying to compensate for harm, the aim would be to try to return the harmed agent to the level of functioning that they would have been at had the harm not occurred. However, the longer it is since the harm occurred, the more other events have intervened, for good or ill, that make it impossible to say with any determinacy what level of functioning would have been enjoyed by the victim had the harm not been inflicted. To give a toy example, imagine I wrongfully cause someone to lose a leg; but that as a result they become a great Paralympian, overuse their remaining leg, end up losing that other leg as a result of the overuse, but then fall in love with their care assistant, sharing a fulfilling relationship for the rest of their life. If we are asking, at the end of this story, how much compensation I owe them for the loss of the leg, the counterfactual calculation that involves addressing the gap between how their life went with the harm, and how it would have gone without it, seems impossible to perform.⁷

3. The Inadequacy of Purely Non-Corrective Approaches to Historical Injustice

On the basis of this line of criticism, supporters of reparations for historical injustices such as Young, Catherine Lu, Olúfemi O. Táíwò, and Alasia Nuti have rejected what I have

termed corrective justice, and have turned to alternatives.⁸ For instance, Lu argues that what she calls an ‘interactionist’ approach to reparations is inappropriate to address injustice caused by social structures in which all members of a given society participate. These social structures had their genesis in historical injustice, such as the colonial enterprises of Western countries and their associated racist attitudes. But these actions, she points out, were collective enterprises that make it difficult to trace individual liability. Furthermore, the persistence and maintenance of injustice-reproducing social structures affects and implicates all members of that society and cannot with any determinacy be traced back to individual acts of wrongdoing.

The determination of individual legal liability for wrongful conduct in contexts of political catastrophe [such as war, civil war, state repression, or collapse] is morally difficult and often inadequate as a way of conceptualizing responsibility for such catastrophes. In such contexts, individual actions may contribute to *structured* injustices, where wrongful acts or objectionable outcomes committed or produced by individuals can be attributed to their roles within corporate agents or highly organized and/or purposive social groups ... Individual actions may also contribute to *structural injustice*, consisting of unintended, generalized, or impersonal harms or wrongs that result from social structural processes in which many individual and corporate agents may participate.⁹

Lu argues that there are obligations to address historical injustice, but that they are not borne only by those with some direct or even indirect connection to the wrongdoing. Nor are the victims of historical injustice only those who are descended from the original victims:

The transatlantic slave trade ... was in part enabled by ideologies and juridical codifications of white supremacy and by derogatory views of blacks. To the extent that these racialized attitudes of superiority and inferiority persist as contemporary structural injustices, they burden all contemporary agents who participate in the social structures affected ... [I]t is not only descendants of slave owners who have responsibilities for redressing the structural legacies of historical slavery, nor can the group of people oppressed by such legacies be limited to the descendants of slaves. New agents, including new immigrants, who come to be socialized in and participate in a racially biased society also bear duties to reform such structural injustices, regardless of their lack of connection to the historic injustice.¹⁰

I suggest that an attractive way to interpret this alternative to corrective justice is as an account of historically informed distributive justice obligations. Obligations of distributive justice differ from the corrective justice model on a number of dimensions. They are incurred by social injustice generally rather than by wrongdoing specifically. They are not borne only by those who have responsibility for creating those injustices.¹¹ They are not obligations to set right what one did wrong, but rather obligations to create a fairer, more equal society. They are not owed specifically to the victims of wrongdoing; insofar as they are directed obligations, they are owed to all those whose state or position or treatment is less than what justice requires. Historical injustice may affect the content of obligations of distributive justice, but only as a cause of distributive injustice that needs to be addressed in order for a fairer, more equal society to emerge. For instance, in order to

be able to further distributive justice in the present, as Lu plausibly claims, historically persistent racialised attitudes of superiority and inferiority need to be addressed. So understood, the position of Young, Lu, and others is that, in order to address historical injustice properly, corrective justice is inadequate but we need to recognise the historical dimension of obligations of distributive justice.

While there is much to agree with in this alternative position, there are two ways to interpret it. The *inclusive* view is that, while complying with corrective justice obligations is necessary and central to addressing historical injustice, it is by itself *insufficient*. On the inclusive view, such injustice *also* needs to be addressed by recognising historically informed obligations of distributive justice to address *continuing patterns* as well as *past instances* of injustice. By contrast, the *exclusive* view is that corrective justice is *irrelevant* to cases of large-scale wrongdoing. I will now argue that, while the inclusive view is highly plausible, we should reject the exclusive view.

It seems central to our understanding of marking the significance of wrongdoing that we see wrongdoers as under a distinctive set of obligations by virtue of their wrongdoing. They are marked out by their need to set right what they have done wrong. This is the foundational insight of the corrective justice framework. If there are only obligations of distributive justice, there would no longer be any important distinction between those who are responsible for injustice and those who are not – that is, between those who are responsible *for it*, and those who have responsibilities *to address it*. ‘Responsible’ would not mean ‘implicated in the production of a wrong’ but rather just ‘being the bearer of some responsibility to address resulting injustice’ – where that responsibility is simply a distributive one. Those who are at fault for wrongful harming would no longer be *marked out* by the assignment of secondary obligations to address the wrongdoing. Wrongful violations of victims would remain unaddressed *as wrongs*.

Proponents of the exclusive view might argue that we should reject corrective justice because of the impossibility of identifying compensable harm. To do so would be to assume that the compensation model of corrective justice is the only available model, or indeed the most adequate model. However, the compensation model cannot be the whole story when it comes to corrective justice. If it were, then a wrongdoing in which one left no harmed victim would be one for which one had no amends to make. If one managed sufficiently to destroy one’s victim, or wronged one’s victim in such a way as to cause no harm (or caused harm that could never be compensated for), then one would owe no reparations. Since this is a morally unacceptable result, there must be a corrective justice basis for reparations that goes beyond compensation.

Indeed, compensation is neither necessary nor sufficient for setting right what one did wrong. It is not necessary because compensation is relevant only when identifiable and compensable harms are caused. Because not every case of wrongdoing involves such harms, and because on the corrective justice framework, secondary obligations to set things right are incurred by all and only wrongful violations of primary obligations, secondary obligations to set things right must be incurred even when compensation cannot be made. There must be a way of setting right wrongs for which no compensation can be given. Furthermore, compensation is not sufficient for setting things right because it merely attempts to restore the *status quo ante*. It aims to return the victim to the state in which they would have been had no wrongdoing taken place. Even when it succeeds in ‘making the victim whole’, compensation by itself does not address the fact that what one did was wrong. Therefore, an adequate model of corrective justice must involve some

explanation of how it is possible, not simply to repair harm, but to address one's own wrongdoing. It would be wrong, then, to conclude that corrective justice is inapplicable to historical injustice simply on the basis that the compensation model of corrective justice is inapplicable.¹²

4. The Apology Model: A Dead End?

Where should we look for a better model of corrective justice? I suggest we follow Caricom's lead and investigate a corrective justice framework based on apology rather than compensation. In what follows, I investigate and defend *the apology model of corrective justice*. As with any other model of corrective justice, the apology model sees secondary obligations arising from the wrongful violation of primary obligations. The characteristic feature of the apology model concerns its conception of how to set things right. According to the apology model, it is apology that is our fundamental way of addressing the wrongdoing for which we are responsible. Apology does not simply aim to repair or compensate for harm; it is called for in cases of wrongdoing in which no compensable harm has been caused.

Before I outline the apology model, it will be worth setting out three lines of criticism that might be advanced against the view that apology is a necessary and central part of an adequate response to historical injustice. For some readers, my introduction of the apology model will only reinforce the conclusion that corrective justice is not the right way to think about reparations for historical injustice. It will be helpful to get these criticisms on the table before we look at the details of the apology model itself.

The first criticism is that apology is radically *insufficient* to address a historical injustice such as mass enslavement. Many other things need to be done to address such wrongdoing, this criticism says, and those other things are far more important than apology. For instance, having asserted, first of all, the need for apology, the CRC demands other measures such as debt cancellation, support for development, and support for repatriation to Africa, among other things. This line of criticism says that the importance of these other measures dwarfs that of apology. This criticism may be compatible with taking apology to be, at some level, necessary to moral repair. However, it casts doubt on the purported centrality of apology to the reparations process. On this view, apology might just be ornamental, with the main work of repair being done by other measures.

The second line of criticism goes further. It is the claim that apology is not only insufficient to cases of historical injustice, but *unnecessary*. This view is based on the claim that the value of apology lies in its instrumental role in bringing about future benefits. For instance, what apology might do is to provide reassurance to its recipients about the commitments of the party apologising. According to this criticism, it is in signalling commitment and creating reassurance that the value of apology lies.¹³ Any inherent value to apology as a way of addressing wrongdoing is negligible. However, according to this criticism, apology is unnecessary because this work of signalling commitment and creating reassurance can largely be done without apology. Indeed, given that apologies are easy to make, there may be far more effective ways of signalling commitment than simply saying sorry. Hence, this line of criticism concludes that it is often, perhaps usually, the case that apology is unnecessary as long as other work of repair has been done.

The third criticism says that apology is *irrelevant* to historical injustice. This view holds that apology is only relevant when it is a response that addresses a binary relation between an identifiable wrongdoer and an identifiable victim, and where the apology is made *for* identifiable wrongs *to* that identifiable victim for which the wrongdoer is responsible. In cases of historical injustice, however, there are difficulties in identifying the wrongdoers who should make the apology and the victims to whom it should be addressed. Although the CRC plan envisages that apology should be made by current European governments to Caribbean and African nations (and their current inhabitants), there is, according to this criticism, a fatal arbitrariness in choosing this set of parties. These parties do not include all and only those who might be seen as wrongdoers and victims. According to this line of criticism, this arbitrariness means that apology is not relevant to moral repair for historical injustice.

Having outlined some of the challenges that a model of corrective justice will need to meet if it is to be adequate to the complexities of historical injustice, I now turn to developing the apology model.

5. Developing the Apology Model: An Example

I will begin to develop the apology model of corrective justice by looking at an example that may at first sight seem distant from the case of large-scale historical injustice. This might appear to play into the hands of those who claim that apology is suited only for simple, interpersonal cases. We will see, however, that this example has important structural similarities to those more complex cases. It will also demonstrate the flexibility of our practice of apology, and show that it is not confined to narrow, binary moral relations.

Imagine that, one summer's evening, a group of young people congregate in a field behind some houses, carousing and drinking. As the night progresses, and as people in the houses are starting to turn in for the night, the levels of noise and boisterousness increase, and continue for many hours, keeping many of the residents worried and awake. At some point in the evening, one of the young people has the fine idea to clamber over the fences into the gardens to plunder their fruit trees. When the residents awake the next morning, they have not only had a short night's sleep because of the disturbance, they also find damage to their fences and gardens and litter strewn over the field. With the young people having finally dispersed, the residents set about making repairs and tidying up.

A few days after this, there happens to be a big party in the local pub. Most of the residents from the affected houses are there, along with many other locals. At some point it becomes clear that one of the young people in attendance is looking upset. This young man (call him Bryson) is no hardened wrongdoer, but he does have a tendency to act in ways that he later regrets. Bryson cares about his relations with others, and has felt since waking up the morning (or afternoon) after the evening in question that there was something needing to be put right. Eventually, he pulls himself together, climbs on to one of the tables in the pub, and says, 'Look, I know some of you here had your gardens trampled the other night, and even more of you were kept up half the night by noise. I was one of those who did it. I'm sorry and I'm feeling so stupid about what I did. I don't have the money to repair the damage, and I know that you have probably done the repairs already. I can't give you back your night's sleep. But what I did doesn't sit right with me and I want to make it up to you. I don't have money, but I can work. I want to come round and help with your

gardens; anything you want, just let me know and I'll do it. I mean it; I don't know exactly which of you here I've done wrong to; but just come and let me know and I'll arrange to come around. If no one comes forward, I'm going to take it upon myself to trim your hedges on the field side. I just want to do something to make it up to you and set things right'.

This is an example of minor wrongdoing that it might seem strange to compare to serious historical injustice. The example of Bryson is helpful, however, because we can think of him as a *virtuous offender*. He is not fully virtuous, of course, or else he would not have engaged in wrongdoing. However, he is virtuous to the degree that he is fully and genuinely sorry for what he has done. To the extent that my portrayal of Bryson is accurate and true to life, it captures what it is like to see things as a person does who is painfully sorry for what they have done. I suggest that Bryson is pained in part because he accurately recognises his secondary obligations. His is not an abstract, detached recognition: because he is virtuous, there is no gap between recognition and motivation. The obligations function for him immediately as what is to be done. These undischarged obligations have unsettled him and he cannot rest until they have been addressed.

6. What Do We Learn from the Example?

First, let us consider what the example shows us about what apology involves. It might seem unpromising to claim that merely saying sorry can be the basis of corrective justice. This might be the motivation for some of the criticisms we looked at above: that apology is merely ornamental and the importance given to it often disproportionate; even that apology is unnecessary. However, apology properly understood involves much more than saying sorry. This is clear from our example. Bryson makes what Nick Smith has called a categorical apology.¹⁴ If we look at a categorical or 'unreserved' apology, the kind of apology that sets things right as far as is possible and leaves no legitimate demand unaddressed, the mere speech act of saying sorry is insufficient to serious cases. A commitment to reform and to perform further amends is part of the apology. It is misleading to think of apology as just saying sorry. Indeed, amends can be even more important to the reparative success of the apology than the speech act itself.¹⁵

For these reasons it makes sense to see apology not simply as the speech act of saying sorry at a given moment, but rather as a complex action that includes a range of necessary constituent elements. The Caricom plan acknowledges this in spelling out that 'full apology accepts responsibility, commits to non-repetition, and pledges to repair the harm caused'. Caricom does assert that measures other than apology are necessary. For instance, they demand debt cancellation measures, support for development, and support for repatriation. However, as I read it, these measures are seen as continuous with rather than additional to the full and formal apology. They are *part of* the fullness of the apology that is required.

In previous work, I have argued that for apology to do its distinctive normative work, its necessary constituent elements include such things as saying sorry, assuming a deferential body posture, committing to reform, making amends, and so on.¹⁶ An important question in the philosophical study of apology is why (or whether) it is rational to believe that these elements hang together in such a way that they, and only they, are necessary to achieve whatever normative effects it is characteristic of apology to bring about. I will suggest

below that they are all to do with adequately *marking* the significance of one's wrongdoing. They are measures that all have to do with, in corrective justice fashion, undoing the wrong for which one was responsible, and which one would desperately want to undo if one was properly apologetic. Without a commitment to these things, the apology itself would be hollow because it would not be an expression of a genuine desire that the wrong had never occurred and that its traces should be obliterated.

Second, what does the example show us about the nature of secondary obligations? Bryson takes himself to be under certain obligations in virtue of his involvement in wrongdoing. One of these obligations has to do with reparation or making amends. His apology involves an offer of reparations, and an intention to undertake some reparative work if that offer is not taken up. However, the reparation is not solely aimed at *compensating* anyone for the damage caused. Bryson's apology makes it clear that such compensation cannot be given. This is in part because of the nature of the wrongdoing ('I can't give you your night's sleep back'), in part because the repairs have already been made, and in part because of Bryson's own lack of funds. Nevertheless, Bryson realises that the wrongdoing is sufficiently serious that something more needs to be given than a verbal apology. He offers to do something to help; and if no one takes him up on it, he will help anyway.

This reinforces our earlier point that there are reparative obligations to benefit those whom one has wronged that cannot simply be identified with compensation. I will call these *penitential* obligations. In his analysis of atonement – the process of fully making up for a wrong – Richard Swinburne distinguishes compensation from *penance*.¹⁷ Appeal to the idea of penance is also a crucial part of R.A. Duff's communicative justification of punishment.¹⁸ Penance is not a matter of repairing harm; a more adequate view, as Swinburne puts it, is that it is a performative act through which one 'disowns' the offence.¹⁹ Penitential obligations are a fundamental part of corrective justice. In overlooking this, the institution of tort law rests on a mistake: it presents a hollowed-out version of the rich understanding of corrective justice to be found in interpersonal morality. Tort law makes a fetish of monetary compensation, and the possibility of recovering damages stands or falls on establishing that compensation is due. But tort law liability is not a good guide to corrective justice.

Third, what does the example tell us about who needs to make the apology and to whom it is properly addressed? Bryson issues the apology without knowing the precise nature and extent of his wrongdoing, whether he was a central instigator or whether he just joined in. He is not entirely clear about the nature of the wrong for which he is apologising, the precise extent of the harm he personally caused, nor the precise identities of the victims. While it is determinate which fences were knocked down and which gardens trampled (though Bryson himself might not be in a position to remember these details very clearly), it might be rather indeterminate who was kept awake by the disturbance. However, Bryson has a fair certainty that many of those affected will be reached by his verbal apology and by his reparative action. And that is all he needs for the apology to do its work.

Perhaps the simplest way to think of an apology is as a bilateral interaction between the one who issues the apology and its recipient, where the former has a directed (secondary) obligation to the latter because of prior wrongful harming. However, the example shows that not all cases of apologising need be like that. Bryson's apology is legitimately fuzzier than that – he simply aims to put things right by doing some good, where the good is aimed roughly, more or less, at the collection of people he wronged. The conditions for this apologetic action may be imperfect in comparison to the bilateral model of fully determinate

wrongdoer, victim, and harm canvassed above. But, in conditions that are imperfect in that sense, the apology (including reparations) is nevertheless in perfectly good order and perfectly sufficient to do its normative work. In the conditions in which Bryson finds himself, he does all that a virtuous offender would do. No one could reasonably ask more of him. What he does has all of the marks of fulfilling the secondary obligations incurred by his wrongdoing. Not all apologies require a fully determinate wrongdoer, a fully determinate victim or set of victims as the addressee(s), and a fully determinate wrongful harm to which the apology is responding. The practice of apology is flexible enough to accommodate cases in which this bilateral model is not instantiated.

7. Apology as an Expressive Action

With the example of Bryson, I have appealed to intuition. I have tried to show why, once we look more closely at the practice of apology, it is intuitive that apology involves more than just a speech act. It involves complying with penitential obligations incurred by wrongdoing, and, while the penance should aim to benefit those wronged, it need not be directed precisely. However, some readers may remain unconvinced. They may, for instance, be suspicious of intuition as a guide to moral phenomena. They might also point out, doubtless correctly, that the intuitive data I have provided is selective. Furthermore, they may wonder whether, in appealing to the Roman Catholic idea of penance, my intuitions are skewed by the influence of a particular religious tradition. What now needs to be understood in more depth is why it should be the case that Bryson's apology can be a perfectly good example of what apology does. To address that, we need to say something more about what kind of action apology is and what it most fundamentally does.

I claim that apology should be seen, at least in part, as an expressive action.²⁰ Expressive actions, as I understand them, are symbolic actions that mark situations as in some way significant, and the symbolism of which is not arbitrary in relation to what is being marked. Examples of expressive action might be kneeling in the presence of one's God, where the kneeling – making oneself small and vulnerable – symbolises the greatness, but also the loving trustworthiness, of the divinity; or the carrying of a coffin at a funeral, where one symbolically helps the deceased on their final journey. Other common expressive actions include welcoming, thanking, respecting, celebrating, leave-taking, blaming, and so on. In each case, something significant is being marked through a symbolic action that reflects or captures the significance being marked. For instance, welcoming (and leave-taking) can be marked by embracing that non-arbitrarily symbolises the relation of closeness and the desire to stay connected.

Expressive actions are symbolic; but they are not 'merely symbolic'. They perform the vital role of marking situations that cannot be allowed to pass unmarked. The value of marking is primarily non-instrumental. It is not that we mark situations primarily because we aim to produce some further benefit, such as strengthened relationships or other effects on ourselves or an audience. We have good, often weighty non-instrumental reasons to mark situations *simply in virtue of the importance of those situations*, independently of reasons to alter or attempt to improve those situations. In marking it, we lift the situation out of the banal one-thing-after-another run of events and bestow on it a special place in the fabric of our lives. We create a connection to that situation. Not all situations call for

such non-instrumental marking, but some do. Life would be poorer and meaner if we did not do anything to mark significant things that happen to us.

With this sketch of expressive action in hand, we can see why it might be plausible to say that apology is an expressive action; and also why apology has a penitential aspect through which one marks, repudiates, or disowns one's wrongdoing. Situations in which people are wronged and harmed are significant situations. They are situations that call for forward-looking action, action directed at helping and protecting victims as far as we can. But they are also situations that call to be marked, independently of whether we can do anything to help reduce the harm. After all, in some situations, we cannot do anything to help someone who has been harmed. In these situations, practical reason does not leave us entirely without guidance. Rather we have reasons to mark such situations, independently of reasons to alter or improve them.

Bryson's apology should be seen as an expressive action that appropriately marks the situation. His situation calls to be marked because cases of wrongdoing, and perhaps in particular our own wrongdoing, are significant situations in the context of the normative relationships and projects in which our lives are embedded. In previous work I have argued that apology for one's own responsible wrongdoing is a symbolic act of (self-)dissociation, of dissociation from the wrongdoing, and dissociation from the self that committed that wrongdoing.²¹ As an expressive action, the dissociation does not in itself change anything. Rather it marks the situation – it involves taking a stand against the wrongdoing, and against oneself insofar as one endorsed that wrongdoing. It involves partially and temporarily cutting off forms of normal treatment, of the kinds of respect and recognition that the offender would normally be entitled to as an agent who is part of a community that seeks to act collectively to uphold and further moral standards.²² In apology, self-dissociation, one withdraws this respect or recognition from oneself, undertaking actions of penance that are onerous and that it would not normally be required of one to undertake.

When one's wrongdoing has a clear victim, the symbolism through which one marks the significance of one's responsible wrongdoing involves penitential actions that are directed specifically at the victim. It would not mark the right thing about the situation – it would not correctly mark what was significant in it – if one's penitential actions were not in some manner addressed to the victim. However, it may be obligatory to mark the situation symbolically even when it is not precisely clear who the victims are; for instance, because one wronged a group and it is not clear who exactly is in that group. In such cases, the thing to do is to help, more or less, those who count as members of that group, as Bryson does, without worrying too much about precision.

8. Addressing the Criticisms

With this understanding of apology on the table, we can now return to the lines of criticism raised earlier. The first criticism said that there are many other more important things than apology that need to be done in the wake of serious wrongdoing, and that the importance given to apology is disproportionate. We can now see that this criticism is based on the assumption that apology is nothing more than a speech act. However, this assumption is wrong. We have seen that apology needs to involve much more than a speech act if it is to do its characteristic work of addressing wrongdoing. The 'other more important

things' that this line of criticism correctly claims to be necessary are really *part* of the apology. They are a part of the apology when they are done as an expression of the apologisee's apologetic attitude.

The second criticism was that apology is unnecessary to cases of historical injustice. This criticism was based on the view that apology has only instrumental value in providing reassurance regarding the attitudes and future commitments of the wrongdoer now apologising. However, apology does not have only instrumental value. It has non-instrumental value as the appropriate way to mark the situation of one's own wrongdoing, something over which one cannot pass in silence. This criticism implies that bringing about these benefits *without* apologising, or doing them otherwise as an expression of one's apologetic attitude, would be just as good as a way of addressing wrongdoing. However, we can now see that this is false. It would leave a crucial thing undone if a wrongdoer were to provide these benefits and yet not apologise. They would be helping the victim, of course, but they would be acting as if they had not really done anything wrong that needed to be expressively marked. The victim may quite appropriately feel insulted by a benefit from an agent who glaringly fails to mark their responsibility for the recipient's victimhood. Hence apology is not, as the criticism claims, a merely dispensable part of moral repair.

The third criticism was that apology is irrelevant to cases of historical injustice. This criticism is based on the assumption that, for apology to be relevant, there needs to be a determinate moral relation between an identifiable wrongdoer and an identifiable victim, where the wrongdoer apologises to the victim for determinate and identifiable wrongs. It is probably correct to say that this determinacy is not to be found in cases of historical injustice. However, the example of Bryson shows that apology is required and can be in perfectly good order in circumstances in which this bilateral relation is only very imperfectly realised. This is in part because of the central role of penitential action in addressing wrongdoing. Apology works because it is not about providing compensation for harm but rather marking the significance of wrongdoing. In order to do that it has to have a penitential element through which the apologisee can disown their offence, normally by doing something beneficial for their victim.²³ If European governments can be shown to have sufficient continuity of identity that they bear the secondary obligations incurred by the governments of previous centuries (just as they continue to bear obligations incurred, for example, by treaties), it is no get-out clause to say that they were not the only wrongdoers, or that they are simply the last ones left standing. Like Bryson, they stand under penitential obligations that can be discharged by aiming to benefit a group that largely contains (descendants of) victims whose lives bear the impact of those injustices, even if that group does not contain all or only victims.

9. Conclusion

In this article I have considered some grounds for scepticism about the relevance of corrective justice and apology to historical injustice. My claim is that the practice of apology gives us our best understanding of the normative basis of corrective justice. That is, when we understand what we expect of someone who needs to apologise, we have our best understanding of the nature and basis of secondary obligations arising from interpersonal wrongdoing.

If I am right that we take apologies as authoritative expressive actions to mark situations of wrongdoing, this understanding of apology shows why penance as well as compensation is appropriate to situations of wrongdoing. There can be expressive obligations to apologise that persist even in cases in which compensation cannot be given. The structure of apology as an expressive action accounts for the corrective justice obligations that are incurred in cases of wrongdoing. This suggests that organisations such as the CRC are correct to think of apologies as being the central response that is required in cases of historical injustice.

It is implausible that the corrective justice obligations identified by the apology model are the only obligations we have to address historical injustice. As I argued in relation to Catherine Lu's view, it is highly plausible that some of our obligations of distributive justice relate to conditions created by historical injustice. The most adequate accounts of addressing historical injustice would therefore be forms of what I called the inclusive view on which corrective justice is necessary but insufficient. My argument here has simply been that what I called the exclusive view must be rejected. It is implausible to deny that apology and corrective justice are relevant to the obligations European governments have in relation to colonialism and mass enslavement.

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NOTES

- 1 Caricom Reparations Commission, "10-Point Reparation Plan." Caricom further asserts that European governments imposed a hundred years of racial apartheid upon ex-slaves and their communities after the official abolition of slavery.
- 2 Different European governments had different levels of involvement in the colonial project. It is clear that Scottish and UK governments were enthusiastic participants.
- 3 Caricom Reparations Commission, "10-Point Reparation Plan."
- 4 For a developed account of expressive action, see Bennett, *Expressive Action*.
- 5 Young, *Responsibility*, 181–2.
- 6 For an account of the structure of tort law, see e.g. Goldberg and Zipursky, *Recognizing Wrongs*.
- 7 For similar arguments, see Waldron, "Superseding." For an attempt to address the concerns, see e.g. Butt, *Rectifying*, chap. 4.
- 8 Lu, *Justice*; Nuti, *Injustice*; Táiwò, *Reconsidering*.
- 9 Lu, *Justice*, 89.
- 10 *Ibid.*, 171.
- 11 One way to interpret Iris Marion Young's 'social connection' model is as a distributive justice account, where those who bear the relevant obligations are those who are 'socially connected' in some to-be-specified way.

- 12 For related arguments, see e.g. Shiffrin, "Reparations"; Sanderson, "Against Supersession"; Kumar, "Why Reparations?"; Satz, "Countering"; Harrison, "Supersession."
- 13 See, for instance, Wenar, "Reparations."
- 14 Smith, "Categorical Apology." For other recent work on apology, see e.g. Gill, "Moral Functions"; Bovens, "Apologies"; Martin, "Owning up"; Helmreich, "Apologetic Stance."
- 15 Indeed, the speech act itself can in certain circumstances be unnecessary to an apology, and the insistence on such a speech act being given disproportionate. Without at least an offer of amends, verbal apology in serious cases is hollow, even insulting. Nevertheless, it seems correct to say that, in paradigm cases of apology, there is a default normative expectation that a speech act admitting and apologising for wrongdoing should be addressed to the victim.
- 16 Bennett, "What Goes on When We Apologize?"
- 17 Swinburne, *Responsibility*.
- 18 Duff, *Trials*. See also Bennett, *Apology Ritual*.
- 19 Swinburne, *Responsibility*, 84.
- 20 Bennett, *Expressive Action*.
- 21 For more on dissociation, see Bennett, "Desert."
- 22 This is what P.F. Strawson calls the 'withdrawal of goodwill' characteristic of the expression of reactive attitudes of resentment and indignation. See Strawson, "Freedom and Resentment."
- 23 Given the importance of this expressive and penitential element, it is not clear that it needs to be shown that current African Americans continued to be wronged by slavery, as is suggested by Rahul Kumar in a paper that is otherwise well aligned with the argument put forward here. Kumar says: 'The question of whether or not living African-Americans have a valid claim to reparations for chattel slavery ... is whether there is an important respect in which chattel slavery can be said to wrong both living African Americans and to have wronged those enslaved under the legal regime of chattel slavery' (Kumar, "Why Reparations?," 204–5).

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