

## CHAPTER 9

### Citizen Responsibility and the Reactive Attitudes: Blaming Americans for War

#### Crimes in Iraq

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

-- J.M. Coetzee, *Diary of a Bad Year*<sup>1</sup>

#### Introduction

It is now horrifyingly apparent that American prosecution of the war in Iraq, and its attendant detention policies, have been rife with abuses. American soldiers killed Iraqi civilians by throwing them into the Tigris,<sup>2</sup> or shooting them in “massacres” at Haditha

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<sup>1</sup> J.M. Coetzee, *Diary of a Bad Year* (New York: Penguin, 2007), 43 (reflecting on American shame in the face of human rights abuses committed in the course of the war in Iraq). In a probing critique of this passage, Jeff McMahan argues that “even if there are institutional connections between ordinary Americans and their government that make it rational for them to feel personal shame over its deeds, to suggest that it might be desirable, meritorious, noble, or even morally necessary for them to kill themselves is to attribute vastly disproportionate significance to the grounds for shame.” Jeff McMahan, “Torture and Collective Shame,” in Anton Leist and Peter Singer, eds., *J.M. Coetzee and Ethics: Philosophical Perspectives on Literature* (New York: Columbia University Press, 2010). Earlier in his essay, McMahan roundly rejects the notion that the generic American might bear any guilt for the torture of Iraqis. Operating with an unfailingly individualist conception of responsibility, McMahan contends that where he neither participated in torture nor failed to prevent torture that it was in his power to prevent, he cannot be said to bear individual guilt for torture perpetrated by his government. The most that can be ascribed to the generic American is, for McMahan, a kind of moral taint by association. It is for this reason that suicide seems to McMahan so grossly disproportionate – a product of megalomania or else an obsessive need for moral purity. In contrast to McMahan, this essay takes seriously the notion that Americans are individually blameworthy for torture, and other human rights abuses, committed in the course of the war in Iraq. Nothing in this essay should be taken to endorse suicide as an appropriate response to America’s transgressions, but the arguments advanced herein should nonetheless help to make sense of the sentiment underlying the epigraph.

<sup>2</sup> Dexter Filkins, “The Fall of the Warrior King,” *New York Times*, October 23, 2005.

and Mahmoudiya,<sup>3</sup> or running them over in supply-carrying convoys intent on moving through traffic.<sup>4</sup> During raids, it became “very common” to shoot the family dog in front of the family who owned it, and routine to “destroy” the family’s property with no subsequent compensation.<sup>5</sup> Detainees died after having been exposed to extreme temperatures,<sup>6</sup> or subjected to stress positions;<sup>7</sup> in one case, an Iraqi prisoner suffered a lethal heart attack after he was forced to do long sessions of jumping jacks with a sandbag over his head.<sup>8</sup>

Cries of ignorance, perhaps once possible, are now unavailable and unavailing. The pictorial evidence has been too graphic, the pleas for judicial relief too numerous, and the revelations by journalists and veterans too widespread and wrenching, for Americans to invoke the Bush Administration’s penchant for secrets and deceit (and sometimes that of the Obama Administration as well) as sources of immunity.<sup>9</sup> The question of responsibility therefore presses upon us: What responsibility do Americans bear for these war crimes?<sup>10</sup>

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<sup>3</sup> Tim McGirk, “Collateral Damage or Civilian Massacre in Haditha?,” *Time*, March 19, 2007; Richard Engel, *War Journal: My Five Years in Iraq* (New York, Simon and Schuster, 2008), 279.

<sup>4</sup> Chris Hedges and Laila Al-Arian, “The Other War: Iraq Vets Bear Witness,” *The Nation*, July 30, 2007.

<sup>5</sup> Id.

<sup>6</sup> Glenn Greenwald, “Senate Report Links Bush to Detainee Homicides,” *Salon*, December 15, 2008.

<sup>7</sup> Seth Hettena, *Iraqi Died While Hung From Wrists*, AP, February 17, 2005.

<sup>8</sup> Greenwald, *supra* note 6.

<sup>9</sup> For examples of statements issued by the Bush Administration intended to deny its role in these abuses, see, for instance, Dan Froomkin, “Pack of Liars,” *Washingtonpost.com*, Dec. 12, 2008, <http://www.washingtonpost.com/wp-dyn/content/blog/2008/12/12/BL2008121201873.html>. The Obama Administration has at times upheld the Bush position. For example, the Obama Administration followed the Bush strategy of invoking the state secrets defense in order to thwart an ACLU lawsuit challenging the U.S. program of rendition, under which alleged terrorists were abducted and sent to other countries to be tortured. See, e.g., Glenn Greenwald, “Obama Fails His First Test on Civil Liberties and Accountability -- Resoundingly and Disgracefully,” *Salon*, Feb. 9, 2009, [http://www.salon.com/news/opinion/glenn\\_greenwald/2009/02/09/state\\_secrets](http://www.salon.com/news/opinion/glenn_greenwald/2009/02/09/state_secrets); David Luban, “You Cover It Up, You Own It,” *Balkinization*, Feb. 10, 2009, <http://balkin.blogspot.com/2009/02/you-cover-it-up-you-own-it.html>.

<sup>10</sup> My use of the term “war crimes” is not intended to be polemical. A Spanish prosecutor, for example, recently filed a complaint seeking an indictment against six high-level Bush officials for the torture of detainees as a war crime. A copy of the complaint can be found here:

For most commentators and scholars, the answer is “none,” at least if we are referring to the responsibility of Americans who did not directly participate in the crimes in question. Instead, the tendency is one of deflection (onto, for example, George W. Bush),<sup>11</sup> or submersion (by the Administration of Barack Obama, which implores the American public to move forward).<sup>12</sup>

These responses find support in a conception of responsibility familiar to us from criminal law, in which individual causal responsibility is seen to be the sine qua non of culpability.<sup>13</sup> Yet, as a handful of scholars have recently argued, the collective nature of crimes of war escapes the bounds of the individualist paradigm of Western criminal law.<sup>14</sup> Thus Mark Drumbl forcefully argues in this collection that “[t]he collective nature

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[http://www.publico.es/resources/archivos/2009/3/27/1238184153397QUERELLA\\_VERSION\\_FINAL.pdf](http://www.publico.es/resources/archivos/2009/3/27/1238184153397QUERELLA_VERSION_FINAL.pdf).

See generally Jeremy Brecher, Jill Cutler and Brendan Smith, eds., *In the Name of Democracy: American War Crimes in Iraq and Beyond* (New York: Metropolitan Books, 2005). Cf. Neta C. Crawford, “Individual and Collective Moral Responsibility for Systemic Military Atrocity,” *Journal of Political Philosophy* 15 (2007): 187 (arguing that the killing of Iraqi civilians by American soldiers at Haditha and Ramadi constitute “systemic atrocities,” – *i.e.*, those that are unintended but foreseeable, resulting from the constraints of a larger social structure rather than any individual’s intentional act).

<sup>11</sup> See, e.g., Andrew Sullivan, “Dear President Bush,” *The Atlantic*, October, 2009, <http://www.theatlantic.com/doc/200910/bush-torture/1>.

<sup>12</sup> See, e.g., Shailagh Murray, “A Commission on Enhanced Interrogation? Obama Rebuffs Idea,” *Washington Post*, April 23, 2009, [http://voices.washingtonpost.com/44/2009/04/23/a\\_commission\\_on\\_enhanced\\_inter.html](http://voices.washingtonpost.com/44/2009/04/23/a_commission_on_enhanced_inter.html).

<sup>13</sup> For a statement embracing the principle of individual culpability in international law, see the Appeals’ decision in *Prosecutor v. Tadic*, before the International Tribunal for the former Yugoslavia (ICTY): “The basic assumption must be that in international law as much as in national systems, the foundation of criminal responsibility is the principle of personal culpability: nobody may be held criminally responsible for acts or transactions in which he has not personally engaged or in some other way participated (*nulla poena sine culpa*).” *Prosecutor v. Tadic*, Case No. IT-94-1-A (Int’l Crim. Trib. for the Former Yugoslavia Appeal Judgment, July 15, 1999), at ¶ 186 (footnotes omitted). Resistance to accomplice liability in domestic law is a prominent place exhibiting reverence for the principle of individual culpability as, for example, in Joshua Dressler, “Reassessing the Theoretical Underpinnings of Accomplice Liability: New Solutions to an Old Problem,” *Hastings Law Journal* 37 (1985): 91-140.

<sup>14</sup> See, e.g., Mark A. Drumbl, “Collective Violence and Individual Punishment: The Criminality of Mass Atrocity,” *Northwestern Law Review* 99 (2005): 542 (“The dominant discourse determines accountability through third-party trial adjudication premised on liberalism’s construction of the individual as the central unit of action. This means that a number of selected guilty individuals squarely are to be blamed for systemic levels of violence.”) (footnote omitted); George P. Fletcher, “The Storrs Lectures: Liberals and Romantics at War: The Problem of Collective Guilt,” *Yale Law Journal* 111 (2002): 1499-1573. Cf. Larry May, *Crimes Against Humanity: A Normative Account* (New York: Cambridge, 2005), 246-49 (advocating collective responsibility as a supplement to individual responsibility in “situations of group-based harm, [where] many members of the society may have chosen to play a role in the climate that has been

of [atrocities] sits uncomfortably with international criminal law's predicate of individual agency, action, and authorship."<sup>15</sup> Similarly, George Fletcher contends that "the liberal bias toward individual criminal responsibility obscures basic truths about the crimes that now constitute the core of international criminal law. The[se] crimes ... are deeds that by their very nature are committed by groups and typically against individuals as members of groups."<sup>16</sup>

One might have thought that dissatisfaction with the conception of responsibility underpinning the response to atrocity would have occasioned support for the notion of collective guilt. But the alternatives proposed by critics like Fletcher and Drumbl are far more modest. Fletcher's interest in collective guilt is intended not to implicate those who acquiesced in atrocity but instead to mitigate the responsibility of those who committed it.<sup>17</sup> Drumbl is prepared to countenance group-based responsibility, but only if individual group members are permitted "the subsequent opportunity ... to affirmatively demonstrate why they should be excluded from the liable group."<sup>18</sup> Accordingly, on Drumbl's account, group members who resisted or spoke out against mass atrocity would be exempt from having to contribute to a collective sanction levied against other members of the group.<sup>19</sup> Similarly, others who have entertained the notion of collective

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instrumental in nurturing the harmful conduct."); Larry May, *War Crimes and Just War* (New York: Cambridge, 2007), 247-56 (offering a qualified defense of joint criminal enterprise as a kind of collective responsibility where the responsibility of each member turns on his having an intention to participate in the collective injury).

<sup>15</sup> Mark Drumbl, *Collective Responsibility and Post-Conflict Justice*, at 1. *See also* Mark A. Drumbl, *Atrocity, Punishment and International Law* (New York: Cambridge, 2007): 37 ("[i]nternational criminal culpability is too crude a device to assimilate and measure the small things many people do that make the larger things fewer people do truly pandemic.").

<sup>16</sup> Fletcher, *supra* note 14 at 1513.

<sup>17</sup> Fletcher, *supra* note 14 at 1541-42.

<sup>18</sup> Mark Drumbl, *Collective Responsibility and Post-Conflict Justice*, *supra* note 15 at 25.

<sup>19</sup> Drumbl, *Atrocity, Punishment and International Law*, *supra* note 15 at 208. Drumbl worries that an assessment that ignores individual culpability will entail not only that the debtor class will include "innocent" group members, but also that the beneficiary class will include complicit group members. Such

sanctions in this context contemplate internal rights of contribution, which would allow the group to apportion group-based sanctions according to members' relative amounts of wrongdoing.<sup>20</sup> In short, those who call for a more encompassing understanding of responsibility for atrocity have nonetheless remained faithful to the principle of individual culpability embodied in international criminal law.

By contrast, this paper takes seriously the notion that individuals may bear responsibility for the transgressions of their group even where they do not bear the hallmarks of individual culpability. More specifically, I shall contend that citizenship itself can ground responsibility for the crimes of one's nation-state. To be clear, my interest here lies not in uncovering when and why it is appropriate to hold *groups* responsible (whether conceived as nations or states), questions addressed by the papers by Toni Erskine and Tony Lang in this volume; nor am I interested in determining the circumstances when, and grounds upon which, it is appropriate to transmit sanctions imposed upon the group to its members, which is the question Richard Vernon and Avia Pasternak confront in their contributions. I am interested instead in locating and interrogating the grounds upon which we may, *in the first instance*, hold group members responsible for a transgression of their group. The focus here is then on responsibility assigned directly to members, and not derivative of the responsibility of the group.

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an assessment "would retribute some individuals while unjustly enriching others." Id. at 200. While I go on to defend an assignment of responsibility that Drumbl deems "crude", I see no reason why this assignment could not function alongside a careful delineation of the individuals entitled to compensation.

<sup>20</sup> See, e.g., Mark Osiel, "The Banality of Good: Aligning Incentives Against Mass Atrocity," *Columbia Law Review* 105 (2005): 1842-59 (advocating the imposition of collective *civil* sanctions on military units, and arguing that these are just because they allow military officers to redistribute the sanction internally so that it is levied in accordance with individual guilt). Cf. Daryl Levinson, "Collective Sanctions," *Stanford Law Review* 56 (2003): 345-428 (advocating collective sanctions within criminal law, but anticipating that the sanctions will work themselves out internally, to cohere with principles of individual culpability).

Moreover, the kind of responsibility I have in mind is not simply the forward-looking variety, which is what many forms of civil liability and reparations programs contemplate; nor is it simply outcome responsibility, which arises where an individual deserves to incur the material consequences of her acts, but not moral sanction.<sup>21</sup> Instead, I shall argue that U.S. citizens are legitimate targets of *blame* for abuses committed in the course of the war in Iraq.<sup>22</sup>

The account of citizen responsibility that I advance differs from the individualist account insofar as it severs moral and causal responsibility: Again, I shall argue that the citizen may bear moral responsibility even though she did not participate in, facilitate, or even tolerate the abuses committed in her midst. The account also severs the notions of guilt and blameworthiness: I shall argue that the citizen may be an appropriate object of blame (and hence appropriately subject to resentment and indignation) even though she need not conceive of herself as guilty. And I shall suggest that this fracturing of the traditional troika of guilt, resentment, and indignation has implications for the way we think about moral responsibility more generally.

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<sup>21</sup> See, e.g., David Miller, "Holding Nations Responsible," *Ethics* 114 (January 2004): 244-46; Richard Vernon, Punishing Collectives: States or Nations at 14.

<sup>22</sup> Most accounts that seek to assign responsibility to group members who did not participate in the group transgression contemplate forward-looking responsibility, and not responsibility as an assignment of blame. For example, John Parrish has sought to argue that Americans bear responsibility for illegal killings and other injuries suffered by Iraqi civilians. Though Parrish assigns responsibility to Americans independent of individual blameworthiness, he understands responsibility to consist of an obligation of repair, and not as liability to blame. John M. Parrish, "Collective Responsibility and the State," *International Theory* 1 (2009): 119- 154. Similarly, in other contexts, theorists have argued that citizens may be held responsible to redress harms of their nation-state, though these citizens are innocent of wrongdoing. See, e.g., Debra Satz, "What Do We Owe the Global Poor?," *Ethics and International Affairs* 19 (2005): 47-54.

Juha Raikka is one who has argued that even those who dissociate themselves from their group's wrongdoing may nonetheless warrant blame for that wrongdoing. Juha Raikka, "On Disassociating Oneself from Collective Responsibility," *Social Theory and Practice* 23 (1997): 93-108. In brief, Raikka argues that dissidents come to bear responsibility for group acts that they oppose where they must participate in, or otherwise support, an evil practice in order to oppose that same or another evil practice. Raikka's account is not as far-reaching as my own, and it is particularly unhelpful here, since it is far from clear that the American opponent of the war in Iraq need participate in any evil practice in order to voice her opposition.

I begin by articulating an account of the relationship between the citizen and her nation-state that grounds the citizen's responsibility for a transgression of her nation-state independent of the extent of her participation in that transgression. I do not anticipate, however, that that account will induce guilt in every American who encounters it. The resistance to guilt is itself interesting and, in the second Part of the paper, I seek to investigate its source. To that end, I undertake an exploration of the moral psychology of guilt and resentment, especially as these emotions pertain to understandings of responsibility for war crimes among members of the perpetrator and victim populations. I end by gesturing to the ways in which the account challenges accepted truths about moral responsibility and its relationship to the reactive attitudes.

Some words about terminology first: By "morally responsible," I shall mean "appropriately subject to blame," which I take to mean the same thing as "blameworthy." Further, I conceive of the experience of guilt as being constituted, at least in part, by the judgment that one has breached an expectation whose authority one recognizes.<sup>23</sup> Whether that experience is also constituted by guilt feelings is a question I shall have occasion to consider in what follows. For now, it is sufficient to note that by "guilt feelings" I shall mean the phenomenological correlates of the judgment involved in

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<sup>23</sup> Cf. Gabriele Taylor, *Pride, Shame and Guilt: Emotions of Self-Assessment* (New York: Oxford University Press, 1985), 85 ("To feel guilty, [an individual] must accept not only that he has done something which is forbidden, he must accept also that it is forbidden, and thereby accept the authority of whoever or whatever forbids it."). Though Taylor here speaks of "feel[ing] guilt," she clearly has the cognitive component of guilt in mind and so her description fits what I have referred to as the judgment involved in the experience of guilt.

experiencing guilt – typically, pain, sadness, etc.<sup>24</sup> Finally, I refer to the entity whose acts occasion responsibility as the “nation-state.”<sup>25</sup>

## I. Citizen Responsibility

The notion that one may be held morally responsible for a group wrong not in virtue of one’s participation in it but instead in virtue of group membership alone has been termed “tribal,”<sup>26</sup> and even “barbarous.”<sup>27</sup> Indeed, those who seek to blame Americans for abuses committed in the war in Iraq have been accused of succumbing to the same kind of spurious logic that allowed the 9/11 terrorists to kill American civilians in retaliation for (purported) grievances against the American government.<sup>28</sup> But what these critics fail to see (and what the 9/11 terrorists, tragically, failed to see) is that assignments of responsibility need not be one-size-fits-all. Instead, we may hold different people responsible *to different degrees* for the same event or state of affairs, which may lead to our imposing upon them different kinds or amounts of sanction. It is worth beginning our

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<sup>24</sup> See, e.g., Margaret Gilbert, “Collective Guilt and Collective Guilt Feelings,” *Journal of Ethics* 6 (2002): 118-119.

<sup>25</sup> In his contribution to this volume, Richard Vernon offers an incisive inquiry into whether the responsible collective ought to be understood as the state or the nation, and Vernon settles on the former. Vernon persuasively argues that the transmission of liability from a socio-political entity to its members can be defended for states, but not for nations, since it is the open-ended delegation of authority to the state that legitimates our imposing upon citizens the consequences of that delegation (here, the sanctions arising in the aftermath of state crime), and this open-ended delegation of authority is an essential feature of the state, but not the nation. All of this seems correct if one is concerned with citizens’ derivative liability, as Vernon is. But I am concerned with citizens’ individual moral responsibility. For my purposes, something more normatively robust than the mere state is required. More specifically, the collective entity in question must possess the political character of a state since, as Vernon rightly notes, it is in its political aspect that the collectivity commits crimes of war. But mere states, we shall see, need not encompass the normative obligations of fidelity to fellow members and the group itself that ground responsibility here. For these reasons, I invoke the nation-state as the collective actor of interest.

<sup>26</sup> See, e.g., Nick Smith, *I Was Wrong: The Meaning of Apologies* (New York: Cambridge, 2008): 188.

<sup>27</sup> See, e.g., H.D. Lewis, “The Non-Moral Notion of Collective Responsibility,” in *Individual and Collective Responsibility: The Massacre at My Lai*, ed. Peter A. French (Cambridge, MA: Schenkman Publishing Company, 1972): 121.

<sup>28</sup> See, e.g., Crawford, *supra* note 10 at 205.



inquiry into citizens' responsibility by considering two factors that govern the magnitude of a responsibility assignment.

First, and most obviously, responsibility turns on the nature of the injury in question, which we may call the *object* of responsibility. Thus, the murderer is more blameworthy, *ceteris paribus*, than is the assailant whose victim sustains only non-lethal injuries. Second, the magnitude of a responsibility assignment varies according to the nature of the individual's relationship to the injury for which we seek to assign responsibility. Thus, for example, Kitty Genovese's assailant bears more responsibility for her death than do the residents of Kew Gardens; the former intends her death, while the latter recklessly refuse her rescue, and thereby contribute to her death.<sup>29</sup> We may refer to this second factor as the *ground* of responsibility.

Now, the claim to be defended in this Part is that *all* Americans of majority age bear responsibility for American transgressions – that is, the *object* of responsibility is the same for all. But it is worth noting up front that the *ground* of responsibility will differ in accordance with the nature of the relationship of each American to the transgression in question. In particular, perpetrators, bystanders and opponents of the transgression each bear a different relationship to it, and these differences entail differences in the *magnitude* of responsibility to be assigned to members of each camp.

To take one example: The complacent bystander (but not the dissident) has done nothing to diminish the perpetrator's motivation to commit the atrocity in question. The complacent bystander thereby signals to the perpetrator (as well, as his victim, perhaps)

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<sup>29</sup> The standard account of the Kitty Genovese case has recently been disputed. See Rachel Manning, Mark Levine & Alan Collins, "The Kitty Genovese Murder and the Social Psychology of Helping: The Parable of the 38 Witnesses," *American Psychologist* 62 (2007): 555. I nonetheless employ the standard account here for illustrative purposes.

that the victim's treatment does not merit opposition. In this way, he helps to normalize this treatment. So the ground of the complacent bystander's responsibility, but not that of the dissident, includes the support through silence that complacency confers. The complacent bystander will thus come to bear more responsibility than will the dissident.<sup>30</sup>

More generally, it cannot be denied that the perpetrators and facilitators of atrocity are related to the atrocity in ways that the dissident, and other non-participants, are not. But there is one way in which *all* adult citizens are related to the atrocity, and it is this relationship upon which I focus here.

Each citizen bears a *commitment* to the nation-state, and this commitment, as I argue at greater length elsewhere,<sup>31</sup> provides a ground for holding each citizen responsible for the nation-state's acts, no matter the extent of her participation or opposition. More specifically, the citizen's *commitment* to the nation-state contains a normative dimension that requires the citizen to accept responsibility for her nation-state's transgressions.

To get a better handle on the normative dimension of commitment, it will be useful first to contemplate other, more intimate contexts of commitment. Consider the marital union, for example. Individuals in a marriage must act with a certain regard for

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<sup>30</sup> To be sure, there may be many complacent bystanders – so many that the causal role of any one of them may be insignificant. But moral responsibility is not a zero-sum matter, with the portion of responsibility for each individual turning on the number of people sharing it. For one thing, that complacency is rampant is a matter of moral luck. The complacent bystander should not be treated more leniently, then, just because others join him in providing psychic support to the atrocity's perpetrators. Indeed, we might say something even stronger than this: Each of these bystanders reinforces the complacency of the other, and thereby comes to bear responsibility not only for the atrocity the complacency supports but also the complacency itself. Cf. Larry May, *Sharing Responsibility* (Chicago: University of Chicago Press, 1996), 47 (arguing that those who hold racist attitudes “causally contribut[e] to a climate that influences others to cause harm.”).

<sup>31</sup> Amy Sepinwall, “Responsibility for Group Transgressions,” Ph.D. diss., Georgetown University, 2010.

their union.<sup>32</sup> While exit is a real option, each nonetheless bears an obligation to the other to put the possibility of exit out of his or her mind, at least while less disruptive options exist. And, each is obligated to the other to present a united front to the world, for maligning one's spouse to others would degrade the union and violate marital trust.

Similarly, individuals in a joint business partnership must each also operate with a certain regard for the joint venture, and commit themselves to working out the kinks of the operation before contemplating dissolution. And, where one partner is empowered to, say, manage the partnership's business, the other partner may not publicly disparage the result, and disavow responsibility for it. To do so would be to make a fool of the producing partner, and to exhibit a reproachable lack of loyalty.

Now, we should note that the strength of the obligations each member of the joint venture bears to the other(s) will depend on the strength of the commitment the joint venture expects of its members. Thus spouses typically have greater obligations of fidelity to each other than do business partners since a marriage typically demands more of the individuals comprising it than does a business venture. Nonetheless, some amount of fidelity follows from membership in the partnership just as it does in the marital union. *Mutatis mutandis*, I shall now argue, some amount of fidelity follows from membership in the joint project that is the United States. By way of establishing this point, I offer first some general remarks about the ways in which citizenship can entail a commitment of the kind that grounds responsibility. I then describe the ways in which America might be understood as a joint project.

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<sup>32</sup> Cf. Herbert Morris, *On Guilt and Innocence: Essays in Legal Philosophy and Moral Psychology* (Berkeley : University of California Press, 1976), 124-125 (arguing that a husband's intention to commit adultery, even if never acted upon, constitutes a betrayal of his spouse because marriage "is defined partly by each partner being prepared to exercise restraint out of love and respect for the other. The man's intention reveals that he is no longer prepared to abide by this condition.").

The citizen harbors a commitment to the nation-state and that commitment obligates him in special ways to his fellow citizens. The citizen has an obligation (though not an insuperable one) to operate with a certain regard for the ways in which his acts reflect on or contribute to the nation-state. He must demonstrate a loyalty that requires, among other things, that he seek to change his country's conduct or policies before jumping ship, as it were. Most relevant here, his commitment entails that he may not step outside the nation-state to point a finger in righteous indignation at his state's transgressions; instead, he must stand in judgment with his fellow citizens, in recognition that the nation-state is his as well as theirs. To do otherwise is to denigrate the shared venture; it is to demonstrate a solipsism incompatible with citizenship.<sup>33</sup>

Importantly, the commitment that grounds the citizen's responsibility is a normative component of citizenship. This commitment may well have attendant psychological effects – in particular, it may be accompanied by a feeling of loyalty toward one's fellow citizens and the nation-state itself, a feeling of pride at their or the nation-state's successes, or a feeling of shame in the face of their or its misdeeds. Indeed, the commitment entails a normative expectation that the citizen will experience just these feelings in the appropriate contexts. But the psychological concomitants of the citizen's commitment are not themselves the ground of his responsibility.<sup>34</sup> If they were, a citizen

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<sup>33</sup> Since, on at least some accounts, responsibility presupposes freedom, I will note here that the account of citizen responsibility I advance depends upon a genuine right of exit and, as such, applies only where each citizen can emigrate and is not unduly deprived by the state of the resources necessary to do so. I take it that it is relatively uncontroversial to presuppose that Americans possess genuine rights of exit.

<sup>34</sup> But see Farid Abdel-Nour, "National Responsibility," *Political Theory* 31 (2003): 703 (contending that citizens' national responsibility "*only extends to the actions that have historically brought about the objects of their national pride.*") (italics in original); Meir Dan-Cohen, "Responsibility and the Boundaries of the Self," *Harvard Law Review* 105 (1992): 959-1003. Both Abdel-Nour and Dan-Cohen argue that citizens can share responsibility for the nation-state's acts in virtue of *actual* feelings of national identification – in particular, acts that elicit pride or shame on the part of the citizen. The problem with these accounts is that

could deny responsibility simply by disclaiming any psychological attachment to the nation-state. Instead, the disaffected citizen bears an amount of responsibility for the nation-state's transgressions that corresponds to the strength of the commitment citizenship entails, regardless of whether the citizen has fulfilled her commitment by harboring the feelings of loyalty that the commitment demands.

That citizenship has the normative cast invoked here is a contingent, and not a conceptual, matter; citizenship need not function in this way everywhere and at all times. For example, loose political associations in which citizenship is a shorthand for eligibility for a set of legal entitlements and obligations, with no attendant sense that citizens are joined in a shared project, would not sustain the normative component of citizenship that grounds responsibility here. Citizenship in some of the states of the United States might well be of this kind. Similarly, individuals who have been granted formal citizenship but are denied inclusion in the joint project of the nation-state would not be subject to the normative pressures that ground responsibility. Think here of Blacks in the Jim Crow south, or Jews in the early years of the Nazi regime, who enjoyed formal citizenship but nonetheless experienced significant political disempowerment. The account advanced here would not extend to these excluded citizens either.

Nonetheless, there is good reason to think that American citizenship is more than sufficiently robust to comprehend the normative elements – in particular, the demand that citizens stand together in judgment -- that, I have argued, ground the citizen's responsibility. There are multiple ways in which one could draw out the normative project of the United States. For our purposes, it will suffice to focus on the quasi-

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they risk exculpating disaffected or alienated citizens, and perhaps threaten unwarrantedly to implicate outsiders who identify with the country in question.

spiritual understanding of the nation's mission, and the connection to martyrdom that this understanding yields.

At the time of the nation's founding, Americans conceived of themselves as a chosen people,<sup>35</sup> and their purpose as a kind of "errand into the wilderness."<sup>36</sup> The image of America as "a city on a hill" – a phrase borrowed from Jesus's Sermon on the Mount – figures in a continuous stream of political speeches, from the earliest Puritan settlers to modern-day political figures as diverse as John F. Kennedy and Ronald Reagan, with riffs on the phrase provided by, among others, George H. W. Bush ("a thousand points of light"), Wesley Clarke ("a beacon of hope and a source of inspiration for people everywhere"), and John Kerry ("we have moved closer to the America we can become – for our own people, for the country, and for the world.").<sup>37</sup> In the wake of the attacks of September 11, 2001, commentators and politicians alike have embraced America's "imperial mission" of delivering the canons of American ideology to the world at large,<sup>38</sup> a mission toward which "God is not neutral," as former President George W. Bush intoned to the American people.<sup>39</sup>

Religious elements pervade the conception of American citizenship, seen most readily, perhaps, in the steps required of foreigners who wish to become U.S. citizens.

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<sup>35</sup> See Rogers M. Smith, *Stories of Peoplehood: The Politics and Morals of Political Membership* (New York: Cambridge, 2003), 7.

<sup>36</sup> E.g., Kenneth Karst, *Belonging to America: Equal Citizenship and the Constitution* (New Haven, CT: Yale University Press, 1989), 30.

<sup>37</sup> See generally Kimberly Winston, "From Theological Tenet to Political Password: Three of the Democratic Candidates Have Already Pitched to Their Audiences Some Version of the 'City on a Hill' Speech." *Beliefnet*, <http://www.beliefnet.com/News/Politics/2004/02/From-Theological-Tenet-To-Political-Password.aspx> (last visited March 1, 2010).

<sup>38</sup> Fouad Ajami, "Hail the American Imperium," *U.S. News and World Reports*, November 5, 2002, 28. See also W.J. Bennett, *Why We Fight: Moral Clarity and the War on Terrorism* (New York: Doubleday, 2002); Walter Berns, *Making Patriots* (Chicago: University of Chicago Press, 2001), Dinesh D'Souza, *What's So Great About America* (Regnery Publishing, Inc., 2002). See generally Smith, *supra* note 35 at 191-210.

<sup>39</sup> George W. Bush, "After September 11," (Speech to Congress, Washington, D.C., September 20, 2001), <http://www.historyplace.com/speeches/gw-bush-9-11.htm>.

The process of Americanization, as the 1997 Jordan Report on naturalization stated, should “cultivate” immigrants in a “*shared commitment* to the American values of liberty, democracy and equal opportunity.”<sup>40</sup> Peter Spiro, a noted theorist of citizenship, contends that this recommendation makes “America look[] more like a religion, allowing for conversion of belief in the place of any need of lineage.”<sup>41</sup>

If the nation was founded in a higher calling, it makes sense that its citizens should be willing to die for its sake, or so political theorists have argued. The original delineation of American citizenship – who was in and who was out – was itself determined with an eye to national security. Membership in the early years of the nation would be conferred to any White person born in the United States as a way of “guarantee[ing] ... the manpower for the nation’s defense.”<sup>42</sup> And, today, military service is the quickest and surest route to naturalization for those not born here: “In times of peace, one year’s honorable service in the U.S. armed forces qualifies an alien for naturalization; during periods of military hostilities, including now the post 9/11 period, an alien becomes eligible on enlistment....”<sup>43</sup>

Moreover, the connection between military service and citizenship is not just pragmatic. As Paul Kahn argues, for example, the prospect of self-sacrifice is foundational in the American political culture, both in the sense that the United States was born in revolution, and that the United States is sustained by the government’s continued authority to demand that Americans kill or be killed on its behalf.<sup>44</sup> To make

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<sup>40</sup> Peter Spiro, *Beyond Citizenship: American Identity after Globalization* (New York: Oxford University Press, 2008), 47 (italics added).

<sup>41</sup> Id. at 47.

<sup>42</sup> Id. at 15.

<sup>43</sup> Id. at 38.

<sup>44</sup> Paul W. Kahn, *Sacred Violence: Torture, Terror and Sovereignty* (Ann Arbor: University of Michigan Press, 2008). While I am foregrounding military service as the central obligation of citizenship, it may be

his point, Kahn invites us to consider the naturalization oath of allegiance, which, in requiring the individual seeking American citizenship to pledge that she will “bear arms on behalf of the United States when required by law to do so,” conveys, Kahn notes, the “sovereign demand on citizenship as an open-ended willingness to sacrifice.”<sup>45</sup> And it is not just for immigrants-*cum*-citizens that the obligation to die for America is made salient; other theorists have noted that, among the duties that all American citizens bear, “[a]bove all others is the duty to bear arms and to face the mortal hazards of the battlefield.”<sup>46</sup> Yet the prerogative of the sovereign to demand its citizens’ deaths likely only makes sense within a nation-state that claims a commitment of its citizens of the kind at issue here.<sup>47</sup> The notion that Americans should be willing to kill and die for America is, then, a strong piece of evidence in support of the claim that American citizenship has a normative cast.

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worth noting that jury duty is also indicative of the normative commitment American citizens bear. So important a civic service is jury duty that, in some jurisdictions, sheriffs are empowered to seize individuals eligible to sit on a jury and deliver them to court, where the court finds that it does not have enough people present to empanel a jury, *see, e.g.*, California Code of Civil Procedure Section 211 – a process viewed as kidnapping, by some lights.

Peter Spiro, whose general project is to argue that territorially defined citizenship no longer tracks the affective ties upon which citizenship should be grounded, contends that today it makes little sense to restrict jury service to citizens: “[I]f one takes seriously the proposition that criminal defendants are entitled to a jury of their peers, the practice [of excluding resident aliens] looks more like a deprivation of a right rather than an exemption from a duty.” Spiro, *supra* note 40 at 99. Against Spiro’s critique, one might argue that eligibility for jury duty is not about whether the prospective juror counts as a “peer” but instead whether she is entitled to stand in judgment – an understanding of the obligation more congenial to the conception of citizenship I advance. On that conception, I would argue, citizens are specially placed to hold one another to the laws to which both should be committed, and that both should affirm.

<sup>45</sup> Kahn, *supra* note 44 at 98.

<sup>46</sup> Spiro, *supra* note 40 at 97. See generally George Kateb, *Patriotism and Other Mistakes* (New Haven: Yale University Press, 2006), 7 (“How is patriotism most importantly shown? Let us not mince words. The answer is that it is most importantly shown in a readiness, whether reluctant or matter of fact, social or zealous, to die and to kill for one’s country.”).

<sup>47</sup> In this volume, David Luban offers a critique of the state cast as jealous god, demanding its citizens’ lives when its own existence is threatened, and fighting wars against other states with near impunity. While I find his critique compelling, my purpose here is simply to describe, and not evaluate, the cultural phenomenon in question.



To be sure, the prospect of being called to the battlefield is remote for most Americans. Nonetheless, there are moments in Americans' lives – moments of “extraordinary politics,” as Bruce Ackerman refers to them – when Americans are called upon to transcend the pursuit of self-interest in deference to the needs of the country or their compatriots.<sup>48</sup> This transcendence may be less difficult for Americans than others to effect, given that Americans rank higher than any other people on patriotic sentiment.<sup>49</sup> And even those who disagree with U.S. policies can, with the right cast of mind and heart, nonetheless wear the banner of patriotism. For the practice of dissent, far from being taken to rend the fabric of national unity, is reckoned as a paradigmatically American form of enacting one's citizenship, and construed as part of the project of national stewardship.<sup>50</sup>

In general, the obligation to act with an eye toward the national interest – whether in times of war or peace -- is, in America, a national trope, figuring in presidential addresses (“Ask not what your country can do for you, but what you can do for your country”) and patriotic slogans (“I only regret that I have but one life to give my country”). Briefly put, it is hard to imagine an America where commitment to the nation-

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<sup>48</sup> See Bruce Ackerman, *We The People: Foundations* (Cambridge, MA: Harvard University Press, 1993).

<sup>49</sup> See, e.g., Jack Citrin, “Political Culture,” in *Understanding America: The Anatomy of an Exceptional Nation*, Peter Schuck and James Q. Wilson, eds. (New York, NY: Public Affairs Press, 2009): 154.

<sup>50</sup> Consider, for example, Justice Brandeis's stirring defense of the right to dissent in his concurrence in *Whitney v. California*, 274 U.S. 357 (1927), a case challenging the defendant's conviction for her membership in the Communist Labor Party: “Those who won our independence believed ... that the greatest menace to freedom is an inert people; that public discussion is a political duty; and that this should be a fundamental principle of the American government. They recognized ... that the path of safety lies in the opportunity to discuss freely supposed grievances and proposed remedies. ... Recognizing the occasional tyrannies of governing majorities, they amended the Constitution so that free speech and assembly should be guaranteed.” *Id.* at 375 (footnote omitted). Cf. Andrew Mason, “Special Obligations to Compatriots,” *Ethics* 107 (April 1997): 444. (“The idea that we have a special obligation to our compatriots to participate fully in public life has been thought to include or entail various specific obligations, such as an obligation ... to keep a watchful eye on government and speak out when it acts unjustly.”)

state is not a feature of the citizen's identity that sits comfortably alongside, and sometimes even transcends, other sources of affinity.<sup>51</sup>

The foregoing provides insight into not only the generic American's responsibility for abuses in Iraq but that of the American opponent of the war as well, for the dissident also harbors a commitment to the nation-state. Indeed, it is in virtue of this commitment that the dissident enacts her opposition: She believes that the pursuit and conduct of the war in Iraq grossly betray values she takes to be fundamental and sacred to her beloved country, and her opposition is intended to restore America to its rightful path (or her conception of it, anyway). Were she not so committed to the United States, she might well have sought to leave it. Having stayed, however, she must accept that its acts redound to her. Just as the non-producing business partner may not disown the products of his partnership so the dissident may not disown the acts of the United States.<sup>52</sup>

In short, the commitment inherent in American citizenship grounds the American's responsibility for the United States' acts, and the expected strength of that commitment determines the magnitude of responsibility she bears through citizenship alone.<sup>53</sup> Four qualifications round out this part of the account. First, given that

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<sup>51</sup> Cf. Citrin, *supra* note 49.

<sup>52</sup> Richard Vernon argues, in his contribution, that the mere fact that a citizen supports the project of the nation-state need not entail that she bears responsibility for any acts undertaken in furtherance of that project. In particular, where the citizen valiantly opposes the acts in question, Vernon contends, her opposition ought to thwart an attempt to hold her responsible. After all, to will the end is not to will the means, Vernon pithily reminds us. To be clear, then, the ground of responsibility on my account is different from the one that Vernon critiques. For one thing, the dissident would come to bear responsibility for a national wrong on my account even if the wrong proved ineffective at protecting or promoting the nation-state. More generally, the dissident's commitment need bear no relationship – teleological, motivational, or otherwise -- to the misdeed of her compatriots in order for her to merit responsibility for that misdeed. Instead, the ground of the dissident's responsibility follows from an obligation of fidelity that she owes her fellow citizens in virtue of their shared membership in the larger enterprise of the nation-state.

<sup>53</sup> In this volume, Avia Pasternak advances an account of citizenship as an associative obligation that resonates well with the conception of citizenship articulated here. Nonetheless, I do not agree with Pasternak that her account can justify an equal distribution (ED) of burdens among citizens. Instead, it seems to me that the "solidary" nature of citizenship would be disrupted if each citizen were to carry an

commitment to the nation-state licenses our holding citizens responsible, it is expected only of those individuals who qualify as moral agents. The agency requirement follows from the conditions under which it would be permissible to hold an individual responsible for her *own* acts. Citizens who do not satisfy the criteria for individual responsibility ought not to bear responsibility derived exclusively from their group affiliations.

Second, I here assume that it is possible to measure the extent of expected or actual commitment, but I do not offer a methodology for doing so here, leaving that task instead to sociologists and psychologists. Third, I assume further that, in the United States, the expected strength of commitment is the same for all citizens who have reached the age of majority. Thus, the generic American and the U.S. perpetrator of war crimes in Iraq will both bear equal responsibility for these war crimes *in light of their citizenship*. The perpetrator will, in addition to the responsibility she bears *qua* citizen, bear responsibility *qua* perpetrator. We should then expect the perpetrator's responsibility to be significantly greater than that of the generic American. But there is nonetheless some (non-zero) amount of responsibility appropriately assigned to the generic American citizen.

Finally, I do not venture to spell out the nature of the sanctions appropriate to generic Americans simply in virtue of their citizenship except to say that I assume that

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equal burden independent of the extent of his or her participation in the state transgression in question. Far from fostering solidarity, an insistence upon an equal distribution in the face of differential contributions to the wrong might instead prompt friction between citizens, as those who did not participate in the wrong rightfully awaited exoneration – or at least relief from the sharing of burdens – from those who did participate. My account, by contrast, seeks to be sensitive to the different kinds of relationships citizens can have to a transgression of their nation-state, and to adjust the magnitude of responsibility accordingly. At the same time, it views citizenship as an inescapable ground of responsibility, and in that way may well honor the good of citizenship that Pasternak helpfully and lucidly identifies, without fomenting the resentments to which, I worry, her account may give rise.

the magnitude of their responsibility would be too little to warrant individual punishment. Instead, responsibility of the kind and magnitude entailed by citizenship is much better cashed out in the form of emotional sanctions like resentment and indignation, as we shall see in the next Part. (Indeed, it is for this reason that the American who opposes the war in Iraq likely chooses dissidence over emigration -- the costs of uprooting oneself and renouncing one's attachment to one's beloved nation-state are far greater than the sanctions to which, I anticipate, citizenship on its own gives rise.)

Because citizenship grounds the American's responsibility for U.S. transgressions, and because one either is or is not a citizen, Mark Drumbl refers to the account just advanced as "crude,"<sup>54</sup> and he rejects it in favor of what he terms the "crude-careful" way, which delineates the responsible group crudely, but allows individual members to escape liability where they can demonstrate, for example, that they sought to prevent the atrocity in question, or were themselves victims of their state's crime. But this way of putting the difference between our accounts is misleading for citizenship is not, on my account, some rough proxy for individual culpability, as it may be on Drumbl's crude-careful account. Citizenship is instead a real basis of individual culpability, though the culpability it yields may be overwhelmed by countervailing sources of moral credit, which include acts undertaken to oppose the atrocity. Indeed, we shall see in the next Part that the citizen's dissidence can sometimes, though not always, undercut the warrant for others' resentment or indignation. In short, then, it is not clear that my account is any less careful than Drumbl's; it is just that I attach moral weight to citizenship and Drumbl does not, so that dissident citizens more readily (though not necessarily more deservedly) escape liability on his account than on my own.

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<sup>54</sup> Mark Drumbl, *Collective Responsibility and Post-Conflict Justice*, at 17.

On a related note, Drumbl is correct that my account, focused as it is on American wrongdoing in the war in Iraq, does not contemplate situations in which some citizens were themselves victimized by the state transgression for which we seek to assign responsibility. Here too though it is not clear that relying on citizenship, as my account does, produces outcomes that are less just than those of Drumbl's account. As I have argued in a different context,<sup>55</sup> requiring formerly oppressed citizens to contribute to programs aimed at rectifying past abuses against them affirms their co-equal membership in the nation-state. And, the compensation amount can be inflated beyond what is owed for the abuses themselves in order to reimburse the formerly oppressed citizens for their contributions. In this way, victimized citizens' contributions come to have a purely symbolic function: They reinforce the equality that was denied by the oppression by including the victims in the national program of repair, and they do not, in the end, cost the victims anything.

That theorists like Drumbl who appreciate the collective character of atrocity nonetheless deny that blameworthiness can arise independent of individual fault should give us pause. For it turns out that there are deep psychological currents that make an individualist stance difficult to overcome, as we shall now see.

## **II. Citizen Responsibility and the Reactive Attitudes**

I noted at the outset that an American who did not support the war in Iraq might resist the idea that she bears responsibility for abuses committed in its course. Even were she to encounter the arguments of the last Part, she might nonetheless maintain – with full

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<sup>55</sup> Amy J. Sepinwall, "Responsibility for Historic Injustices: Reconceiving the Case for Reparations," *Journal of Law and Politics* 22 (2006): 183-229.

honesty – that she harbors no guilt over American war crimes committed in Iraq. More specifically, the citizen in question might lack the unpleasant sensation of guilt, and she might also resist the belief that she has acted wrongly. Her response provides an occasion to assess the relationship between bearing guilt, experiencing guilt, and feeling guilt – or, put more generally, the relationship between responsibility, the reactive attitudes, and their accompanying sensations.

I seek to argue here that although our paradigmatic experience of responsibility involves the blamed individual’s felt guilt and acknowledgement of wrongdoing, an assignment of responsibility may well be warranted even where one or both of these pieces are absent. This is not an uncontroversial claim. On some conceptions of responsibility, a judgment of responsibility is believed to be *constituted* by one or more reactive attitudes;<sup>56</sup> and, on some conceptions of the reactive attitudes, emotions are themselves believed to be *constituted* by feeling-sensations.<sup>57</sup> How, then, can we arrive at a justified assignment of responsibility where the citizen – *when presented with the grounds of her responsibility* -- neither responds to herself with guilt nor has any kind of guilt sensation? Put differently, how can it at once be appropriate for the Iraqi to resent the American and the American to forswear remorse?

To answer these questions, I begin with the case of the dissident. The dissident need not deny that citizenship is a ground of responsibility, as the last Part argues. She

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<sup>56</sup> See, e.g., Gary Watson, “Responsibility and the Limits of Evil: Variations on a Strawsonian Theme,” in *Responsibility, Character and the Emotions: New Essays in Moral Psychology*, Ferdinand Schoeman, ed. (Cambridge: Cambridge University Press, 1987): 257 (“Strawson’s radical claim is that these ‘reactive attitudes’ (as he calls them) are *constitutive* of moral responsibility; to regard oneself or another as responsible just is the proneness to react to them in these kinds of ways under certain conditions.”).

<sup>57</sup> See, e.g., Elisa A. Hurley, “Working Passions: Emotions and Creative Engagement with Value,” *Southern Journal of Philosophy* 45 (2007): 83 (“Feelings seem to be somehow *essential* to what emotions are, even if they are not necessarily present on every token occasion of emotion.”); Morris, *supra* note 32 at 102 (“When feeling guilty we characteristically suffer pain that is partly constitutive of the feeling.”).

may nonetheless maintain that her dissidence functions as a defense. More specifically, the dissident may believe that her acts of resistance more than offset her commitment to the United States, and so exempt her from responsibility. As such, she does not judge herself to have acted wrongly and, accordingly, *feels* no guilt. In the first Section of this Part, I attempt to make sense of her experience of her relationship to U.S. transgressions in light of resentment that victims of these transgressions might direct toward her.

The generic citizen is situated differently from the dissident. He cannot call upon a set of activities that purportedly tempers or eliminates his responsibility in order to explain his self-asserted innocence. Instead, he invokes the absence of guilt feelings – his own, as well as those of most of his compatriots -- as a defense in itself: “Were we who didn’t participate morally responsible,” this imagined citizen might argue, “at least many of us would feel guilt. But most of us do not feel guilt, so it is doubtful that we are morally responsible.” In the second Section of this Part, I inquire into his response.

Finally, in the last Section of this Part, I draw out some of the implications of the insights of the first two sections for philosophical thinking about moral responsibility.

### **A. Dissidence and Divergent Viewpoints**

The dissident believes that her resistance cancels out whatever responsibility she should come to bear in virtue of her commitment to the United States as a whole. She has arrived at this self-judgment because she has synthesized the dimension of her identity that flows from her citizenship and the dimension of her identity that flows from her dissidence and arrived at a coherent conception of herself in which her dissidence is much more definitive of who she is. But though each of us is empowered to perform this synthesis

and arrive at a self-understanding that makes sense of the disparate and sometimes conflicting strands of our identity, none of us is entitled to have others conceive of us as we conceive of ourselves. In particular, the dissident cannot legitimately expect that her self-understanding will govern the Iraqi's conception of her; he is entitled to believe that citizenship looms larger as a constituent element of an American's (or anyone's) identity than do acts opposing the policies or practices of one's government. And, so long as he does hold this belief, he will harbor resentment toward the American citizen, no matter how valiant her efforts at resistance.

The divergence just described arises from differing conceptions of the relative weights to place upon commitment to one's nation-state, on the one hand, and resistance to its acts, on the other, in constructing the dissident's individual identity. But there is a second possible source of separation between the dissident and the Iraqi that arises from a divergence between the conception of America that each harbors. As we have seen, the dissident may undertake opposition to the war in Iraq because she conceives of an America in which the prosecution of the war in Iraq has been distinctly un-American. Indeed, it might be precisely because she harbors a vision of America as different from, and better than, the America of recent times that she is motivated to resist, and thereby restore her beloved nation-state to her imagined conception of it.<sup>58</sup> But just as she must recognize that her self-conception is not authoritative for others, so too she must recognize that her conception of America must also yield, at least sometimes, to that of outsiders. Thus an Iraqi might detect a cultural imperialism in the quest to "liberate" his country, and an exceptionalism in the potential impunity with which high-ranking U.S.

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<sup>58</sup> Cf. Dan-Cohen, *supra* note 34 at 987-88 ("In this vein, Americans' knowledge that they [would come to bear]x responsibility for the Vietnam War in a way that others did not may explain why they were more actively opposed to the war than were, say, the English.").



officials have violated the laws of war, that strike him as unmistakably American. Rooted in his perspective on America, the Iraqi might find the dissident's commitment to America all the more reproachable.

Importantly, in each of the sources of resentment just described – the first rooted in divergence over the dissident's identity, and the second rooted in divergence over the identity of America – there may be no principled way of adjudicating between the competing conceptions. This is not to say that there cannot be cases in which one or the other party may be mistaken: the dissident could harbor a kind of false consciousness,<sup>59</sup> or the Iraqi might operate with an unduly prejudiced mindset. In each of these cases, evidence could be invoked to bring the mistaken party to see things differently. But I see no reason to believe that every case is of this kind. Individuals and nations are complex, multi-faceted entities, admitting of multiple constructions and narratives, and there may well be several of these that synthesize the constituent elements equally plausibly. In short, there may be an unbridgeable gap between the dissident and the Iraqi, and it is in the face of this gap that resentment may rightfully take hold.

Where there is an insuperable divergence regarding the dissident's blameworthiness, we might well want each party to recognize it, and proceed with humility. Thus, we might ask that the dissident resist disclaiming responsibility, and the Iraqi withhold contempt, despite the fact that each holds fast to his or her respective beliefs about the dissident's relationship to the United States. But we might also allow that there are situations in which forbearance is too much to demand. Thus, the Iraqi who lost a family member in the Haditha massacre might, given his loss and also his not

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<sup>59</sup> Cf. Karl Jaspers, *The Question of German Guilt*, E.B. Ashton, transl. (New York: Fordham University Press, 2001): 97.

completely baseless belief in American prejudice against Muslims of middle-eastern descent,<sup>60</sup> be permitted his resentment.

Here a kind of cognitive dissonance arises. To inhabit the dissident's perspective on America and herself, the Iraqi must abandon a stance of righteous anger through which he might seek to vindicate the worth of his lost loved one, or the Iraqi people as a whole. He must instead contend with the notion that he cannot find an outlet in blame for his loss and injury that corresponds sufficiently to their (perceived) magnitude. He would then incur not just the pain of his tragedy but the profound burden of self-restraint in stifling his own sense of the injury and deferring to that of one of his (apparent) injurers. Should we really reproach him for spurning this path? Given the additional pain of forbearance, is he not entitled to presume the legitimacy of his own perspective, and proceed with resentment?<sup>61</sup>

Ideally, individuals should be given some latitude in making sense of tragedies that befall them. That latitude ought not to be so great that it permits blaming innocents. But where one possible interpretation is more comforting than another *and the two are equally plausible*, the more comforting interpretation should prevail. Here, then, the Iraqi

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<sup>60</sup> See, e.g., Chris Hedges and Laila Al-Arian, "The Other War: Iraq Vets Bear Witness," *The Nation*, July 30, 2007, <http://www.thenation.com/doc/20070730/hedges> ("According to the survey, conducted by the Office of the Surgeon General of the US Army Medical Command, just 47 percent of soldiers and 38 percent of marines agreed that [Iraqi] civilians should be treated with dignity and respect."). Laura MacInnis, "U.N. body adopts resolution on religious defamation," *Reuters*, March 26, 2009, <http://www.reuters.com/article/idUSTRE52P60220090326> (describing a U.N. Human Rights Council anti-defamation resolution that states, among other things, that some Muslims faced prejudice in the aftermath of September 2001).

<sup>61</sup> In principle, there may also be cases in which a dissident might be permitted to disclaim, given how violative an ascription of blame for national transgressions is to her vision of her nation-state and herself. I assume here, however, that the transgressions committed against Iraqis are so egregious that it wouldn't be plausible to think that the Iraqi victim's resentment ought to give way to the American dissident's self-conception.

may legitimately indulge his resentment.<sup>62</sup> This does not, of course, entail that the dissident is compelled to feel guilt -- feelings, after all, cannot be compelled. Nor does it entail that she must internalize the Iraqi's assessment of her responsibility. But, though the dissident may inwardly maintain her innocence, she must nonetheless accept that she is an appropriate object of blame. Just as the dissident bears an obligation of loyalty to her fellow members to refrain from disavowing the group act, so too she bears an obligation of decency to the victims of her group's transgression to do the same.<sup>63</sup>

The foregoing is intended to suggest that the warrant for resentment need not rest exclusively on an undeniable wrongdoing. It can instead arise where an individual conceives of the harm he suffers as a wrongful injury, and where his understanding of the harm is no less reasonable than is the understanding of the resented party. It follows, then, that resentment can be justified even when the target of resentment cannot recognize her wrongdoing, and this not because she is constitutionally impaired in some way (as the psychopath is) but instead because she rejects the victim's interpretation of

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<sup>62</sup> The philosophical literature on resentment contains a debate about whether resentment is, all things considered, a useful emotion or instead one that is self-debasing. Compare Annette Baier, "Hume on Resentment," *Hume Studies* 6 (1980): 133-149 (arguing that resentment, for Hume, functioned to call attention, and thereby reduce, imbalances in power) and Jeffrie Murphy, "Forgiveness and Resentment," in *Forgiveness and Mercy*, Jeffrie G. Murphy & Jean Hampton, eds. (Cambridge: Cambridge University Press, 1988), 16 ("Resentment ... is a good thing for it is essentially tied to a non-controversially good thing -- self-respect.") with Friedrich W. Nietzsche, *On the Genealogy of Morals*, Douglas Smith, trans. (New York: OUP, 1999), 24 ("While the noble man lives for himself in trust and openness..., the man of *ressentiment* is neither upright nor naïve in his dealings with others, nor is he honest and open with himself. ... he has a perfect understanding of how to keep silent, how not to forget, how to wait, how to make himself provisionally small and submissive."). To the extent that I here promote resentment as an important implement in allowing the victim of atrocity to make sense of his lot, I align myself with those who defend the usefulness of resentment.

<sup>63</sup> Insofar as the argument here permits us to blame, and hence condemn, someone who is not unequivocally culpable, it might be accused of unwarrantedly relying upon a retributivist conception of justice. In her contribution to this volume, Erin Kelly exhorts us to abandon retributivist conceptions of justice, where retribution is pursued for its own sake, given the natural and social factors that often undermine human agency. She nonetheless allows that retribution might be permissible for the sake of some other social good. One who is moved by Kelly's rejection of retributive justice for its own sake might nonetheless find no objection with assigning blame to the dissident, given that the assignment may be therapeutic for the victim of the wrong, and that the dissident does bear some relationship to the wrong, even if not the relationship that retributive justice ought to require.

her relationship to the wrong. Correspondingly, indignation can be justified even where *its* target denies wrongdoing, for third-parties too might harbor a conception of the injury that implicates someone who does not conceive of herself as culpable, and here too the two conceptions may be equally plausible.

In short, resentment and indignation are meaning-creating emotions, and the circumstances in which they are appropriate are not always clear. Where there is genuine uncertainty about their warrant, it may well be the case that we ought to defer to the interpretation of the injury that confers meaning on the party most in need of making sense of his situation.<sup>64</sup>

## **B. Citizen Responsibility and the Emotions**

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

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<sup>64</sup> Compare Bernard Williams, *Shame and Necessity* (Berkeley: University of California Press, 1993), 70 (arguing that it may be appropriate for victims of a harm to hold responsible the agent who *unintentionally caused* the harm even though the agent is not a wrongdoer: “Those who have been hurt need a response; simply what has happened to them may give them a right to seek it, and where can they look more appropriately than to you, the cause?”).

One possibility is that the generic citizen suffers from some kind of psychological or emotional impairment (e.g., depression, narcissism, etc.) This possibility is reasonable, but uninteresting. It is clear that our emotions are not infallible guides to moral truths; we do not always respond to moral wrongs with the emotions that we ought. One citizen's failure to respond to abuses in the war in Iraq portends little for the cogency of the claim that he is nonetheless responsible. By contrast, a widespread absence of guilt – which is characteristic of the American mood these days – is more arresting.<sup>65</sup> It is this mood, personified in the generic citizen here, that invites inquiry. In this section, I explore the implications of the absence of felt guilt for the account of membership responsibility. In the next Section, we shall explore the wider metaethical possibilities that arise from the notion that blameworthiness need not be accompanied by an experience of guilt, resentment or indignation on *anyone's* part.

Others who have contemplated the absence of guilt among members who did not participate in a group transgression have raised the possibility that the responsibility of these members is *not* strictly *moral* responsibility – *i.e.*, responsibility understood as appropriate liability to blame; it is instead a highly personal response to a tragedy in which one *chooses* to see one's agency, though one in fact bears no guilt for the wrong. Given that the experience of responsibility is optional on this possibility, the generic citizen who disclaims responsibility is then one who has simply opted not to conceive of his agency in this way.

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<sup>65</sup> Compare Ariel Dorfman, "Forward: The Tyranny of Terror: Is Torture Inevitable in Our Century and Beyond?," in *Torture: A Collection*, Sanford Levinson, ed. (New York: OUP, 2004): 8 ("[Torture] presupposes, it requires, it craves the abrogation of our capacity to imagine others' suffering, dehumanizing them so much that their pain is not our pain. It demands this of the torturer ... but also demands of everyone else the same distancing, the same numbness, on the part of those who know and close their eyes, those who do not want to know and close their eyes.")

Karl Jaspers is among the exponents of this possibility. Thus he argues that the citizen who neither participated nor acquiesced in the Nazi regime bears not moral guilt but *metaphysical guilt* – a kind of guilt arising though its bearer could not have done otherwise. He writes of Germans who survived the war: “We did not go into the streets when our Jewish friends were led away; we did not scream until we too were destroyed. We preferred to stay alive, on the feeble, if logical, ground that our death could not have helped anyone. We are guilty of being alive.”<sup>66</sup> Similarly, Larry May, who offers a subtle reconstruction of Jaspers’ account, agrees that, where a group member did not participate in the group harm, and where she could not have prevented it, “moral responsibility, at least understood on the model of individual moral guilt, would be inappropriate.”<sup>67</sup> Finally, Herbert Morris refers to the *non-moral guilt* the American who visits Hiroshima shortly after World War II might experience – non-moral because its bearer is, by hypothesis, without fault for the Hiroshima bombings.<sup>68</sup>

Importantly, for each of these theorists, whether the member who did not participate in the group transgression conceives of herself as bearing responsibility for that transgression is a matter over which she alone has authority. For Jaspers, the German citizen’s metaphysical guilt is something no one else can “prescribe” or “anticipate”;<sup>69</sup> whereas others may sit in judgment where political or legal guilt is concerned, “[j]urisdiction for [metaphysical guilt] rests with God alone.”<sup>70</sup> May also seems to recognize the optional character of metaphysical guilt. Identification with the group is the

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<sup>66</sup> Jaspers, *supra* note 59 at 68

<sup>67</sup> May, *Sharing Responsibility*, *supra* note 30 at 152.

<sup>68</sup> Herbert Morris, “Nonmoral Guilt,” in *Responsibility, Character and the Emotions: New Essays in Moral Psychology*, Ferdinand Schoeman, ed. (Cambridge: Cambridge University Press, 1987), 237-40.

<sup>69</sup> Jaspers, *supra* note 59 at 68.

<sup>70</sup> *Id.* at 26.

ground of moral taint for May, and he acknowledges that the degree, or even the presence, of such identification may be up to the individual. Thus, he notes that, “for members who are only on the fringe of the community... the group identification may be so weak as to not generate feelings of metaphysical guilt.”<sup>71</sup> For Morris, non-moral guilt also rests upon identification with the wrongdoer; in particular, he argues that it arises where the individual who is blameless nonetheless identifies with the one who is blameworthy, whether a family member or even just a fellow human being.<sup>72</sup> Reasonably enough, then, he contends that “[w]e may not ask of ourselves or of others that guilt be felt in these situations.”<sup>73</sup>

Underlying each of these accounts is the thought that an individual has full discretion about whether she will harbor the identificatory ties upon which the experience of responsibility is purportedly predicated. Since, on these theories, these ties may not be mandated from without, neither may the sense of responsibility that they yield.

These theorists may well be right that identification is discretionary in some cases; it is not, however, discretionary in the context of an institutional group like the United States, as I sought to argue in the last section. Instead, as we saw, American citizenship has a normative dimension that compels the citizen to accept blame for U.S. transgressions. To understand the generic citizen’s response to the claim that he is responsible, then, we will have to look to something other than theories that entertain discretionary guilt experiences.

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<sup>71</sup> May, *supra* note 30 at 153.

<sup>72</sup> E.g., Morris, *supra* note 68 at 240.

<sup>73</sup> *Id.* at 237.

An inquiry into the natural history of guilt provides useful insights. Guilt, as Herbert Morris notes, “is a painful state.”<sup>74</sup> One can trace the unpleasant sensation accompanying guilt by way of an evolutionary account that looks to the practical effect of our emotional life. On such an account, the unpleasantness of guilt is useful for its power to regulate behavior. We come to associate certain courses of conduct with this pain and refrain from pursuing them in order to avoid suffering this pain.<sup>75</sup> From an evolutionary standpoint, it makes sense that guilt should have naturally evolved in connection with wrongs in which we played a causal role, given that the unpleasantness of guilt functions to deter us from future wrongdoing. The natural history of guilt thereby privileges those acts in which our agency is substantially implicated. Correspondingly, for acts in which our causal role is remote or non-existent, guilt may not be activated.<sup>76</sup>

Importantly, the thought here is not that our relationship to those wrongs of our nation-state in which we did not participate causes us to experience some feeling that we cannot name. Instead, the impoverishment resides in our *emotional* vocabulary: we are bereft of the capacity to *feel* in the face of wrongs in which our agency is not salient. It is perhaps for this reason that Karl Jaspers refers to the German citizen’s failure to wage a fruitless opposition against the Nazi regime as *metaphysical guilt*, a species of guilt

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<sup>74</sup> Morris, *supra* note 32 at 89.

<sup>75</sup> Compare Joseph Butler, “Sermon VIII: Upon Resentment and Forgiveness of Injuries,” in *Fifteen Sermons Preached at the Rolls Chapel*, Leroy Dagg, transcribed (2002), <http://anglicanhistory.org/butler/rolls/08.html> (arguing that, where virtue fails, individuals may nonetheless be deterred from pursuing wrongdoing by the anticipated unpleasantness of the resentment their wrongdoing would elicit).

<sup>76</sup> Compare Allan Gibbard, *Wise Choices, Apt Feelings: A Theory of Normative Judgment* (Cambridge, MA: Harvard University Press, 1990), 135-138 (describing guilt as the experience an individual ought to have in the face acts that reveal that she is insufficiently motivated to engage in cooperation and reciprocity, and arguing that others’ anger in the face of anti-social conduct will tend to induce the guilty party to make amends, thereby restoring faith that she is suitably prepared to cooperate).



whose phenomenological component seems utterly mysterious.<sup>77</sup> It is also perhaps for this reason that others who have contemplated the possibility of a sense of responsibility in the absence of wrongdoing have identified shame, rather than guilt, as its attendant emotion.<sup>78</sup>

If guilt does have the natural history just described, then we should not expect cases of wrongdoing that do not fit the paradigm – again, a paradigm in which we bear significant causal responsibility for the wrongs for which we are held responsible<sup>79</sup> – to elicit the feeling of guilt. And, without the phenomenological correlates of guilt, the judgment that we are guilty may not be accessible to us through the first-personal experiences upon which we typically rely to illuminate the moral character of our acts. But the impediment to experiencing guilt need not entail that we do not bear a reproachable connection to the wrongdoing. An understanding of guilt’s evolutionary role opens up the possibility, then, that our emotional life may track only a subset of the wrongs for which we bear responsibility. This possibility warrants further consideration.

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<sup>77</sup> Jaspers, *supra* note 59 at 68. I do not mean to endorse here the part of Jaspers’s account that leaves the experience of metaphysical guilt to the individual’s conscience. Nonetheless, the term “metaphysical guilt” may well be apt for cases in which one views oneself as culpable in a wrong for which one is not causally responsible.

<sup>78</sup> See, e.g., Morris, *supra* note 32 at 137 (describing the experience of non-moral guilt as “a feeling of shame, perhaps before God, because of the evil done by any human being, as if some defect in us were revealed by what any human being did.”); May, *supra* note 30 at 155 (“moral shame or taint may be the appropriate moral feeling” in instances “when a person’s causal agency is not in question, or at least when the causal role one played did not make a difference in the world.”)

<sup>79</sup> I use the “significant” qualifier because I believe that the citizen does bear a causal relationship to the wrongs of her nation-state, though not one that itself grounds her responsibility. Elsewhere, I have argued that all citizens furnish the nation-state’s capacity to act by sustaining the identity of the nation-state over time, and preserving the rules according to which the acts of some citizens qualify as acts of the nation-state. See Sepinwall, *supra* note 55. To that extent, all citizens causally contribute to the nation-state’s acts. But this notion of causality is atypical. In everyday ascriptions of causal responsibility, causality is restricted to instances when one’s contribution made a difference to the outcome. Insofar as no individual citizen can be said to have made a difference in furnishing the nation-state’s capacity to act, it is not inappropriate to think that the casual contribution flowing from citizenship alone is insufficient to make each and every citizen causally responsible for each and every act of the nation-state. To say that the generic citizen does not bear a significant causal relationship to a transgression of the nation-state is, then, just to say that he did not participate in the transgression in question.

### C. Citizen Responsibility and Licensed Blame

I have argued that resentment may be appropriate even though guilt is not (the case of the dissident), and that one may bear guilt even though the feeling of guilt is universally absent or even universally inaccessible (the case of the generic citizen). As I have characterized them, then, these cases sit uncomfortably alongside several core ideas within philosophical understandings of moral responsibility. In particular, these cases challenge the idea that judgments of moral responsibility are constituted by a particular triad of reactive attitudes, and the idea that judgments of responsibility are constituted by reactive attitudes in general. Most fundamentally, these cases challenge the notion that blameworthiness presupposes guilt. I elaborate on each of these implications in turn.

In the literature linking responsibility and the reactive attitudes, it is nearly a gospel truth that guilt, resentment, and indignation co-travel.<sup>80</sup> More specifically, on these accounts – which we may call *Strawsonian* after Peter Strawson’s seminal paper -- one and the same transgression is supposed to induce guilt in the person who carries it out, resentment in its victim, and indignation in third-parties who learn of it.<sup>81</sup> But I have argued that, in the case of the dissident, the supposed triad of guilt, resentment and indignation dissolves: The dissident may be an appropriate object of resentment and

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<sup>80</sup> See, e.g., Peter Strawson, “Freedom and Resentment,” in *Perspectives on Moral Responsibility*, John Martin Fischer and Mark Ravizza eds., (Ithaca, NY: Cornell University Press, 1993), 56-57 (referring to resentment and indignation as “kindred” reactive attitudes, and to guilt as the “correlate” of these two); Williams, *supra* note 64 at 89 (“What arouses guilt in an agent is an act or omission of a sort that typically elicits from other people anger, resentment or indignation.”). R. Jay Wallace has argued that the reactive attitudes should consist *only* of guilt, resentment and indignation. R. Jay Wallace, “Emotions and Expectations,” in *Free Will: Critical Concepts in Philosophy*, John Martin Fischer, ed. (New York: Routledge, 2005), 145.

<sup>81</sup> Strawson, *supra* note 80 at 57.

indignation even if she need not conceive of herself as guilty. In other words, there may be asymmetries between the self-reactive attitudes and other-directed reactive attitudes.

The situation for the Strawsonian gets worse when we turn to the reflections on the natural history of guilt marshaled above. For the Strawsonian, moral salience is brought to light through the emotions. If I am right that our emotional vocabulary is limited where our causal agency is absent, however, then there may be a whole swath of acts or outcomes for which we bear responsibility and to which we are blind. The blindness becomes troubling where it is not universal – in particular, where victims or third-parties assign responsibility to us and we are incapable of experiencing the corresponding self-assessment. But it is also possible that our relationship to some wrong will elicit no guilt, no resentment *and* no indignation. This possibility arises because those who judge us may be no less primed to view responsibility through a causal lens than we are, and so they too might overlook the fact that we – now cast as generic members of institutional groups in whose transgressions we have not participated – deserve blame. On this possibility, then, there would be blameworthiness that no emotion could disclose. And yet it is not clear that the interests or status of the individuals affected by the blameworthy act would thereby warrant any less vindication.

Finally, it is not just the Strawsonian understanding of responsibility that occludes judgments of responsibility in cases where we bear a non-causal relationship to the wrong. It is a commonplace across the literature on responsibility that it is a necessary condition of X's being morally responsible for Y that it be appropriate for X to experience guilt in relation to Y.<sup>82</sup> But the account of citizen responsibility I have

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<sup>82</sup> See, e.g., Gibbard, *supra* note 76 at 126 (“a person is to blame for something if it would make sense for him to feel guilty for having done it....”); Stephen Darwall, *The Second Person Standpoint: Morality*,

advanced dispenses with the supposedly necessary connection between moral responsibility and the appropriateness of guilt. More specifically, on my account, one need not experience guilt in relation to some wrong in order to bear moral responsibility for it; sometimes, the fact that others would be licensed in blaming us is enough to ground our moral responsibility.

In sum, then, the account of responsibility advanced here entails not only a dissolution of the guilt-resentment-indignation triad. That account also exposes the implicit primacy accorded to guilt, relative to the other two members of the triad, and it invites us to unseat guilt from its pride of place, and replace it with resentment instead. In the face of legitimate disagreement about the warrant for blame, it is, then, victims, and not wrongdoers, whose perspectives should prevail.

More generally, the account of membership responsibility implies that we may be implicated in wrongs in ways that we do not feel and do not see. Our moral reality may then transcend the scope of our emotional awareness. As such, we ought to be open to the possibility that we bear responsibility for more of the transgressions of our nation-state than we think. Americans, that is, ought to be open to the possibility that they bear responsibility for U.S. war crimes committed in the course of the war in Iraq.<sup>83</sup>

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*Respect, and Accountability* (Cambridge, MA: Harvard University Press, 2006), 71 (“Guilt feels like the appropriate (second-personal) response to blame: an acknowledgment of one’s blameworthiness that recognizes both the grounds of blame and, more importantly for us, the authority to level it (even if only “to God”). To feel guilt, consequently, is to feel as if one has the requisite capacity and standing to be addressed as responsible....”). Susan Wolf captures the position in question thusly: “guilt is the emotion one feels or should feel in proportion to how much one judges oneself blameworthy.” “The Moral of Moral Luck,” September 13, 2001, <http://www.law.berkeley.edu/centers/kadish/moralluck.pdf>.

<sup>83</sup> For very helpful comments and suggestions, the author wishes to thank Margaret Little, David Luban, and Andrew Siegel as well as attendees at the April 7, 2010, Philosophers’ Lunch, University of Pennsylvania Philosophy Department, and participants in the Collective Punishment Workshop, Windermere Manor, University of Western Ontario, April 17-19, 2009.