
CORPORATE RESPONSIBILITY FOR REPARATIONS

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Abstract

This essay looks at one aspect of the Holocaust and American slavery: the responsibilities of corporations that have benefited from these practices and often have continued to benefit. By clarifying these responsibilities and considering possible ways in which they can be met, I hope to shed light on the inter-dependence of genocide and slavery when viewed as practices whose legacies - for beneficiaries, not only survivors - persist long after their official conclusion. The idea that corporations were usually just innocent bystanders to genocide and slavery or else coerced to participate against their will is comforting, but hardly captures the complex way in which responsibility depends upon future benefits as well as past deeds.

On March 30, 1908, Green Cottenham was arrested by the Shelby County, Ala., sheriff and charged with vagrancy. After three days in the county jail, the 22-year-old African-American was sentenced to an unspecified term of hard labor. The next day, he was handed over to a unit of U.S. Steel Corp. and put to work with hundreds of other convicts in the notorious Pratt Mines complex on the outskirts of Birmingham. Four months later, he was still at the coalmines when tuberculosis killed him.

Born two decades after the end of slavery in America, Green Cottenham died a slave in all but name.... (1)

The recently created German Foundation “Remembrance, Responsibility, and the Future” suggests one way to meet the corporate responsibility for slave and forced labor during the Holocaust. Its relevance for determining corporate responsibility for slavery in the United States has been noted by legal activists and journalists concerned about reparations such as the author of this article on leased convicts in

The Wall Street Journal. Despite the important conceptual differences that scholars have emphasized between genocide and slavery, (2) as reparations policies are debated in Germany and the United States, new connections between genocide and slavery are likely to emerge that affect public policy and the prospects for reparations for slavery in the United States. (3)

This essay looks at one aspect of the Holocaust and American slavery: the responsibilities of corporations that have benefited from these practices and often have continued to benefit. By clarifying these responsibilities and considering possible ways in which they can be met, I hope to shed light on the inter-dependence of genocide and slavery when viewed as practices whose legacies – for beneficiaries, not only survivors – persist long after their official conclusion. The idea that corporations were usually just innocent bystanders to genocide and slavery or else coerced to participate against their will is comforting, but hardly captures the complex way in which responsibility depends upon future benefits as well as past deeds.

Political Responsibility

Corporate responsibility typically is divided into three asymmetrical and overlapping categories: legal, moral, and social. (4) For example, the legal responsibility not to mislead customers, the moral responsibility to support charitable causes, and the social responsibility not to pollute the environment illustrate how these three categories may overlap. Charitable corporate giving is encouraged through tax laws that reward corporations; consumer protection laws protect the consumer's freedom of choice; and environmental protection laws sometimes rest on the moral status of non-human entities.

There is a fourth neglected category, corporate *political* responsibility. Given the major roles corporations have played in the political life of capitalist democracies, tipping the balance between capitalism and democracy in favor of the former, there is a continuing need to call attention to the ethical content of their political responsibilities beyond the moral responsibilities of individuals implicated in corporate practices and their limited legal liabilities.

A fully responsible corporation in a capitalist democracy is not merely one that makes money without harming its employees and the

public at large, pays its debts and fines when it is caught, and helps the needy as long as it does not cost too much. An ethical corporation is also one that takes political responsibility for practices that it has benefited from and that have harmed the body politic as a whole. Reparations for these harmful practices should not be limited to restitution and compensation to particular individuals and groups that have been harmed, as important as these reparations are. In such cases reparations from corporations should include participating on an appropriate footing with other persons in the periodic assessment of the nature and distribution of power and wealth that these harmful practices have skewed. In fact, focusing exclusively on fixed sums rather than this procedure for arriving at them makes it less likely that corporations will take any responsibility at all for their collaboration in these practices.

This kind of political responsibility can be distinguished from other duties and obligations of democratic citizenship such as the duty to respect the free speech of other persons and the obligation to honor the results of democratic elections, win or lose, both of which have moral and legal dimensions as well. Political responsibility, unlike these more familiar duties and obligations, is necessary in a capitalist democracy because of the way that small biases and disadvantages can accumulate and become institutionalized and because of the way that large illicit benefits gradually can be taken for granted. This is especially true for corporations whose lineage after a series of mergers and takeovers can become opaque even to itself. In the case of U.S. Steel which took advantage of leased – mostly black – convict labor is a disturbing example of this phenomenon. After its acquisition of Tennessee Coal in 1907, U.S. continued to employ “leased” convicts through 1913 despite the assertion by its then Chairman and self-proclaimed “Abolitionist from childhood,” Ebert H. Gary, that “I won’t stand for it.”

Still, according to state records and an internal company memo provided by U.S. Steel, the company continued to use more than 700 convicts already in custody of Tennessee Coal under state and county contracts that weren’t scheduled to expire for four more years. The company also entered into unspecified new convict-labor contracts after 1907, according to the company memo written in 1913. (5)

Hence, there is a need for periodic and unbiased discussions of the distribution of power and wealth, and as beneficiaries of egregious

practices that have skewed the distribution of power and wealth, corporations have a responsibility to participate in these discussions. In order to bring out the distinctive characteristics of political responsibility for corporations that typically enjoy great power and wealth in a capitalist democracy, this essay will focus on corporations that have benefited from their collaboration in the extreme practices of genocide or slavery. While many of the benefits of collaboration in these practices are large and immediate, others are often not widely noticed and accumulate gradually. If corporate political responsibility for the latter type of benefits is to amount to anything more than an echo of the pious apologies that states have made for past genocides and other political crimes, then the following questions must be answered first.

- Are corporations' persons with a capacity for collaboration and political responsibility?
- What benefits in power and wealth, if any, accrue to corporations that collaborate?
- If this legacy of benefits exists, how should corporation collaborators take political responsibility for it?

Once these preliminary questions are addressed, I will take a look at some particular strategies that corporations can support that broaden our understanding of what it means to be a bystander to genocide and slavery.

Corporate political responsibility for reparations should include cultural re-enactment projects that sensitize other citizens to their own individual responsibilities as bystanders.

Are corporations political persons?

According to Peter French, (6) corporate actions, intentions, and responsibilities cannot be reduced to the actions, intentions, and responsibilities of their constituent members. Their moral personhood should guide our views about their legal (and presumably political) status, and not the other way around.

One need not reject holism entirely to quarrel with French's conceptions of corporate action and intention. In fact, a limited holism that stops short of attributing full moral personality to corporations is required by a theory of corporate political responsibility. (7) Corporations are not moral persons, but they ought to be treated as persons from a political perspective. That is, when certain benefits accrue to them

because of their political actions and position, they become politically responsible for them. Since they cannot be voted out of office and it is not always possible to revoke their charter, other constructive political remedies must be found.

French's Extended Principle of Accountability (EPA) regulates responsibility on the basis of the effects of corporate action. It extends moral responsibility beyond a person's own intentional acts to include all deliberate actions and the "nonoriginal or second effects that involve the actions of other persons that he obliquely or collaterally intended or was willing to have occur as the result or under different descriptions of his actions."⁽⁸⁾ Moral accountability, however, does not capture the kind of forward-looking political responsibility that I have described.

Nor does French's second moral Principle of Responsive Adjustment (PRA) that extends moral responsibility backwards in time to cover some of a person's prior acts. It relies on the notions of corporate character and moral integrity to justify this temporal extension of responsibility. According to the PRA, even though a corporation may have acted unintentionally in committing a morally untoward act, it may be held responsible for that act if, in the future, it does not make adjustments in its policies and procedures so that the act does not re-occur. The failure to make adequate adjustments, when it is in the power of the corporation, is an intentional act ("from practiced indifference to blatant repetition") that makes the earlier unintentional act now something the corporation should be held responsible for, even though the earlier act is not re-assessed and found actually to be intentional after all. ⁽⁹⁾ It is what the failure to comply with the PRA tells us about the character of the person – in this case a corporate person – that warrants holding such a person responsible retroactively. ⁽¹⁰⁾

One reason for rejecting the PRA's strong personification of the corporation, beyond any support it gives to the doctrine of limited liability, ⁽¹¹⁾ is that it presupposes a misleading hierarchical model of the corporation in which general policy goals are announced at the top and then filter down as task-specific sub-goals. The structure of large-scale organizations now is a "coalition of groups of divergent claims and interests, engaged in a continuous process of bargaining with one another."⁽¹²⁾ This is certainly true of universities, one of the holistic "conglomerate collectivities" that French mentions in passing. The professional administrators have one set of goals, the alumni/ae another,

the students another, the tenure system faculty another, the taxpayers or other funding sources another, and so on. Policy goals and procedural rules are contested as these various groups bargain and position themselves to influence decisions that may or may not satisfy their conceptions of the university's responsibility and their own personal interests. There is not one Corporate Internal Decision structure, as French assumes, but several interconnected ones.

As different factions jockey for strategic position, the corporate system as a whole can alter the content of competing interests, needs, and even self-understandings. For example, some factions may want a university that seeks more outside funding from private business, an anti-union attitude toward faculty and graduate student organizing, and a minimalist approach toward recycling on campus. To achieve these goals, they will favor one internal decision structure over others. They will market their ideas, and they will use their influence to affect the self-understandings of other factions. Administrators may favor special ad hoc committees and expert task forces over a more time-consuming process of faculty governance. They may hire consultants to train middle-level managers (for example, department chairs and associate deans) in negotiating techniques. Other factions may be able to find common ground in their opposition to these goals, but to articulate their goals and policies they may have to push decision-making outside this structure. For example, students may reject administrative task forces and faculty governance procedures for open meetings and public demonstrations. They may prefer an *external* decision structure.

This does not mean that corporations do not have intentions or that their intentions do not affect their responsibilities. The intentions of members of the corporation will be heavily influenced by the competing internal and external corporate decision structures within which they occur. As Larry May has argued, treating the corporation as a single person with a full moral responsibility to re-examine and adjust its behavior in light of the consequences of past unintentional wrongdoing obscures this political complexity. (13)

The retroactive PRA, premised on the possibility of a monolithic corporate character, should be replaced by a more democratic procedure for determining the limits of future corporate responsibility. Such a procedure would enable all of the corporation's stakeholders to analyze the competing conceptions of the corporation's interests, needs, and self-

understandings, and the way that the corporation exercises power to shape the dominant interpretation of these competing conceptions of corporate personality and responsibility. Corporate collaboration is the product of a complex political process. Corporate responsibility for the benefits that the corporation derives from that collaboration is political in the sense that it affects the political society as a whole and thus ought to be assessed through an appropriately fair political process.

This does not mean that corporations deserve all the political rights, duties, and responsibilities of other political persons, anymore than they enjoy the legal rights, duties, and responsibilities of other legal persons. The question is what exactly are the benefits that corporation collaborators derive from their participation in extreme politics, and what are the particular responsibilities these benefits carry with them?

What are the benefits of collaboration?

John Ladd has indirectly raised this concern about corporate power from a non-holistic point of view. He has argued that formal organizations are machines with narrow technical purposes that should be regulated by human beings who should assume responsibility for their use. The problem, according to Ladd, is not how to hold a corporation as a whole responsible, but how to hold its members accountable when the imperatives of the organization typically are not consistent with our considered moral views. Bluffing, for example, may be an acceptable practice within the corporate “language game,” but from a moral point of view it may be just clever lying. (14) Members who play corporate liar’s poker much of the day will become alienated from themselves, or at least the moral language games that they also value. In other words, corporations condition their members to bracket moral responsibility. They also condition their members to think of the needs and interests of people outside the corporation in purely instrumental terms as potential sources of human capital and consumers. (15) This “moral schizophrenia” Ladd describes becomes exacerbated in post-genocide societies. Corporate collaborators enjoy additional leverage to define the limits of retribution and restitution. Because of fear of corporate flight, corporate collaborators can present themselves as and be accepted as reformed patriots at home at the same time that they maintain and repair profitable relationships with criminal regimes elsewhere. (16) Whereas Ladd is concerned about a moral problem that employees suffer, corporation collaboration affects the rationality of collective political deliberation. The fear of corporate flight

or more subtle forms of retaliation in post-genocide societies leads to mutual deceptions that corrupt the body politic, not just its individual members.

In addition to this political privilege based on their power to interpret interests and needs, corporate collaborators also enjoy a form of economic wealth that eludes traditional measures of restitution. Competitive market advantages won through collaboration cannot be disassembled anymore than the transportation and industrial infrastructure of a society can be reorganized and transferred into new hands. Corporations that have benefited unjustly in the past can be required to make amends, but it is not likely that they will be put out of business. Nor is it clear that they should be, given the costs it would impose on others who depend upon them. The challenge is to find a way to enable others to participate in the distribution of this legacy of benefits so that they become collective goods.

Being held morally and legally responsible involves a retrospective judgment about the group's antecedent causal actions. Taking political responsibility requires a very different frame of reference that emphasizes group responsibility for group benefits. (17) While some group collaborators in past atrocities may be held morally or legally responsible for their actions, many others can be justifiably excused. However, regardless of their degree of responsibility for causing or facilitating past atrocities, collaborators often benefit from past atrocities in ways that carry these benefits forward. As I have said, they share in a legacy of tainted benefits from the past that they ought to take political responsibility for. If, for example, they have benefited from the employment of slave labor, then they have a present responsibility to redistribute those benefits now and into the future so that their descendants (corporate or individual) do not continue to profit from a past injustice that will persist and multiply if it is not addressed. (18)

What we have here is a complex web in which corporate collaborators, forced and slave laborers, and perpetrators are entangled. Like the "gray zone" that Primo Levi famously described in his accounts of the many survivors like himself who were forced to work by the Nazis, (19) corporate collaboration defies our urge to either convict or excuse.

What would it mean to take political responsibility for the legacy of genocide?

Unlike the overtly criminal case of I.G. Farben, (20) there is a set of cases of corporate collaboration with the Nazi genocide that may prove to be more instructive from the point of view of political responsibility.

Several German corporations that continue to benefit from their relationship with the Third Reich have been subject to lawsuits brought under the traditional tort law concept of liability. Insurance companies, banks, and manufacturers who exploited slave labor have been the primary targets in these suits. Their collaboration not only kept them in business, it also helped to finance the Nazi war effort and extermination plan. Litigation against these corporations has fallen into three categories. Some plaintiffs have sought recovery of lost property or insurance policies that were never paid off. Other plaintiffs and their heirs have sought to recover damages and back pay based on the claim that these corporations have unjustly benefited from unpaid labor. Finally, some plaintiffs have argued that corporations that violated international human rights by collaborating in the most abhorrent Nazi practices, should have to pay a certain kind of reparation. Manufacturers of the lethal gas used in Nazi death camps, for example, and companies that purchased, melted down, and resold gold taken from concentration camp victims would be liable for damages in this third category.

One of the most important recent cases was the 1999 class action suit *Burger-Fischer v. Degussa* brought in U.S. Federal District Court. The Degussa Corporation smelted gold looted from Nazi death camp victims and manufactured Zyklon-B cyanide used in gas chambers. In 1998, the corporation offered to make humanitarian payments to its former slave laborers. This gesture was rebuffed as inadequate, and the class action suit was filed in U.S. District Court on the grounds that Degussa's conduct had violated international treaties, fundamental human rights laws, and customary international law. (21)

Attorneys for Degussa argued that their actions were legal under German law at the time. Further, they argued that they had no choice. The company was singled out by the Nazis as the only company in Germany at the time with the "capacity to refine precious metal dental alloys into market grade purity." (22) Neither of these arguments, however,

was judged on its merits, and the case was dismissed as a non-justiciable political question. (23)

In the meantime, the German government in Fall 1998 already had approached Stuart E. Eizenstat, then U.S. Deputy Secretary of Treasury, to help them resolve similar class action suits pending in the United States against Degussa and other German companies. After several years of discussions with representatives of other interested governments as well as representatives of the victims and the companies, the German Parliament created the Foundation “Remembrance, Responsibility and the Future,” equally endowed by the German government and the embattled German corporations, with formal support from the United States. The agreement does not extinguish the claims made by U.S. citizens against German corporations but rather states that the U.S. government will provide a statement to courts hearing such suits that it is in the “foreign policy interests” of the United States and “legal peace” generally that these cases be dismissed and the plaintiffs seek a remedy through the Foundation. (24)

On December 5, 2000 in U.S. Federal District Court Judge William G. Bassler granted the motions in 49 cases brought by plaintiffs to voluntarily dismiss their actions against German corporations. Bassler reviewed the creation of the Foundation and praised the settlements that it affords plaintiffs such as these and other survivors for its dual commitment to historical understanding and political agency. (25) Letting tort law, even tort law for private humanitarian rights reparations, determine corporate responsibility for genocide, casts the problem of responsibility too narrowly. Tort law concentrates on who should be held responsible for past wrongs and neglects the question of who should take responsibility for future benefits.

Now that the corporations believe that their future legal liability is limited, they have agreed to accept the Foundation’s settlement terms. (26) Despite the small individual payments and the self-serving behavior of the corporations involved in the settlement, (27) this process neither dissolves corporate wrongdoers in bankruptcy nor merely imposes a fine on them that allows them to pay off their debt once and for all. It is a process (in its earliest stages) that forces them to acknowledge the benefits that they have continued to enjoy.

Degussa and the Foundation “Remembrance, Responsibility and the Future” created to handle cases like this underline the importance of treating corporations as “group persons.”(28) Corporations are capable of acting intentionally and we ought to hold them to it. That is, when they collaborate in a genocide by employing slave laborers that support the genocide, they must be required to explain their acts and address those that continue to be harmed in the aftermath of those acts. This certainly could become a charade in which corporate executives hide behind a corporate shield. But, it need not be. International political cooperation at this level, similar to the cooperation that has brought an International Criminal Court into being, may be able to curb corporate power and bring corporate collaborators to the table in a serious way.

Who are the bystanders to slavery?

Similarly, the cause of reparations for slavery in the United States is more likely to be served by the creation of an institution capable of careful analysis of the distribution of the corporate wealth created by slavery than by judicial decisions in individual tort cases based on what back pay is owed. What exactly should corporations that collaborated with slavery in the U.S. do to take responsibility for the legacy of benefits they enjoy?

The first thing would be to open their own books so that all of the benefits that have accrued to them are publicly known. (29) Just as insurance companies that benefited from the Holocaust have done, some insurance companies in the United States such as Aetna Insurance Company of Hartford have begun to accept this responsibility. Railroads, for example, that employed slave labor would also be appropriate targets for this kind of full disclosure encouraged by the creation of the German Foundation. Legal research in the U.S. in preparation for legislation and lawsuits seeking reparations for slavery is uncovering a web of corporate collaboration that unites the North and South. It should come as no surprise that slavery was as much a part of the economy of the so-called free Northern states as it was the Southern economy in the United States before the Civil War. That Northern textile manufacturers, for example, generally were uncritical of Southern slavery was no accident. This part of the legacy of slavery has yet to be written. (30)

The second step should be the creation of publicly funded institutes chartered to plan reinvestment strategies. The restoration projects to be

considered should focus on the development of social and intellectual capital. What educational projects and cultural institutions are needed to create a society on the local and national level that attends to the legacies of slavery? For example, strategies will be needed for funding memorials, public art, theater, and other performance projects that make the presence of slavery's past palpable. (31) Unlike the testimony that occurs before truth commissions, these projects should not be designed to encourage cathartic confessions or acts of religious forgiveness. They should be part of the process of full disclosure on a systematic level: how have the then-legal acts of enslavement structured social, intellectual, and cultural institutions? They should not be concerned, as the South African TRC almost exclusively was, with rogue acts of illegal violence. Only after these initial steps have been taken will it be possible to build a political consensus to support additional and continuing forms of investment to overcome the legacy of slavery's benefits.

Let me call these projects of political education *cultural re-enactments*. (32) The primary task would be to problematize the notion of a bystander, especially an innocent bystander. For example, consider what it would be like to watch a slave auction, not as a slave or as a buyer, but as a bystander. That is, someone who does not believe that he is responsible for the auction and does not intend to benefit from it. In 1994 at Colonial Williamsburg, a mock slave auction was held to commemorate George III's ascension to the English throne. According to historian James Oliver Horton, "At the end of the extremely moving re-enactment of a family being broken apart through the sale, the crowds of visitors grew silent, and many wept." However, some visitors objected to the "racist show" while others charged that it "glorified the horrors and humiliation of the evil of slavery." (33) According to another report, "White visitors...view the skits as scenes from the past. Blacks compare them with their own experience." (34)

The Williamsburg re-enactment makes the bystanders suffering and responsibility palpable. Should I speak out? Should I stand by and profit from this commerce in human beings, even if my profiting is only indirect? Bystanders, then and now, cannot turn away without realizing that they have made a choice and acted when they do not object. The performance artist Robbie McCauley has taken up these questions in her dramatic re-enactment of a slave auction in her two-person play, *Sally's Rape*. This is a complex work of art in which McCauley, a black woman whose great-great grandmother Sally who was a slave who had been raped

by her master, and a white woman discuss, debate, and argue about violence, responsibility, and action. The audience is consciously drawn into the play and at one point, in fact, bids on Sally. The experience, as one reviewer has noted, is both painful and unforgettable. (35) McCauley, however, is not seeking simply to shock or shame her audience. The dialogue between the two women on stage, as they assume several different roles, represents a larger social dialogue about race, gender, and responsibility. "Sally's Rape shows us two women hard at work, attempting to connect on some level. Dialogue across difference, with all its baggage and misunderstandings, is both the subject of this work and the work that we must do, in the interest of survival."(36)

Corporations that have benefited from slavery have a responsibility to increase public investments in cultural re-enactments so that they can serve as a form of political education. Individual artists like McCauley have created some models for this kind of dialogue, but many more are needed. Consider the hold that civil war re-enactments that ignore the legacy of slavery now have on so many. (37) To counter this, the National Park Service has begun to commission more authentic and inclusive re-enactments at the parks commemorating Civil War battles that recognize the central place of slavery in the Civil War. (38)

Of course, re-enactments such as these do not necessarily bring the past to life in this critical sense. Consider the current debate over whether to establish a privately owned theme park on the grounds of the Stone Mountain State Park in Stone Mountain, Georgia. (39)

The State Park is built around a giant granite rock, Stone Mountain, that has a larger-than-lifesize carving of Confederate President Jefferson Davis and Generals Thomas J. "Stonewall" Jackson and Robert E. Lee. The carving sprung from the imagination of C. Helen Plane, a charter member of the United Daughters of the Confederacy in 1912. She hoped to memorialize not just these heroes of the confederacy, but also Ku Klux Klansmen who fought against the North and resisted Northern carpetbaggers. The town of Stone Mountain became the birthplace of the modern KKK in 1915. As recently as 1991 the Klan was holding rallies there.

Given this history and the fact that Stone Mountain is the largest tourist attraction in Georgia, one would hope that the State Park authorities would take pains to integrate this history into their

educational programs and displays. Unfortunately, the “story of the South” that they present is designed to “Celebrate the Spirit of the South and “delight children of all ages.” There is an “upgraded plantation” where glass blowing, black-smithing and basket-making demonstrations can be seen. There are “main street” shops, a marina, and an open-air train. In addition, there are natural history exhibits and other educational programs for schoolchildren visiting the park. The proposed privately-owned theme park would complement this re-enactment of “the Story of the South.” According to their spokesperson, there are no “specific stories relative to Stone Mountain and racism” that need to be told. Their story is the “history of heritage and fun.”

Today, the town of Stone Mountain is predominantly African-American. Its first African-American Mayor takes issues with this version of the “story of the South.” He believes that “If you are going to tell the story of the South, you have to tell the *story* of the South.” But, he also believes that there are “practical issues.” If there is going to be a new theme park, then there should be money to build new roads, not just put up an exhibit about slavery.

Like Maya Lin’s memorial to fallen U.S. soldiers in the Vietnam War, Stone Mountain has the potential to interrogate our collective memory of the Civil War. Commercializing it won’t accomplish this, of course. Nor is it enough to erect a monument to slavery the size of the mountain itself. Re-enactments on this scale may have an initial shock value, but ultimately they do not serve a critical purpose. Like photographs of the liberation of Nazi concentration camps, as they are hung stiffly in our public galleries, their content will gradually be forgotten. (40) What is needed is not a theme park or a counter-spectacle to the mass media, but a diversified medium of popular engagement that enables citizens – corporations and individuals – today to reflect critically on what it means to be a continuing bystander to events that began in some cases before their time but have been endorsed over time in their name and from which they have benefited. Official apologies have little to do with the creation of this critical cultural engagement with the legacies of genocides and slavery.

Notes

1. Douglas A. Blackmon, "From Alabama's Past, Capitalism and Racism in a Cruel Partnership," *The Wall Street Journal*, July 16, 2001, A1.
2. Avishai Margalit and Gabriel Motzkin, "The Uniqueness of the Holocaust," *Philosophy & Public Affairs*, Vol. 25, No. 1, Winter 1996, pp.65-83.
3. For example, see Judy Scales-Trent, "Racial Purity Laws in the United States and Nazi Germany: The Targeting Process," *Human Rights Quarterly*, Vol.23, No.2, May 2001 on racial categorizing.
4. See Kurt Baier, "Moral, Legal, and Social Responsibility" in Hugh Cutler, ed., *Shame, Responsibility and the Corporation* (New York: Haven Publishing Co., 1986), pp.183-195.
5. Blackmon, "From Alabama's Past, Capitalism and Racism in a Cruel Partnership, A10. Also, see Matthew J. Mancini, *One Dies, Get Another: Convict Leasing in the American South, 1866-1928* (Columbia: University of South Carolina Press, 1996).
6. Peter A. French, ed., *Individual and Collective Responsibility: The My Lai Massacre* (Cambridge, MA: Schenkman, 1972); Peter A. French, *Collective and Corporate Responsibility*, (New York: Columbia University, 1984); and Peter A. French, *Responsibility Matters* (Lawrence, KS: University Press of Kansas, 1992).
7. For a review of the literature on holism and individualism, as these concepts are applied to the corporation, see Michael J. Phillips, "Reappraising the Real Entity Theory of the Corporation," *Florida State University Law Review*, Vol.21, Spring 1994, pp.1061-1123, and James J. Brummer, *Corporate Responsibility and Legitimacy: An Interdisciplinary Analysis* (New York: Greenwood, 1991).
8. French, *Collective and Corporate Responsibility*, pp.134.
9. French, *Collective and Corporate Responsibility*, pp.156.
10. French, *Collective and Corporate Responsibility*, pp.160

11. For a criticism of French along this line, see Manuel Velasquez, "Why Corporations Are Not Morally Responsible for Anything They Do" reprinted in *Collective Responsibility: Five Decades of Debate in Theoretical and Applied Ethics*, eds. May and Hoffman pp.111-132. For a discussion of individual moral character and individual responsibility for genocide, see David H. Jones, *Moral Responsibility in the Holocaust: A Study in the Ethics of Character* (New York: Rowman & Littlefield Publishers, 1999).
12. Meir Dan-Cohen, *Rights, Persons, and Organizations* (Berkeley, CA: University of California, 1986), p.19. For a detailed discussion of the implications of this model of the corporation for criminal liability, including comments on French's theory, see Jennifer A. Quaid, "The Assessment of Corporate Criminal Liability on the Basis of Corporate Identity: An Analysis," *McGill Law Journal*, Vol. 43, January, 1998, pp.67-114.
13. Larry May, *The Morality of Groups: Collective Responsibility, Group-Based Harm, and Corporate Rights* (Notre Dame, IN: University of Notre Dame, 1987), p.69.
14. John Ladd, "Morality and the Ideal of Rationality in Formal Organizations," *The Monist*, Vol.54, No.4, October 1970, p.500.
15. Ladd labels this condition "moral schizophrenia" and suggests that in addition to its psychological and sociological aspects, it rest upon a flawed theory of action. "The net effect of conceiving of social decisions as a distinctive kind of action of this type is that moral obligations, rights and responsibilities relative to them belong to the organizations as such, that is are predicated of the organizations rather than of other individual officers who perform the actions as its representatives (actors)." One result of this is to strengthen the shield protecting corporate officers by confusing causal responsibility with moral responsibility. Ladd, "Morality and the Ideal of Rationality in Formal Organizations," *The Monist*, pp.507-508.
16. See, for example, Edwin Black, *IBM and the Holocaust: The Strategic Alliance between Nazi Germany and America's Most Powerful Corporation* (New York: Crown Publishers, 2001).

17. From the perspective of individual moral responsibility, taking responsibility is a precondition for being held responsible. As individuals are praised and blamed, they feel the force of others' disapproving moral attitudes of indignation and resentment, and they come to view themselves as moral agents. Once they have learned to take responsibility for their actions in this Strawsonian way, it is possible to hold them morally responsible when they fall short. Of course, in many cases we may wish to hold individuals responsible for things they have done even if they refuse to take responsibility for having done them. But, if someone truly is unable to see himself as a moral agent, then holding him morally responsible may indeed be impossible. It would still be possible to hold such a person legally responsible, but moral responsibility presupposes a set of moral attitudes and abilities on both sides that legal punishment and liability does not. See, John Martin Fischer and Mark Ravizza, *Responsibility and Control: A Theory of Moral Responsibility* (New York: Cambridge University, 1998), Chapter 8.
18. A somewhat different argument is made by Ruti Teitel when she states that when states have neglected to correct past wrongs, they become implicated in them and the original wrong becomes an "unrepaired state wrong." By not repairing the wrong, the current state lends new legitimacy to it and thereby implicates itself in the original harm. Ruti G. Teitel, *Transitional Justice* (New York: Oxford University, 2000), p.142.
19. *The Drowned and the Saved*, trans. Raymond Rosenthal (New York: Vintage, 1988), pp.36-46.
20. Joseph Borkin, *The Crime and Punishment of I.G. Farben* (New York: The Free Press, 1978), pp.148-154. More generally, see Frank M. Buscher, *The U.S. War Crimes Trial Program in Germany, 1946-1955* (New York: Greenwood, 1989).
21. *Burger-Fischer v. Degussa*, 65 F. Supp.2d 248.
22. Brown, "Litigating the Holocaust: A Consistent Theory in Tort for the Private Enforcement of Human Rights Violations," *Pepperdine Law Review*, Vol.27, 2000," p.583.

23. "To state the ultimate conclusion, the questions whether the reparation agreements made adequate provision for the victims of Nazi oppression and whether Germany has adequately implemented the reparation agreements are political questions which a court must decline to determine. Accepting that the court has jurisdiction over the subject matter of this case and assuming that it has jurisdiction over the parties it must nevertheless refrain from adjudicating this dispute." *Burger-Fischer v. Degussa*, 65 F. Supp.2d 248.
24. *Agreement between the Government of the United States of America and the Government of the Federal Republic of Germany concerning the Foundation "Remembrance, Responsibility, and the Future,"* Berlin, Germany, July 17, 2000.
25. "In formulating the framework for the Foundation "Remembrance, Responsibility and the Future," the participants have provided a mechanism for payments to hundreds of thousands of slave and forced laborers, following the initiative of German companies to establish a foundation, which has since been joined by thousands of other German companies. But within the Foundation itself is a "Remembrance and Future Fund" charged with the permanent task "to foster projects that serve the purposes of better understanding among peoples, the interests of survivors of the National Socialist regime, youth, exchange, social justice, remembrance of the threat posed by totalitarian systems and despotism, and international cooperation in humanitarian endeavors." It is this commitment that grounds our confidence in Kierkegaard's words, that "life must be lived forwards." *In re: Nazi Era Cases Against German Defendants Litigation*, 198 F.R.D. 448.
26. Roger Cohen, "Last Chapter: Berlin to Pay Slave Workers held by Nazis," *The New York Times*, May 31, 2001.
27. See "Payments Soon for Slave Labor Victims," *The New York Times*, June 15, 2000
28. In Annette Baier's words, doing things with others is more basic than doing things alone. Philosophers who have sought to analyze doing things in groups, however, have not paid adequate attention to institutional groups. They prefer to analyze two friends deciding to go on a walk together, a married couple deciding to paint a room together,

or as Hume did, two oarsmen rowing together in the same boat. They argue that we ought to treat these small groups with the same kind of rational respect that we treat rational individuals. “[T]he class of persons is the class of agents who mutually recognize one another as facing, in all of their relations, the same ethically significant choice concerning whether and when to engage in agency-regarding relations.”

For example, if groups, like individuals, can have a rational point of view, can be committed to achieving overall rational unity, and can be susceptible to rational modes of influence, then we should treat them like agency-regarding persons. That is, they are capable of acting like rational agents and treating other persons as rational agents. According to Carol Rovane, it would be hypocritical for individuals who think these are the elements of their own identity as persons not to treat groups as persons. Walking partners owe the group, not just other individuals in the group, an explanation when personal obligations force them to cancel because the group ideally would have the same agency-regarding respect for any of its members. Carol Rovane, *The Bounds of Agency: An Essay in Revisionary Metaphysics* (Princeton: Princeton University, 1998), pp.49, 131.

Not all philosophers who believe in this ontology of groups subscribe to this particular normative agency-regarding theory of group identity. However, the kind of group many of them have in mind is what I will call a good neighbor model of groups. The distinctive thing about this group ontology is that it ignores the institutional context of group formation and action. Neighbors disagree, build fences, and break off relations. But, they do not inhabit the same institutional structures of power. At least not in these precious examples. In fact, actual neighbors inhabit overlapping structures of power. They are usually neighbors within the same school district and the same police precinct even if they work for the same company and have different national citizenship. The examples of walking partners or painting couples do not take up the problems that these institutional realities pose for real neighbors with group intentions and responsibilities. It is only when a toxic dump site or something equally dramatic intrudes that the institution-based power relations among neighbors become visible.

29. One important part of the U.S. acceptance of the German Foundation was the creation of a Presidential Advisory Commission on Holocaust Assets in the United States. Its extensive report, *Plunder and*

Restitution, published in December, 2000 gave survivors and other interested parties more confidence that the record of collaboration and profiteering from the Holocaust was becoming available.

30. Many press reports have been issued regarding research in this area by individual lawyers such as Deadria Farmer-Paellmann and the Reparations Assessment Group, led by Charles J. Ogletree. A *New York Times* editorial summarizing this neglected aspect of the political economy of slavery was written by Brent Staples, "How Slavery Fueled Business in the North," July 24, 2000. According to Staples, in the early 1800's New York City had more slaves than any other U.S. city except Charleston, S.C.. Cliometricians who have argued that the economic health of slavery and of slaves has been underestimated, could perform a needed service by examining with the same unblinking eye the economic health of corporations that benefited from slavery long after its legal abolition. See, for example, Robert William Fogel and Stanley L. Engerman, *Time on the Cross: The Economics of American Negro Slavery* (Boston and Toronto: Little, Brown and Company, 1974). Once this record is visible, it may be possible to bring public pressure to bear to prohibit corporations from collaborating with new forms of slavery today. Kevin Bales, *Disposable People: New Slavery in a Global Economy* (Berkeley: University of California, 2000).
31. Part of the German Foundation committed particularly to "Remembrance and the Future" is devoted to this kind of social investment in memorials, mass media and internet programs, and other forms of art, literature, and drama. See Dr. Lothar Ulsamer, *Future Fund "Remembrance and the Future": Working for International Reconciliation and Human Rights*, available from the German Economy Foundation Initiative and found on the World Wide Web <www.stiftungsinitiative.de/eindexr.html> on June 30, 2001.
32. I have discussed these strategies at greater length in "Cultural Re-enactments of Mass Violence and the Prospects for Political Conciliation" (manuscript)
33. James Oliver Horton, "Presenting Slavery: The Perils of Telling America's Racial Story," *The Public Historian*, Fall, 1999.
34. *Change*, November, 1999.

35. Deborah Thompson, "Blackface, Rape, and Beyond: Rehearsing Interracial Dialogue in Sally's Rape," Theatre Journal, Vol.48, No.2, 1996, pp.123-39.
36. Ann E. Nymann, "Sally's Rape: Robbie McCauley's Survival Art," African American Review, Winter, 1999.
37. Tony Horwitz, Confederates in the Attic: Dispatches from the Unfinished Civil War (New York: Vintage, 1998).
38. Personal correspondence from Katie Lawhon, Public Affairs Specialist, Gettysburg National Military Park, September 25, 2000. Similar programs in local schools and communities can be fashioned, whether it is an actual model refugee camp for students to walk through so they come to learn what it means to suffer from mass violence. See, for example, "Imagine war breaks out in your hometown, found on the World Wide Web on October 11, 2000, <<http://www.refugeecamp.org>> and "Ghosts of War in a Placid Park," The New York Times, found on the World Wide Web on September 16, 2000, <<http://nytimes.com/2000/09/16/nyregion/16REFU.html>>. Or, the same effect may be possible through an interactive web site that makes the suffering of today's Third World slaves visible to First World consumers. On this subject, see Kevin Bales, Disposable People: New Slavery in the Global Economy (Berkeley: University of California, 1999).
39. The following summary is taken from the Stone Mountain Park web site, found on the World Wide Web on December 21, 2000, <<http://www.stonemountainpark.org/>> and a feature segment broadcast on daily radio news program, "All Things Considered," produced by National Public Radio on December 20, 2000 and found on the World Wide Web on December 21, 2000, <<http://search.npr.org/cf/cmn/cmnpd01fm.cfm?PrgDate=12%2F20%2F2000&PrgID=2>>
40. See, Barbie Zelizer, Remembering to Forget: Holocaust Memory Through the Camera's Eye (Chicago: University of Chicago, 1998).

Biographical Sketch

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