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**CORRECTIVE JUSTICE AS A DUTY OF THE POLITICAL  
COMMUNITY: DAVID LYONS ON THE MORAL LEGACY  
OF SLAVERY AND JIM CROW**

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INTRODUCTION

David Lyons has written a series of important, insightful, and morally trenchant papers about the history of slavery and racial hierarchy in the United States. He argues in these papers that slavery and Jim Crow “were in large part public, not private wrongs.”<sup>1</sup> They were parts of a project of “racial subjugation” that “was implemented by public policy at all levels.”<sup>2</sup> Moreover, the federal government is the major currently existing party that is accountable for this history of injustice.<sup>3</sup> His argument is striking for at least two reasons. First, it is theoretically striking that he holds the government to be accountable. We often find ourselves morally evaluating the actions of

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\* Professor of Philosophy, University of California, Davis. This Paper is written to honor David Lyons and to celebrate his contributions to philosophical and legal scholarship through his many distinguished publications and through his teaching. He supervised my doctoral dissertation and taught me in many classes while I was a graduate student at Cornell University during the early 1970s. I am deeply grateful for his help and support, for the superb example he set of honest and careful scholarship, and for his helpful criticism at every stage of my work. I presented an abbreviated version of this Paper to the Boston University School of Law Conference, Rights, Equality, and Justice: A Conference Inspired by the Moral and Legal Theory of David Lyons, March 12-13, 2010. I am grateful for the helpful comments of members of the audience. I am especially grateful to Richard Boyd, Steven Davis, Bill Wringe, and, of course, to David Lyons.

<sup>1</sup> David Lyons, *Reparations and Equal Opportunity*, 24 B.C. THIRD WORLD L.J. 177, 182 (2004).

<sup>2</sup> David Lyons, *Corrective Justice, Equal Opportunity, and the Legacy of Slavery and Jim Crow*, 84 B.U. L. REV. 1375, 1397 (2004).

<sup>3</sup> *Id.*

states, governments, corporations, and other types of collective entities. Indeed, a morally accurate account of twentieth century history could hardly neglect the atrocities and injustices committed by states. Despite this, however, philosophers tend to hew to an individualistic moral stance. Lyons's argument is therefore noteworthy from a theoretical perspective. Second, his argument is morally striking because it offers a way to make sense of the idea that something needs to be done in order to right the historical wrongs of slavery and Jim Crow, even though it may be that no living person is accountable for these wrongs. After all, the government still exists, and if Lyons is correct, it is accountable.

Lyons's argument is grounded in a detailed historical discussion of relevant events over the past few hundred years. His discussion focuses on: (1) the creation of chattel slavery, including colonial legislation that created the legal framework for slavery and constitutional provisions concerning slavery; (2) Reconstruction and the establishment of Jim Crow; and (3) the failures of governments in the late twentieth century to address the economic and social legacies of Jim Crow. His central historical claim is that, in his words, "[t]he political community comprising the United States of America, including its direct forebears, through official action and morally relevant inaction, created, maintained, modified, and has declined to eliminate a deeply entrenched racial hierarchy."<sup>4</sup> That is, a "Racial Subjugation Project" was put in place and maintained by public policy. Given this, he argues, "[c]orrective justice calls for a *National Rectification Project* to extinguish the relevant inequities."<sup>5</sup> Lyons maintains that such a project can be grounded in "uncontroversial principles of political morality" – an obligation every agent has to rectify wrongs for which it was responsible and an obligation to undo policies that have undermined equal opportunity, especially where children are concerned.<sup>6</sup>

Lyons suggests that reparation is not possible, strictly speaking, for it is not possible to restore people to the condition that would have obtained if slavery and Jim Crow had not happened.<sup>7</sup> The people who were wronged by these systems are no longer alive, or most of them are not, and the people who were responsible for the wrongs, or most of them, are also no longer alive.<sup>8</sup> For this reason, Lyons argues, we need to give up the idea of repairing the historical injustices of these systems. His argument is driven by two key insights. First, the United States government is a currently existing agent and it was at least partly responsible for slavery and Jim Crow. As he says, the federal government "is the single most important currently existing party that can truly be held accountable to those who have suffered the wrongs of racial

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<sup>4</sup> David Lyons, *Unfinished Business: Racial Junctures in US History and Their Legacy*, in *JUSTICE IN TIME* 271, 294-95 (Lucas H. Meyer ed., 2004).

<sup>5</sup> Lyons, *supra* note 2, at 1397.

<sup>6</sup> *Id.* at 1377.

<sup>7</sup> *Id.* at 1378.

<sup>8</sup> *Id.* at 1378-84; Lyons, *supra* note 4, at 296.

subjugation.”<sup>9</sup> Second, there are currently existing inequities in life prospects between African Americans and white Americans that are among the consequences of the injustices of the past. If we focus on correcting these inequities, we will see that a solid case can be made for a program of rectification.<sup>10</sup> The upshot, Lyons contends, is that the federal government is obligated to rectify the currently existing inequities that are the historical legacy of slavery and Jim Crow.

This argument can be challenged on various grounds. Some historians might want to challenge Lyons’s rendering of history, but I will assume that his historical scholarship is accurate in every way that is important for his argument. In what follows, I will address four remaining challenges and attempt to respond to them on Lyons’s behalf. First, there are metaphysical challenges. An agential individualist would object that collective entities, such as governments, cannot, strictly speaking, perform actions. A moral individualist would object that claims about the moral obligations or moral responsibility of a collective entity are not, strictly speaking, true. A moral individualist would presumably deny that the United States government could be accountable for the wrongs of slavery and Jim Crow. I will discuss agential individualism in Part I of the Paper and moral individualism in Part II. Second, there are moral challenges to the argument. The United States could not implement Lyons’s National Rectification Project without imposing costs on individual citizens who, as Lyons would agree, were not complicit in the wrongs in question.<sup>11</sup> The challenge is to explain on what basis citizens and other members of the political community can, in general, be morally required to pay these costs. I will address this objection in Part III and Part IV. Finally, there is room to object that Lyons’s proposal does not adequately address the strongly held view that the guilt for slavery and Jim Crow must somehow be acknowledged and atoned for. The history of racial exploitation and subjugation has left a stain on the moral record of the United States. There is a need to remove that stain. I will consider this potential objection in Part V. In the Conclusion, I will briefly address worries about the political feasibility of Lyons’s proposal and about potential adverse consequences of adopting the National Rectification Project.

#### I. THE CHALLENGE OF AGENCY INDIVIDUALISM

A collective entity obviously cannot act unless individual persons perform actions “officially” or in relevant “roles” or in circumstances where, taken together, these actions “constitute” the collective’s acting.<sup>12</sup> Collective entities are not independent agents, as we might say. One might think, on this ground,

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<sup>9</sup> Lyons, *supra* note 2, at 1396-97.

<sup>10</sup> See Lyons, *supra* note 4, at 296.

<sup>11</sup> Lyons, *supra* note 1, at 177.

<sup>12</sup> I leave the “constitution” relation unanalyzed. There is metaphysical controversy about what the relation comes to, but I do not believe it affects my argument in this paper.

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that collective entities such as states and governments cannot, strictly speaking, act at all. We can call this position agency individualism. It might seem that the truth of agency individualism would challenge Lyons's argument. For the United States government could hardly be accountable for acts of creating, and maintaining, and failing to abolish the system of racial subordination if it is not capable of acting at all.<sup>13</sup>

I cannot address agency individualism in detail here. Nor can I address moral individualism in detail. I have discussed them more thoroughly elsewhere.<sup>14</sup> Here I will limit myself to a few remarks.

To begin, I assume that no agency individualist wants to rewrite history by denying, for example, that the United States dropped an atomic bomb on Hiroshima in 1945, or that Japan attacked Pearl Harbor in 1941. Instead, I assume, the agency individualist wants to claim that these truths about World War II and other similar truths that appear to ascribe actions to collective entities do not in fact do so. It is true that an atomic bomb was dropped on Hiroshima in 1945 but, the individualist presumably wants to say, what makes this true is the occurrence of a complex event involving the United States. This event was constituted by, among other things, certain actions performed by individual persons, including the President and the commanders of the aircraft that were involved in carrying out the bombing. But the event was not an action performed by the United States.

It is also true that no anti-individualist should want to rewrite history. In the Hiroshima case, the anti-individualist should agree that, along with other events and actions and various standing conditions, the relevant actions of the President and of the commanders of the aircraft constituted the bombing of Hiroshima by the United States. Lyons maintains that "the political community comprising the United States of America . . . created, maintained, modified, and has declined to eliminate a deeply entrenched racial

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<sup>13</sup> Lyons's view could also be challenged by a metaphysical tidiness according to which collective entities do not really exist. On this view, existing entities are the "building blocks" of nature that are revealed when nature is "carved at its joints" in a way that reveals its fundamental structure. Since collective entities are composed of persons, they are not among the building blocks. Persons presumably also are not metaphysically fundamental, however, nor are most of the things we deal with in ordinary life. I take it that many things exist in a perfectly ordinary sense that would not remain after tidy metaphysical dissection. I therefore set aside the metaphysically tidy position.

<sup>14</sup> I have argued against agency individualism in a series of papers. See generally David Copp, *Collective Actions and Secondary Actions*, 16 AM. PHIL. Q. 177 (1979) [hereinafter Copp, *Collective Actions*]; David Copp, *The Collective Moral Autonomy Thesis*, 38 J. SOC. PHIL. 369 (2007) [hereinafter Copp, *The Collective Moral Autonomy Thesis*]; David Copp, *Hobbes on Artificial Persons and Collective Actions*, 89 PHIL. REV. 579 (1980); David Copp, *On the Agency of Certain Collective Entities: An Argument from 'Normative Autonomy'*, 30 MIDWEST STUD. PHIL. 194 (2006) [hereinafter Copp, *On the Agency of Collective Entities*]; David Copp, *What Collectives Are: Agency, Individualism and Legal Theory*, 23 DIALOGUE 249 (1984).

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hierarchy.”<sup>15</sup> He maintains that this was done “*through* official action and morally relevant inaction.”<sup>16</sup> These official actions include actions of individuals, such as presidents and congressmen, and actions of collective entities, such as Congress and the Supreme Court. As Lyons says, “the relevant decisions” – the decisions of various persons and decision-making bodies that led to the creation and maintaining of the system of racial hierarchy – “were made on behalf of, and thus *by*, governments such as the United States.”<sup>17</sup> In general, an anti-individualist would agree that, in cases where an event occurred that she would classify as an action performed by a collective entity, the event was constituted by relevant actions that were performed by individual persons.

The dispute between the individualist and the anti-individualist is therefore subtle. In the Hiroshima case, the dispute boils down to whether or not the event, the United States’ dropping an atomic bomb on Hiroshima in 1945, was an *action* performed by the United States, or whether it was some *other* kind of event. The individualist and anti-individualist agree that the event was constituted by actions of individuals along with various other facts and standing conditions. The dispute is not about this. What the dispute is about, in general, is whether true statements that appear to ascribe an action to a collective entity actually do so or whether they merely describe or refer to a complex event of a certain kind that involves the entity and that also involves certain relevant actions of individual persons. Do we have actions performed by collective entities or merely “actional events” of collective entities?

Anti-individualists will treat actional events of collective entities as actions. Individualists will treat these events as not being actions, strictly or technically speaking. They are not “technical-actions” or “tactions.” If this were the full story, the dispute would not be of concern to us here. We could simply set it aside as falling in the province of action theory. But this is not the full story since, as we have seen, our common-sense moral views ascribe moral duties to collective entities and ascribe moral blameworthiness to collective entities when they fail to fulfill their duties. This means that our common-sense moral views presuppose that at least some collective entities can act. Crucially, Lyons says, “[w]e normally assume . . . that [a government’s] acts and practices are subject to moral appraisal, and that it can be held accountable for its past acts.”<sup>18</sup> He points out, for example, that the United States government has “accepted accountability” for the internment of Japanese-Americans during World War II.<sup>19</sup> Common-sense moral thinking therefore seems to presuppose

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<sup>15</sup> Lyons, *supra* note 4, at 294-95.

<sup>16</sup> *Id.* (emphasis added).

<sup>17</sup> *Id.* at 272.

<sup>18</sup> Lyons, *supra* note 2, at 1385.

<sup>19</sup> *Id.*

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an anti-individualist conception of action and to favor an anti-individualist action theory.<sup>20</sup>

Despite this, I do not think that Lyons needs to reject agency individualism. The way forward is to recognize that common-sense morality makes use of a concept of action that includes in its extension both the technical-actions of individualist "taction theory" and the actional events of collective entities, such as the United States' bombing of Hiroshima. An individualist taction theory does not include events of the latter kind in its scope, and for that reason such a theory is not comprehensive enough to account for all the actional events that are relevant to common-sense morality. But an individualist theory could be combined with a theory of actional events to provide a comprehensive actional theory. A theory of this kind would also deal, for example, with events such as my selling of my house, which is an actional event of mine that is constituted by the action of an attorney in transferring ownership to another person, given that I have authorized her to do so.<sup>21</sup> Common-sense moral thinking evaluates acts of this kind as well as the technical-actions that would be recognized in an individualistic theory. From the perspective of an individualist taction theory, then, common-sense moral thinking deals with a variety of actional events as well as technical-actions. This need not be viewed as an objection to common-sense moral thinking. Hence, I believe, Lyons is not committed to rejecting agency individualism.

## II. THE CHALLENGE OF MORAL INDIVIDUALISM

Unlike agency individualism, moral individualism *does* directly challenge Lyons's argument. A moral individualist would contend that moral evaluations of the moral status of "actions" of collective entities are not, strictly speaking, accurate. They are at best convenient ways of speaking. In some cases, they function as summaries of the moral evaluations we might be prepared to make of the relevant actions of the relevant people. For example, if we say that the United States was wrong to drop an atomic bomb on Hiroshima, our statement is not accurate, but it might be a useful way to summarize claims about the wrongness of the actions of individual people whose actions constituted the bombing, including the actions of the President and of the commanders of the relevant aircraft; and these claims might be accurate. In other cases, evaluations of the moral status of "actions" of collective entities function as place-holders for more complex and nuanced individualist evaluations that we might not be in a position to make due to our limited knowledge. But in any case, according to the moral individualist, collective entities are not moral agents and moral evaluations of the "actions" of such entities are not accurate.

It appears that Lyons cannot avoid denying moral individualism since he views governments as moral agents. He contends that something morally

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<sup>20</sup> See Copp, *On the Agency of Collective Entities*, *supra* note 14, at 196.

<sup>21</sup> See generally Copp, *Collective Actions*, *supra* note 14.

important would be left out of a history that neglected the moral significance of the actions of states and governments, even if it contained a complete and morally accurate inventory and evaluation of the actions of individual persons. For no currently existing individual moral agents are plausibly held accountable for the injustice of slavery. But, in Lyons's view, the United States government is a currently existing agent. Governments exist over stretches of time that greatly exceed the life spans of human beings, and they continue to exist even while individual office holders leave office and are replaced by members of new generations of citizens.<sup>22</sup> And, in Lyons's view, the United States government is accountable for the injustice of slavery. So he thinks there is a morally substantive difference between an individualist view of history and a view that recognizes the moral role of government. As he says, if we focus "only on accountable individuals," we ignore "the systemic character of racial subjugation."<sup>23</sup> We ignore the fact that the individuals who made the central laws and policies that created and sustained the system of racial subjugation were "acting in an official capacity . . . on behalf of the political community."<sup>24</sup> "Racial subordination in the United States was institutionalized [by the government]."<sup>25</sup> Hence, Lyons contends, "it is reasonable to hold the federal government accountable."<sup>26</sup>

The question is whether there is any good reason to think that moral individualism is correct. We have seen that it is not entailed by agency individualism. An individualist taction theory could be combined with a theory of actional events, including actional events of collective entities, to provide a comprehensive actional theory. And a comprehensive theory of this kind would be compatible with the view that the actional events of collective entities are open to moral appraisal. But if agency individualism by itself does not support moral individualism, what supports it? I can see two lines of argument.

The first rests on an idea in philosophical psychology. The actions and actional events that common-sense morality evaluates are at least potentially intentional. But actional events of collective entities are not intentional. They are not intended *by* these collective entities for, it might be thought, collective entities are not *capable* of having an intention or any other kind of psychological state. The United States' bombing of Hiroshima was intended by President Truman. But, it might be thought, the United States *itself* did not intend to bomb Hiroshima.

I assume, however, that the individualist will not want to rewrite history. Historians presumably agree that the United States did intentionally drop the atomic bomb on Hiroshima. It would be obtuse to deny this without some new

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<sup>22</sup> Lyons, *supra* note 2, at 1385.

<sup>23</sup> *Id.* at 1379.

<sup>24</sup> *Id.* at 1379-80.

<sup>25</sup> *Id.*

<sup>26</sup> *Id.* at 1385.

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historical evidence suggesting that the bombing was in some way unintended or that it was a private affair rather than an official act. Any historian of World War II would understand the questions whether the bombing was done by the United States and whether it was intentional, and would understand how to investigate these questions. Obviously, if the bombing was in fact done intentionally by the United States, one would expect to find evidence of official Presidential decisions to build the bomb and then to use it, and one would expect to be able to follow a trail of command from the President to the commanders of the aircraft that were used in the bombing mission. If the bombing was not done intentionally, one would expect to find, perhaps, an official inquiry after the fact to determine how the bomb could have been dropped, using equipment of the United States, in the absence of an official decision to do so by someone with sufficient authority to order such an attack. Plainly, the historical question would not be answered by a philosophical argument to the effect that collective entities are not capable of having a mental state. Similarly, Lyons's historical claim that the United States government intentionally created and sustained a policy of racial subordination is not one that can be competently challenged by a philosophical argument about the capability of governments to have intentions. I assume, then, that the dispute between the moral individualist and the anti-individualist is not about the accuracy of historical claims of these kinds.

The dispute, therefore, is subtle. It is not fundamentally different from the dispute between the agency individualist and the anti-individualist. In general, the dispute is about whether true statements that appear to ascribe an intention or an intentional action to a collective entity actually do so, or whether instead they merely describe or refer to a certain kind of complex event involving the entity and involving as well certain relevant intentions or intentional actions of individual persons. Do we have intentions and intentional actions of collective entities or merely intentions and intentional actions of persons that constitute "intentional actional events" of collective entities?

Anti-individualists can maintain that the intentions of collective entities, such as the United States' intention in bombing Hiroshima, supervene on and are constituted by relevant intentions of persons. Similarly, the intentions of persons supervene on and are constituted by relevant states of their brains. It seems, therefore, that there is an available metaphysically innocent way to account for the intentions of collective entities.

Moreover, historical accounts of familiar events, such as the bombing of Hiroshima, seem to favor adopting a view that makes room for the intentions of collective entities. And the concept of action that is at work in common-sense morality seems to include in its extension the intentional actions or actional events of collective entities, such as the United States' bombing of Hiroshima. As we have seen, an individualist technical-action theory does not include events of the latter kind in its scope, but an individualist theory can be combined with a theory of actional events to provide a comprehensive actional theory. We could then construe this comprehensive theory as providing an

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account of the morally relevant concept of “action,” the concept that is at work in common-sense thinking. And we could combine it with an account of the intentions of collective entities as supervening on the intentions of persons. Moral individualism therefore is not forced on us.

The second way to support moral individualism rests on a conception of morality. The central premise of the argument is, roughly, that morality is concerned fundamentally with the needs and interests of individual persons or, perhaps, that morality is concerned fundamentally with the respectful treatment of rational beings. Collective entities do not have needs or interests in their own right and they are not rational beings. Morality therefore is not concerned with them.

This argument does support the idea that the survival and success of collective entities is not of moral concern, except insofar as it affects the welfare of persons. But it should be obvious that the actions (or actional events) of collective entities can powerfully affect the welfare of persons. Consider the bombing of Hiroshima, the internment of Japanese Americans during World War II, and the decisions and policies of successive governments of the United States that implemented, permitted, or sustained Jim Crow and the rest of the apparatus of the system of racial hierarchy in the country. If morality is concerned fundamentally with the needs and interests of persons or with the respectful treatment of persons, then it will impose duties on collective entities and it will appraise the moral quality of their actions. The argument, therefore, does not support moral individualism.

One might think nevertheless that since the actions of collective entities are constituted by actions of persons, a moral requirement imposed on a collective entity will be ineffective and pointless unless it entails requirements that are incumbent on relevant persons, requiring them to do the things that would constitute the collective entity’s fulfilling its requirement. This is an important thought, and I will return to it. However, it does not support moral individualism. For one thing, it suggests that there can be moral requirements on the actions of collective entities, such as a requirement to treat people equally. For another thing, it suggests that individuals in some cases may have moral duties that are derivative from duties that fall in the first instance on a collective entity. For instance, the requirement that a collective entity do no harm may imply that relevant persons, because of their roles in a collective entity, must not do particular official acts. The latter requirements would be derivative. There is no suggestion here that moral appraisals of the “actions” or “actional events” of collective entities are inevitably inaccurate.

A final position I will consider is related to moral individualism. It holds that moral evaluations of the actions of collective entities are completely redundant since, on analysis, they boil down to evaluations of the relevant actions of individual persons. We have already seen a reason to doubt this, for in some cases, requirements on collective entities seem fundamental and the corresponding requirements on the actions of persons seem to be derived from

them.<sup>27</sup> If Lyons is correct, then we cannot fully account for the moral landscape without separately accounting for the culpability and the obligations of the United States government.

Lyons argues in particular that the government is accountable for the currently existing gap in life prospects between blacks and whites in the country because the gap exists as a result of the system of racial hierarchy that was implemented in the past by people acting in official capacities on behalf of the government.<sup>28</sup> The government is culpable for this,<sup>29</sup> yet there may be no currently existing person who is culpable for playing a role in implementing the system of racial hierarchy in the past.<sup>30</sup> The government has an obligation to correct the current inequity that is the result of its past behavior.<sup>31</sup> Yet, as we will see, it is debatable exactly what this implies about requirements that are incumbent on citizens and government officials.<sup>32</sup> Lyons suggests that members of the political community are obligated to support just government policies designed to correct the inequities.<sup>33</sup> What this amounts to in particular cases obviously would depend on which policies, if any, the government has implemented. We see then that Lyons's argument turns on a moral analysis of past actions of the government. It is only once this analysis is settled that we are in a position to determine what, in detail, individual citizens must do in order to play their part in correcting the current inequities. Given this, it hardly seems plausible that the moral evaluation of the actions of the United States government in implementing the system of racial subordination is completely redundant.

### III. THE OBJECTION OF THE GAP

I now consider a moral objection to Lyons's proposal. There is no way to implement the National Rectification Project without imposing costs on individual people who were not complicit in the wrongs in question. The objection is that there is no basis on which to justify this. Let me explain.

The basic outline of Lyons's position should be evident. He argues that to understand the contemporary moral legacy of the historical injustices of slavery and Jim Crow, we need to focus on the roles of institutions.<sup>34</sup> If we insist on restricting ourselves to an individualistic perspective, we will have

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<sup>27</sup> For a similar argument, see Bill Wringe, *Needs, Rights, and Collective Obligations*, in *THE PHILOSOPHY OF NEED* 187, 203 (Sorana Reader ed., 2005).

<sup>28</sup> See Lyons, *supra* note 2, at 1385-86.

<sup>29</sup> Lyons, *supra* note 1, at 182.

<sup>30</sup> Lyons, *supra* note 4, at 296.

<sup>31</sup> David Lyons, *Political Responsibility and Resistance to Civil Government*, 26 *PHILOSOPHIC EXCHANGE* 5, 16-17 (1996); Lyons, *supra* note 1, at 182-83; Lyons, *supra* note 4, at 272.

<sup>32</sup> Lyons, *supra* note 31, at 17-19; Lyons, *supra* note 1, at 184.

<sup>33</sup> Lyons, *supra* note 1, at 184.

<sup>34</sup> Lyons, *supra* note 2, at 1384-85.

difficulty identifying any currently existing party that could plausibly be held accountable for the injustices.<sup>35</sup> But the government can be held accountable and still exist.<sup>36</sup> Moreover, he contends, “[r]acial subordination in the United States was institutionalized” by the government.<sup>37</sup> He argues on this basis that “it is reasonable to hold the federal government accountable.”<sup>38</sup>

It is important to be clear which institutional entity Lyons believes to be accountable. His official view seems to be that the federal *government* is primarily accountable.<sup>39</sup> In some places, however, he seems to be viewing the *state* (that is, the United States) as the primary accountable party. In these places, however, he might not be distinguishing between the government and the state.<sup>40</sup> In an important paper on “racial junctures” in United States History, Lyons says it is the political *community* “comprising” the United States that is primarily accountable.<sup>41</sup> In one place he says the “nation as a whole” is accountable.<sup>42</sup> One might think he has in mind the group we might refer to as the “population,” but he goes on to suggest that he means to refer to “the political system as a whole” and to say that it is accountable.<sup>43</sup>

There are complex relations among the government, the state, the nation, the political community, and the political system as a whole. For present purposes, we can set aside these complexities. Lyons needs to identify an accountable entity that existed during the entire historical period he discusses, beginning with the founding of the country and continuing to the present day. It must also be an entity capable of acting, of forming, and of implementing public policy. As Lyons says, the *government* seems clearly to be the best candidate. Here I do not mean to refer to the current government or administration. I mean to refer instead to the institution that was created by the Constitution and that has existed continuously ever since, although different persons obviously have held the key offices at different times.<sup>44</sup> As Lyons says,

The government’s policies supported both slavery and Jim Crow. Since 1865, the government has violated or failed to enforce its own Constitution and legislative enactments for extended periods. . . . It

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<sup>35</sup> Lyons, *supra* note 4, at 296.

<sup>36</sup> Lyons, *supra* note 2, at 1385.

<sup>37</sup> *Id.* at 1380.

<sup>38</sup> *Id.* at 1385.

<sup>39</sup> *See id.* at 1385-97; Lyons, *supra* note 1, at 182.

<sup>40</sup> Lyons, *supra* note 2, at 1397; Lyons, *supra* note 4, at 272. I think of the government as the institution that administers and controls the state and so I distinguish it from the state itself.

<sup>41</sup> Lyons, *supra* note 4, at 271-72.

<sup>42</sup> *Id.*

<sup>43</sup> *Id.* at 272, 295.

<sup>44</sup> Better, I mean to refer to what I have called an “animated institution.” For this idea, see David Copp, *The Idea of a Legitimate State*, 28 PHIL. & PUB. AFF. 3, 5-10 (1999).

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thereby enabled the entrenchment of inequities for African Americans in a new system – Jim Crow. It tolerated . . . widespread, grievous violations of African Americans’ most fundamental rights. Given the opportunity, it has more than once declined to undertake measures necessary to substantially rectify the long-standing inequities. . . . [T]his pattern . . . has dominated public policy since the United States was established.<sup>45</sup>

Lyons’s conclusion is that the government is “the single most important currently existing party that can truly be held accountable” for the wrongs of the policy of racial subordination.<sup>46</sup>

To hold the government accountable is obviously compatible with holding certain individual people accountable. Set aside the people of good will who opposed slavery and Jim Crow; they presumably are not to be blamed. But many people benefitted from slavery and Jim Crow and supported these systems. Some of these people held office in the government and tolerated, advocated, or created policies that supported slavery or Jim Crow. All of these people were accountable, although some of them might have had excuses for what they did, so that their blameworthiness was mitigated to some degree. In any event, most of these people are no longer alive. Of course some people from the era of Jim Crow are still alive, and if they were responsible for specific crimes they should be held accountable, both morally and before the law. The important point, however, as Lyons insists, is that slavery and Jim Crow were matters of public policy, not merely matters of private wrongdoing.

The government was *complicit*, Lyons argues, so it is accountable.<sup>47</sup> It can be “called to account.” Some might contend that various historical circumstances excused the government, or at least mitigated the degree to which it is blameworthy. Lyons argues, however, that there is insufficient reason to excuse the government since, as he documents, there were several points in the history of the country when the government *could* have corrected the injustices and when the steps that could have been taken to do so were *known* to those in office. For instance, the government could have instituted a policy of land redistribution after the Civil War so that former slaves would not have been forced into exploitative relationships with former slave owners. The idea of breaking up the large land-holdings and redistributing land to the former slaves was considered seriously, and some steps were taken in the direction of instituting such a policy, but in the end, the idea was abandoned. The federal government instead allowed the Jim Crow system to develop.<sup>48</sup> If Lyons is correct – and as I said, I assume his account of the history is correct in all key respects – the government is culpable for all of this.

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<sup>45</sup> Lyons, *supra* note 2, at 1396.

<sup>46</sup> *Id.* at 1397.

<sup>47</sup> Lyons, *supra* note 1, at 182.

<sup>48</sup> For extensive discussion of these points, see Lyons, *supra* note 4, at 271-98. On post-Civil War land redistribution, see *id.* at 287-90.

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An agent that is accountable for wrongs has a duty to rectify the wrongs. We recognize this in ordinary circumstances. We hold that wrongdoers have a duty to compensate their victims and their victims have a right to compensation.<sup>49</sup> Call this the “duty of repair.”<sup>50</sup> Lyons points out that this duty concerns wrongs we have been complicit in as well as those we are fully responsible for, and he suggests that in cases in which wrongs cannot be fully undone, we have a duty to end them, alleviate them, and compensate as best we can.<sup>51</sup> This is surely uncontroversial. To be sure, as Lyons points out, correction is a “defeasible requirement” – the duty of repair must be balanced against our other duties – and Lyons notes that there may be a limit to the sacrifice that is required.<sup>52</sup> I will return to this point at the end of the Paper.

The trouble is that the persons who were wronged by slavery are no longer alive and most of the victims of Jim Crow are also no longer alive. To be sure, many people who suffered under Jim Crow are still with us, but, except in special individual cases, insurmountable difficulties stand in the way of compensating them. In order to determine what compensation is owed, we would have to determine in what ways and to what degree those individuals are worse off than they would have been in the absence of Jim Crow, all other things being equal. The most important difficulty is that these people almost certainly would not even have existed in the absence of Jim Crow. For in the absence of Jim Crow, circumstances would have been so different that their parents might never have met, and even if they had met and had children together, it is highly unlikely that they would have had exactly the same children. Even if we ignore this first difficulty, another is that in the absence of Jim Crow, economic, legal, and social circumstances would have been so different that, for most individuals, we cannot say in what ways and to what degree they would have been better off. The school system presumably would have been more egalitarian; the courts and police would have treated people more equitably; black people would not have faced the everyday dangers and humiliations of living under Jim Crow. Yet in the case of most individuals, we

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<sup>49</sup> *Id.* at 295.

<sup>50</sup> Lyons, *supra* note 31, at 16-17. Lyons refers to the duty in question here as the duty of “reparation,” but in a later paper he suggests that the term “reparation” can be misleading. See Lyons, *supra* note 2, at 1378. For this reason, I have chosen to speak of the “duty of repair.” Lyons’s account of this duty can usefully be compared with Jules Coleman’s account of corrective justice. For Lyons, the duty of repair is a duty a wrongdoer has to compensate the victim of his wrongdoing. For Coleman, corrective justice places a wrongdoer under a Hohfeldian “liability” to the victim, who has the Hohfeldian power to demand compensation, and thereby to impose a duty of compensation on the wrongdoer. That is, in corrective justice, a wrongdoer is subject to the victim’s Hohfeldian power to demand compensation. In Lyons’s view, however, the existence of a duty of repair does not depend on the victim’s demanding compensation. I am grateful to Coleman for helpful discussion of these ideas (in personal correspondence).

<sup>51</sup> Lyons, *supra* note 31, at 16-17.

<sup>52</sup> *Id.*

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cannot know how these differences in the overall nature of the society would have been reflected in their lives. For example, a more egalitarian school system would have given black children a better opportunity of getting a good education, but not every black child would have been better educated as a result. In the cases of those who suffered specific injustices in the courts or at the hands of people acting lawlessly, we can see what compensation might be owed. We can measure it on the basis of the injuries they suffered. Yet setting aside these identifiable cases, it seems it would be impossible in practice to determine the compensation owed to most of the currently living victims of Jim Crow.

Lyons therefore suggests that we need to abandon the goal of undoing the wrongs done to the victims of slavery and Jim Crow, since these wrongs cannot be undone. Instead, he suggests focusing on current inequities in life prospects between black Americans and white Americans since these inequities arguably are in large part the present-day result of slavery and Jim Crow. The duty of repair includes a duty to correct ongoing injustices and wrongs that are the result of wrongs for which we are accountable. Hence, given that the government is accountable for the injustices of slavery and Jim Crow, and given that the current inequities in life prospects are largely the result of the history of slavery and Jim Crow, Lyons concludes that the government has a duty to do what it can to correct these inequities. His specific proposal is the program he calls the National Rectification Project, which is aimed at equalizing the life prospects of children and at ensuring equal opportunity for all children.<sup>53</sup>

The key problem for my present purposes is that such a project could not be implemented without imposing costs on members of the general community. For example, they would be required to pay taxes to support it. Yet very few of these people are accountable in any way for the injustices of slavery and Jim Crow or for the current inequities in life prospects that resulted from the country's history of slavery and Jim Crow.<sup>54</sup> The duty of repair therefore does not require them to pay these costs. Nor does the duty of repair directly apply to current office holders in the government, for, perhaps with a few exceptions, they also are not personally accountable for Jim Crow and they could hardly be personally accountable for slavery. The duty of repair therefore does not require them to create a program aimed at eliminating the current inequities. It is one thing to show it is the duty of the government to redress wrongs for which *it* is accountable. It is another thing to show that members of the general community and government officials have a duty to work to redress wrongs for which the *government* is accountable. The objection alleges that this gap cannot be closed. Call this the "objection of the gap."

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<sup>53</sup> Lyons, *supra* note 1, at 184; Lyons, *supra* note 4, at 297. As we will see, Lyons's proposed program has both a "material" and a "moral" component. Lyons, *supra* note 2, at 1397-403.

<sup>54</sup> Lyons, *supra* note 4, at 296.

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One might think that the gap could be closed by invoking the obligation of citizens to obey the law. For if the National Rectification Project were enacted in law, citizens would be required by law to support it by paying taxes. Obviously, however, invoking the obligation to obey the law cannot ground the idea that citizens and government officials have a duty to *create* the laws that would be required to implement the Project. Moreover, Lyons denies that there is a general obligation to obey the law.<sup>55</sup> There may be an obligation to obey just laws, but the question we face here is whether a law would be just if it required people who are not in any way culpable for government injustices to contribute to rectifying those injustices. Therefore, an obligation to obey the law cannot close the gap that concerns us.

How else might it be closed? Lyons rejects two lines of argument that might seem tempting. First, he denies that the gap is closed by an automatic political accountability of citizens. He argues that citizens are not automatically accountable for the wrongs of their government, even if they were not party to them.<sup>56</sup> He is surely correct about this. Second, he denies that we can close the gap by invoking a duty to restore unjustly acquired benefits. He does agree that a person who has benefitted unjustly from a government wrong might be obligated on that basis to help redress the wrong. But he suggests that any formula for redistributing benefits that were unjustly acquired as a result of slavery and Jim Crow would be “practically impossible to apply” because doing so would depend on assessing the truth of “imponderable counterfactuals” about what would have happened in the absence of slavery and Jim Crow. It is not plausible, for instance, to presume that all white Americans or that only white Americans benefitted from slavery and Jim Crow.<sup>57</sup> Some individuals surely are better off than they would have been if slavery or Jim Crow had not existed, but to determine how much better off they are, we would have to look at the details of each case, and in each case we might find ourselves unable to evaluate key counterfactuals. Hence, the duty to restore unjustly acquired benefits cannot establish that members of the political community have an obligation, other things being equal, to support or to contribute to the National Rectification Project. Neither of these lines of argument can close the gap.

It might seem that there is no gap in the case of government officials since their offices entail certain duties, including, arguably, a duty to do their part to discharge the duties of the government. So if the government has a duty to redress wrongs for which it is accountable, its officials have derivative duties to do their parts in bringing it about that these wrongs are redressed. This may be correct, but the challenge is to explain why it is correct. We cannot answer the challenge by invoking the idea that office holders voluntarily accept certain duties in accepting their offices, because it is not difficult to imagine political

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<sup>55</sup> Lyons, *supra* note 31, at 8.

<sup>56</sup> *Id.* at 18.

<sup>57</sup> Lyons, *supra* note 2, at 1382-83, 1385; Lyons, *supra* note 31, at 18.

officials explicitly refusing, in taking office, to accept a duty to redress the past (alleged) wrongs of the government. They might benefit personally from the status quo, and so they might oppose redressing past wrongs.

#### IV. A DUTY OF CIVIC RESPONSIBILITY

Lyons's initial response to the objection of the gap, in a 1995 paper, is to invoke the duty of justice, a requirement to promote justice and to right injustice regardless of who is accountable for it. As Lyons understands it, this duty places no weight on borders or locations. We have no stronger duty to promote justice in our own community than in other communities. Nevertheless, Lyons contends, in practice, we promote justice most effectively by working in our own community, since we know it and live there.<sup>58</sup> In short, Lyons suggests, to justify requiring people to contribute to the National Rectification Project, we do not have to show their complicity in the injustices of slavery and Jim Crow. We only have to invoke the duty of justice.

The trouble with this response is that the duty of justice does not require anyone to contribute specifically to rectifying the injustices and inequities that flowed from past wrongs of the United States government. Nor does it require anyone to contribute to bringing about justice in the United States by working to ensure that there are laws and policies that promote equal opportunity among all children in the country. American citizens and government officials might discharge the duty of justice by devoting energy to eliminating injustices that exist in some other wealthy country, such as Australia or France. So, the duty of justice does not close the gap that concerns us. To close the gap, what we need is a showing that the duty of repair that falls on the United States government implies that current officials of the government and current members of the political community have a duty to contribute to enabling the government to discharge its duty.

In a more recent paper, Lyons argues that we can justify requiring members of the political community to contribute to the National Rectification Project by invoking their "civic responsibility."<sup>59</sup> He suggests that the obligations of members of a political community include a duty to support just public policies of *that* community, especially those designed to rectify inequities resulting from *that* community's past public policies.<sup>60</sup> Presumably, this duty also includes a duty of public officials to create and implement policies designed to achieve justice in the country and to rectify past injustices, as required of the government by the duty of repair. Again, Lyons insists, the idea that citizens have a civic responsibility of this kind does not presuppose that they are in any way culpable or accountable for past injustices of their country or government.<sup>61</sup>

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<sup>58</sup> Lyons, *supra* note 31, at 19.

<sup>59</sup> Lyons, *supra* note 1, at 177, 184.

<sup>60</sup> *See id.* at 184.

<sup>61</sup> *Id.* at 177.

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In the 1995 paper that I mentioned before, Lyons rejected the idea that citizens have an unqualified obligation to help rectify past injustices of their government. He pointed out, for instance, that it is implausible that a former slave is obligated to help create a system to right the wrongs of slavery, including the wrongs done by the government to him. In general, he suggested, victims of government wrongdoing do not have “an unqualified duty” to help redress these wrongs.<sup>62</sup> Accordingly, our civic responsibility can include only a *qualified* and *defeasible* duty to help redress past wrongdoing of the government. Even victims of past wrongdoing have such a duty because they have a duty to support just policies of the government, and one such policy might be aimed at rectifying the wrongs of which they are victims. But they might not have a duty to undergo personal costs in supporting a policy aimed at rectifying injustices of which they were victims. Would Japanese Americans who were unjustly interned during World War II have a duty to pay taxes to enable the government to compensate themselves for having been unjustly interned? Perhaps their taxes should be reduced proportionately. There is no doubt that a fully developed account of the duties entailed by our civic responsibility would be qualified in various ways to deal with a variety of complications.

The challenge, however, is to *support* the proposition that citizens have a civic responsibility that includes a duty to support just policies of their government. I will briefly take up this task, arguing first for an obligation to “contribute,” and second for Lyons’s duty of civic responsibility.

We noticed before that the actions of collective entities are constituted by actions of individual persons. Because of this, it would be ineffective and pointless for morality to require a collective entity to do something unless it also required relevant persons to do the things, or to contribute to enabling the things to be done, that would constitute the collective entity’s fulfilling its requirement. I will call this the “duty to contribute.”<sup>63</sup> It is a conditional, defeasible requirement. It entails that people who have appropriate roles in a collective entity, or who are appropriately situated, are morally required (other things being equal) to do their parts in contributing to that entity’s doing what it is morally required to do. There would be a kind of incoherence in morality if there were no such requirement.

Suppose that there were no such requirement. In that case, a collective entity could have a moral obligation without any members having relevantly corresponding obligations – obligations to do their parts in contributing to the collective entity’s fulfilling its obligation. Consider what this would mean. Let me assume for present purposes that an agent has a defeasible or *pro tanto*

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<sup>62</sup> Lyons, *supra* note 31, at 18.

<sup>63</sup> I argued for such a duty in Chapter Seven of my doctoral dissertation. David Copp, *Individuals, Collectives and Moral Agency* (Jan. 1976) (unpublished Ph.D. dissertation, Cornell University) (on file with Cornell University). In the dissertation, I dealt with various complications that I ignore here in order to simplify matters.

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moral obligation to do something if and only if there is a moral reason for the agent to do it. Recall that the actions of collective entities are constituted by actions of persons; typically they are constituted by actions of members of the collective or by actions of people having official roles in the collective. Given these ideas, if there is no duty to contribute, it follows that a collective entity might be morally obligated to do something even though there is no moral reason for the relevant individual agents to do the things that they would need to do in order for the collective to fulfill its obligation. Even if Congress is morally required to do something, this fact might be completely irrelevant to the issue of what members of Congress ought to do. Congress might be morally required to enact a piece of legislation, yet there might be no moral reason at all for the members of Congress to vote in favor of the legislation – unless, by good fortune, their personal circumstances happened to be such that, on some other ground, there was a moral reason for them so to act. This is a problematic and incoherent picture.<sup>64</sup>

If this is correct, we should conclude that it is not possible for a collective entity to be morally obliged to do something unless some relevant persons have at least a defeasible moral obligation to take part in bringing it about that the collective fulfills its obligation. This explains how the moral obligations of a collective entity guide the actions of its members by providing moral reasons for them to contribute to the collective's fulfilling its obligation. It does not guarantee that any member is required, all things considered, to contribute, because they may have conflicting moral obligations of their own. Yet it does guarantee that at least some members have moral reasons to contribute. So, I claim, when a collective entity has a duty, some members have at least a defeasible duty to contribute to bringing it about that the collective fulfills its duty.<sup>65</sup>

This argument for the duty to contribute is a metaethical argument based on abstract considerations about the structure of morality, on the assumption that collective entities can have moral requirements. I think a similar argument could be constructed based on the "society-centered" metaethical view that I favor and that I have proposed in other work.<sup>66</sup> These arguments are not moral arguments, but it seems to me that there is a closely related moral argument. For if a collective of which you are a member is morally required to do something, and if you are in a position to contribute to its doing that thing, this

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<sup>64</sup> I offered roughly this argument before, in Copp, *The Collective Moral Autonomy Thesis*, *supra* note 14, at 384-85.

<sup>65</sup> *See id.* (arguing additionally that no relevantly stronger thesis is plausible).

<sup>66</sup> *See* DAVID COPP, MORALITY IN A NATURAL WORLD 13-21 (2007); DAVID COPP, MORALITY, NORMATIVITY, AND SOCIETY 4 (1995). For an argument based on the society-centered view for the conclusion that there is a defeasible duty to obey "morally innocent" law, see Copp, *supra* note 44, at 36-39. I believe a structurally similar argument could support the conclusion that there is a defeasible duty to contribute to the state's fulfilling its moral duties.

by itself seems to me to be a moral reason to contribute. Thus, if Congress is morally required to enact a piece of legislation, this intuitively is a moral reason for its members to vote accordingly. And if so, then members have a defeasible obligation to vote accordingly – given that, as I understand things here, to have a defeasible moral obligation to do something is just to have a moral reason to do it.

Lyons's duty of civic responsibility follows from the duty to contribute. For if the government is required to do something as a matter of justice or as a matter of rectifying past injustices, then office holders, citizens, and other members of the general community are in a position to do things that would contribute to enabling the government to fulfill its requirement. Hence, given the duty to contribute, they have a defeasible duty to do so. This is the duty of civic responsibility. That is, the duty to contribute entails the duty of civic responsibility that Lyons requires for his argument.

Given that there is this duty, and assuming that Lyons's arguments are successful, members of the general community in the United States have a duty, other things being equal, to contribute to enabling the government to implement the National Rectification Project. They have a duty to favor the project, to contribute taxes to support it, and so on. And if the government does not implement the project, they have a duty to engage in political activity directed to getting the government to implement it.

#### V. THE OBJECTION FROM MORAL GUILT

One might object that the National Rectification Project does not adequately address the moral guilt that, on Lyons's historical evidence, the United States government bears for slavery and Jim Crow. Lyons speaks of "accountability" rather than "guilt," but in any event, given his argument, the government is culpable for slavery and Jim Crow. It is guilty of serious moral injustices. Slavery and Jim Crow were parts of a brutal systematic program of racial subjugation that was supported, sustained, and permitted over an extended period of time by the federal government. The government bears guilt for this, and it is reasonable to demand that it adequately respond to this guilt. The objection is that the National Rectification Project is an inadequate response.

One might reply that it is impossible to expunge moral guilt for historical injustices of the scale we are discussing, and that it is a mistake to demand such a thing. But the objection does not depend on the idea that guilt must be expunged. It rests merely on the demand that the government acknowledge the guilt and make an effort to rehabilitate its status as an agent of good standing in the moral community.

It is worth stressing again that the idea that the government bears guilt for the historical injustices of slavery and Jim Crow does not mean that currently living people bear guilt for these injustices. Some, though not all, government officials were involved in implementing or sustaining these programs, and these people presumably were morally guilty for what they did. However, neither the guilt of these people nor the guilt of the government has been

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inherited by currently living people as if it were a bit of property or as if guilt could be communicated by some mysterious infectious process.<sup>67</sup> To be sure, it would be morally untoward for a person who identifies with the United States and gives allegiance to its government to acknowledge that the government is accountable for the historical injustices of slavery and Jim Crow, and yet not feel ashamed of this aspect of the history. But that raises an issue in moral psychology that lies outside the scope of this paper.<sup>68</sup>

To see why one might think that the National Rectification Project is an inadequate response to the government's guilt, recall that the Project is aimed at equalizing the life prospects of children and at ensuring equal opportunity for all children.<sup>69</sup> On Lyons's showing, the Project would be justified on this basis even in the absence of government accountability for slavery and Jim Crow. Suppose history had been radically different. Suppose that the current inequities in life prospects between black and white children had resulted from a sequence of events that did not include any wrongdoing by the government. On Lyons's showing, the government would still be obligated to try to eliminate these inequities. For he thinks that the society as a whole has an obligation in justice to ensure equal opportunity for all children and that the government accordingly has a duty to promote equal opportunity. This is a duty that Lyons holds to be based in considerations of fairness, and not to depend on the duty of repair.<sup>70</sup> But if the Project would be equally appropriate in the absence of slavery and Jim Crow, then it cannot be an adequate response to the government's guilt for slavery and Jim Crow.

Consider a roughly analogous case. Suppose that I kidnap my own child from his mother, from whom I am estranged, and keep the child a prisoner in a dark room for a decade. It is easy to imagine that this experience will leave my child with severe psychological problems. Suppose that, after I release him, I pay for psychotherapy to help him deal with these problems. It should be clear that this is not a morally sufficient response to the wrong I committed. For as his father, I ought to help him deal with his psychological difficulties no matter how they came about. Similarly, one might reasonably suggest the National Rectification Project is not an adequate moral response to the accountability of the government for the program of racial subjugation that it pursued. For, if Lyons is correct, the Project is morally called for anyway, as a way to correct inequities in children's life prospects.

Of course, some philosophers would reject Lyons's contention that the government has a duty in justice to promote equal opportunity for all children. Philosophers who take such a view would not agree that the National Rectification Project would be required anyway, even in the absence of

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<sup>67</sup> See Lyons, *supra* note 2, at 1378; Lyons, *supra* note 31, at 18.

<sup>68</sup> See generally Marina A. L. Oshana, *Moral Taint*, 37 METAPHILOSOPHY 353 (2006).

<sup>69</sup> Lyons, *supra* note 2, at 1398-401; Lyons, *supra* note 1, at 184; Lyons, *supra* note 4, at 296-97.

<sup>70</sup> See Lyons, *supra* note 2, at 1397-98; Lyons, *supra* note 4, at 297.

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government accountability for slavery and Jim Crow. They therefore could not argue on this ground that the Project is an inadequate response to the government's guilt. But there is a more fundamental reason to worry that the Project is inadequate.

Suppose I have cut your car's brake lines just as a prank, without any justification or excuse. I should warn you about your brakes, help you to repair them, compensate you to the extent that I can for any harm or damage that you or anyone else has suffered, and I should apologize. The apology is the important thing for my purposes here. After warning you and compensating you, it would be inappropriate for me to go blithely on my way, as if nothing of any concern had happened. The wrong of cutting your brake lines is perhaps trivial in itself, but the result could have been a serious accident. I will not have adequately responded to the wrong I committed unless I apologize, and it seems that a full and sincere apology would require that I acknowledge the wrong, express my regret, and resolve to do better. Now consider the general case. I think the following principle of rehabilitation is on the right track. An agent that is accountable for having wronged someone must put an end to the wrong and its wrongful consequences, compensate the victim to the extent it can, and do what it can to redeem or rehabilitate its status as an agent of good standing in the moral community. Apologizing is only the most obvious thing a person can do to help to redeem her moral standing.

The principle of rehabilitation suggests that the National Rectification Project is an insufficient response to the government's accountability for the injustices of slavery and Jim Crow. The objection is not that the Project fails to compensate the victims adequately, for Lyons is surely correct that this cannot be done. Lyons's proposal acknowledges the practical impossibility of compensation since it aims to eliminate current inequities in the life prospects of children that are the present-day results of slavery and Jim Crow, rather than to compensate the victims of the historical injustices. This is one of the virtues of his proposal. But it does not address the objection that Lyons's Project would do nothing to rehabilitate the status of the government as an agent of good standing in the moral community.

It is perhaps true that if the government took up the Project it would show that it had abandoned its historical support for racial hierarchy and subjugation. Because of this, Lyons might have hoped that the Project would be viewed as a way to rehabilitate the moral standing of the government. The objection, however, is that merely adopting the Project would be insufficient.

There is an aspect of the Rectification Project that I have been ignoring. Lyons points out that the legacy of slavery and Jim Crow includes, in addition to material inequities in life prospects between black and white Americans, the existence of widespread, persistent racist attitudes.<sup>71</sup> Racist attitudes have been expressed in a wide range of actions, including "systematic insults,

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<sup>71</sup> See Lyons, *supra* note 2, at 1402 ("Racist derogation has been a central feature of racial subjugation in the United States.").

indignities, and humiliations,” and the history of racial subjugation has included the “political exclusion and social subordination” of African Americans as well as “harassment, terror, murder, rape, and public lynching.”<sup>72</sup> Lyons says,

It would seem, then, that an essential element of the required rectification is an informed acknowledgment of the moral as well as material aspects of the wrongs of slavery and Jim Crow and an effective undertaking to combat racism. It is, moreover, imperative that the moral aspects of racial subordination in the United States be addressed directly. The persistence of racism helps to account for the lack of political will to implement a genuine reconstruction.<sup>73</sup>

Lyons seems here to be saying that the Rectification Project cannot hope to eradicate the damaging legacy of slavery and Jim Crow if racism continues to be a significant factor in American politics and society. For this reason, one aspect of the Project, the “moral aspect,” must be a program of combating racism.

One might also read Lyons, however, as saying that the National Rectification Project must address the government’s guilt. He insists that the government needs to make “an informed acknowledgment . . . of the wrongs of slavery and Jim Crow.”<sup>74</sup> This brings him close to directly speaking to the objection from guilt. If he had added that, beyond simply acknowledging the wrongs, the government must acknowledge *its complicity* in the wrongs, express regret, and apologize, then there would be no room to object that the Project is an insufficient response to the government’s accountability.

In any event, whatever Lyons intended to say, we can perhaps agree with the substantive worry that motivates the objection from guilt. That is, we can perhaps agree that the government must work to rehabilitate its status as an agent of good standing in the moral community. A program designed to equalize the opportunity of all children and to combat racism would not by itself look back to the historical injustices in a way that acknowledges culpability and expresses appropriate regret.

Of course, the idea is not that the government must *feel* regret. Rather, it must behave in ways that are appropriate given that it acknowledges its culpability. This requirement is obviously vague. An example might be the Australian government’s apology in 2008 for its historical treatment of Aboriginal persons.<sup>75</sup> Another example might be Germany’s criminalizing Holocaust denial and outlawing the exhibition of the swastika.<sup>76</sup> It might be

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<sup>72</sup> *Id.*

<sup>73</sup> *Id.* at 1403.

<sup>74</sup> *Id.*

<sup>75</sup> See Tim Johnston, *Australia Says ‘Sorry’ to Aborigines for Mistreatment*, N.Y. TIMES, Feb. 13, 2008, at A14.

<sup>76</sup> See, e.g., *Jail for German Holocaust Denier*, BBC NEWS, Feb. 15, 2007, <http://news.bbc.co.uk/2/hi/europe/6364951.stm>.

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enough if a government were to denounce its past wrongs. There is no formula an agent can follow, in the wake of wrongdoing, to rehabilitate its status as an agent of good standing.

There are a variety of steps that the government might take instead of, or in addition to, an apology. It could encourage historically accurate teaching that acknowledges the injustices of slavery and Jim Crow and the government's complicity in the injustices. It could fund research into the history of race relations in the United States. It could begin an open and effective program of opposing racial hierarchy and of supporting racial equality around the world. The government's objective should be, in part, to redeem its moral standing. With this objective, it should acknowledge the injustices and its complicity in them, express its regret, and show a determination to oppose systems of racial subordination in the future.

Some people might view a government apology for slavery and Jim Crow with cynicism, even if it were accompanied by adoption of something like the National Rectification Project. Moreover, a President would face fierce political opposition from certain groups if she proposed to apologize. This might help to explain why Lyons did not explicitly propose that the government apologize. The National Rectification Project would produce real improvements in the life prospects of many children, and it would be foolish to jeopardize this achievement by tying the Project to what could be a politically-sensitive apology. Hence, even if I am correct that something like an apology is morally called for, it might be a mistake to apologize, all things considered.

#### CONCLUSION

David Lyons has provided a persuasive, detailed, and insightful account of the history of racial oppression in the United States. On his account, the systems of slavery and Jim Crow were parts of a brutal systematic program of racial subordination. This program was supported, sustained, and permitted over many decades by the federal government. Lyons argues that the government is the primary currently existing party that is accountable for the injustices of slavery and Jim Crow, and that it is reasonable to hold it to account. He contends, moreover, that wrongdoers have a duty of repair; a duty to undo their wrongs (or at least to end them); to alleviate them; and to compensate the victims as fully as they can be compensated. As Lyons points out, it would be practically impossible to compensate the victims of slavery and Jim Crow. Nevertheless, the existing inequities in life prospects between black and white children are among the present-day unjust effects of these systems. Lyons therefore proposes that the duty of repair requires a program of National Rectification aimed at equalizing the life prospects of children and at combating the poison of racism. He argues that such a program is also required by considerations of fairness and justice.

I have tried to defend Lyons's proposal from several objections. Agency individualism would deny that the government could have done anything, much less sustained an unjust system of racial oppression. I argued that this

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objection can be neutralized. Moral individualism would deny that the government could be morally accountable for anything, since it is not a moral agent. I also argued that this objection is unsuccessful. The third objection is that there is an unbridgeable gap between the claim that the government is obligated to adopt the National Rectification Project and the claim that people are obligated to contribute to supporting the Project. I defended Lyons's proposal that members of a political community have a duty of civic responsibility to contribute to their government's doing what justice requires.

The final objection that I addressed is the objection from moral guilt. It argues that the National Rectification Project would be an inadequate response to the moral guilt that the government bears for its history of supporting slavery and Jim Crow. I think that this objection is well-motivated, but it is not an objection to the National Rectification Project. It rather calls for the Project to include efforts by the government to rehabilitate its status as an agent of good standing in the moral community. I proposed a principle of rehabilitation, which can be viewed as subsuming Lyons's duty of repair. According to this principle, the government must put an end to the injustices that are due to slavery and Jim Crow and compensate victims to the extent that it can. The principle requires in addition that the government must do what it can to rehabilitate its status as an agent of good standing in the moral community. On this understanding, if the government were to take up the Project, it would acknowledge its complicity in the injustices of slavery and Jim Crow, express its regret, and oppose systems of racial subordination in the future. It would apologize.

It is important to bear in mind that the duties implied by the principle of rehabilitation are defeasible. We have reached the conclusion that the government ought to apologize for its role in the historical injustices of slavery and Jim Crow, and more importantly, attempt to rectify some of the wrongful consequences of slavery and Jim Crow. These duties must be balanced against a variety of other duties, and they can be separated. It would be possible to do either of these things without doing the other, and it would be possible to implement a program aimed to equalize opportunity without justifying it as a response to historical injustice. Before deciding to take these steps, an administration would need to consider the political feasibility of doing so; it would need to order its priorities, and assess the risk of adverse consequences. Deciding these matters would require political and moral wisdom that I do not pretend to have.<sup>77</sup>

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<sup>77</sup> Steven Davis pressed me to acknowledge the points I am making in this concluding paragraph.