

MORAL RESPONSIBILITY OF BYSTANDERS AT T1¹

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INTRODUCTION

After the ‘democratic revolution’ in 2000 there has been no public reflective deliberation in Serbia about the crimes committed in its name. The majority of population does not express its discontent with its disqualified group identity. Is it puzzling that no public expression of discontent, shame, empathy for the victim community, followed this historical rupture with the ‘civilizational norms’?² Are people simply not informed? Not likely because today, facts about crimes are established beyond any reasonable doubt.³ Are people coerced into silence?⁴ Maybe during the criminal regime (although even then, the omnipotence of the few who prepared the groundwork for collective crime is morally secured by the many), but today this can hardly be considered to be the case. Were people compelled into obedience? If so, then presumably the public expression of discontent (at the very least) would not be absent in the aftermath of crimes (as was the case in Chile, Argentina, many of the countries in the Central and Eastern Europe). Were people deceived? If so, then, would we hold them responsible for allowing being deceived? Would we hold people responsible for deceiving themselves, or for being morally ignorant? Is it because people share common norms and values with the perpetrators, which render them vulnerable to each guilty verdict, issued by the international and

2 Nenad Dimitrijevic’s term used to depict: mass murder, torture, rape, expulsions, theft, etc.

3 Some of the most notorious perpetrators of crimes against humanity, ethnic cleansing, and genocide stood trial at the ICTY; these proceedings were brought to the public in Serbia via domestic TV channels. Citizens of Serbia learnt that their political and military leaders in Belgrade planned, coordinated, supported and carried out crimes which amount to: tens of thousands murdered, thousands still missing and an undetermined number of mass graves, hundreds of thousands of refugees, war camps, torture centers, shelled and in some cases burnt to the ground villages, towns and cities. Factual ignorance can no longer be reasonably claimed as an excuse for lack of public response.

4 Since 2000, a number of free and fair (presidential, parliamentary, local) elections have been held. The claim that it is coercion that prevents an outcry against the grave injustices and suffering caused seems unreasonable.

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domestic courts? Does this explain why these same people consider perpetrators of war crimes their heroes?

I will try to show that the absence of these responses to the moral fact of crime suggests complicity. In other words, those who would be bearers of such definitive moral response to the community of victims are implicated in the harm. They are implicated due to their *membership* in the perpetrator group, through their (relevantly) *shared intentions*⁵ that caused the harm, and through their *wrong (or missing) evaluation* of the regimes' *actions*. This wrong evaluation is due to their shared *norms* and *values* with the perpetrators, embedded in their common national identity. I will argue that a specific (and large) segment of population can be said to share these characteristics, which make it a fair target for ascription of moral responsibility. Thus, it can be argued that the absence of public disqualification of the criminal project and its ideology is a collective problem and likewise a common identity problem.

Discussions about collective moral responsibility mostly focus on the question whether the whole community—or large parts of it—can be held responsible for the harms produced by particular group members in cases where not all group members caused the harm directly. In cases of Nazi Germany and Milosevic's Serbia, I will argue that the majority of population (but not the entire population) can be held responsible for collective crime.

A large segment of the population shares a common identity with the perpetrator group, and not solely by birth (involuntary membership in the nation) but by choice. They share this identity *voluntarily* in the sense that they fail to exercise their capacity to think critically (reason) about the moral facts of crime. I will argue that they have the *freedom*

⁵ Diversity of intentions does not negate the possibility of existence of a relevant shared intention.

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not to participate in the collective crime. I will analyze whether the *control* (freedom from interference of others) and *knowledge conditions* (moral and factual ignorance) obtain in the case of bystanders in the context of this analysis, i.e. collective crime. The nature of the regime that gives rise to collective crime presupposes mass internalization of regime's values. This complex relationship between external and internal factors in collective crime is well captured in Vlasta Jalusic's observation that "there is something exceedingly risky in the belief that . . . under Nazi totalitarianism or during Milosevic's regime, as well as in the cases of other 'collective crimes', the dominant causes were 'abuse' of power, manipulation and respective 'evil' on the side of the power(full) elites and politicians; while the 'people' (or 'masses') were 'innocent,' naturally good, or simply misled."⁶

So, those who choose to *participate* in the collective crime can be ascribed moral responsibility and I refer to them as bystanders. To clarify, bystanders are those who had the freedom from external factors (coercion and threat) to act according to the universal ethical standards but did not do so (Nazi Germany, Milosevic's Serbia). They are those who know the facts about crimes being committed, but who judge the harm committed in their name as justified (thereby they become passive or active supporters of the criminal project).⁷

6 Vlasta Jalusic, "Organized Innocence and Exclusion: "Nation-States" in the Aftermath of War and Collective Crime," p. 1180

7 What distinguishes them from dissenters is that they share common attitudes toward crime (murder is sometimes justified), towards victims (they deserve what they get), towards national identity formed on the bases of the perpetrator group's explicated interests and intentions (territorial gains, ethnic "purification," etc). Dissenters had the bad moral luck to be members of the populist criminal regime, yet their ethical position toward crime, victims, intentions of the perpetrator group and the strategies for justification of the same, remain their own (authentic as Sartre would put it). They exercise their capacity to think critically (Hannah Arendt) and to reason (Thomas Nagel) which allows them to consider victims as members of their moral universe.

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Mine is a *backward-looking claim of moral responsibility* (that attempts to answer whether we are morally responsible for the past crimes?), which has to do with *causation*. It is an argument that a specific group (or a collective) on its own right can be causally responsible for the production of harm even if it would not be legally liable for the crime. In this chapter, I will assess the role of this segment of population in the production of harm while the criminal project lasts (T1). The ‘Personal Autonomy Principle’⁸, I will try to show, is not harmed by this approach, because it is a carefully identified segment of the population that is considered a proper target for ascription of moral responsibility⁹ not each member of the collective. I am inclined to agree that all members might be considered metaphysically (politically) guilty, but not morally. It is *choice* that separates those whose moral responsibility is assessed for ascription and the others (the dissenters).

I share Larry May’s belief that when we think about what it might mean to say that one’s shared identity with a group implicates one in the wrongs that that group commits, we need to think about identity the way the social existentialists do. That is, we should say that one’s identity is itself a matter of choice. May rightly points that “A person may not be able to choose his race, ethnicity, nationality, or family, but he can choose how he reacts to these group memberships.”¹⁰ Many of those now writing about

8 According to Rawls, in ascribing responsibility we have to consider persons separately and focus on their own actions so as not to violate principles of justice, principles of justice that for Rawls themselves begin with the value of discrete individuals. In Smiley, Marion, "Collective Responsibility", The Stanford Encyclopedia of Philosophy (Fall 2005 Edition), Edward N. Zalta (ed.), URL = <<http://plato.stanford.edu/archives/fall2005/entries/collective-responsibility/>>.

9 Although Linda Radzik argues that "...we can disconnect the concepts of responsibility and control without violating the separateness of persons," Larry May keeps his focus on what is in the agent’s control. He argues that ‘assigning responsibility to people for their attitudes will encourage them to inculcate better attitudes in themselves and thereby work to prevent collective harms.’ This way, May seems to avoid violating the separateness of persons. In Linda Radzik, “Collective Responsibility and Duties to Respond,” p.461

10 Ibid., p. 466

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collective responsibility agree that responsibility cannot be distributed to those group members who openly resist or fight against their communities' bad actions or policies.¹¹

Cassie Striblen would disagree by pointing that “When other members of these identity groups cause harm, you cannot easily disassociate yourself from the group and in that way avoid responding to the harm.”¹² Nenad Dimitrijevic and Linda Radzik would also argue that disassociating yourself from the group does not relieve one of moral responsibility because a response is still owed to the victim community who hold demands due to their reasonable fear¹³. I incorporate some of the aspects of May’s, Dimitrijevic’s and Radzik’s approaches into my own, by directly linking the acts of disassociation from the group with the duty to respond thesis¹⁴.

I hold that those members of the collective, who disassociate themselves because of their sense of duty toward the victim community, are not proper targets for ascription of moral responsibility. They intend to prevent harm against the community of victims from happening and they act accordingly. They voluntarily align their interests with those of the community of victims. I argue that it is the *reason for disassociation* and not the *act of disassociation* (itself) from the group that commits the harm that establishes the

11 See here, for example, the arguments of Joel Feinberg (Feinberg 1968), Peter French (French 1998), Howard McGary (McGary 1986), J. R. Lucas (Lucas 1993), and Michele Moody-Adams (Moody-Adams 1994).

12 Cassie Striblen, “Guilt, Shame, and Shared Responsibility,” p. 469

13 Radzik conceptualization of reasonable fear has two aspects: an epistemic and a moral one. She tells us what does not constitute reasonable fear: “Fear based on pure fantasy does not create duties to respond in the other. Fear based on immoral prejudices—for example, a hatred of the members of the other group simply because they are different—cannot create a moral duty to respond to that fear for the other person... In general, fear based on morally unreasonable responses to the other group cannot create duties to respond in the other.” (Linda Radzik, “Collective Responsibility and Duties to Respond,” p. 467)

¹⁴ Radzik says “Duties of response often cannot be quickly and finally discharged. Response is necessary because of a reasonable fear on the part of the victimized group. . . And reasonable fear often does not disappear with one expression of regret or one caring interaction. The duty to respond lasts as long as the other's fear continues, and continues to be reasonable, even into the next generation.” (Ibid., p. 469)

threshold for moral responsibility of bystanders¹⁵. In the case of dissenters, the *sole* exculpating reason is to openly oppose the criminal ideology in order to protect the victim community from harm. Thus, I will not argue that membership alone grounds responsibility¹⁶. For May shared responsibility is moral, unevenly distributed, non-vicarious, and is only defensible if it is dependent upon individual participation.¹⁷ I also hold participation (or contribution to) in harm to be relevant for ascription of collective moral responsibility.

Additionally, on this account, moral responsibility is not primarily identified with praise or blame, but rather with rights and *duties* in which case, the proper responses are reflection and deliberation.¹⁸ Finally, I do not consider collectives to be ‘independent agents’ from its members, because (like May) I believe that treating a group as a moral agent might not protect the individual autonomy concept.

In summary, in this chapter¹⁹ I will: 1. Conceptualize what constitutes a collective relevant for ascription of moral responsibility, 2. Provide an overview of what constitutes crime at T1, 3. Introduce main theoretical approaches in the debate on shared (or collective) moral responsibility to locate my own argument, 4. Provide positive and negative identification of bystanders in collective crime, 5. Identify harm committed by bystanders in T1, and 6. Introduce and respond to the critique of methodological individualists.

15 This is different from what McGary refers to as ‘disassociation condition.’

16 We have a non-vicarious sense of shared responsibility when more than mere membership is required.

17 Cassie Striblen, “Guilt, Shame and Shared Responsibility,” p. 478

18 Seumas Miller, Linda Radzik, Nenad Dimitrijevic among others. . .

19 In the previous two chapters, I analyze concepts of moral responsibility, collective moral responsibility while addressing objections made by methodological individualists; different kinds of criminal projects; conceptualize collective crime. In this chapter I will introduce these concepts when necessary and briefly.

SECTION I (WHAT CONSTITUTES A MORALLY LIABLE COLLECTIVE?)

The most common approach taken to distinguishing between appropriate and inappropriate sites of collective responsibility has been to focus on nations, corporations, and other groups that have well-ordered decision-making procedures in place, since, it is argued, these groups are, by virtue able to demonstrate two things that are often assumed to be necessary to collective responsibility. The first is a set of *group actions* that are based on *group decisions* (Bates' 'group decision methods' by which some collection of persons is able to reach decisions even though no formal structure exists²⁰). The second is a set of decisions that are made self-consciously on a rational basis—or at least purposively—by the group that takes the form of *group intentions* or group choices.

Margaret Gilbert states that “any population of people who are party to a given joint commitment – thereby constituting a plural subject – constitutes a collective.”²¹ In addition to that, I have to answer what constitutes a collective relevant for ascription of *moral* responsibility. To ascribe group responsibility is to say that a group is morally responsible for some (morally faulty) outcome (on this approach, reasonable fear).²² Although a nation is considered to represent a hierarchical structure, characterized as not member-dependent, inter-generational and involuntary, the characteristics of the group of bystanders are: not inter-generational, voluntary and member-dependent.²³ These three aspects of membership in the group of bystanders are relevant for ascription of moral responsibility because they suggest that the *control condition* obtains (voluntariness). In

20 Larry May, *The Morality of Groups*, p. 108

21 Margaret Gilbert, “Who’s To Blame?” p. 102

22 Although group responsibility may be non-distributive and apply only to the group considered as a single unit, or it may be distributive and apply to each member of the group and the former is often referred to as “collective responsibility” and the latter “shared responsibility,” I will not spend much time on this debate. At this time, I don’t find it particularly useful in the context of collective crime, for ascription of moral responsibility.

23 Elaborated in the previous chapter, section “Identifying a group: Bystanders”

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the context of collective crime, subjects come to form a group which can (due to its group capacity and morally flawed position) be considered a proper target for ascription of moral responsibility. Dimitrijevic explains that „Collective crime . . . presupposes the collective intention to commit a particular type of crime, collective awareness about the nature of the intended crime, organized effort to realize the intention (to perform the chosen action), and collective awareness about its consequences. The construction of collective crime unfolds in three stages, which, taken together, form a peculiar implicit pact between the regime and its subjects.”²⁴

The primary condition (*membership*) for establishing responsibility holds for both groups (nation and bystanders) – they represent groups in whose name the crimes are perpetrated (by the group of perpetrators). On Hannah Arendt’s view shared responsibility among members of identity groups is political and based on membership alone. May’s strategy is different than Arendt’s. Instead of dividing responsibility into two kinds (political and moral), May attempts to incorporate political considerations into the moral realm by making individuals responsible for how aspects of their group membership affect their social world. On his account (that draws inspiration from the existentialist tradition), shared responsibility is tied to individual participation in producing harm, which expands our understanding of moral responsibilities to include *attitude* (as an aspect of participation). May does not consider attitudes to be mere opinions, but as dispositions to behave. “In part, our attitudes are shaped by the predominant attitudes of our groups. Even so, provided that we have some control over which attitudes we embrace, we are morally responsible for our attitudes and for the kind

²⁴ Nenad Dimitrijevic, “Moral Responsibility for Collective Crime: Transitional Justice in Former Yugoslavia,” p. 5

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of person we become as a result of embracing those attitudes. Accordingly, on May's view we are responsible for how our attitudes affect our own moral development; furthermore, we are responsible for how our attitudes affect the attitudes and actions of others in our social world."²⁵

Along these lines, I identify membership and participation (through attitudes and actions) in the collective that produces harm as main characteristics of the group of bystanders. Purposeful action requires intention, so I will try to demonstrate that this group has relevantly similar and shared intentions, which, I hold to point to existence of group-shared norms and values.

Granted, it is more difficult to ascribe moral responsibility to a group (then say, a corporation), which does not possess a clear decision-making structure. Unlike in regime crime, where bystanders represent a random collection or an aggregate of individuals ('ordinary people'²⁶), in the context of collective crime, they come to form an organized group. In cases of Nazi Germany and Milosevic's Serbia, we observe that the criminal regimes²⁷ in the preparatory phase of collective crime openly proclaim their norms and policies. Thus, the subjects, who prior to this represent an aggregation of individuals, or

25 Cassie Striblen, "Guilt, Shame and Shared Responsibility," p. 476

26 Dimitrijevic specifies "The discussion here is limited to the perpetrators, regime officials, and "ordinary people" whose actions were clearly causally linked to regime crime." Milder" forms of support, in which the causal relationship with the crime cannot be established – such as voting for the regime, expressing public support for it, refraining from action in situations in which acting may have prevented a particular crime or have mitigated its consequences – are not regarded as sufficient reasons for raising the question of responsibility. Nenad Dimitrijevic, "Moral Responsibility for Collective Crime," *Belgrade Circle Journal* No.1 -4 (2006): 30.

27 Dimitrijevic defines a regime as criminal on the basis of two criteria. "The first criterion is the scope of the committed crime: mass murder, torture, persecution of whole groups of the population, forced deprivation, and destruction of property, are only the crudest forms of human rights violations and annihilation of human dignity that characterize actions of this type of regime. The second criterion is normalization of crime. This normalization has at least two important aspects. The first consists in ideological, legal, and political institutionalization of crime: the system of values, political arrangements, and legal norms are all shaped in a manner that allows, justifies, and renders routine the killing of those who are arbitrarily proclaimed as enemies. The second aspect of normalization appears as the support of the majority of the population for the regime and its practices." Ibid.

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‘the population’, are presented with a choice. The group of bystanders is formed when a segment of population chooses to uphold the proposed norms. In doing so, they give authority to the criminal regime not only to represent them but to interpret (judge and evaluate) and re-interpret the reality for them. So, although, at the first glance, it might seem that bystanders are not an organized group, in the context of collective crime, this group takes on a *formal structure* (with the criminal populist regime at the pinnacle of its decision-making hierarchy).

How does a group come to intend? Christopher Kutz analyzes collective action through “an individual *participatory intention*,” which he defines as “an intention to do my part of a collective act, where my part is defined as the task I ought to perform if we are to be successful in realizing a shared goal.”²⁸ This is a minimalist approach to understanding group intentions. I consider May’s approach, which does not do away with group intentions as a necessary condition of collective responsibility, more helpful in conceptualizing intentions of bystanders. May reformulates group intentions within a theory of what he calls *interdependence* and, in doing so, develops a general outlook on collective responsibility that not only combines individualism and collectivism but places both relationships and social structures at the center of our attention.

May relies on the work of Sartre to develop his account of group intentions and posits what he calls a “pre-reflective intention”, i.e., “an intention which is not yet reflected upon by each of the members of the group.”²⁹ May makes clear here that group intentions of this sort arise out of the relationships between particular members of a group rather than from any one group member. Hence, while they are not trans-individual or

²⁸ Ibid., p. 169

²⁹ Larry May, *The Morality of Groups*, p. 64

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collective in any sense that stands totally above individuals, they can be treated “as if they are collective”³⁰ Moreover, these intentions are not *individual* intentions but *group-based*. “Since each member of the group comes to have the same intention, either reflectively or pre-reflectively”, it is “different from their individual intentions.” Indeed, “the sameness of intention is collective in the sense that it is caused by the group structure, that is, it is group-based.”³¹

Michael Bratman has also developed an account of shared intentions. A necessary feature of a shared intention of a group is that the members of the group must have a *common end* or *goal*. But this feature, while necessary, is not sufficient for a shared intention. Two persons can intend to do an activity together, but if neither is aware of the other’s intentions, then no shared intention exists. For two persons to have a shared intention to do something they must have *knowledge* of each other’s intentions and this common knowledge must lead to interpersonal coordination between them. *Joint activities, then, are activities guided by shared intentions*. And shared intentions exist when the attitudes and plans of a group of individual persons are related to one another in the right way (unanimity is not required).³²

As we have seen from historical evidence (Nazi Germany and Milosevic’s Serbia), the criminal populist regimes are transparent about their intentions. In collective crime, unlike in regime crime, intentions are openly communicated and their ‘proper’ (‘correct’) interpretation is provided because it is not obedience that is the goal but approval and agreement from the subjects. In doing so, the criminal regimes use the public space (used for citizen deliberation in liberal democracies) to build their support.

30 Ibid.

31 Ibid. p.65

32 Steven Wall, “Collective Rights and Individual Autonomy,” p.246

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The public space in the early stage of collective crime is open to dissenters. It would thus follow that (since the external factor of strong coercion does not obtain) those who do not oppose, come to share the proclaimed intentions. I am not suggesting that the intentions of each individual member of the group of bystanders are the same as those proclaimed by the criminal regime, but that they overlap significantly (or are inter-linked due to the exceedingly shared background normative position) so as to create a joint intention. Thus, the condition of *awareness* (or common understanding/knowledge) of intentions holds.

These give rise to contributory actions. May argues that “there are two conditions (but that only the first need be fulfilled) which need to be satisfied in order for a group of persons to be legitimately ascribed actions: 1. individuals are related to each other so as to enable each other to act in ways they could not act on their own, and 2. some individuals are authorized, or appear to be authorized, to represent their own actions as the actions of the group as a whole.”³³ Although clearly actions of the group of bystanders differ from those of the perpetrators, they have a common goal (as interpreted by Bratman).

Margaret Gilbert would argue that there is a commitment that can be referred to as non-basic joint commitment.³⁴ She considers this kind joint commitment (as opposed to basic joint commitment which is self-legislated) to be formed by the authorized representatives (which obtains in the case of a populist criminal regime). I hold that group solidarity with proposed intentions is enough to give rise to joint actions (as proposed by Feinberg) and that Bratman’s knowledge and evidence (considered

33 Larry May, *The Morality of Groups*, p. 55

34 Margaret Gilbert, “Who’s To Blame?” p. 103

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necessary for the claim of knowledge) conditions are obtained in the context of collective crime.

Likewise, I believe that Dimitrijevic's claim that when a group's identity rests upon violated common values then the values of each member of the nation are also harmed. They are harmed in so far as they are shared with the perpetrators who kill in the name of each member of the group, which permits us to conceptualize collective moral responsibility as a "duty to respond" (Linda Radzik). With this last claim, the causal link is established. A collective on this account is a fair target for ascription of moral responsibility because in sharing the identity with the criminal regime (due to membership and participation) it comes to share the duty to respond to those who are harmed.

To summarize: bystanders are a group because they rely on a decision-making structure (that of the criminal regime), they have an awareness of the intentions, thus it can be concluded that they hold the non-basic commitment to participate in collective actions. Bystanders are a morally faulty group because of their shared common identity with the perpetrators of harm.

SECTION II (COLLECTIVE CRIME AT T1)

The context within which the ascription of moral responsibility to the group of bystanders is analyzed is collective crime. I will briefly introduce the concept of collective crime. Radzik suggests that collective crime should be understood "as the one committed by a significant number of members of a group, in the name of all members of that group, and upon individuals identified as a target on the basis of their belonging to a

different group.”³⁵ This primary conceptualization points to a specificity of mass crimes, which is common to both collective and regime crimes (each is well organized bureaucratically and ideologically). Dimitrijevic points to the next level of conceptualization³⁶, which allows us to distinguish between collective and regime crime. He argues that they are differentiated by their intentions towards and expectations from their subjects. Mainly in collective crime, the populist criminal regime attempts to secure as homogenized as response to its ideological and practical intentions and actions as possible and uses instruments of repression reluctantly (these are employed primarily against the targeted victims). In regime crime, obedience of subjects is secured through strong coercion (employed against all subjects).

This distinction between the types of regimes and the harm they produce is important for our understanding of what constitutes morally faulty agents. It elucidates the nature of relations in collective crime between the regime, which Dimitrijevic refers to as ‘populist criminal regime’ and its subjects. Since *coercion* (an excusing factor according to Aristotle) does not play as important a role in this relationship as it does in regime crime, the ascription of moral responsibility is likely to be more appropriate. It might be argued, however, that *moral ignorance* (an excusing factor according to Aristotle) is more prominent among subjects of collective crime than regime crime, since in the first, the regime relies on the internalization of proposed ideological interpretations. It has to be assessed then to what extent this excusing condition (moral ignorance) affects moral responsibility ascription in cases of collective crime.

35 Linda Radzik, “Collective Responsibility and Duties to Respond,” p. 456

36 For more detail see Nenad Dimitrijevic, “Moral Responsibility for Collective Crime,” Belgrade Circle Journal No.1 -4 (2006)

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Bystanders come to be formed as a group in collective crime whereas in regime crime ‘ordinary people’ remain an aggregate, or a population that cannot be considered a group and thereby (on this account) not a proper target for ascription of moral responsibility. This is why I believe Dimitrijevic argues that the question of collective moral responsibility can be raised only in the case of collective crime.

Since in this chapter I am interested in the role bystanders have in collective crime at T1, or while the criminal project lasts, I will focus on the first two aspects (or stages) as proposed by Dimitrijevic. The last (third) phase, marked by normalization of crime in its aftermath, will be the focus in the next chapter.

PREPARATORY STAGE³⁷

“The first stage could be identified as the *preparation of collective crime*. It requires both ideological mediation and legal-political institutionalization. Ideological mediation includes practical measures of political and cultural propaganda aimed at integrating the subjects into an organic whole, within which any relevance of their individual identities will effectively be cancelled. The regime will demand unconditional loyalty to the proclaimed ideological values and goals. This will be formalized through legal and political institutionalization of arrangements that define binding distinctions between allowed and forbidden, good and bad, right and wrong. An integral part of this demand for internalized and institutionally formalized loyalty will be the requirement that the subjects consciously and unquestionably accept the basis of legitimation and the

37 A stage insinuates a chronological structure, whereas an aspect does not. Given that activities of interpretation and ideological persuasion are omnipresent throughout the criminal project, it might be more helpful to refer to this as an ‘aspect’ instead.

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institutional patterns of crime. The very act of expressing support for crime means agreeing to de-subjectivization.”³⁸

Rights and freedoms of the targeted victim community³⁹ are *practically* taken away incrementally. The subjects’ rights and freedoms are increasingly challenged as well in a process of mutual agreement or negotiations with the regime (as Dimitrijevic argues, through the process of surrendering individual identities to the appointed representatives of the nation). In the first phase of the collective crime, values and norms that guide behavior according to universal ethics in civilized societies are interpreted so that proposed limitations upon a targeted group’s rights directly reduce the duties toward them.

In this phase, a reasonable person could be expected to exercise both, positive and negative duties. In failing to do both, their solidarity with the regime may be concluded from the stand point of the victim community. Put differently, in the words of Paul Formosa, “We might formalize these two points by the (provisional) normative claims that (in Kantian terms) there is a perfect duty to neither participate in nor support through obedience evil persons or practices, and an imperfect duty to combat or reduce evil (without, in the process, perpetrating evil) whose normative force is proportional to one’s power to in fact do so.”⁴⁰

To summarize: the intentions of the regime are communicated to the public, policies that limit the rights of the community of victims are implemented, and the physical violence is not yet observed. As already stated, a moral agent would presumably

³⁸ Nenad Dimitrijevic, “Moral Responsibility for Collective Crime,” *Belgrade Circle Journal* No.1 -4 (2006): 5

³⁹ The regime’s primary concern is to carefully identify and justify which subjects constitute the target group. The first group formed in the process of preparation of collective crime, is that of the victims.

⁴⁰ Paul Formosa, “Moral Responsibility for Banal Evil,” p.508

not only hold a critical attitude toward the new policies but would also be motivated to act on it. It would be reasonable to expect that active opposition takes place -- in form of protests and collective organization against the attempts of the regime to strip away the rights and freedoms of the group targeted for victimization and/or in form of withdrawing support through non-participation in all state institutions. Thus, in the preparatory phase, we would hold agents morally responsible for their judgments and actions (we observe significant freedom for collective action in both, Nazi Germany and Milosevic's Serbia). I will discuss the harms committed by the group of bystanders in section five.

CRIMINAL ACTION STAGE

Dimitrijevic points to historical knowledge in clarifying the careful preparation and coordination of the execution of this type of crime. He says „The murky rationality of this project implies the planning of a peculiar ‘division of labour’: both the formulation of goals, and the manner of their realization count on different forms of complicity on the part of the subjects. This is where the conditions of voluntary loyalty and de-subjectivization are to undergo the most serious test. The subjects are not expected to be mere accomplices to, or supporters of, the criminal actions of the regime. They are expected to demonstrate a specific kind of moral loyalty which will be interiorized, and then manifested, in an attitude that whatever the regime is involved in, and whatever the subjects act as accomplices to, is politically justifiable and morally right.“⁴¹

Judgment is context-independent. Thus, the exchange between the regime and its subject is an illusionary surrender of capacity to judge. It serves the intended purpose nevertheless, the regime is able to justify its measures by claiming to have been

41 The third and final stage of collective crime is referred to by N. Dimitrijevic as ‘the joint acceptance of its consequences’ and it will be the focus of my next chapter.

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authorized by the people, while the people can claim innocence and thereby justify their failure to think critically. It is a mutually re-enforcing process.

Physical harm marks the implementation phase of collective crime. This is the phase when, through their joint actions, the perpetrators are most easily identified as a group. Although they clearly exist in the preparatory phase, the group is increased as we move to this phase. These agents who perpetrate physical harm are usually not the same people (watchful ideological interpreters and modifiers of reality) who in the preparatory phase perpetrated harm by creating a new moral universe. The group of perpetrators is thus enlarged, and its political and social power depends on the level of acquired homogenization of thought/reason from the group of bystanders. It is precisely the moral norms of this group that do not change over time (as the membership changes).

To summarize: in this phase, the perpetrators (political and intellectual leaders and the killing machinery) are no longer only morally but criminally and politically liable for their actions. What about the group of bystanders? I have assumed that at least one of the two *subjective causal relationships to the consequences* holds, mainly their ability to judge and possibly the second one, their ability to make *free choices*. In this phase, given the presence of physical harm committed against the community of victims, it might be argued that freedom for actions is limited (physical violence against the victim community can be interpreted by all others as a threat) so a reasonable person would be expected to evaluate the crime as wrong, while to act in accordance with that judgment (or to be motivated by it) would not be expected. To put it more pointedly, in the words of Thomas Nagel, a moral agent (or a reasonable person) would be expected to reflect on the

question ‘How should I act, given that these are true of me or of my situation?’⁴² More specifically, it is expected that each moral agent (constitutive elements discussed in the previous chapter) has the normative capacity, which is exercised to examine rights and obligation one holds in each and every system.

I would not consider this to be an excusing factor for ascription of moral responsibility. I am inclined to identify these agents (who judge harm as wrong) as mixed cases (in Aristotle’s terms – thereby they don’t deserve to be blamed or praised). I hold that although they disassociate themselves from the bystander group (that judges the harm as justifiable) they are not relieved of moral responsibility like those agents who evaluate the harm as wrong and are motivated by that judgment (to perform both, perfect and imperfect, duties).

SECTION III (COLLECTIVE MORAL RESPONSIBILITY: THEORETICAL DEBATE)

I will not sketch the framework of the points in the theoretical debate on shared (or collective) moral responsibility that are most relevant for my own approach. I hold each of the insights elucidated below relevant for my analysis of the moral responsibility attributions to bystanders as a group in the context of collective crime. The few strategies outlined below for assigning shared moral responsibility could be referred to as: 1. Contractualist, 2. Existentialist (or relational), 3. Common needs or solidarity-based, and 4. The shared attitude approach:

One feasible way of tracing the value of responsibility back to personhood is offered by contractualism, at least in the version of it defended by Thomas Scanlon. On this account, the value of responsibility has to do with the role played by ascriptions of

⁴² Thomas Nagel, *The Last Word*, p.106

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responsibility in enabling people to participate in inter-personal relationships. The principal tenet of contractualism is that an act is morally wrong "if its performance under the circumstances would be disallowed by any set of principles for the regulation of behavior that no one could reasonably reject as a basis for informed, unforced general agreement". Therefore, as long as people are motivated to act morally they will seek to regulate their behavior to comply with "standards that others could not reasonably reject insofar as they, too, were looking for a common set of principles". It follows that people, as long as "suitably motivated"⁴³, will be primarily concerned with the question whether their actions could be justified to others (who are moved by the same concern).

In the context of collective crime, this space where 'reciprocity of respect' is exercised exists but in a reduced form. It comes to exclude members of the victim community to whom justification is then no longer owed. Thus the intentions and the actions of the perpetrator and bystanders groups are justifiable solely to each other in terms of mutually acceptable principles. Contractualism's claim -- that violations of moral requirements are tantamount to disregarding other people -- seems to be confirmed "Doing wrong is to flout the legitimate demand others have on us to regulate our actions in compliance with mutually acceptable principles. The value of responsibility lies in the contribution of ascriptions of responsibility to maintaining this "system of co-deliberation" in which moral criticism and moral argument "consist in the exchange of requests and justifications."⁴⁴.

May sets down two relationally-based conditions under which we can legitimately say of an action that it is collective rather than individual, which for May means, "not

⁴³ Thomas Scanlon, "The Significance of Choice," p. 151

⁴⁴ Ibid., p. 166

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trans-individual, but relational. The first condition is that the individuals in question be related to each other so as to enable each to act in ways that they could not manage on their own. The second is that some individuals be authorized to represent their own actions as the actions of the group as a whole.”⁴⁵

Another approach to locate appropriate sites of collective responsibility has been to use groups such as ethnic communities, clubs, and social movements as paradigmatic cases of appropriate collective responsibility on the grounds that these groups have members who *share interests* or *common needs*. Two assumptions prevail here. The first is that groups whose members share interests or needs in common show signs of *group solidarity*, which Joel Feinberg defines in this context as a matter of individuals taking a strong interest in each others' interests⁴⁶. The second is that groups that show signs of group solidarity understood in this way are capable of acting and intending in the sense relevant to collective responsibility, since while they are made up of individuals, they pursue projects together.⁴⁷

Yet another approach here is to pick up on shared *attitudes* among group members as something that renders the group itself an appropriate site of collective responsibility. The attitudes taken to be relevant here are generally those that both produce serious harm in society and that require acceptance by many individuals in a community together in order to be effective, e.g., attitudes such as racism, sexism, and anti-Semitism.

All of these approaches rest on a general distinction between aggregate and conglomerate collectivities, which I mentioned in the introductory part of the chapter. An

⁴⁵ Larry May, *The Morality of Groups*, p.55

⁴⁶ *Ibid.*, p.36

⁴⁷ *Ibid.*, Chapter 2

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aggregate collectivity, Peter French writes, is “merely a collection of people”⁴⁸. It is not, from the perspective of most of those now writing on collective responsibility, an appropriate site of collective responsibility. A conglomerate collectivity, on the other hand, is an “organization of individuals such that its identity is not exhausted by the conjunction of the identities of the persons in the organization.”⁴⁹ It is, from the perspective of most of those now writing on collective responsibility, an appropriate site of collective responsibility, since, unlike an aggregate collectivity, it supplies us with a moral agent capable of purposeful action.⁵⁰

Although I incorporate some aspects of the full-blown collective moral responsibility approach proposed by Dimitrijevic and Radzik, my theoretical interpretation is closer to the *shared moral responsibility* position. I hold that a specific segment of population that belongs to a community of perpetrators (collective identity), based on its sufficiently formal structure (that is formed by authorizing the regime to represent this group’s interests), common attitudes, solidarity with the criminal regime, shared intentions and common goals forms a group, which in turn owes a response to the community of victims. What applies to them, then, is what Dimitrijevic and Radzik hold applies to the entire population of faulty collectives (in collective crime) -- a duty to the community of victims and a duty to the larger collective (to correct their own attitudes). The metaphysical guilt (Karl Jaspers) and political guilt (Hannah Arendt) for each member of the blameworthy collective is upheld in this approach. To conclude, I hold both *membership* and *participation* to be essential in ascribing *moral* responsibility to

48 Smiley, Marion, "Collective Responsibility", The Stanford Encyclopedia of Philosophy (Fall 2005 Edition), Edward N. Zalta (ed.), URL = <<http://plato.stanford.edu/archives/fall2005/entries/collective-responsibility/>>.

49 Ibid.

50 Ibid.

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groups and that membership in a faulty collective alone is sufficient for holding each member metaphysically/politically guilty.

The reason I refrain from aligning my approach entirely to the full-blown understanding of collective moral responsibility is that I find it to be insensitive to the personal autonomy principle. This fairness principle, in the case of collective crime, I argue, holds additional relevance than its classical one, to fairly treat agents who are targets for ascription of moral responsibility. In this context, it is a principle of fairness toward the community of victims as well in so far as the community of victims upholds the personal autonomy principle itself. The actions of dissenters are recognized by the community of victims as expressions of solidarity and maybe even common identity with the victims. The community of victims is not likely to have any reasonable fear toward them and would not seek a response. Thus the duty of dissenters is already fulfilled.

The theoretical discussions of Arendt and Jaspers, identify responsibility with shame and guilt, while I see more value in ascribing moral responsibility that is identified with duties, in response to which deliberative public reflection is due. Arendt's approach appears not to elucidate well the role morality plays in guiding our attitudes and actions.

SECTION IV: NEGATIVE IDENTIFICATION OF THE GROUP OF BYSTANDERS AT T1

By negative identification I refer to 'external' conditions that excuse or exempt moral responsibility whether the target of the ascription is a single person or a collective. Based on historical evidence (from Nazi Germany and Milosevic's Serbia) I will assess whether (and to what extent) these two conditions apply to the ascription of moral responsibility of bystanders.

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Aristotle identifies: force of events, threats and coercion, ignorance, intoxication and bad character as excusing and exempting factors. “*Excusing* conditions obtain when a person acts under circumstances in which it would be unreasonable or unfair to hold them to be fully responsible for their actions. Those who act under the duress of direct, immediate, and severe coercion, for example, with a gun to the head, are often thought to fit this category. *Exempting* conditions obtain when a person is in a state where it is reasonable for others to refrain from holding them to moral demands.⁵¹ Among other things, this condition also implies that responsible agents will possess normative competence and an awareness of the foreseeable consequences of their actions.”⁵²

Thus, to ascribe moral responsibility, it must be demonstrated that excusing conditions do not obtain and that participation (understood to encompass attitudes and actions) is *voluntary*. I will assess coercion and moral/factual ignorance in the following sections.

COERCION

I will rely on J. Gregory Keller’s working distinction between “*coercion* understood to allow the agent an alternative to the coerced action and *strong coercion* to offer only normally unacceptable alternatives. When one is *compelled* there is not an alternative available to one. . . Thus, since being either strongly enough coerced or compelled to act as one acts makes one not responsible, not being either so coerced or compelled is a necessary condition of responsibility. Further, this implies that one’s being

51 What constitutes a moral agent is conceptualized in the previous chapter. For example, children and the mentally deranged are often thought to fit this category.

52 Paul Formosa, “Moral Responsibility for Banal Evil,” p. 501

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capable of acting without compulsion or strong coercion is a necessary condition for the possibility of moral responsibility.”⁵³

So, if an agent is (morally) ignorant, strongly coerced, or compelled, one is not responsible for one’s actions. So, how do we determine whether the group of bystanders is faced with ‘unacceptable alternatives’? Can we reach a conclusion, as Keller suggests that the existence of an alternative depends on whether one is being responsible? Dissenters, for example, believe they have alternatives to participating in the collective crime, whereas bystanders might believe that they do not. The, “there is a difficult issue here of how one ought to act if one legitimately yet falsely believes that one has no alternatives. Is one morally responsible for trying to act as one thinks one should?”⁵⁴

In order to emphasize this point and also to examine any excusing issues of coercion, I shall consider an implication from the above discussion—namely that, under some circumstances, thinking can become impossible. As Arendt makes clear, the concentration camps were the representative of the essence of totalitarianism in practice, but even here domination was not always absolutely total. Drawing on Primo Levi’s distinction between the “saved” and the “drowned,” we can see that it is only really the case that the latter perhaps shows us what it means for total domination to actually remove the possibility of thinking. Coercion used in concentration camps is considered strong, and the “drowned” are those who are no longer capable to think. There is a complete isolation of alternative views⁵⁵. So, a criminal populist regime’s coercion against its subjects can be considered at best to limit alternatives, and at worst not to

53 J. Geogry Keller, “Agency Implies Weakness of Will,” p.10-11

54 Ibid.

55 Paul Formosa, “Moral Responsibility for Banal Evil,” p.502

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allow discussing them publicly. Regardless, this would not be considered an excusing coercive situation for ascribing moral responsibility.

FACTUAL AND MORAL IGNORANCE

Factual ignorance can excuse under the circumstances, but moral cannot. Aristotle points that if a person is morally ignorant it is his whole character, his lasting ability to judge and act well, that is impaired. Isolated errors in factual knowledge can be corrected so long as we recognize and regret what we have done (factual mistakes involve no lasting corruption of character). Still, if a person is morally ignorant, it follows that they are unable to choose well.

We would seek to ascribe moral responsibility to an agent who does not judge crime as wrong and as a result does nothing to prevent the harm, whereas we would be less likely to consider ascription of moral responsibility fair should the agent judge the crime as wrong and not act out of fear (for example, or simply would not be motivated to act on this right judgment). I would consider the latter case to be ‘mixed’ (using Aristotle’s terminology). In terms of outcome, these two cases are the same: non-action, but in terms of *moral ignorance* they are not, one’s judgment is right and the other’s is wrong. The first is the agent who would be held responsible, all other relevant circumstances being the same. How do we know ex post facto that an agent in T1 was evaluating harm as wrong?⁵⁶ As I have already stated, *participation in collective silence*, reveals complicity with morally wrong attitudes.

56 By my account, an agent who judges well and acts accordingly is not a proper sight for the ascription of moral responsibility. All other ‘combinations’ (intention and action) are vulnerable for assessment of moral responsibility: 1. one’s judgment is right but the act is wrong, 2. one’s judgment is wrong but the act is right (historical evidence from Serbia confirms the possibility of this outcome), 3. One’s judgment is wrong and the act is wrong (this is what I am trying to defend is representative of the group of bystanders).

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The underlying assumption is that a reasonable person is normatively competent, which thereby merits the ascription of moral responsibility. So, how to approach a situation such as the guiding norms of subjects participating in collective crime? If the claim that subjects in the preparatory phase of collective crime internalize moral norms that are wrong then are we denying that the subjects in populist criminal regimes possess this normative capacity? Moody-Adams argues that these subjects would rather be accused of *affected ignorance* than of *moral ignorance*. Historical evidence suggests that this may be so. In Milosevic's Serbia, those who have internalized the values of the criminal populist regime, do not make claims that would suggest moral ignorance (killing is good), rather they claim factual ignorance. However, this claim points that we are in fact dealing with affected ignorance because they do not make any effort to know (whereas those who I refer to as dissenters, do make that effort – factual information was in fact available from the beginning of the criminal project. As Moody-Adams argues, they “asked no questions about some states of affairs, in spite of evidence that an inquiry might be needed in order to stop or prevent wrongdoing.” The claim that “Much of moral ignorance might best be understood by affected ignorance...” seems to hold true in cases of Nazi Germany and Milosevic's Serbia.⁵⁷

“But even if we only grant the weaker position that sometimes thinking alone is insufficient for moral competence, if one's surroundings are sufficiently morally corrupt, Eichmann still has no excuse. This is because he was certainly not subject to the sort of systematic indoctrination and complete isolation from alternative views that would be required to justify his having such outrageously unjustifiable moral beliefs about, for example, the permissibility of genocide. Thus, it follows that the “normal” adult

57 Michele M. Moody-Adams, “Culture, Responsibility, and Affected Ignorance,” p.13

Eichmann suffered neither from a global (incapable of thinking) nor local (incapable of thinking under totalitarianism) impairment of normative competence, nor from factual ignorance, from which it follows that we can safely resort to the default position of holding him to be responsible for his actions.”⁵⁸

SECTION IV: POSITIVE IDENTIFICATION OF THE GROUP OF BYSTANDERS AT T1⁵⁹

SELF-DECEPTION

To be self-deceived means that one understands what is right and what is wrong and then chooses wrong. According to Henry Allison, “self-deception presumes a certain level of thoughtfulness, of an attempt to formulate universalizable maxims of action . . . if one is deceiving oneself it must first be recognized, at some level, that what one is doing is, at least potentially, wrong, but then nevertheless proceeding to deceive oneself about this, more than likely through some “rationalization” that ignores or obscures morally salient features.”⁶⁰ Self-deceit gives rise to perverted ethics.

ETHICAL POSITION (PERVERTED ETHICS)

Given that our ability to judge is context-independent, I hold that self-deceit (judging but choosing wrong) forms the background for the position of perverted ethics (not to be confused with moral ignorance, but to be considered as deliberate or affective ignorance) and sets in motion mechanisms of denial⁶¹. Our ethical lives involve principles, rules, commitments, rights, duties, ideals, virtues, modes of justifying and

⁵⁸ Paul Formosa, “Moral Responsibility for Banal Evil,” p. 505

⁵⁹ Positive identification of bystanders at T2 (the next PhD dissertation chapter) will be more informed and the revisions of this section will be made accordingly.

⁶⁰ Ibid., p.513

⁶¹ To be further elaborated (S. Cohen’s *States of Denial*)

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criticizing ethical claims, and doubtless other things as well. It is possible to be a relativist about some of these (e.g., what constitutes a good or worthwhile life) but not about others (e.g., rights).

The proper (as opposed to perverted) ethical position (as Scanlon would put it) would be to renounce justification of the committed harm and not to do so would suggest its justification, which from the point of practical morality is wrong. Historical evidence from Nazi Germany and Milosevic's Serbia elucidate the following ethical position held by bystanders -- genocide, war crimes, and attitudes such as hatred toward members of different national, ethnic, racial, etc. groups are 'justifiable.' The rights of the community of victims are no longer within the domain of self-evident human rights (torture, assault, arbitrary power) are from the position of perverted ethics allowable (if regrettable).

CULTURE OF SILENCE

"The ultimate stage of psychological violence is to ban speech: it is specifically prohibited to talk about this violence, recount it, or make it into an object of interest and thereby dissipate part of the diffuse terror it engenders. The hammering of propaganda is accompanied by a law of absolute silence on the 'real' future of totalitarian lies. Thus, in Nazi Germany, it was strictly forbidden, under penalty of serious reprisals, to spread 'rumors' about the camps."⁶²

Cultural relativism is the thesis that a person's culture strongly influences her modes of perception and thought.⁶³

62 Anne-Marie Roviello, "The Hidden Violence of Totalitarianism," p. 927

63 I am yet to address possible objections from this position

SECTION V (HARM COMMITTED BY BYSTANDERS IN T1)

“Feinberg identifies two distinct concepts of harming in our ordinary thought: harm that consists in wronging someone and harms that consists in a setback to somebody's interests. He explicates the notion of harm that is needed to formulate the harm principle by describing it as the *overlap* between these two senses: harm is the wrongful setting back of an interest. Conduct is wrongful by this standard when it is, all things considered, wrongful: A's action harms B only when A's acting in that manner is morally indefensible—that is, neither excusable nor justifiable (pp. 105-6).”⁶⁴ What constitutes the harm committed by the group of bystanders at T1? Do we observe responsibility for the conduct that constitutes the failure and responsibility for the harm itself?

HARMFUL ATTITUDE

How can attitude be harmful? Scanlon says that “a person is open to moral criticism if he does in fact hold judgment-sensitive attitudes that are morally objectionable, such as the attitude that he has no reason to take any account of other people's interests or the possibility of their being harmed by his actions. . . . Such attitudes betray a kind of disregard, a failure to recognize and respond appropriately to [other people's] value as persons.”⁶⁵ Not to value persons as ends in themselves harms those persons without the existence of harmful actions. This is especially important in the preparatory phase of collective crime. This attitude, expressed by the regime and the bystanders alike, provides the basis for what Radzik refers to as reasonable fear of the victim community. In the preparatory phase, the community of victims cannot yet

64 Alison McIntyre, “Guilty Bystanders,” p. 178

65 Thomas Scanlon, “Reasons, Responsibility and Reliance,” p.511

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determine whether the bystanders' wrong moral judgments (perverted ethical beliefs) will motivate them (or not) to commit harm⁶⁶ and this is sufficient to feel fear. To hold and express this attitude then is a 'morally significant action.' Dimitrijevic proposes that "Morally significant actions are those based on certain standards of right, good, and just."⁶⁷

Radzik's perceptive point about reasonable fear expressed by the community of victims summarizes very well the harm caused. A member of the harmed community might say to a member of bystanders "Even if I believe that you did not kill with your own hands, I don't know how you feel about the people who did. I don't know if you encouraged or approved of them. I don't know whether you will act like they did in the future. So I am afraid of you. If you apologize, if you express regret, I will have less reason to be afraid, and maybe we can find a way to live in peace together."⁶⁸ The bystanders' responsibility is then judged on basis of their belonging to the collectivity of perpetrators. At the same time, those who disqualify the regime-proclaimed values and attitudes towards the victims will have acted according to their duty. "Fear is a morally significant harm. Fear is emotionally painful in itself. It can limit one's life projects. Also, if fear and suspicion persist between two groups, the danger of further outbreaks of violence or other wrongs is more likely. Fear causes a rift in the community and prevents its functioning. As the expert on ethnic violence Michael Ignatieff recently put it, "Once people kill each other all forms of neighborly cooperation are off."⁶⁹

66 Thomas Nagel (1970) and Thomas Scanlon (1998), among other philosophers, argue that moral belief can itself give rise to motivation. Rosati, Connie S., "Moral Motivation", The Stanford Encyclopedia of Philosophy (Winter 2006 Edition), Edward N. Zalta (ed.), URL = <http://plato.stanford.edu/archives/win2006/entries/moral-motivation/>.

67 Nenad Dimitrijevic, "Moral Responsibility for Collective Crime," p.8

68 Linda Radzik, "Collective Responsibility and Duties to Respond," p.466

69 Ibid.

HARMFUL INTENTIONS AND ACTION

In T1, in both phases the group of bystanders has committed harm against the victims and the society itself, through its attitudes, intentions and actions. Although in the context of collective crime, intentions of the group of perpetrators might differ from intentions of the group of bystanders, in relation to the community of victims they do not seem to be relevant. For example, a relevant intention of the group of bystanders might be to lead a 'normal' life in a criminal state. How is this then an intention shared with the perpetrators whose goal is, let's say, to harm the victim? It is then contributory harm committed by the bystanders through negligence. As long as one intends to commit the harm, and the other one intends nothing to jeopardize that intention itself, the harm is committed. The criminal intentions of the perpetrators are uninterrupted by the intentions of the bystanders. Not to challenge harmful intentions, when the conditions of control and knowledge are obtained, can be interpreted as participating in the harm.

According to Scanlon an action is wrong "if its performance under the circumstances would be disallowed by any set of principles for the regulation of behavior that no one could reasonably reject as a basis for informed, unforced general agreement."⁷⁰ He argues that "we can explain how persons are moved, say, to avoid wrongful actions by the fact that people have reason to want to act in ways that could be justified to others, together with the fact that when a rational person recognizes something as a reason we do not need a further explanation of how he or she could be moved to act on it."⁷¹ It would be impossible to argue that organized silence (as a form of action) by those in whose name the crime were committed could be generally agreed to.

70 Thomas Scanlon, "The Significance of Choice," p. 153

71 Ibid., p.154

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Their membership in the perpetrator community alone causes fear on the side of community of victims. Additionally, their participation in justifying the crime (either verbally or through silence) solidifies as reasonable fear making it something any reasonable person would not dismiss.

So besides silence, understood as a participatory outcome (thus, an action), it is our duty to take on the obligations that come from a failure to prevent harm — the duty to halt the harm and make repair. Thus the harm committed by bystanders is not to have *attempted to prevent the harm*. Those who I do not consider to be members of the group of bystanders are specifically those who have attempted to halt the crime. Whether their actions were successful or not is not what is at stake. Through these actions they have avoided to commit harmful actions against the targeted victims. “Specifically, if the conduct of war results in moral wrongs, the state, and in some cases the public, can be held morally responsible for negligence, in other words, the failure to change practices that will likely result in future wrongs.”⁷²

SECTION VI (METHODOLOGICAL INDIVIDUALISTS: OBJECTIONS AND RESPONSES)

Now I will first briefly outline the objection of methodological individualists to this account, then I will respond to it. The gist of the objection is that non-perpetrating members cannot be held accountable for the crimes of the group. This position holds that someone who did nothing legally and morally wrong cannot be held responsible. Thus ascribing responsibility to a group is meaningless. “Finally, collective responsibility leads to morally unjustifiable inferences: we first identify a group, then we observe that one or more individuals from the group committed a crime, then we blame the group as a whole,

72 Neta C. Crawford, “Individual and Collective Moral Responsibility for Systemic Military Atrocity,” p. 197

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which finally practically means that we assign blame to each and every individual who belongs to the group. Ascription of blame to a person is done on the basis of belonging only, not on the basis of the morality of her or his action.⁷³

My approach to assigning collective moral responsibility does not consider legally wrong action to immediately mean morally wrong action. Someone might not be legally liable but certainly can be held morally responsible. Secondly, participation in my approach has a central role in assigning moral responsibility. However, on my account, participation of bystanders in committing harm is understood broadly, as acts that are motivated by the morally wrong attitude, not directed at preventing harm committed by the perpetrators, and expressed through active silence (considered to be a strategy for justifying crime).

Methodological individualists tend to reject the notion of collective moral responsibility because they claim it: 1. severs the link between responsibility and *control* (especially in cases where the group membership being invoked is one that individuals cannot possibly choose), and 2. Violates the liberal ethic of what Rawls calls the “separateness of persons”. I believe I have shown that these two objections cannot be made to my approach. Firstly, I argue that individual group members are faulty in some way in order to be held collectively responsible for harm. Others, I do not consider fair targets for ascription of moral responsibility. Secondly, I believe that my approach avoids violating the principle of individual freedom in so far as I have tried to assess whether

73 Heath, Joseph, "Methodological Individualism", The Stanford Encyclopedia of Philosophy (spring 2005 Edition), Edward N. Zalta (ed.), URL = <<http://plato.stanford.edu/archives/spr2005/entries/methodological-individualism/>>.

excusing conditions obtain (i.e. how much freedom from external factors the individuals had to distance themselves from the community that has done wrong).

“An account of moral responsibility for systemic atrocity that puts the onus on individuals is too thin.”⁷⁴ As I said in the introduction of this chapter, mass crimes are committed by groups against groups. How can assessing individual moral responsibility elucidate what brought about these collective crimes, how they came to be, how they came to last? Committing collective crime is certainly what Peter French would consider to be representative of the “class of predicates that . . . can only be true of collectives.” According to French, “there is a class of predicates that just cannot be true of individuals that can only be true of collectives. Examples of such predicates abound . . . and include ‘disbanded’ (most uses of), ‘lost the football game’, ‘elected a president’, and ‘passed an amendment’. . . . Methodological individualism would be at a loss in this context.”⁷⁵ The very nature of the harm committed suggests involvement and coordinated activity of a large segment of population. Assessing each perpetrating member’s role in bringing about the harm seems obsolete. We can generalize ascription of moral responsibility to a collective because substantial overlaps in attitudes and actions can be identified.

Ascription of moral responsibility to a collective is purposeful. As Ignatieff suggests, it matters because it can lead to “some sort of acknowledgment of the harms done and an expression of respect for the victimized group.” What would be the consequence of assessment of moral responsibility of individuals? What purpose would

74 Ibid. p.188

75 Smiley, Marion, "Collective Responsibility", The Stanford Encyclopedia of Philosophy (Fall 2005 Edition), Edward N. Zalta (ed.), URL = <<http://plato.stanford.edu/archives/fall2005/entries/collective-responsibility/>>.

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that serve? Finally, if methodological individualists would agree that “making consideration of the victims central to our conception of responsibility [which] is itself a way of responding to them and acknowledging their dignity” then how would they go about proposing a workable response-based account?

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