

Symposium: Andrew I. Cohen's *Apologies and Moral Repair: Rights, Duties, and Corrective Justice*

Who Are "We" to Apologize?

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One of the many virtues of Andrew I. Cohen's clear and stimulating book is the attention he pays to questions about collective apologies.¹ Cohen conceives of apologies as corrective offers to repair wrongdoing and he holds—correctly, in my view—that collective agents can and on occasion should apologize for wrongs they have committed. Two particular kinds of collective agent—business corporations and states—figure prominently in his discussion; each serves as the focus of a chapter of the book (Chapters 7 and 8, respectively) and both reappear in his discussion of reparations for historic injustice (Chapter 9).

Some readers might take this to be a mischaracterization of Cohen's view, for he seems wary of committing himself to the existence of collective agents. Also, he spends a considerable part of Chapter 7 arguing that existing practices of corporate apology and the existence of duties to issue such apologies are compatible with a form of individualism. The individualist view to which he commits himself is one on which corporations "always, and only, act through their members" (p. 128). However, Cohen describes his view as a kind of "noneliminative individualism," which he introduces in the following terms: "[T]he noneliminative individualist shares the eliminative individualist's commitment to analyzing statements about corporate wholes as statements about individuals in various relationships and

¹ Andrew I. Cohen, *Apologies and Moral Repair: Rights, Duties, and Corrective Justice* (New York: Routledge, 2020). All subsequent references to *Apologies and Moral Repair* will be cited by page number parenthetically in the text.

roles. But the noneliminative individualist denies that statements about corporate wholes must refer to some ghostly group entity in order for them to be true” (p. 133).

How we should understand this position will of course depend on what, exactly, is meant by “analysis” here. Cohen’s discussion of Carl Wellman’s views² suggests that what he means by analysis is semantic analysis, on which each and every claim purporting to refer to corporate entities can be replaced without loss of meaning with statements that make no such overt claim. It is worth saying, however, that Cohen’s position seems like an extension—albeit a natural one—of Wellman’s. He cites Wellman as making this claim about attributions of actions, rights, and duties to corporations. These do not exhaust all the claims one might want to make about corporations; one might want to attribute to them intentions, goals, and states referred to by labels that, when applied to individuals, would refer to emotions, such as the state of regret.

Cohen holds, then, that many claims about the actions, rights, and duties of corporations are true. Many such statements appear to entail the existence of corporations. I think that we should take these entailments—along with many similar entailments in other areas of philosophy—at face value. If so, then Cohen’s view is, indeed, one on which we are committed to the existence of corporate entities. One might deny this if one were to think that genuine commitment to the existence of corporate entities must involve believing what Cohen’s noneliminative individualist is said to deny, namely, that “statements about corporate wholes must refer to some ghostly group entity in order for them to be true.” However, few of those who argue for the existence of corporate agents would accept that their view commits them to group entities that are legitimately described as “ghostly.”³ So,

² Carl Wellman, *Real Rights* (New York: Oxford University Press, 1995).

³ Ghosts are, at a minimum, immaterial substances. Among those who believe in collective agents without believing in immaterial substances are Kendy Hess, “The Peculiar Unity of Corporate Agents,” in *Collectivity: Ontology, Ethics, and Social Justice*, ed. Kendy Hess, Violetta Igneski, and Tracy Isaacs (New York: Rowman & Littlefield International, 2018), 35–60; Peter French, *Collective and Corporate Responsibility* (New York: Columbia University Press, 1984); Christian List and Philip Pettit, *Group Agency: The Possibility, Design, and Status of Corporate Agents* (Oxford: Oxford University Press, 2011); and Stephanie Collins, *Group Duties: Their Existence and Their Implications for Individuals* (Oxford: Oxford University Press, 2019).

to regard this commitment as being part of what is required by a commitment to the existence of collective agents seems at best uncharitable. If a commitment to the existence of corporate agents does not require this, then there seems little basis for denying that Cohen's view is one on which such agents do, in fact, exist.

Cohen argues—convincingly, in my view—that corporate agents can and, on many occasions, should apologize for wrongs they have committed, and he rebuts several objections along the way. One objection worth discussing in more detail is that apologies constitutively require a certain kind of emotional state of the apologizing agent, so that corporations—and other kinds of collective agent—cannot be the subjects of such states (p. 135). Cohen has two responses to this. One is to allow that corporate agents may in fact be the subject of emotions. The second is to accept that while these emotional states may be typical of apologies offered by individual agents, there is no reason to think that apologies offered by collective agents must share this feature (pp. 135–37).

The second option might seem like the only sensible one for the defender of corporate apologies. Emotions are paradigmatic examples of conscious states. Indeed, the kinds of emotions that typically accompany apologies made by individuals, such as regret and remorse, seem to be states that feel a certain way; they are, in other words, phenomenally conscious. Furthermore, while there does not seem to be anything obviously objectionable in thinking that collective agents have access to their own mental states—at least to those of us who accept that there are collective agents and that collective agents will have states like beliefs and intentions—few would want to commit themselves to the idea that such agents are phenomenally conscious.

However, this option has significant drawbacks. One has to do with the question of sincerity. It seems reasonable to hold, as Cohen does, that apologies made by individuals and those made by corporations will not be the same in all respects. We might, nonetheless, think that in any practice whose significance comes close to the kind of significance for us that the practice of individual apologies has, we will be able to distinguish between sincere and insincere apologies. In the individual case, it is plausible to think that the sincerity of an apology will be, to some extent, a matter of the emotions that accompany it. A second, related worry has to do with the meaningfulness of apologies. Those who are skeptical about the practice of corporate apologies may hold that there is something conceptually amiss with them. However, a much more powerful form

of skepticism, voiced in great detail by Nick Smith, has to do less with the possibility of such apologies than with their meaning or significance.⁴ Smith suggests, plausibly in my view, that an individual might apologize without experiencing regret or any similar emotion, but that apologies of this sort will typically be less meaningful than apologies that are accompanied by emotions. If so, one might worry that even if collective apologies unaccompanied by emotion are bona fide apologies, they will be considerably less meaningful than apologies offered by individuals.

In short, there are good reasons for a defender of the possibility of corporate apologies to try to make room for the possibility of corporate emotions. Someone who wants to adopt this view has a number of options at their disposal. One approach might involve the suggestion that corporate emotions involve emotions that are shared by some or all members of the corporation. Margaret Gilbert provides one model of emotional sharing, on which a shared emotion involves a commitment by a group of people to feel a certain way “as a body,” with the shared commitment providing individuals with standing to rebuke those who deviate from the emotion committed to by the group members.⁵ Hans-Bernhard Schmid provides another, more phenomenologically inspired model, taking as a paradigm cases such as the shared excitement that might be felt by the audience at a concert.⁶

An alternative view takes more seriously the idea that the emotions relevant to the sincerity of a corporate apology must be emotions of the corporation itself. Those impressed by a view of this sort might adopt a functionalist account of the emotions of corporate agents along lines explored by Gunnar Bjornsson and Kendy Hess.⁷ Alternatively, they might choose a view on which, under certain circumstances, emotions felt by members of a corporation can count as emotions of the corporation as a whole—a view that Cohen himself

⁴ Nick Smith, *I Was Wrong: The Meanings of Apologies* (Cambridge: Cambridge University Press, 2008).

⁵ See, e.g., Margaret Gilbert, *Life in Groups* (New York: Oxford University Press, 2023).

⁶ Hans Bernhard Schmid, “Shared Feelings: Towards a Phenomenology of Collective Affective Intentionality,” in *Concepts of Sharedness: Essays on Collective Intentionality*, ed. Hans Bernhard Schmid, Katinka Schulte-Ostermann, and Nikos Psarros (Frankfurt: De Gruyter, 2009), pp. 59–86.

⁷ Gunnar Bjornsson and Kendy Hess, “Corporate Crocodile Tears? On the Reactive Attitudes of Corporate Agents,” *Philosophy and Phenomenological Research* 94, no. 2 (2017): pp. 273–98.

seems tentatively to favor. However, it is not entirely clear that this view fits well with the kind of noneliminative individualism that Cohen outlines earlier.

It is true that if we say that emotions can be attributed to corporations in virtue of the emotional states of some of their members, we need not have committed ourselves to the existence of any kind of ghostly entity. However, a claim that corporations are in emotional states in virtue of the emotional states of their members need only be a claim about the truth-makers or the grounds for truths of claims about the emotions of corporations. As such, it may well fall short of a semantic analysis; even if any facts about a corporation's emotional states are made true by some facts about the emotional states of its members, there may be no way of analyzing statements about corporations' emotions into a set of statements about individuals' emotional states. The ways in which different corporations are organized and the different ways in which they perform regret may be so various that there is no systematic way of translating from a language that talks about corporate regret to one that only mentions the emotional states of employees. I do not think there is any reason to feel alarmed by this; it is just intended to suggest a note of caution as to how the individualist best expresses their metaphysical caution.

Corporate wrongdoing is one form of collective wrongdoing. However, it is not obvious that all forms of collective wrongdoing are perpetrated by collective agents. Suppose the commonly believed version of the death of Kitty Genovese were true. That is, suppose it were true, as it seems not to have been, that her death was the result of a collective omission on the part of neighbors too uncaring to intervene or call for assistance. We might think that we had a situation involving, in addition to individual moral failures, a collective moral failure on the part of those who could—perhaps in coordination with one another—have ensured her survival. But there is, plausibly, no collective agent on which to pin the failure.

Can we imagine, in a version of this already fictitious scenario in which Kitty Genovese survives, the possibility of a collective apology given by those who failed her? It is not clear whether, on Cohen's account, we can. As we have seen, Cohen holds that apologies are corrective offers to repair wrongdoing. In a collective apology, we would presumably need both the offer and the repair offered to be collective. On the face of it, there seem to be difficulties at both points. Let's start with the offer. To make an offer is to act. If so, it seems as though only agents can make offers. Furthermore, an offer must be

made by someone authorized to make the offer on behalf of those whose offer it is. But this, one might think, must be a collective act of authorization; those who are apologizing must be able to decide to empower someone to make an offer on their behalf. Once again, though, we seem to be talking of something that only a collective agent can do, especially if we think, as some do, that shared decision procedures are constitutive of collective agency.

So much for the offer. What about the promised fulfillment, the work of repair? We might start by focusing on it as that which is offered in the offer to repair. Here, we might start by observing that offers are typically, if not always, offers to act in certain ways. Again, it seems as though we need an agent in order to allow for the possibility of the offer being made good. If the offer cannot be made good, what kind of an offer is it? We might also think that in order to be genuinely reparative, the work of repair must involve some kind of guiding intention and that, if the reparation offered is genuinely collective reparation, it must be animated and shaped by some kind of collective intention. Again, the specter of a collective agent seems to be lurking in the background.

There are two possibilities that these reflections do not rule out. One is a collection of individual apologies, but we should be wary of supposing that such a collection can provide a wholly adequate substitute for a collective apology. No individual should take it on themselves to apologize for the group's omission. As members of a collection of putatively unconnected individuals, none of them has the standing to do *that*. Alternatively, each individual might, plausibly, apologize for *their part* in the group omission. Our fictionalized Kitty Genovese might excuse, or forgive, one or more of them. In doing so, she might, as Christopher Bennett suggests, be giving up a right to resentment.⁸ If she is forgiving them for their part in the shared omission, then she gives up her right to resent them for that part. However, even if she adopts this attitude to each of those involved in the omission, she might still and with no loss of rationality, retain the right to resent the omission to which each contributed.

A second possibility might be for the passersby to constitute themselves as a collective agent. They might, for example, contact one another and appoint a spokesperson to speak on their behalf. This collective agent would be the kind of thing which is, on a view like

⁸ Christopher Bennett, "The Alteration Thesis: Forgiveness as a Normative Power," *Philosophy & Public Affairs* 46, no. 2 (2018): pp. 207–33.

Cohen's, capable of making an offer, but it is not clear whether this completely solves the problem. One problem has to do with standing; the collective agent is distinct from any of its members. It is also, plausibly, distinct from the totality of its members. It is not clear, then, how it can be capable of apologizing either on their collective behalf or on behalf of any of them individually.

An agent can authorize another agent to act on their behalf. Furthermore, a group of agents can authorize a single agent to act on each of their behalves. If there is a worry about how a newly formed collective agent can have standing to apologize, it must be a worry about the circumstances under which one agent can perform reparative work on behalf of one or more others. Sometimes, we think that an agent can do this on behalf of another, provided that they stand in a suitably close relationship and provided, perhaps, that there is some kind of nontrivial obstacle that stands in the way of the agent who committed the wrongdoing apologizing on behalf of another. Parents can, sometimes, apologize on behalf of their children and children can, sometimes, apologize on behalf of their parents. The most plausible cases are, perhaps, those where the agency of the individual on whose behalf the apology is offered is in some way impaired.

This might provide us with a model for a collective agent offering an apology on behalf of a non-agential collective of which its members form a part. The relationship between the collective agent and the individuals who make it up is at least as intimate as that between an individual and its parents; they are, we might say, of the same flesh. The fact that third-party apologies are most plausibly taken to be appropriate when the agency of those on whose behalf they are offered is impaired also seems suggestive. If there is any kind of wrongdoer whose agency is undeniably impaired, it is the agency of a non-agential group. In short, we seem to have every reason for allowing non-agential groups to apologize by incorporating themselves into a group.

The skeptical reader might think that, insofar as these points are based on reflection on a fictionalized variant of a famously misreported real-life case, we have wandered far from the possibility of practical significance. However, further consideration of the practice of apologizing for historic wrongdoing might suggest otherwise. Some such wrongdoing can be assigned to identifiable wrongdoers: past states, individuals, or organizations. But some of it, we might think, is assignable to groups that are not agents. Consider two kinds of examples. The first includes forms of climate-related injustice being

perpetrated today. The second includes the wrongs of colonialism and slavery. In both cases, there are wrongs committed by individuals and by various kinds of collective agents. However, we might also think that some kinds of wrongdoing here can be attributed, in a nondistributive manner, to groups that do not constitute group agents: the wealthy, say, or colonial settlers taken as a group. Another kind of case that might be worth considering are wrongs done by the citizenry of a state, as opposed to the state itself, but the question of whether the citizenry of a state constitute a collective agent is a controversial one, which I shall avoid going into here for reasons of space.

Focusing on those duties of apology that fall on collective agents, as Cohen does, might lead us to overlook the possibility of non-agential groups of this sort having duties to apologize. If the considerations I have brought forward here are correct, this is a mistake, albeit an understandable one. The example I considered required the existence of a collective agent to *discharge* the apology, but the duty to apologize fell on the non-agential group. Difficulties arose from considerations about the relationship that must exist between the non-agential group and the collective agent formed out of its members in order for the collective agent to have standing to apologize. However, it is far from clear that these difficulties undermine the idea of a duty to apologize falling on a non-agential group.

It seems difficult to imagine a collective agent standing in as intimate a relationship to the other kinds of non-agential wrongdoing groups as the collective agent formed from the bystanders in our fictional Kitty Genovese case. It is even less clear that we can rule out the possibility (or the value) of apologies in such cases. If so, we are left with a question: Just how close must be the relationship between a group and some agent for the second to be able to apologize on behalf of the first? Cohen's work provides us with some valuable tools that would enable us to address this question, but in my view, the question remains open.