

Diversity, Collective Responsibility, and the Problem of Control

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ABSTRACT

Diversity in U.S. colleges and universities is a worthy goal. However, this goal cannot be meaningfully achieved unless members of certain socially defined groups are held collectively liable for practices that caused the unjust exclusion of some socially defined racial groups.

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INTRODUCTION

There was a time in the United States when very few people of color and women were represented in many American institutions. There has been some progress, but we still have a long way to go.

In today's political climate, many people are reluctant to publicly oppose diversifying the workplace. However, many are willing to challenge or criticize the way in which we go about diversifying workplaces. Some of the motives for rejecting programs designed to achieve a diverse work force are not noble, but others may truly be opposed to the means adopted or they may be innocently operating with a distorted sense of the existing social realities. However, before we can understand or assess their reluctance, we must be clear about the existing social realities concerning opportunities for racial minorities and women. As

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Richard Wasserstrom tells us in an important article that is still relevant today,¹ racism and sexism are harmful to the life prospects of many citizens. Racism often involves overt individual acts, but sometimes it is covert and takes an institutional form.

In Part I, I shall briefly sketch the goal of achieving diversity in American society. Part II will comment on diversity as an effort to include diverse ideas in American institutions or as an effort to include people who have been unfairly excluded. Then, in Part III, I will briefly comment on who is responsible for working to bring about diverse institutions. I next develop an argument in Part IV for holding socially defined groups morally liable for unjust social practices. Finally, in Part V, I shall briefly comment on how cultural ignorance and the debate over the moral standing of bystanders relates to the problem of collective responsibility.

I. ACADEMIC DIVERSITY

The word “diversity” is associated with ideas and people. Some people believe that American institutions are diverse only if they embody different and varied ideas. Others believe the goal of diversity is an institution with people from various ethnic, gender, and racial backgrounds. The writer Danny Weil wrote:

Understanding diversity is to understand diversity of thought, action, and conditions relative to pressing social and institutional power structures. It is to understand the logic of thinking, from the point of view of gender groups, the aged, the disabled, newly arriving immigrants, people of color, and economically disadvantaged social classes. By engaging in critical culture examination and analysis, students can free themselves from unexamined biases and prejudices, while at the same time significantly enhance and expand their abilities to think and act fairmindedly and critically about and with other culturally diverse viewpoints on historical and contemporary reality. Students come to see diversity as a (sic) strength as opposed to a plague.²

Clearly the optimal state of affairs would be institutions that are just and non-homogeneous.

There are two arguments for why we should focus on ideas rather than people if our goal is to achieve diversity. The first line of argument is pragmatic. The supporters maintain that people are more likely to support diversity if the focus is ideas rather than people. The second is substantive. It claims that the argument for diversity in terms of people depends on holding people morally liable. Supporters of this view believe we won't be able to integrate people of different races and genders in a meaningful way into existing institutions without holding

1. Richard Wasserstrom, *Racism, Sexism, and Preferential Treatment: An Approach to the Topics*, 24 UCLA L. REV. 581 (1976-1977).

2. Danny Weil, *Towards a Critical Multicultural Literacy*, 13 INQUIRY: CRITICAL THINKING ACROSS DISCIPLINES 14, 15 (1994).

people liable for past practices that unfairly excluded them. But this argument is not a philosophical argument that can be employed to justify the goals of diversity. Clearly utilitarians, and other consequentialists, have argued that integrating American institutions is the morally good or right thing to do even if it is highly unlikely that it requires holding people liable.

Political scientist Iris Young recently responded to the debate over the necessity of holding people liable in addressing social injustice. Her arguments about who is responsible for working to achieve diversity are not intended to give a purely philosophical justification for who has the duty to be the agent of change. Her goal is to provide a clear and consistent justification that is also practical. Early in her book *Responsibility for Justice*, she asked the following question: “[H]ow should we as individuals think about our own responsibility in relation to social justice?”³ Her answer is simple and direct: In virtue of our everyday activities we share responsibility for unjust processes, but we should not be blamed or held liable for wrongdoing. According to Young, we have a “political responsibility” to address structural injustices to which we have an intimate connection. However, we don’t bear any moral liability for these injustices. Young’s argument has had a great deal of uptake by political scientists who wrestle with the issue of global justice, but it has not been widely discussed by philosophers who have discussed collective responsibility. And, as I said above, this is because her focus was on change rather than mere description.

II. DIVERSITY: BODIES OR IDEAS?

In this part, I shall briefly discuss the merits of seeing diversity as the inclusion of diverse ideas as well as the inclusion of people who have historically been excluded. People who favor the ideas approach claim that whatever the institution, we should strive for excellence. They want the best ideas to triumph irrespective of who espouses them. This claim has the ring of an obvious truth, but we need to look more closely into it.

Why do we need bodies of color or women in our institutions? Is the answer just simply they are grossly underrepresented or is it because they are grossly underrepresented due to unfair exclusion. For instance, some people think that the small number of women in the National Football League is not due to injustice. Similar conclusions have been reached about certain racial groups in some disciplines or vocations. Is it possible that the procedure could exclude certain bodies, but not important ideas (qualifications)? Maybe the focus should not be the lack of diverse bodies, but the loss of different and important new ideas. Given the long history of racism and sexism, many people find it extremely difficult to connect important ideas with certain bodies. This practice has had numerous negative moral, social, and political consequences, *e.g.*, blacks believe X and whites believe not X.

3. IRIS YOUNG, *RESPONSIBILITY FOR JUSTICE* 95–122 (2011).

One of the negative consequences has been a lack of inclusion (diversity) by members of certain groups that the U.S. Supreme Court has declared worthy of close scrutiny. A popular argument used to achieve faculty diversity is the “role model argument.”⁴ However, this argument may miss the mark if the goal of diversity is ideas rather than bodies. What is the role model argument? According to Anita Allen, the goal of the role model argument is to provide exemplars for students of color and women to emulate.⁵ But are we simply providing bodies to convince students that people who look like them can be professors? Anita Allen seems to be worried that this may be the case. Therefore, she has some concerns about using the role model argument to justify preferential hiring. She worries that the role model argument may unintentionally imply that the role models don’t bring novel and important ideas to the dance. She fears that the role model argument might imply that faculty members of color are not hired for their ideas, but for their bodies.⁶

Unfortunately, Professor Allen may be right. It would be interesting to know whether most faculty members believe that people of color are hired for the importance or uniqueness of their ideas. Is the black Kant scholar hired because of the excellence of her ideas? I would love to see candid answers by faculty members to this question. If the answer is no, then the prevailing perception would be that it is probably about bodies rather than ideas.

The role model argument is a forward-looking consequentialist argument for faculty diversity. If what I have said about this argument is true, then it may unintentionally cast doubt on the faculty members who are hired using this rationale. Some other consequentialist/forward-looking arguments may suffer the same fate, *e.g.*, ones that claim diversity contributes to the self-awareness of students and prepares students for a real diverse world. However, in a society where intellectual qualifications of people of color and women have been and are still called into question, the assumption may still be that people who are hired because they help to achieve these worthy goals and not for the worth of their ideas. With the liability argument, there is no presumption that faculty members of color hired are not employed for their scholarly accomplishments. Quite to the contrary, the presumption is that people like W.E.B. DuBois, the famous sociologists, had novel and worthy ideas, but they were not hired because they were not given what they were entitled to have, a job because of their qualifications. History shows that qualified women and people of color have experienced discrimination in faculty hiring. Some of this discrimination was overt and some was due to implicit bias embedded in the structure of institutions. Some people actively perpetuate the injustice while others are merely complicit in it.

4. See, *e.g.*, Judith Jarvis Thomson, *Preferential Hiring*, in *EQUALITY AND PREFERENTIAL TREATMENT* 19 (Marshall Cohen et al. eds., 1977).

5. Anita L. Allen, *The Role Model Argument or Faculty Diversity*, in *AFRICAN AMERICAN PERSPECTIVES AND PHILOSOPHICAL TRADITIONS* 267 (John Pittman ed., 1997).

6. *Id.* at 279.

There has been progress, but injustices remain. In a recent article, Beckie Supiano discusses racial disparities in higher education. She claims nearly 80 percent of full-time faculty members are white, citing the National Center for Education Statistics.⁷ These numbers may be surprising and discouraging to some, but does the race of the instructor or professor really matter? Some critics would argue that these numbers don't show that injustices result in underrepresentation. Some would argue that it is unreasonable to think that gender or race of a faculty member is what determines the lack of representation. In fact, some people believe that the small numbers are due to the small number of qualified people in the pipeline. However, this response just seems to pass the buck. There still seem to be good reasons for thinking that the poor representation is the result of injustice. And, as such, a concerted effort can eliminate these harmful perceptions.

III. THE RESPONSIBILITY FOR DIVERSITY

In order to diversify the workforce someone must take responsibility. Is it the personal responsibility of each American? Some people say "yes." They claim that each person has to do their part. However, others claim that there must be some collective effort if we are to bring about meaningful change. But what does this mean? Is it a kind of shared responsibility described by Iris Young?⁸ Perhaps the responsibility rests with people whose wrongful actions have in some way created the present unjust reality for members of certain racial groups. I favor the second approach, but maybe this backward-looking approach to address the lack of diversity is the wrong way to look at the problem. Thoughtful people have argued that our approach should be forward-looking. The supporters of the forward-looking approach don't see the value in attributing fault or blame. They contend we are better served by seeing how we all can benefit from making the workforce diverse rather than trying to affix blame or responsibility for the lack of diversity. However, research shows that most white Americans don't embrace diversity efforts even when they are described in forward-looking terms. They are unwilling to make the large or small sacrifices to bring about diversity even when doing so increases social utility or makes society more egalitarian.

In American society, most people are not willing to voluntarily forego their own perceived self-interest in order to promote important public goods, such as defense and clean air. I would add a diverse society to this list. The problem with getting rational individuals to contribute to a public good is that the good can be brought about without the contribution of every person in the group. Therefore, each person can reason that they don't need to contribute in order to achieve a good result. However, if enough people don't contribute, we don't obtain the

7. Beckie Supiano, *Racial Disparities in Higher Education: An Overview*, CHRON. HIGHER EDUC. (Nov. 10, 2015), <https://www.chronicle.com/article/Racial-Disparities-in-Higher/234129> [<https://perma.cc/MM3Y-BGX5>].

8. YOUNG, *supra* note 3, at 110.

public good. But if we get enough people to contribute, some people who don't contribute will still benefit. This creates what has been referred to as the free rider problem. This problem is relevant today, but it was recognized as a problem hundreds of years ago. David Hume wrote:

Two neighbours may agree to drain a meadow, which they possess in common; because 'tis easy for them to know each other's mind; and each must perceive, that the immediate consequences of his failing in his part, is, the abandoning the whole project. But 'tis very difficult, and indeed impossible, that a thousand persons shou'd agree in any such action, it being difficult for them to concert so complicated a design, and still more difficult for them to execute it; while each seeks a pretext to free himself of the trouble and expence, and wou'd lay the whole burdens on others.⁹

This is why many commentators believe that a purely volunteer army will not work or that we can't achieve the goal of fair and open housing without the Fair Housing Act. A draft or forced conscription is seen as the only just and workable way of populating an army and fair housing laws that hold individuals and groups liable because unjust discrimination in housing are seen as indispensable. Similarly, I don't believe that people will step up to a shared responsibility to address present inequities that are results of prolonged and unjust legal and social practices that place members of certain groups at an economic and social disadvantage. Ronald Dworkin proposes a political ideal to address this problem.¹⁰ According to Dworkin, citizens should be compensated for things in their lives that are beyond their control because these things are not the result of their choices. Unfortunately, Dworkin does not see that many things that appear to be a matter of free choice are really the result of people being placed in circumstances that limit the choices that are available to them. Thus, I don't believe that Young's notion of shared responsibility without liability or Dworkin's principle of equal concern and respect are able to address the present injustices African Americans experience. In order to address these injustices, I believe an adequate account of collective responsibility that involves moral liability are required. Although the supporters of collective or shared responsibility without liability maintain that some of the agents in the group can't be held liable, they do sensibly admit that not all of the members can avoid liability. Clearly certain influential agents with role and task responsibilities can be held liable. Over two decades ago, Larry May, a supporter of collective responsibility, claimed that with large socially constructed groups with members who occupy different positions and roles "[t]he concept of responsibility does not neatly fit the division of justice-oriented obligations and virtue oriented ideals."¹¹ I agree with May. In the next

9. DAVID HUME, A TREATISE OF HUMAN NATURE 538 (L.A. Shelby-Bigge and P.H. Nidditch eds., 1978) (1739-40).

10. RONALD DWORKIN, TAKING RIGHTS SERIOUSLY, 76-80, 181-82 (1978).

11. LARRY MAY, SHARED RESPONSIBILITY 34 (1992).

and final part, I will present and refine an account of collective moral liability that I developed in 1986.¹²

IV. DIVERSITY: THE RESPONSIBILITY OF GROUPS

For seven decades philosophers have debated the issue of collective responsibility.¹³ Supporters of collective responsibility reject an absolute commitment to methodological individualism. They believe that some groups can be held responsible even when the responsibility does not reduce to the behavior of each member of the group. In the literature on the moral status of groups, groups have been seen as more than a collection of individuals. However, unlike groups of non-persons, when persons are involved, we care about the relationship between members of the group. In order for the group to have moral significance, the group must exhibit certain features. Various philosophers have defined these features in different ways. Some of these features include: formal decision-making procedures (Peter French) clearly stated rules of conduct that group members endorse (Larry May), solidarity between members of the group (Joel Feinberg), and overt and implicit interest shared by members of the group (Howard McGary).¹⁴

One of the pertinent issues in the collective responsibility debate is how should groups be characterized. Or, in other words, when does a collection of individuals constitute a group that can have moral and legal predicates assigned to it? Can we hold clubs, corporations, countries, families, genders, or races responsible? Many theorists believe that when a group is loosely or randomly organized, it cannot satisfy two conditions thought necessary for collective responsibility: causality and an opportunity for control. Both conditions have intuitive appeal. If I am thought to be responsible for the broken window, then I must have played some causal role in the breaking of the window. And if I am responsible for a broken window, then I must have had control over the actions that lead to the window breaking.

Both conditions that are thought to be necessary for collective responsibility are important and controversial. However, in the present discussion, I will concentrate on the control requirement. Critics of collective responsibility have questioned whether or not the control requirement can be satisfied when the groups in question are loosely organized—like genders and races.

David A. Johnson has insightfully remarked that in current discussions of group rights and group responsibility most of the focus has been on the influence

12. Howard McGary, *Morality and Collective Liability*, 20 J. VALUE INQUIRY 157 (1986).

13. See Marion Smiley, *Collective Responsibility*, STANFORD ENCYCLOPEDIA OF PHILOSOPHY (Mar. 27, 2017), <https://plato.stanford.edu/archives/sum2017/entries/collective-responsibility/> [<https://perma.cc/NBL8-WPX3>].

14. See COLLECTIVE RESPONSIBILITY: FIVE DECADES OF DEBATE IN THEORETICAL AND APPLIED ETHICS (Larry May & Stacey Hoffman eds., 1991).

that groups have exerted on other groups.¹⁵ But he also tells us that we should be concerned about the influence that group members have on each other as well. I wholeheartedly agree. In our rush to reject tribalism, we often fail to see how group members shape each other's lives. The influences can be positive or negative. Cultural, gender and racial groups are all socially constructed.¹⁶ Since they are, I reject all naturalistic explanations of why members of these groups interact with each other in the ways that they do. Groups are made up of two or more individuals who interact and influence one another because of social interactions.¹⁷

Achieving just institutions that are more diverse in terms of race and gender designations may be different from achieving diverse institutions. "Diversity" has become a buzzword in contemporary American society. The basic idea is that diversity makes an institution or society stronger. Since the diversity ideal is not seen as rights-based, it is justified on consequentialist grounds. It is in opposition to rights-based remedies that focus on fault or wrongdoing. Rights-based remedies claim that gender and racial justice can only be achieved by respecting distribution principles that respect the rights of all Americans, and by repairing present injustices caused by past wrongdoing. On the other hand, the diversity proposal insists that we are better served by focusing on the good consequences that will be achieved by not attempting to disentangle the fault of the various members of groups, instead, assign responsibility generally to all or a significant number of members of the group. Even though we recognize or even celebrate group differences, many people reject assigning political rights and moral obligations based on group (e.g., race or gender) membership.

For Joel Feinberg, collective liability in the sense of being accountable requires three conditions: (a) group solidarity, (b) prior notice to the liable party, and (c) opportunity for control by the liable party.¹⁸ Feinberg rejects this sense of collective liability in our case because he believes that condition (a), group solidarity, is not satisfied. For Feinberg, group solidarity exists when all members of a group share interests; feel pride when one of its members does something noteworthy; and feels shame when one of its members acts badly.

I Feinberg's group solidarity requirements do not fit with "loosely organized groups." I believe a group may experience group solidarity even if its members have minimal shared interests and do not feel pride or shame when members of their group accomplish something noteworthy or act badly.

When a group is "loosely organized" and very large and diversified, not all of Feinberg's requirements for group solidarity are necessary. For example, residents of California can experience group solidarity even though they individually

15. David A. Johnson, a graduate student at Rutgers University, made this point in a conversation we had on June 21, 2016.

16. SALLY HASLANGER, *RESISTING REALITY: SOCIAL CONSTRUCTION AND SOCIAL CRITIQUE* 42–47, 193–194, 248–252, 275–282 (2012).

17. See DONELSON R. FORSYTH, *GROUP DYNAMICS* (6th ed. 2013).

18. Joel Feinberg, *Collective Responsibility*, in *DOING AND DESERVING: ESSAYS IN THE THEORY OF RESPONSIBILITY* 249 (1970).

may have little in common and varied interests. The poor Watts ghetto dweller may have little in common with a wealthy person living in Beverly Hills, but they can have group solidarity if they both rally around efforts to prevent needed water from being routed to some other state.

Feinberg's rejection of collective moral liability rests on drawing a dichotomy between a group with solidarity and a random collection of individuals. Such a dichotomy is misleading. Of course, we would reject holding a person morally liable for the faulty actions of a collection of individuals of whom by the luck of circumstances he happened to be a part. But in the Beverly Hills and Watts cases above, the groups are not random collections. Members of these groups identify with the group even if they do not support all the actions of its members. Racial and national identifications are quite strong. In fact, we are not fully conscious of how much we identify with these groups. Strong group identifications have served as a source of self-esteem and as a foundation for cultures. Solidarity, unlike group identification, requires a level of political and social consciousness. As, for example, when a worker begins to define herself as a member of the working class. Just being a worker is not sufficient to have a worker's consciousness. With racial and national identification there is perhaps not the level of political and social consciousness that would allow us to conclude that group solidarity exists, but there is enough group identification to warrant the judgment that the members of the group have chosen to identify with the group for the security and benefits that group membership provides. Some are reluctant to accept the conclusion that all or many members of a racial group should be liable for the unjust actions of some, but some of this reluctance can be overcome if we move from talking about actions to practices.

However, Feinberg is right. It would be unjust to hold a person legally liable for something he did not do because he is a member of a racial group whose actions have been faulty. Even if we add that this person benefitted because of the faulty action or practice that led to the injustice, this would not suffice to show that he is liable given the present requirements for legal liability (e.g., cases of unjust enrichment).¹⁹ I do not think we can show legal liability for groups as a whole in such cases, but we can show that a form of moral liability carrying with it serious non-legal constraints and sanctions is justified.

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

19. PETER BIRKS, *UNJUST ENRICHMENT* (2d ed. 2005).

is a necessary part of their chosen strategy to ensure that all members of society remain free moral agents, which is an integral part of their reason for joining the moral community in the first place.

Some philosophers have argued that a person who willingly commits an injustice is more blameworthy than a person who merely lets an injustice occur.²⁰ My purposes here are not to question this admittedly controversial contention, but to grant it and argue that under certain conditions, letting an injustice occur, perhaps less faulty than causing an injustice, is faulty enough, in a moral sense, to make a person morally liable.

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

- (1) X knows or should have known about P.
- (2) X identifies or has solidarity with those who engage in P or X does not sufficiently disassociate himself from P or X's failure to disassociate from P was not a part of a reasonable strategy to prevent further or greater harm.
- (3) X's liability must be proportional²¹ to his/her ability to disassociate from the unjust practices.

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

Condition (1). Condition (1) refers to practices, not the individual or complex actions that occur between individuals. It is satisfied if a person knows that a practice exists even if he or she has not personally been a party to a particular faulty act. However, one further clarification is needed. Often people will use ignorance of a fact or state of affairs as a reason for their not being held accountable. Sometimes such an excuse is valid, but there are cases where we believe that the ignorance excuse is inadequate. Imagine the case where a tour guide orders the members of his party to drink from a stream, which, unbeknown to him, is contaminated. Should the guide not be held responsible for the illness or deaths of members of his party simply because he did not know that the stream was contaminated? We must answer no. He should have known. A part of his duty as a tour guide is to check such things, but we could modify our example in such a way that ignorance could relieve the guide of responsibility. Suppose the guide checked the stream for contaminants but did not test for some highly improbable bacteria that is rarely found in streams. In such a case, it would be wrong to hold him morally liable; he took all responsible precautions. Where reasonable efforts

20. See PHILLIPPA FOOT, *MORAL DILEMMAS AND OTHER TOPICS IN MORAL PHILOSOPHY* 78–87 (2002).

21. The principle of proportionality is used as a test of fairness and justice regarding how a statute should be interpreted. A primary function of the principle is to strike the correct balance between a prohibited act and the measures intended to correct violations of the prohibited act.

have been made to become knowledgeable, ignorance can warrant the conclusion that the agent is not liable.

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

Condition (2). The first part of condition (2) can be satisfied when those involved share some common interest; they need not feel pride or shame when members of the group with which they share a common interest do something noteworthy or act badly. A person can identify or have solidarity with a group even though he or she does not profit in a financial way from faulty practices engaged in or supported by the group. When this is the case, the person is liable because his emotional support for the group that engages in faulty practices enables the group to remain powerful and to continue its unjust practices. Even though the person does not financially profit, he will, at least, profit from the sense of emotional security that is attached to being a member of a powerful group. This alone does not warrant liability. However, when the powerful group is oppressive and the emotional feelings of security that group members feel contribute to the disadvantage and oppression of members of other groups, it does.

The second disjunction of condition (2) requires disassociation where appropriate. Disassociation can involve publicly denouncing a practice, but only if that is all that one can do, and a refusal to accept any enrichment that occurs as a result of the faulty practice. But, it will usually require direct action and a refusal to accept further enrichment. In either case, the moral agent is required to do something that separates him from the faulty practice. What he is required to do depends upon a number of factors: opportunity for control, risk of harm, and time. We cannot say with absolute certainty in advance what disassociation requires because the conditions may vary from case to case. In some cases, this may require complete disassociation from the group that one identifies with. In other cases, people will be required to do less because they have less power and influence. But this is as it should be.

I do not support the position that all people who disassociate themselves from injustice are doing so from attitudes that are morally commendable. My point simply is that there are cases in which disassociation will serve to reduce the injustice, and if it does not, it can still be said to be morally commendable because the attitudes present are something other than self-righteousness.²²

A crucial aspect of the disassociation condition is the requirement that avenues of action are available for disassociation. These avenues for action can be political as well as legal. For example, when chattel slavery was legal in this country,

22. For an extensive discussion of this point see Thomas E. Hill Jr., *Symbolic Protest and Calculated Silence*, 9 PHIL. & PUB. AFF. 83 (1979).

there were laws that closed most of the legal avenues open to those people who opposed slavery, but there were still political avenues available, e.g., abolitionist movements. Some people used the avenues available to them and thus, succeeded in disassociating themselves from the horrible practice of slavery.

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

My critics might object that it is physically or psychologically unrealistic to think that a person can be held morally liable because of a failure to disassociate from some unjust practice. Neither objection will suffice. The objection that it is physically unrealistic is unsatisfactory because the person is not required to travel great distances or to expend more than a modest sum of money to disassociate from an injustice. Given the present state of mass media and the varied organizations that allow for political participation, it would not be unrealistic to think serious unjust practices could go unnoticed and that there would be no political avenues open to a person who wished to disassociate from them.

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

Condition (3). Condition (3) follows the general principle of proportionality in the law. According to this principle, our aim should be to achieve the right balance between the sanctions required by the corrective measures compared to the severity of the unjust practices. The basic idea is that corrective action should fit (match) the violation.

As I said several decades ago, my theory differs from Feinberg’s and others because it recognizes the importance and role of moral liability in a good society.²³ It also explains why group membership, in certain circumstances, can make one morally liable even though one does not personally cause or explicitly support the faulty practices engaged in by a group of which one is a part. The theory

23. See McGary, *supra* note 11, at 80–82.

of collective liability that I have advanced is one that recognizes that we live in a world where we can no longer view ourselves as being detached from the actions of groups of which we are a part. We should be aware that efforts to achieve a morally good society could bring about disharmony and maybe some social unrest. However, in my judgment, a morally decent society should be willing to pay these costs.

V. DIVERSITY, CULTURAL IGNORANCE, AND BYSTANDERS

If my account of collective responsibility is correct, how will it shape our understanding of the moral standing of bystander?²⁴ One might argue that bystanders in the case of institutional racism should not be held accountable because of pluralistic ignorance (group members as individuals reject a practice, but incorrectly believe that the group accepts it, and therefore individual members go along with the practice). Of course, psychologists have tried to explain why people suffer from pluralistic ignorance.²⁵ Their explanations are relevant to our understanding of moral motivation. If this phenomenon is widespread, then we may have to rethink our moral assessments of the theories we adopt to explain moral liability. From the moral point of view, we accept various excuses for unjust or wrongful conduct. First, we excuse people for such conduct because addressing this conduct or these practices would subject the bystanders to serious harm or risk of harm. In such cases, we expect them to do the morally correct thing, but we don't expect them to be paragons of morality. Second, we excuse people who are suffering from non-culpable ignorance—when they are ignorant about something that they should have known. Third, we excuse people if they are operating under some compulsion, delusion, or fit of insanity. Finally, we excuse people if there is some legal or moral necessity for their action or inaction.

It is possible that a kind of culturally induced ignorance can impair the epistemic or rational basis for ascribing moral responsibility and blame. This ignorance has sometimes been referred to as “cultural blind spots.” The person who is ignorant in this way is not ignorant in all circumstances. Supporters of this way of thinking do not claim that these agents are incapable of moral agency because they completely lack the rationality to act voluntarily. Rather, in certain situations, the person's ignorance can be attributed to cultural ignorance rather than some personal human failing. These explanations are employed to explain why otherwise good people tolerate practices like racial or sexual oppression.

How does the cultural ignorance phenomenon, if it exists, apply to our cases? In a dominant culture that has ignored institutional racial injustices and accepted the devaluation of certain groups of persons, the white majority became blind to

24. I discuss these ideas in Howard McGary, *Psychological Violence and Institutional Racism: The Moral Responsibility of Bystanders*, in CONTEMPORARY DEBATES IN SOCIAL PHILOSOPHY 299 (Laurence Thomas ed., 2008).

25. See, e.g., Rasmus K. Rendsvig, *Pluralistic Ignorance in the Bystander Effect: Informational Dynamics of Unresponsive Witnesses in Situations Calling for Intervention*, 191 SYNTHESIS 2471 (2014).

particular instances of this devaluation unless their own self-interest required them to be aware of its existence. So, even though people sense that the behaviors they observe are wrong, a cultural blind spot prevents them from being fully cognizant of all the things that should follow from this recognition when they are dealing with members of groups that have experience prolonged systemic injustice.

I don't deny that the cultural blind spot argument might have some plausibility in certain cases, but I doubt that it applies in ours. I agree with Michele Moody-Adams when she claims that the supporters of this argument confuse the difficulty of altering, revising, or resisting characteristic patterns of behavior found in a culture with an inability to do so.²⁶ I share her belief that many cases of so-called culturally induced ignorance are really cases of affected ignorance. Put in another way, these are cases where people choose not to be informed about things they can or should know. My suspicion is that the persons in our cases suffer from affected ignorance rather than culturally induced ignorance that relieves them of blame and responsibility. Therefore, if they fail to disassociate from harmful racist behavior that they don't condone, they should be held accountable.

What if it is true that the situations that people find themselves in are better predictors of what they will actually do than their moral character? Would an organization be better served by spending its resources to identify the factors and situations that contribute to optimal moral outcomes instead of trying to inculcate or reinforce certain moral dispositions in its employees? Finally, if "implicit prejudice" is real, would this force us to eliminate the necessity to show that an employee's intentions were bad in order to describe correctly the employee's behavior as morally suspect? If proof of intent to discriminate is not necessary, will this also raise vexing legal questions? For example, is there anything in the Fourteenth Amendment to the US Constitution that would allow the courts to address implicit bias?²⁷ If not, should our existing laws be changed because they rely on outdated psychological theories? These are questions that deserve further examination.

26. Michele Moody-Adams, *On the Old Saw that Character Is Destiny*, in *IDENTITY, CHARACTER, AND MORALITY* 111, 128 (Owen Flanagan & Amélie Oksenberg Rorty eds., 1990).

27. See generally *IMPLICIT RACIAL BIAS ACROSS THE LAW* (Justin D. Levinson & Robert J. Smith, eds. 2012).