

State Apologies: Exemplary Judgments between Past and Future

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Abstract

The main aim of this paper will be to offer a normative account of state apologies to formerly disenfranchised groups. I suggest we think about apologies not only from the perspective of the victims, but also from the point of view of the communities in whose name the state speaks. More precisely I engage one particular reason for resisting an apology, namely that such an act would taint the self-image of the democratic community. Insights from the philosophy of judgment will be used to argue to the contrary. By putting “us, the community” in the best possible light as liberal democrats who can assume responsibility for an unjust past, an apology furthers our principles in practice. In the form of an exemplary judgment, an official “sorry” can inspire societal reflection and thus play a catalytic role with regards to the development of a more inclusive democratic culture and institutions.

Key words: state apology, exemplary political judgment, democratisation, historical injustice

Introduction

The last few decades have witnessed a sharp rise in the number of public apologies. Not only states, but churches, citizens, judges, the medical profession, academic institutions have issued apologies to those they have wronged in the past. A gesture formerly considered as a sign of weakness, now represents a sign of moral strength.¹ Crimes such as enslavement, land displacement, violation of earlier treaties, wartime deaths, ethnic discrimination, cultural disruptions, political seizures and many other types of human rights abuses have constituted reasons for expressions of regret.² The sheer number of such phenomena makes them important objects of scientific research. The nature of apologies and the goals they can serve have thus become an object of inquiry for a number of academic disciplines in the social sciences and humanities, including philosophy, political science, theology, history and sociology.³ Authors have been preoccupied by an array of questions: What is an apology? What is its purpose? Who is entitled to offer an apology? Who can accept and who can demand an apology? What makes for an appropriate apology?

¹ Nicolaus Mills, “The new culture of apology,” *Dissent* 48, no. 4 (Fall 2001): 113-116; Mark Gibney et al., eds., *The Age of Apology: Facing up to the Past*, Pennsylvania Studies in Human Rights (Philadelphia: University of Pennsylvania Press, 2008).

² Stanley L. Engerman, “Apologies, Regrets and Reparations,” *European Review* 17, no. 3-4 (2009): 593-610.

³ Trudy Govier, “Forgiveness and the Unforgivable,” *American Philosophical Quarterly* 36, no. 1 (January 1999): 59-75; *Taking Wrongs Seriously: Apologies and Reconciliation*, Cultural sitings (Stanford, Calif: Stanford University Press, 2006); Gibney et al., *The Age of Apology*; Ari Kohen, “The personal and the political: forgiveness and reconciliation in restorative justice,” *Critical Review of International Social and Political Philosophy* 12, no. 3 (2009): 399-423.

Within this growing literature, the state occupies a distinct position as both perpetrator and apologizer. Naturally, the framework developed for understanding interpersonal apologies cannot be seamlessly transferred to make sense of apologies by collective agents. One of the most frequently asked questions is: Can the state express remorse or guilt? While officials offering the apology might experience such attitudes, there is a growing consensus in the literature that remorse is not a condition for an authentic apology by agents like the state. Rather than expressing such emotions, the purpose of the public apology is to declare knowledge and condemn injustice,⁴ set the record straight,⁵ re-establish equality among groups and recognize suffering,⁶ strengthen a principle of transnational cooperation and thus contribute to the development of international law and diplomatic relations,⁷ make a relationship possible by creating a less hostile environment for the groups,⁸ and mark a society's affirmation of a set of virtues in contradistinction to a past of exclusion.⁹

Yet, while many scholars see public apologies as creating a space of communal reflection and restoration, there are strong sceptical positions that conceive of such official acts as nothing but a “smoke screen” meant to hide further projects of assimilation and discrimination. On the basis on normative inconsistencies associated with current practices of apologies, realist scholars have objected that apologies are a form of “sentimental politics”¹⁰ that serves as a “seductive, feel-good strategy contrived and promoted by governments”¹¹ to compensate for the lack of redistributive measures. On this view, apologies allow political elites to take the higher moral ground against those who came before them.

It is in response to this kind of argument that I would like to formulate my contribution. While I agree that a state apology cannot rectify massive injustice on its own, I argue that a community should indeed feel good about themselves when they apologise, and that it is appropriate to take the moral high ground and condemn past practices of exclusion and discrimination. I argue that, instead of feeling its self-understanding tainted and threatened by remembering past evils, an apology can actually put “us, the community” in the best possible light as democrats concerned with equal respect for all. Far from undermining our self-respect, an exemplary apology can further our principles by showing that we can be the kind of people who can take responsibility for the past, present and the future.

Before outlining the structure of the paper, let me first clarify what I will not do here. I will not argue in favour of seeing apologies as the panacea for historical injustice. I see them as one among many other institutional mechanisms that are necessary for engaging the complexity of a past of violence and discrimination. The more narrow argument I aim to make is that, should a

⁴ Nigel Rapport “Ethics of Apology,” in Nayanika Mookherjee, ed., “The Ethics of Apology: A Set of Commentaries,” *Critique of Anthropology* 29, no. 3 (2009): 345-366.

⁵ Kathleen Gill, “The Moral Functions of an Apology,” *The Philosophical Forum* XXXI, no. 1 (Spring 2000).

⁶ Michael Cunningham, “Saying Sorry: The Politics of Apology,” *Political Quarterly* 70, no. 3 (1999): 285-293.

⁷ Mark Gibney and Erik Roxstrom, “The Status of State Apologies,” *Human Rights Quarterly* 23, no. 4 (November 2001): 911-939; Richard B. Bilder, “The Role of Apology in International Law and Diplomacy,” *Virginia Journal of International Law* 46, no. 3 (2006): 437-473.

⁸ Ghassan Hage, “On the Apology” in Mookherjee, “The Ethics of Apology: A Set of Commentaries.”

⁹ Elizabeth Kiss, “Saying We're Sorry: Liberal Democracy and the Rhetoric of Collective Identity,” *Constellations* 4, no. 3 (1998): 387-398; Lisa Strom Villadsen, “Speaking on Behalf of Others: Rhetorical Agency and Epideictic Functions in Official Apologies,” *Rhetoric Society Quarterly* 38, no. 1 (Winter 2008): 25-45.

¹⁰ Berlant, Lauren. “The Subject of True Feeling: Pain, Privacy and Politics,” in Austin Sarat and Thomas R Kearns, eds., *Cultural Pluralism, Identity Politics, and the Law*, Amherst Series in Law, Jurisprudence, and Social Thought (Ann Arbor, Mich: University of Michigan Press, 1999). Also Andrew Woolford, “The Limits of Justice: Certainty, Affirmative Repair and Aboriginality,” *Journal of Human Rights* 3, no. 4 (2004): 429-444.

¹¹ Gillian Cowlshaw, “A Multiplicity of Meanings: An Ethnographic Reflection on Kevin Rudd’s Apology on Behalf of the Nation, to Australia’s Indigenous Peoples in January 2008,” in Mookherjee, “The Ethics of Apology: A Set of Commentaries.”

democratic community decide to offer an apology, it would not diminish the community's self-esteem but, on the contrary, it would show it in the best light of its guiding principles. I will also not investigate the impact of state apologies on the victim and their descendants. There is a large literature investigating the beneficial effects that official acts of regret can have for the formerly oppressed. Providing symbolic recognition and paving the way to reconciliation, helping the victimised regain their sense of the self, reintegrating them in the moral and political community by correcting memory, and helping them develop trusting relationships with the rest of society are all hoped-for effects of apologies from the point of view of the victim.¹² By contrast, this paper seeks to show how official expressions of regret can catalyse normative shifts within the public culture of mature, yet imperfectly just democracies. Democracy is conceptualised here to comprise a normative, an institutional and a cultural dimension. I suggest that we imagine public apologies as efforts to unsettle unjustly closed accounts in a way that engages all three dimensions. These efforts could be successful to the extent that an official "sorry" takes the form of an *exemplary political judgment*, a judgment that has the potential to open up the path for institutional reform and for a societal examination of history and identity. By the end of the paper I hope to have argued that, far from tainting the community by unearthing past evils, state apologies express "us" as a true democratic community and thus push "us" towards a greater and greater approximation of democratic principles in practice.

The first section of the paper will explain what I mean by imperfectly just societies and their normative shifts, as reflected both in institutions and public culture. A number of objections to official state apologies will be engaged critically, yet we will focus on dealing with the "self-image objection," i.e. the objection that examining the past unnecessarily taints our present. Building on the extensive work in the philosophy of judgement, the second section will offer an account of *exemplary political judgment* that will pave the way for a complex account of official expressions of regret. This account is meant to illuminate the manner in which the "self-image objection" can be dealt with. Next I examine how a state apology can provoke its audience to judge whether "we" can be the kind of society who apologises for past wrongs. Instead of a conclusion, I will attempt to address two potential objections regarding the motivations that might undermine good judgment and the central role I envisage for the state as a motor for attitudinal change.

Exploring the Circumstances of Imperfectly Just Democracies

Imperfectly just societies¹³ are societies that depart from their declared and constitutionalised conception of justice in significant, yet correctable ways. In such cases, the principles of justice characterising the polity have not been consistently applied across time and across persons. Naturally, such normative inconsistencies call for redress. Our interest lies with the issue of state apologies to formerly disenfranchised groups, apologies that have been known to take place

¹² See, for example Gill, "The Moral Functions of an Apology"; Trudy Govier and Wilhelm Verwoerd, "The Promise and Pitfalls of Apology," *Journal of Social Philosophy* 33, no. 1 (2002): 67-82; Jeff Cortassel and Cindy Holder, "Who's Sorry Now? Government Apologies, Truth Commissions and Indigenous Self-Determination in Australia, Canada, Guatemala and Peru. Paper prepared for delivery at the annual meeting of the International Studies Association, San Diego, CA, March 22-25, 2006."; Engerman, "Apologies, Regrets and Reparations"; Peter Lewis, "After Sorry: Towards a New Covenant of Solidarity and Embrace," *Pacifica: Journal of the Melbourne College of Divinity* 22, no. 1 (2009): 1-19.

¹³ I want to avoid the heavy baggage that comes with the Rawlsian concept of "non-ideal theory". By referring to imperfectly just societies in a way that does not rely on the Rawlsian vocabulary I seek to distance myself from a certain way of thinking about justice. See John Rawls, *A Theory of Justice*, Rev. ed. (Cambridge, Mass: Belknap Press of Harvard University Press, 1999).

almost exclusively within constitutional democracies.¹⁴ Such political acts are usually meant to address historical violations of equal concern and respect against a certain group of “permanent losers.”¹⁵ As such, they can be potential institutional candidates for beginning to recognise and enfranchise the formerly excluded.

Apologies take place within extremely complex circumstances and it is only by paying attention to this complexity that we can make the best of their critical potential. Quite often injustices are not just the work of institutions, but are ingrained within the public culture of a democratic community. Institutional discrimination is the result of excluding some groups from the protective scope of a community’s sense of justice. At the same time, institutional discrimination reinforces and legitimises exclusionary attitudes. Once we understand that abuse is not merely the result of bad institutions, we need to try and offer a normative account of state apology that takes into account the attitudinal dimension of the democratic regime. How should apology be offered if it is to have an impact not only on institutional practices, but also on a discriminatory—or, at best—indifferent citizenry? How can apologies correct injustices within an environment that is at least partially hostile to the idea of apologising?

This problem becomes even clearer when we remember that political apologies are offered by state officials speaking in the name of the institution they belong to, and on behalf of the larger society. This raises one of the main concerns associated with political apologies: since the authority of officials is based on their representation of the demos, political apologies are pervaded by a “proxy” structure. The fact that such gestures are always made “in the name of” a greater community makes them problematic, especially when the wider publics are hostile to the idea of offering an apology. How can political elites initiate processes of political transformation when they lack the support of a constituency? What is to be done when the constituency is more concerned with what an apology would do to their self-understanding than with the need of remedying inherited inequities? This question points us to the necessity of attending to all dimensions of democratisation: *normative, institutional and attitudinal*.

Democratic transformations are generally seen to cover changes exemplified on a continuum by such phenomena as the Rights Revolution in the United States, the enfranchisement of women worldwide, emancipation from authoritarianism and colonialism by various societies in the 20th and 21st Centuries. If we look at democracy as a normative regime, such transformations may involve refining standards of evaluation and extending their protective scope. All of these are part of a continuous and gradual—but also sometimes abrupt—movement towards a closer approximation of the requirements that democratic reciprocity and inclusiveness place on both institutions and citizens. If we look at democracy from the institutional point of view, these normative changes get manifested in the (re)writing of constitutions and electoral laws, the revision of old statutes, the annulment of “evil laws,”¹⁶ the creation of new rights or the more

¹⁴ Apology is seen to be a mark of liberal democracies by a number of authors. See Kiss, “Saying We’re Sorry: Liberal Democracy and the Rhetoric of Collective Identity”; Juliette Fette, “Apology and the Past in Contemporary France,” *French Politics, Culture and Society* 26, no. 2 (Summer 2008): 78-113; Katherine Smits, “Deliberation and Past Injustice: Recognition and the Reasonableness of Apology in the Australian Case,” *Constellations* 15, no. 2 (2008): 236-248.

¹⁵ Duncan Ivison explains how those who permanently lose in the democratic political game end up harbouring feelings of resentment. Duncan Ivison, Paul Patton, and Will Sanders, eds., *Political Theory and the Rights of Indigenous Peoples* (Cambridge, U.K.: Cambridge University Press, 2000).

¹⁶ Many historians and theorists of violence use the term “evil” to give voice to their abhorrence regarding the injustices states commit against their populations. The term “evil laws” refers to laws put in the service of oppression. The term also covers discriminatory laws within democracies. See Hannah Arendt, *Eichmann in Jerusalem*, deutsche Ausg. (München: Piper, 1965); David Dyzenhaus and Mayo Moran, eds., *Calling Power to Account: Law, Reparations and the Chinese Canadian Head Tax Case* (Toronto: University of Toronto Press, 2005); Leora Bilsky,

extensive application of the existing ones, all this in order to change the terms of political membership.

Be they more or less profound, such transformations lend themselves to multiple layers of theorising and usually lead to practical dilemmas. Some of the most pertinent questions one could ask are: Who initiates the normative shift—institutions or groups within the civil society? How can the citizens of a community be motivated to accept and to consistently act on the recently (re)discovered principles? What happens when the consistent application of principles across persons is in strong tension with the individuals' dispositions, desires and reactive emotions?

These questions bring us to the socio-affective dimension of a democratic political culture. Democratic shifts need the backing of a supportive political and emotional culture. However, motivating citizens to adapt to change behaviourally and attitudinally is a very difficult task. Mutual respect, the willingness to listen, exchange arguments with and include the points of view of historically disenfranchised groups are frequently absent in imperfectly just societies. On the contrary, indifference, lack of trust, resentment, and indignation dominate the dominant majority's emotional repertoire.

In a recent article, Michael Cunningham analyses three categories of objections that have been raised against a potential apology by Britain for its contribution to the slave trade on the occasion of the bicentenary of the abolition of the slave trade in Britain.¹⁷ While these objections are linked to discussions within a particular polity, they are not all confined to it. Unfortunately, they have emerged in other contexts where the need for an apology has been discussed. Turkey's refusal to acknowledge the Armenian genocide, or Portugal's clinging to an image of a civilising empire are just two cases in which a discomfort with the past prevents sincere processes of national reckoning.¹⁸

The first category of objections is particular to all cases where victimisers and victims are all dead. This is the indeterminacy objection: since we cannot identify victimisers and victims it does not make sense to ascribe responsibility. And why should officials who have not contributed to the injustice apologize for violations their predecessors perpetrated? While there are strong voices arguing against the very idea of collective apologizing for injustices that took place a long time in the past,¹⁹ the dominant position seems to be that it is normatively sound to ascribe

Transformative Justice: Israeli Identity on Trial, Law, meaning, and violence (Ann Arbor: University of Michigan Press, 2004).

¹⁷ Michael Cunningham, "It Wasn't Us and We Didn't Benefit': The Discourse of Opposition to an Apology by Britain for Its Role in the Slave Trade," *Political Quarterly* 79, no. 2 (2008): 252-259. For a very good critical engagement of the way in which Britain "talked" about the slavery on the occasion of the bicentenary of the abolition of slave trade see Emma Waterton and Ross Wilson, "Talking the Talk: Policy, Popular and Media Responses to the Bicentenary of the Abolition of the Slave Trade using the 'Abolition Discourse'," *Discourse & Society* 20 (2009): 381-399.

¹⁸ Rehabilitating the names of the masterminds and perpetrators of the Armenian genocide and funding research programs that maintain a skewed view of history represent just two ways in which Turkey has been trying to avoid an honest reckoning with its unsavoury past. See Rouben Paul Adalian, "Turkey, The Republic of, and the Armenian Genocide," in Israel W. Charny, ed., *Encyclopedia of Genocide* (Santa Barbara, Calif: ABC-CLIO, 1999). For an account of the relationship between Turkish identity and racist nationalism see Stephan H. Astourian, "Modern Turkish Identity and the Armenian Genocide: From Prejudice to Racist Nationalism," in Richard G Hovannisian, ed., *Remembrance and Denial: The Case of the Armenian Genocide* (Detroit: Wayne State University Press, 1998), 23-50. Clinging to the idea of linguistic parentage when political domination came to an end after brutal wars is just one among many symptoms of maintained colonial attitudes within the Portuguese public sphere. See Alfredo Margarido, *A Lusofonia E Os Lusófonos: Novos Mitos Portugueses*, 1st ed. (Lisboa: Edições Universitárias Lusófonas, 2000). For an account of the way in which the self-image of a former colonial power was reflected in literature after 1974 see Margarida Calafate Ribeiro, *Uma História de Regressos: Império, Guerra Colonial e Pós-Colonialismo* (Porto: Afrontamento, 2004).

¹⁹ See, for example, Michel-Rolph Trouillot, "Abortive Rituals: Historical Rituals in the Global Era," *Interventions* 2, no. 2 (2000): 171-186.

responsibility to the institution of the state as continuous in time and as transcending the particular individuals constituting it at a certain moment.²⁰ Assuming institutional responsibility and acknowledging that an injustice has been committed must be conceptually distinguished from collective guilt, a more problematic notion.²¹

The second objection—namely that we should focus on more concrete ways of acknowledging the past—does not contest the validity of apologies as such, but points to more useful ways of dealing with historical injustice. Most scholars of apology agree that while it is an important part of a holistic effort to deal with a past of oppression, it could not on its own provide appropriate redress.

It is the third objection that constitutes the focus of this article and it is in responding to it that I try to offer my contribution. The “self-image objection” points to the undesirable fact that an apology would focus attention on the negative aspects of the country’s history, to the detriment of that country’s merits in eliminating oppression. In the case of the debates around the bicentenary of the Abolition of the Slave Trade Act, the British felt they needed to celebrate the pioneering role their polity played in fighting slavery worldwide. In the public sphere of the UK, an apology was interpreted as tarnishing the community’s image, as an unnecessary denigration of its achievements on the basis of something that took place a long time ago, and as an incomprehensible effort to re-write history and unqualifiedly portray the British empire as a force of injustice. Conservative commentators and public figures concerned about the community’s tradition and history objected to the degrading of its accomplishments. In opposing such supposed misrepresentations, efforts were made to highlight the merits of Britain in the abolition movement and to thus promote a positive image of history. In their analysis of the policy, popular and media responses to the bicentenary of the abolition of the slave trade, Emma Waterton and Ross Wilson expose the kind of manoeuvres that were used in order to deflect both accusations of complicity and demands for an apology.²² By sidestepping issues of race, by focusing on the fact these events belonged in the past and that Britons lived much better today, by constructing “slavery” as an agent itself, by deferring blame and responsibility, and by denying the relevance of slavery for inequities in the present, the public discourse managed to stifle the potential for a critical reflection on history and contributed to the reproduction of undemocratic attitudes. Needless to say, this resulted in great disappointment for the African, African-British and African Caribbean groups within the UK.²³ The positive self-representation of Britain as the moral leader of Europe and as champion of abolition inoculated it against any potential claims of recognition and redress. When emphasising the achievements of the present, enough distance was achieved from the horrors of the past to foreclose any possible attempt at challenging founding myths and examining present inequities historically.

Unfortunately, the concern with preserving such a glorious national image did not transpire only in public interventions by conservative public figures. Nor was it a story imposed on the citizenry in a top down manner. On the contrary, this attitude emerged from contributions by ordinary citizens, which were flavoured with a worrying dose of inverted racism.²⁴ The result of

²⁰ Cunningham, “Saying Sorry”; Charles L. Griswold, *Forgiveness: A Philosophical Exploration* (New York: Cambridge University Press, 2007).

²¹ See Kiss, “Saying We’re Sorry: Liberal Democracy and the Rhetoric of Collective Identity”; Gill, “The Moral Functions of an Apology”; *Taking Wrongs Seriously*.

²² Waterton and Wilson, “Talking the Talk: Policy, Popular and Media Responses to the Bicentenary of the Abolition of the Slave Trade using the ‘Abolition Discourse’.”

²³ *Ibid.*, 382-383.

²⁴ The claim was that by agitating for an apology, African British people were responsible for perpetuating racism against themselves. See *Ibid.*, 395.

the public discussion was the reinforcement of the dominance of a partial view of history, that of the white British population.

This type of attitude pervades many democratic societies with a past of injustice. Given the anchoring of such arguments into the public's self-identification, how can we re-think apologies in a way that gives citizens no ground for fearing their impact? How should one contest the attachment to a partial and dishonest view of history? In what way should decision-makers offer an apology in view of engaging the exclusionary views that underpin the fear of an apology's deprecating effect? This paper seeks to contribute a theoretical account of the characteristics by virtue of which apologies can hope to achieve these transformational results. In order to provide guidelines—yet not a formula—for a democratically inspiring apology I now turn for resources to the growing literature on political judgment.

The Power of Exemplary Judgment: An Invitation to Reflection

Sparked by Hannah Arendt's revolutionary work on Kant's aesthetics,²⁵ in the last few decades, a massive literature has developed on the topic of reflective political judgment.²⁶ Beside Kant and Arendt's philosophical appropriation of his account of aesthetical judgment for politics, the other source for the literature lies with Aristotle's famous notion of *phronesis*²⁷ and Gadamer's hermeneutics.²⁸ In spite of their theoretical differences, the proponents of the turn to judgment converge on the idea that politics is not a science; against Platonic views, politics is seen as covering complex situations where no precise, easily applicable guidelines are available.²⁹ The most relevant distinction here is between the Kantian determinant judgment as the faculty that enables us to apply pre-given rules, formulae, and principles to a concrete situation and reflective judgement, which works within the complexity of the situation itself and attempts to derive the general from within the particular. Since all humans have the capacity to exercise reflective judgment, and since the validity of such judgments is to be determined inter-subjectively by a public that the agent is trying to woo into agreement, this faculty is particularly relevant for scholars of democratic politics.³⁰

In contouring my account of the transformational power of state apologies, I shall build on Alessandro Ferrara's account of "first-order good judgment."³¹ However, my exercise in

²⁵ Immanuel Kant, *Critique of the Power of Judgment* (Cambridge, UK: Cambridge University Press, 2000).

²⁶ Hannah Arendt, *Lectures on Kant's Political Philosophy* (Chicago: University of Chicago Press, 1982). For a sampling of the emerging literature on judgment triggered by Arendt's project, see Ronald Beiner, *Political Judgment* (Chicago: University of Chicago Press, 1983); Peter J. Steinberger, *The Concept of Political Judgment* (Chicago: University of Chicago Press, 1993); Alessandro Ferrara, *Justice and Judgment: The Rise and the Prospect of the Judgment Model in Contemporary Political Philosophy* (London: SAGE, 1999); Ronald Beiner and Jennifer Nedelsky, eds., *Judgment, Imagination, and Politics: Themes from Kant and Arendt* (Lanham, Md: Rowman & Littlefield, 2001); María Pía Lara, *Narrating Evil: A Postmetaphysical Theory of Reflective Judgment*, *New Directions in Critical Theory* (New York: Columbia University Press, 2007); Alessandro Ferrara, *The Force of the Example: Explorations in the Paradigm of Judgment*, *New Directions in Critical Theory* (New York: Columbia University Press, 2008).

²⁷ Aristotle, *The Nicomachean Ethics*, Further rev. ed., Penguin classics (London, Eng: Penguin Books, 2004).

²⁸ Kant, *Critique of the Power of Judgment*; Arendt, *Lectures on Kant's Political Philosophy*; Hans-Georg Gadamer, *Truth and Method*, 2nd ed. (New York: Crossroad, 1989).

²⁹ For an analysis of the tension between Arendt's attempt to rescue *vita activa* from the truth-obsessed philosophers on the one hand and her return to *vita contemplativa* in her later writings see Majid Yar, "From Actor to Spectator: Hannah Arendt's 'Two Theories' of Political Judgment," *Philosophy and Social Criticism* 26, no. 2 (2000): 1-27.

³⁰ For an insightful analysis of the relationship between political judgment and the political affirmation of freedom see Linda M. G. Zerilli, "'We Feel Our Freedom': Imagination and Judgment in the Thought of Hannah Arendt," *Political Theory* 33, no. 2 (April 2005): 158-188.

³¹ However, this will not be the only source for my exercise in philosophical appropriation. Ferrara himself builds on the work of Arendt and her interpreters.

theoretical appropriation will not be limited to Ferrara's work. Insights from Ronald Beiner's reading of Arendt and Gadamer will hopefully help engage the "self-image objection" in a way that shows its weaknesses.³²

In using reflective judgment as an unexplored source of normativity for the age of pluralism, Ferrara's ambition is to provide an alternative to the neo-naturalism that has flourished since the Linguistic Turn in contemporary political theory. While I do not want to examine the plausibility of his overall project, I find his notion of "oriented exemplary judgment" particularly useful for making sense of how apologies open up avenues for democratic change.

Following in Arendt's footsteps, but departing in considerable ways from her attempt to recuperate judgement for politics, Ferrara defines an "example" as a union of the "is" with the "should be" that puts into motion our moral powers and provides us with a sense of the possibilities for transformation.³³ Examples can be familiar in the sense that one knows what an example is an example of. On the other hand, innovative examples cannot be understood by making reference to precedents. It is only *post facto* that we can understand their normative weight. Innovative judgment is most clearly present in political revolutions, the founding of new religions, or groundbreaking works of art.

In politics, the force of examples is of utmost importance due to the fact of pluralism and the perpetual contestation of multi-vocal principles. By setting the imagination and other moral powers into motion, exemplary judgments act as engines of historical change when no readily available principles come to our aid, from experience or elsewhere.

...the exemplarity of what is as it should be accounts for much of the change undergone by our world over time, for the rise of new patterns and the opening of new paths. Historical change of great magnitude is often spurred by the capacity, possessed by exemplary figures, actions, and events, to illuminate new ways of transcending the limitations of what is and expanding the reach of our normative understandings.³⁴

The "inspiringness" of the example lies entirely within itself, says Ferrara; however, this does not mean that reflective judgment is purely reflective or idiosyncratic. On the contrary, it is "oriented" by the fulfilment of identities: exemplary judgment operates within, though it is not restricted to, a context of shared truths.³⁵ The idea of a community of judgment makes judgment possible both theoretically and concretely.³⁶ Ferrara claims that judging is one of the most important faculties for sharing into and interpreting a political identity. His understanding of the *sensus communis* is neither Kant's minimalist naturalism, nor the Gadamerian hermeneutic horizon, but a shared political identity. When we judge, we interpret ourselves, our historical identity, and our social relationships. In the case of "us, the moderns" interpretation is guided by the ideal of equal respect.³⁷

³² Beiner, *Political Judgment*; Beiner and Nedelsky, *Judgment, Imagination, and Politics*.

³³ Ferrara, *The Force of the Example*, 3.

³⁴ *Ibid.*, 4.

³⁵ In this sense, Ferrara follows into the footsteps of Ronald Beiner who, in his pioneering work on judgment argued that the only plausible account of this political faculty is one that acknowledges the importance of both Kant's formal conception of judgment and Aristotle's emphasis on community as the pool of meanings within which judgment is exercised with the others. See Beiner, *Political Judgment*.

³⁶ For the distinction between the formal and the substantive dimensions of political judgment see Valentina Gueorguieva, "Les deux faces du sens commun," *The Canadian Review of Sociology and Anthropology* 40, no. 3 (2003): 249-265.

³⁷ Ferrara makes this point when he analyses Ackerman's work on the extraordinary constitutional moments that punctuate American history. See Ferrara, *The Force of the Example*, 37.

Competing reasonable judgments within a society can be ranked depending on which of them best fits a shared idea of what “we” could be at our best.³⁸ When “we” evaluate “new and as yet unexplored alternatives,” “we” are guided by the ideal of equal respect that lies at the basis of our understanding of ourselves as heirs of modernity:

If we wish to talk of general principles such as the principle of equal worth or the right to demand justification or the discourse principle, or other such principle, as normative elements whose reach spans beyond our own particular identity, we can certainly do so. The point is, however, that the role played by them is always best understood as that of *orienting* our reflective judgment in the sense of what best proceeds from our shared truths.³⁹

The reference to the Rawlsian concept of *reasonableness* is explained by Ferrara’s idea that the validity of exemplary judgment for a community of moderns depends on inclusiveness, i.e., on taking into consideration the positions of as many individuals as possible. It is these individuals’ consent that we are trying to woo when we communicate our judgment.⁴⁰ By engaging their moral powers, and more precisely their imagination, exemplary judgment can help its addressees enlarge their perspective: “Examples orient us in our appraisal of the meaning of the action not as schemata, but as well-formed works of art do: namely, as outstanding instances of congruency capable of educating our discernment by way of exposing us to selective instances of the feeling of the furtherance of our life.”⁴¹

It must be emphasised that exemplary judgment does not provide a checklist for its recipients to follow, but it surely encourages them to develop what Ferrara calls “second-order reflective judgments” about the validity of the “first-order reflective judgments” underlying exemplary or reasonable deeds, decisions, policies, practices, etc.⁴² A good second-order judgment is one that recognises the originality of a first-order judgment and accepts the provocation that its exemplarity directs towards one’s own moral powers. A political institution, decision, or action is exemplary, and has fulfilled its purpose of generating good second-order reflective judgments, to the extent that it has stimulated citizens’ political imagination in such a way as to provide them with an enhanced view of the possibilities offered by their political life. Charisma—the personal power to inspire others famously theorised by Max Weber—rhetoric, and the ability to mobilise are essential ingredients for the pursuit of this aim:

What truly mobilizes us, instead, is something not only that meets our interests but also stirs our imagination and carries with it the promise of a “promotion, affirmation or furtherance” of our political life as well as the idea of a communicability of this experience. We do not think of something that mobilizes our political enthusiasm as something that merely meets our *preferences*: we think that the “vision” enshrined in that proposal, slogan, objective can potentially promote, affirm, or further everybody’s life. The ability to mobilize politically rests on the force of the exemplary to inspire conduct.⁴³

³⁸ It becomes clear, now, why Ferrara thought he found in Dworkin’s theory of adjudication and its emphasis on integrity a recognition of the importance of exemplary reflective judgment.

³⁹ Ferrara, *The Force of the Example*, 74. Beiner earlier made the same point when he argued that interpretation is called for not merely in the reading of texts but also in practical conduct and moral action. When we judge we interpret ourselves, our historical identity and social relationships.

⁴⁰ *Ibid.*, 46.

⁴¹ *Ibid.*, 61.

⁴² *Ibid.*, 51-57.

⁴³ *Ibid.*, 119. Aristotle adds the goodness of the speaker’s character, the strength of his arguments, and his skills in engaging the audience’s emotions as variables determining the success of communicated judgments. Aristotle, *Rhetoric*, 1356 a, _ (accessed November 13, 2008). I am here indebted to Beiner who offers an interesting and persuasive exploration of the connection between *phronesis* and rhetoric in Aristotle’s thought. See Beiner, “Judgement and Rhetoric,” in *Political Judgment*, 83-101. From a democratic theory perspective, Simone Chambers

In order to achieve this mobilising effect, the good judging agent must valorise the tools of rhetoric. Rhetoric is understood by scholars of judgment not as manipulative public speaking, but as the medium within which judgment operates and within which the purposes of action are themselves constituted.⁴⁴ In addressing judgments to the others, one must be aware of the impact one seeks to have on them and one must know the kind of receptivity that can be expected from the public. Knowing one's audience is essential for reaching them and for provoking them to follow in judgment. This is especially important when one challenges engrained habits of thought and practices. When the actor imaginatively puts herself against the community and claims that "we, as a community" can better live up to the guiding principles of our political identity if we enlarged the borders of political membership, judgment assumes a tragic dimension.⁴⁵ For dissenting judgments to reach their audience, we need an exemplary judge who

... possesses a certain detachment from the issues being judged, and thus is not swept up into the immediacy of passion and prejudice that often attends pressing political issues. And yet he or she must also possess long and rich experience in the circumstances and context, temporal and spatial, that give to the affairs being judged their particular shape or contour. We can judge only on the basis of a great deal of antecedent knowledge, but we can only put this knowledge to work in freedom from the immediacy of passion or interest. We may be passionately concerned, but must not be driven by passion; we may be intensely interested in the complexities of the case, yet we must exercise our freedom of reflection disinterestedly. Exemplars of judgment do this, and they do it with marvellous adeptness.⁴⁶

Exemplars of judgment thus manage to balance the voices of the spectator and the actor in herself in a way that resonates with her audience and moves them towards new and so far unexplored possibilities.⁴⁷ It is this kind of balancing act and the courage of imagination that is needed for a controversial apology to trigger a shift in institutional arrangements and in the public culture supportive of those institutions. I suggest that, by inviting its audience to re-imagine itself in the best possible light of its guiding principles, an apology can constructively engage those who fear the damage to their communal self-understanding.

Apologising Exemplarily

Exemplary judgments can move their audience's imagination towards better ways of being as a community. Well-thought apologies to formerly disenfranchised groups can open up the space for a normative shift. While there is no formula for how to engage a past of violence and oppression, political actors can weigh contextual variables and decide what would be the best way of opening the discussion about such a divisive issue. As an essential part of wider processes of dealing with historical injustice, a state apology should aim at shaking the community out of deeply engrained

provides an account of deliberative rhetoric that is successful to the extent that it engages the hearer's capacity for practical judgment. The opposite of deliberative rhetoric is plebiscitary rhetoric, which aims more at pleasing and gaining support for a proposal rather than engaging the other. See Simone Chambers, "Rhetoric and the Public Sphere: Has Deliberative Democracy Abandoned Mass Democracy?," *Political Theory* 37, no. 3 (June 1, 2009): 323-350.

⁴⁴ Beiner, *Political Judgment*, 83-89.

⁴⁵ Linda Zerilli shows how Arendt herself left underexplored the power of imagination as a power that is crucial for breaking the boundaries of identity-based experience and affirming freedom. See Zerilli, "We Feel Our Freedom," 174.

⁴⁶ Beiner, *Political Judgment*, 163.

⁴⁷ For an excellent account of the need to balance the twin calls of the spectator and actor in judgement see Mathias Thaler, "Political Judgment beyond Paralysis and Heroism: Deliberation, Decision, and the Crisis in Darfur," forthcoming in: *European Journal of Political Theory*.

discriminatory habits. It must encourage its public to step back and first assume the position of the spectator in evaluating the community's record with regards to the marginalised. It is the spectator's position that might enable "us" to see the ways in which we have been failing to live up to our guiding principles of equal respect and concern for all. Rectifying democratic deficits also implies acting upon history in a way that expands political membership and includes formerly disenfranchised groups under the protective scope of the democratic sense of justice.

Many authors have identified the enlargement of political membership as the main desirable effect of a public apology. For example, in her recent analysis of the debates around official apologies in Canada, the US, Australia and New Zealand Melissa Nobles shows that apologies have been demanded—and have sometimes been offered—for the purpose of changing the terms and meaning of political membership in a way that has reverberations into the future of the community.⁴⁸ Along similar lines Lisa Strom Villadsen writes:

By explicating, possibly reformulating, a normative groundwork, the public apology marks a symbolic transfer from one understanding of a collective self to another—strengthened through the acknowledgement of fault and vitalised through renewed ethical commitment. This potential to reflect the values of a community at a given time is what I see as the most interesting aspect of official apologies. At once a site of reflection and a mode of rhetorical action, official apologies more than most genres tell us what to avoid and what to strive for.⁴⁹

What these authors do not engage is the issue of the attitudinal resistance to the official apology and its rooting in a purified view of the community. I argue that, in order to engage such views of the past and the discriminatory attitudes that nourish them, an apology needs to have an inspirational exemplarity. By dialoguing with the addressees' moral powers, apologies can contribute to a process of democratic political socialisation. A successful challenge to indifference and self-righteous images of "we, the people" can be raised by inviting "the people" to revise the contours of "our" political identity, i.e. to move towards a democratically better "we." The societal sense of justice must be enlarged to take into account the voices of the victims and losers of history. Citizens must be inspired to ground their affective reactions in good second-order reflective judgments and recognise as many points of view as possible. They need to be wooed into assenting to the idea that they become the best that they can be if they apologise, that it is into an apology that the congruency of the democratic "is" with the democratic "should be" is expressed.

Anyone can author good reflective judgment, but given that such acts are seen as dangerous to the integrity of a community's self-understanding, exemplary first-order judgments by inspired political actors—capable of taking enough distance to achieve impartiality and of acting prudently within the existing historical constraints—can lead the way and inspire good second-order judgment. But what does this mean more concretely?

First, in order to count as an apology, the text must meet a specific set of criteria. While there is a bit of variation between authors, they seem to converge on the idea that an appropriate apology must observe the requirement of publicity and ceremony, must state the wrongs committed in the past, accept responsibility, express regret over the suffering of the victims and promise non-repetition.⁵⁰

⁴⁸ Melissa Nobles, *The Politics of Official Apologies* (New York: Cambridge University Press, 2008).

⁴⁹ Strom Villadsen, "Speaking on Behalf of Others: Rhetorical Agency and Epideictic Functions in Official Apologies." 33.

⁵⁰ The authors position themselves on a continuum ranging from more lax to very stringent requirements on the act of apology. For a very strict view see Nick Smith, *I Was Wrong: The Meanings of Apologies* (Cambridge: Cambridge University Press, 2008). For middle positions see Gill, "The Moral Functions of an Apology"; Gibney and Roxstrom, "The Status of State Apologies"; Gibney et al., *The Age of Apology*.

In addition to these formal suggestions, I argue that a good apology has to dialogically engage all counter-arguments in a serious way.⁵¹ Only thus can political judgment fulfil representativeness requirements and hope to woo agreement. Various voices must surface in the text of an apology and extensive space should be given to the elaboration of the implications that commonly endorsed principles have for the shared political life. In view of ensuring its legitimacy and resonating with its audience, an apology must engage all three categories of objection mentioned above in a way that relies on a pre-existing commitment to the community's guiding principles.

First, it must argue that the passage of time does not diminish responsibility, that the effects of injustice reproduce themselves in time with visible and, most of the time, easily measurable effects; that the state and the community are continuous in time and their debts are not extinguished with the change of generation.⁵² The text must explain why the difficulty of identifying the direct victims of violence does not constitute sufficient impediment to apologising, and why the non-exceptionality of bad past behaviour does in no way diminish a community's responsibility for remedying injustices.

Secondly, she who apologises in the name of the community must show that an apology does not close the books. On the contrary, it unsettles accounts and paves the way for the kind of institutional remedial measures that can give concreteness to the commitment to recognise the formerly excluded as equal citizens. Even if insufficient on its own, an apology can perform important symbolic recognition functions for victims and provoke the moral powers of the public to enter processes of historical reflection. Something important is lost in the absence of a ceremonial, public, inspiring expression of regret over a past of state-sponsored abuse. Sceptics often argue that, in the absence of compensation, an apology means nothing. Words on their own cannot rectify years of suffering and exclusion. While I agree that an apology without institutional follow-up measures loses value, there is something that an official apology contributes and that compensation on its own cannot. Compensation, efforts to eliminate discriminatory policies and laws, as well as public education into equal respect for all are necessary elements of a serious effort to provide redress and ensure abuses will be prevented in the future. On its own an apology is tragically insufficient. Should it remain without follow-up, those to whom it is addressed are likely to be wronged a second time.⁵³ However, a carefully formulated apology that gives voice to victims, their descendants, victimisers, the beneficiaries of violence, and the wider society can make an important contribution to rectifying injustices in a democratic way. By providing victims with a much-needed recognition and by disclosing unpleasant aspects of the past, official regret and assumption of responsibility can inspire and mobilise citizens in support of processes of democratic change.

Thirdly, it must be made clear that an apology, far from denigrating "us", puts "us" in the best possible light as democrats, as people who subscribe to a principle of equal concern and respect for all. She who apologises on behalf of a partially dissenting community must aim to woo their agreement over the fact that the past cannot be buried without at the same time undermining the normative integrity of our democracy. She must show how, living up to the principles that

⁵¹ Ricoeur emphasises this aspect of the success of judgment in law: "I think that the act of judging reaches its goal when someone who has, as we say, won his case still feels able to say: my adversary, the one who lost, remains like me a subject of right, his cause should have been heard, he made plausible arguments and these were heard. However, such recognition will not be complete unless the same thing can also be said by the loser, the one who did wrong, who has been condemned. He should be able to declare that the sentence that condemns him was not an act of violence but of recognition." Paul Ricoeur, *The Just* (Chicago: University of Chicago Press, 2000), 131.

⁵² Janna Thompson, *Taking Responsibility for the Past: Reparation and Historical Injustice* (Cambridge, UK: Polity, 2002).

⁵³ See, for example, Govier and Verwoerd, "The Promise and Pitfalls of Apology."

define “us” as liberal democrats implies acknowledging wrongs done to specific groups among “us.” That is to say, a political agent apologising on behalf of the broader community must aim at persuading the members of the political community that “we” are the best that “we” can be when “we” take responsibility for past suffering. By relying on agreement over what it is that defines us as a community, the apologist can hope to woo the assent of her public over an interpretation of those principles that require “us” to take a step back and assess the legitimacy deficits our society suffers from. It is by marking discontinuity with the past, and not by silencing it that we further our democratic identity. A good apology can stand out as an instance of exemplary political judgement when it manages to engage its public in a process of reflection over past and launches an invitation to act for the future. The hope is that its inspirational value will undermine fears about the loss of an idealised past and thereby move the community towards a better future.

Such a critical engagement with those resisting an apology shows due respect to those of a different opinion, while also at the same time inviting them to enlarge their perspective. It must be emphasised that the above-enumerated criteria can guide the decision to apologise, yet they do not represent boxes to be ticked by the political agent.⁵⁴ They merely offer guidance about possible ways of approximating the principle of equal respect and concern in practice, they do not make up a recipe for success.

Naturally, we should not forget that pragmatic concerns also enter and shape judgment. Apologies are offered most efficiently if preceded by careful weighing of alternative possibilities. The use of the vocabulary and rhetorical register, the timing, the selection of relevant historical facts and relevant groups of victims, these are all elements that need to be factored into a complex, Janus-faced process of contemplating and acting upon history. Within a partially hostile environment—but not only—claiming to talk on behalf of everyone requires a fine tuning of one’s discourse in a way that successfully challenges discriminatory attitudes and practices from within the norms that define the community’s shared life.⁵⁵ It is only in this manner that an apology can aspire to have an impact and stimulate political change:

If the speaker ignores or violates the norms and values of the listeners, the apology may be judged empty or disingenuous and the speaker’s mandate null. The speaker’s handling of the mandate from the audience is thus critical to the apology’s credibility.⁵⁶

and,

For judgment at all to be possible, there must be standards of judgment, that is, agreement in judgments at a deeper level that grounds those at the level of ordinary political argument. In this sense, discourse rests upon an underlying stratum of agreement in judgments. The very possibility of communication means that disagreement and conflict are grounded in a deeper unity. This is what may be termed, borrowing Kantian language, a “transcendental” requirement of our discourse.⁵⁷

While we agree that our principles are important and define who we are as an identity, their scope and interpretation remains to be determined inter-subjectively. It is here that a critical judgment can intervene in order to offer an interpretation of apology as something that places that identity

⁵⁴ Onora O’Neill argues that while reflective judgment could benefit from a set of strategies (enlarging one’s mentality, discussing others’ appraisals, revising our own) yet these strategies do not determine our judgment. Guided by such strategies we make decisions and, in making decisions, we reveal who we are. See Onora O’Neill, “The Power of Example,” *Philosophy* 61, no. 235 (January 1986): 5-29.

⁵⁵ Even within societies where public apologies by the state enjoy a high level of support, it is imperious that such support does not take the form of mere lip-service. For significant attitudinal change to take place, an apology must resonate at a deeper level with its audience and put their moral powers into motion.

⁵⁶ Strom Villadsen, “Speaking on Behalf of Others: Rhetorical Agency and Epideictic Functions in Official Apologies.”

⁵⁷ Beiner, *Political Judgment*, 142.

and the institutions it inspires in “the best possible light.” It is inevitable that state-sponsored expressions of regret will fail to reach all those who contested its value. Yet a careful engaging with the past increases the chances of a greater impact. By striving to follow the above criteria and strategies, we can hope to stir publics to deliberate and rethink the kind of community they want to share in the future. And that implies affirming discontinuity and distancing themselves from the skewed view of history they had been clinging to.

Addressing Some Criticisms

We have argued that, in taking this critical position, she who apologises on behalf of a group must assume the position of both a spectator of history—evaluating the political circumstances with which she is presented—and an agent thereof—selecting the type of arguments and decisions that are most likely to persuade citizens to accept the provocation to reflection addressed to them. It is in response to inspiring, historical judgments that individuals might learn to take responsibility for who they are and for who they want to become in the future, institutionally and from the point of view of their public culture.⁵⁸ It is time now to try and address two potential criticisms that might be raised against the argument introduced in the previous sections.

First, where can we find the political agents motivated to perform such exemplary deeds of redress? Where are the noble legislators who come to shape the people into a better “we”? The account presented above may seem to some to bear a strong flavour of naïve idealism and romanticism about the political power holders. The sceptics point to the frequently strategic motivation of the agent and to the fact that one tends to apologise when it is convenient to apologise. It is international attention and pressure, as well as the desire to entrench their own power by gaining the favour of human rights monitoring agencies and certain sectors of the electorate that constitute overriding reasons why political actors express regret over a past of discrimination and violence.

While it would be absurd to ignore the presence of strategic considerations behind public acts of state apologies, these are just some among many other factors that move decision-makers to take action. What is more, empirical research suggests that while present, strategic concerns cannot on their own explain the decision to apologise. On the contrary, it is strong ideological commitment by liberal elites that has, most of the time, determined the decision in favour of an apology, even in contexts where no clear advantages were to be gained from apologising.⁵⁹ It is what is frequently—and incorrectly—called “liberal guilt” that moves decision-makers to initiate redress measures or to respond to claims for redress, when these had been manifested in the public sphere. Since we are not talking here about interpersonal relations, and since it would be absurd to expect remorse and guilt on behalf of state officials, I believe that, to the extent that the text and ceremony of apology communicate a concern for the plight of those formerly disenfranchised, it can aspire to have a transformational effect on its public at home, but not only. This is why I believe that an argument to the effect that, if the apology is not experienced as heart-felt, it will fail to achieve the ends, has no place in a discussion over state apologies. The absence of emotions and the presence of strategic concerns as part of the motivation to say “sorry” do not compromise the validity of good political judgment.

A related objection points to the state-centred nature of my normative recommendations. Why should we expect the state to transform bad social habits of thought and practice? Why should we think that the state is in a privileged position to engage the past in a way that also

⁵⁸“Without examples or exemplars to reflect on we could not even begin to imagine what it would be to exercise such a faculty. We ourselves are schooled in the exercise of this faculty by observing the exemplary performances of others. We learn by example.” Beiner, *Political Judgment*, p. 163.

⁵⁹ Nobles, *The Politics of Official Apologies*.

extends the scope of the citizenry's sense of justice? These are complex questions and a variety of issues need to be addressed. First, since the state and its agents perpetrated the wrongs that make the object of apology, it is the state and its agents who should apologise to the victims and/or their descendants. If we agree that the state is a continuous institution in time that bears responsibility, it is only proper that the state should issue the official "sorry." This does not exclude the necessity that other, non-state organisations apologise for their participation in systematic discrimination and abuse. Nor does it delegitimise civil society's attempts at inviting a revision of a country's founding myths and self-understandings. Secondly, there is something to be said about the important symbolic weight and reach of a state apology, even in an age of globalisation and curtailed sovereignties. Done with ceremony and in a way that follows the above-enumerated guidelines, an official "sorry" for a wrong committed against members of our own society can hope to stir its audience's imagination in a way that a non-representative agency cannot. This does not mean that we have to ignore the fact that it is usually organised victims groups and intellectuals who often represent the main driving forces behind the opening of a public debate over the need to offer a public apology. This political mobilisation in view of changing the terms of the political discourse can be understood as preparing the ground for a state apology. Yet, due to the still important symbolic power of representative state agencies, they are in a particularly important position to launch an invitation to re-think what "we the democratic people" can be at our best.

To conclude, this paper has argued that, in addressing the issue of state apology for prior injustice, we need not limit our examination to the desired impact of such gestures on the victims and their descendants, but also look into the ways in which they could trigger broader processes of institutional and social reform. By offering an account of official apologies as exemplary political judgements, I hope to have shown how we could rethink state expressions of regret in view of ascribing them a more complex role in triggering transformations within democratic, yet imperfectly just societies.