

## MORALITY AND COLLECTIVE LIABILITY

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Discussions of pressing moral issues in the Western world generally are based upon a morality that primarily is concerned with the relationships between individuals. This moral outlook focuses on the rights of individuals and the good society's role in protecting those rights. However, some writers believe there is a moral system that concentrates on the rights of groups and our responsibility to protect group rights.<sup>1</sup>

Critics of the position that we should focus on groups as well as individuals when we attribute moral liability believe that when we do so we adopt a form of tribalism.<sup>2</sup> Their reluctance to focus on groups is due partially to the fact that in the past people were unjustly discriminated against because they were considered to be members of a dangerous, inferior or undesirable group. The Fourteenth Amendment of the U.S. Constitution is interpreted by these critics as endorsing the position that each individual should be judged exclusively on his own merits. In other words, it vests rights in individuals. With similar reasoning, these critics also conclude that concentrating on groups rather than individuals is inappropriate because it will cause the innocent members of groups to suffer and it will reopen the door to the kind of discrimination experienced by racial minorities and other oppressed groups.

Nonetheless, the system of morality that concentrates upon individuals rather than groups is now under siege from those groups who have been frustrated by a long history of oppression and injustice. Group demands and group solidarity on the part of racial minorities and women is, in part, a practical response to a continued discrimination against these groups. Racial minorities, women, and other groups have felt that in order to alleviate their problems as individuals, they also must press claims for their group. Sometimes the opponents of assigning moral concepts to groups associate group solidarity or group identification with separatist movements, be they feminist, racial, or religious, but they are often wrong when they do so because most of the demands of racial minorities and women are not separatist demands. Historically, the goals of these groups have been orientated towards integration into the socioeconomic system rather than separation. But even with this noted, there is still strong opposition against applying

moral concepts like blame, praise, and liability to groups as a whole.

## I

The aspect of collective liability that has received a great deal of attention can be stated in terms of the following question: can all the members of a group be held morally liable if only some of its members' actions have been faulty? There have been two responses by those who have defended collective liability. One group has argued that, under certain conditions, each member of a group may be held liable even if only some of the group's members' actions have been morally wrong or negligent. They believe that where some just or noble goal will be served by holding all the members of a group morally liable, we are warranted in doing so. According to these critics, we should hold each or most members of the group in question liable even though the fit is not perfect between those members of the group who have wronged others, and those who actually are held to be morally liable. The imperfect fit is excused as an administrative convenience,<sup>3</sup> because attempts to improve the fit would involve drawbacks that would outweigh the good done.

Others have argued that simply being a member of a group can justify liability. In its most severe form proponents of this position conclude from the judgment that S is a member of Group G that S is morally liable for the faulty actions of any member of G. They see the fit as perfect.<sup>4</sup>

Both approaches and conclusions are inadequate. Judgments about the liability of individual members of a group are not logically deducible from judgments about the liability of the group as a whole.<sup>5</sup> It would take additional reasons to warrant such a judgment. It is also unjust to hold a person morally liable on the grounds of administrative convenience if the agent's behavior was not faulty or negligent.

The problem of collective liability, as I see it, is to state and defend the conditions under which moral agents can be held morally liable for "practices" that they themselves did not directly engage in. I shall state and defend these conditions. I should stress that this paper does not address the issue of whether or not, all things considered, restitution should be paid to those who are the victims of unjust practices. My aim is to show that moral liability exists in such cases and that a claim for restitution by the victims can not be rejected simply on the ground that no moral liability exists.

On the account of collective liability I shall develop here, we will focus on "practices" rather than particular faulty individual or group actions. By a practice I shall mean a commonly accepted course of action that may be over time habitual in nature; a course of action that specifies certain forms of behavior as permissible and others as impermissible with rewards and penalties assigned accordingly. An example of an unjust racial practice involving blacks and whites is blockbusting — a practice where a realtor sells a home in an all-white neighborhood to a black family at a price below market value because he knows that this will cause white

families to move and allow him to sell their homes to blacks at a handsome profit.

I use the term practice in a way that a number of collective actions are practices, but it should be noted that not every practice is a collective action. This is so because in order for a set of actions to constitute a collective action there must be certain interrelationships among the members of the set and this is not always the case with a practice.

My critics might object to a moral agent being morally liable for a practice on the grounds that one can not be liable for the practice itself since a practice is a type rather than a token.<sup>6</sup> I will agree if their point is that one can not be morally liable for something that has no causal effects, but at the same time point out that a person can be morally liable for a practice in virtue of being morally liable for something that does have causal effects, i.e., instituting a practice, refraining from disassociating oneself from a practice, etc.

## II

When Joel Feinberg wrote his influential essay, "Collective Responsibility," in 1968,<sup>7</sup> the United States was in the midst of the Civil Rights Movement and the Vietnam War. Some commentators believed that Americans as a whole should be held morally responsible for war atrocities and that southern whites, as a group, were responsible for the systematic discrimination suffered by blacks. After careful analysis Feinberg concludes that there is no moral justification for collective responsibility as a form of collective liability in such cases.<sup>8</sup>

His discussion of collective responsibility is motivated by the belief that there are various kinds of responsibility; some of which don't entail any kind of official action or liability. He says "to be morally responsible for some thing or action is to be liable not to overt responses, but to a charging against one's record as a man."<sup>9</sup> This leads him to reject collective moral responsibility as a type of collective liability in the two cases above because some white southerners and some Americans can at most be described as responsible in the sense of a stain on their records as persons, but not in the sense of making them liable to overt responses.

He is right that given our present requirements for legal liability it is doubtful that all southern whites could be held legally liable for the negative consequences of racial discrimination in the south, and that all Americans could be held legally liable for disastrous effects of the Vietnam war. However, I disagree with his contention that there is no sense of moral liability that entails overt official responses. Feinberg under-estimates the role that moral norms play in shaping and directing human behavior. Moral norms that form our conventional morality may be followed for a variety of reasons, but I am sure that one of them is that people have come to see from childhood that following these norms is in their best interest.

Feinberg focuses on the differences between legal and moral liability, but there are some important similarities. For example, there are overt responses to violations of moral as well as legal norms; particularly when young people are given moral

training. These overt responses are an integral part of their moral training. Even mature adults are subject to quite serious overt responses for violations of norms. We must recognize that not every overt response that has serious consequences on a person's life must be couched in legalistic terms. People are often held liable by withholding favors from them. The withholding of these favors is not ad hoc, it is done in direct response to violations of specific moral norms. Withholding these favors serves to coerce us, as do legal sanctions, to learn and support conventional norms. Being found morally liable is no trivial thing in a morally decent society. Doing so serves as more than a basis for self-punishment, remorse or pride.

For Feinberg, in order for there to be collective liability in the sense of being open to overt responses there must be (a) group solidarity, (b) prior notice to the liable party, and (c) opportunity for control by the liable party.<sup>10</sup> Feinberg rejects this sense of collective liability in our two controversial cases basically because he believes that condition (a) is not satisfied. Group solidarity exists when all members of a group share interests, feel pride when one of its members does something noteworthy, and feels shame when one of its members acts badly. On the other hand, if we reject Feinberg's account of group solidarity, a group may experience group solidarity although its members have minimal shared interest and feel no pride or shame when members of their group accomplish something noteworthy or act badly.

When a group is "loosely organized" and very large and diversified, not all of Feinberg's requirements for group solidarity are necessary. For example, residents of the state of California can experience group solidarity even though they individually may have little in common and varied interest. The poor Watts ghetto dweller may have little in common with the wealthy person who lives in Beverly Hills, but they can have group solidarity if they both rally around efforts to prevent needed water from being routed to some other state. Feinberg's rejection of collective moral liability rests on drawing a dichotomy between a group with solidarity and a random collection of individuals. Such a dichotomy is misleading. Of course we would reject holding a person morally liable for the faulty actions of a collection of individuals of whom by the luck of circumstances he happened to be a part. But in our two cases above the groups in question are not a random collection of individuals. Members of these groups identify with the group even if they don't support all of the actions of its members. Racial and national identifications are quite strong. In fact, we are not fully conscious of how much we identify with these groups. Strong group identifications have served as a source of self-esteem and as a foundation for cultures. Solidarity, unlike group identification, requires a level of political and social consciousness. As, for example, when a worker begins to define himself as a member of the working class. Just being a worker is not sufficient to have a worker's consciousness. With racial and national identification there is perhaps not the level of political and social consciousness that would allow us to conclude that group solidarity exists, but there is enough group identification to warrant the judgment that the members of the group have chosen to identify with the group for the security and benefits that group membership provides.

We are certainly reluctant to accept the conclusion that all white southerners should be presumed to be liable for the unjust actions of some, but part of this reluctance can be overcome when we move from talking about actions to practices. However, we are still left uneasy about such a conclusion because we believe that people do not have control over such things as their race or sex, while they do have control over whether they will remain a racist or sexist. But people play very different roles in their dealings with one another. There are those who are oppressors and the direct beneficiaries of oppression, those who are nonparticipating beneficiaries of oppression, and those who appear to be innocent bystanders. The last two categories are what prompts Feinberg to conclude that holding southern whites, as a group, collectively liable to overt responses is unjustified. He believes that the contributory fault condition is absent or very weak in the case of some group members. Thus, for him, no such thing as collective responsibility as a type of collective legal liability exists in such cases.

Feinberg is right. It would be unjust to hold a person legally liable for something he did not do because he is a member of a racial group whose actions have been faulty. Even if we add that this person benefitted because of the faulty action or practice, this, itself, would not suffice to show that he is legally liable. Given the present requirements for legal liability I don't think we can show legal liability for groups as a whole in such cases, but I do think we can show that a form of moral liability that carries with it serious non-legal constraints and sanctions is justified.

### III

The theory of collective moral liability that I advocate here assumes that the notion of community is crucial, community in the sense that each member of the society is serving her own interest by freely joining a group to carry on a common struggle for existence. According to my theory, no legal or moral demands should be placed on the individual such that the person who is subjected to them does not remain a free moral agent. My account of collective moral liability makes group members who fail to take certain steps morally liable for the negative consequences that result from their omissions. They have a moral duty to take these steps because it is a necessary part of their chosen strategy to insure that all members of society remain free moral agents, which is an integral part of their reason for joining the moral community in the first place.

Some philosophers have argued that a person who willingly commits an injustice is more blameworthy than a person who merely lets an injustice occur. My purposes here are not to question this admittedly controversial contention, but to grant it and argue that under certain conditions letting an injustice occur, perhaps less faulty than causing an injustice, is faulty enough, in a moral sense, to make a person morally liable.

The following are conditions under which moral agent X can be held morally liable for a faulty practice P:

- (1) X knows or should have known about P.
- (2) X identifies or has solidarity with those who engage in P or X does not sufficiently disassociate himself from P or X's failure to disassociate from P was not a part of a reasonable strategy to prevent further or greater harm.

When these conditions are satisfied, I hold we have a moral basis for liability. Let us now turn to a clarification and defense of these conditions.

### *Condition (1)*

Condition (1) refers to practices, not the individual or complex actions that occur between individuals. It is satisfied if a person knows that a practice exists even if he or she has not personally been a party to a particular act that is faulty. However, one further clarification is needed.

Often people will use ignorance of a fact or state of affairs as a reason for their not being held accountable. Sometimes such an excuse is valid but there are many other cases where we believe that the ignorance excuse is inadequate. Imagine the case where a tour guide orders the members of his party to drink from a stream which, unbeknown to him, is contaminated. Should the guide not be held responsible for the illness or deaths of members of his party simply because he did not know that the stream was contaminated? We must answer no. He should have known. A part of his duty as a tour guide is to check such things, but we could modify our example in such a way that ignorance could relieve the guide of responsibility. Suppose the guide checked the stream for contaminants but did not test for some highly improbable bacteria that is rarely found in streams. In such a case, it would be wrong to hold him morally liable; he took all reasonable precautions. Where reasonable efforts have been made to become knowledgeable, ignorance can warrant the conclusion that the agent is not liable.

In cases of collective moral liability each member of the group will have duties that result from their simply being moral agents or citizens of some state. We can argue about the extent of such duties, but we can safely conclude that they do exist. Therefore, each person has the responsibility to know what his duties are and to know whether he is living up to his obligations. Pleading ignorance is no excuse unless one has made a reasonable effort to become knowledgeable.

### *Condition (2)*

The first part of condition (2) can be satisfied when those involved share some common interest; they need not feel pride or shame when members of the group with which they share a common interest does something noteworthy or acts

badly. A person can identify or have solidarity with a group even though he or she does not profit in a financial way from faulty practices engaged in or supported by the group. When this is the case, the person is liable because his emotional support for the group that engages in faulty practices enables the group to remain powerful and to continue its unjust practices. Even though the person does not financially profit, he will, at least, profit from the sense of emotional security that is attached to being a member of a powerful group. But this alone does not warrant liability. However, when the powerful group is oppressive and the emotional feelings of security that group members feel contribute to the disadvantage and oppression of members of other groups, it does.

The second disjunct of condition (2) requires disassociation where appropriate. Disassociation can involve publicly denouncing a practice, but only if that is all that one can do, and a refusal to accept any enrichment that occurs as a result of the faulty practice. But usually it will require direct action and a refusal to accept further enrichment. In either case the moral agent is required to do something that separates him from the faulty practice. This may require complete disassociation from the group that he identifies with. Some people will be required to do more than others because of their power and influence, but this is as it should be. In advance we cannot say with great precision what sufficient disassociation entails because different factors are involved from case to case. Some of these factors include risk of harm, time, and opportunity for control; thus, liability will be contingent on these factors.

Before I further explain what disassociation involves, one preliminary remark about the morality of disassociating oneself from an injustice is in order. I do not support the position that all people who disassociate themselves from injustice are doing so from attitudes that are morally commendable. My point simply is that there are cases where disassociation will serve to reduce the injustice and if it does not, it can still be said to be morally commendable because the attitudes that are present are something other than self-righteousness.<sup>11</sup>

A crucial aspect of the disassociation condition is the avenues of action available for disassociation. The avenues of action will be political as well as legal. For example, when chattel slavery was legal in this country, there were laws that closed most of the legal avenues open to those people who opposed slavery, but there were still political avenues available, e.g., abolitionist movements. Some people took those avenues available to them and thus they succeeded in disassociating themselves from the horrible practice of slavery.

The third disjunction of condition (2) is necessary because there might be cases where a person collaborates with a tyrannical power in order not to blow his cover as an agent set on destroying it. In such cases we certainly would not want to hold such persons morally liable. In fact, such persons' actions are morally commendable even though it may prove difficult to distinguish acts of resistance from mere collaboration.

My critics might object that it is physically or psychologically unrealistic to think that a person can be held morally liable because of a failure to disassociate

from some unjust practice. Neither objection will suffice. First, the objection that it is physically unrealistic is unsatisfactory because the person is not required to travel great distances or to expend more than a modest sum of money to disassociate from an injustice. Given the present state of mass media and the varied organizations that allow for political participation, it would not be unrealistic to think, in cases involving serious unjust practices against groups, that these injustices could go unnoticed and that there would be no political avenues open to a person who wished to disassociate from them.

The objection that it would be psychologically unrealistic to expect people to disassociate themselves from unjust practices that they did not cause is not valid. If they mean that it would be unrealistic to expect people to be concerned with everyone else's problems, then I think they are correct. People have a difficult enough time keeping a handle on their own problems and the problems of their loved ones. However, this is not what is being required. We are not requiring an individual to be his brother's keeper, but to be aware that he can be held morally liable if he fails to disassociate from an unjust practice caused by a group that he identifies with. It is not my contention that people should widen or disregard their present loyalties, but I do deny that they are relieved of any moral liability, in certain cases, because they would be psychologically more content if they ignored these injustices and their consequences.

My theory differs from Feinberg's and others because it recognizes the importance and role of moral liability in a good society. It also explains why group membership, in certain circumstances, can make one morally liable even though one does not personally cause or explicitly support the faulty practices engaged in by a group of which one is a part. The theory of collective liability that I have advanced is one that recognizes that we live in a world where we can no longer view ourselves as being detached from the actions of groups of which we are a part. We should be aware that efforts to achieve a morally good society for a time may bring about disharmony and social unrest. A morally decent society, in my judgment, is willing to pay these costs.<sup>12</sup>

## NOTES

1. See L.T. Hobhouse, *Morals in Evolution* (London: Chapman and Hill, (1951) and Peter A. French, *Individual and Collective Responsibility: The Massacre at My Lai* (Cambridge: Schenkman, 1972), esp. pp. 103–118 and 147–165.
2. For example, H. Gomperz, "Individual, Collective, and Social Responsibility," *Ethics* 49 (1939) 329–342.
3. For instance, J.W. Nickel, "Classifications by Race in Compensatory Programs," *Ethics* 84 (1974), 146–150, p. 147.
4. Bernard Boxill supports such a position in "The Morality of Reparation," *Social Theory and Practice* 2 (1972), 113–122.
5. See May Brodbeck, "Methodological Individualism: Definition and Reduction," in Brodbeck's *Readings in the Philosophy of the Social Sciences* (New York: Macmillan, 1968).
6. For a good discussion of the Act-type and Act-token distinction see Alvin I. Goldman,



*A Theory of Human Action* (Englewood Cliffs, N.J.: Prentice Hall, 1970), pp. 63–72.

7. Joel Feinberg, "Collective Responsibility," *The Journal of Philosophy* 65 (1968), 674–688. Revised and reprinted in Feinberg's *Doing and Deserving* (Princeton: Princeton University Press, 1970). All page references will be to *Doing and Deserving*.
8. *Ibid.*, pp. 247–248.
9. Joel Feinberg, "Problematic Responsibility in Law and Morals," in *Doing and Deserving*, pp. 30–31.
10. *Doing and Deserving*, p. 249.
11. For a fuller discussion of this point, see Thomas E. Hill, Jr., "Symbolic Protest and Calculated Silence," *Philosophy and Public Affairs* 9 (1979), 83–102, pp. 99–102.
12. This paper was written with partial support by a Summer Fellowship from the Rutgers University Research Council.