

CAN PUBLIC APOLOGIES CONTRIBUTE TO PEACE? AN ARGUMENT FOR RETRIBUTION

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Retribution

In the last decade, representatives of states have been under pressure, to which they have increasingly succumbed, to issue public apologies for the rectification of wrongs. These apologies tend to be spoken to a global audience, and they have repercussions for local and international peace. Especially since the end of the Cold War and the fall of the Berlin Wall in 1989, democratizing processes have contributed to creating global public forums for retribution--what I will define, for analytical purposes, as the punishment of wrongdoers and the rewarding of good. Many national governments represent these global forums as threats to the sovereignty of states and the autonomy of national judicial systems. That threat is real, but it is not to the stability of democratizing governments and institutions. What is at stake, rather, is the power of local ruling elites when their positions are premised on a lack of public accountability. Public apologies that have been responses to globally supported local movements tend in turn to stabilize local governments--whenever those governments are regarded as democratically accountable. They stabilize by helping to reestablish the moral authority and impartiality of the national judicial systems, which had been compromised through dictatorial or demagogical rule.

In *Settling Accounts: Violence, Justice, and Accountability in Postsocialist Europe*, I argue that democratic states require the reiteration of principles of accountability to reestablish themselves as moral authorities that can claim to represent entire communities (Borneman 1997a). These principles are at the core of the "rule of law," and they are enacted in periodic ritual purification through retribution. Political purification entails locating criminality in the center of governments themselves rather than displacing it to peripheral or external actors and regimes. In other words, democratic governments that do not periodically cleanse themselves of their own criminal behaviors will tend to displace criminality to non-central groups (such as, for example, immigrants in France; poor blacks in the U.S.A.; asylum seekers and foreigners in Germany; ethnic or religious others in Yugoslavia, Rwanda, and India). This displacement to substitute victims works as a strategy to perpetuate local injustices and create internal unity; it inevitably involves the political instrument of the judicial system by the ruling elite.

The end of the Cold War bipolar division of the world has eliminated both an easily identifiable enemy and certain pressures for internal unity. Consequently, new possibilities have appeared for the articulation of injustices and of internal differences that were formerly submerged under the pressure for unity. Local citizen demands for state apologies are a product of this opening, part of a global call for retribution in democratizing states. They have been articulated in countries as diverse as France for collaboration with the Germans in the persecution of Jews, South Africa for apartheid crimes against blacks, and the United States for a history of slavery and for the

persecution of native American Indians. Such demands are increasingly made not only by citizens on their own states but also in relations between states, most recently by Japan to Korea, Israel to the Palestinian Authorities and vice-versa, England to Northern Ireland, and most recently Syria to the United States.

In many if not most of these cases, the injured parties make claims on restitution: material compensation for injuries that takes the form of either redistributive or corrective justice. I believe it is misleading to focus on property or material harm as a first or prior step, empirically or theoretically, in redressing wrongs.¹ Correcting a wrong through redistributive justice is often important and may even be a necessary part of a closure, such as in the case of redressing the South African apartheid state's expropriation and resettlement policies. But such necessary correction is rarely sufficient to alleviate the injured parties' sense of moral injury. If we limit ourselves, for the moment, to the transformations of former dictatorial regimes in East-Central Europe, most of the injuries suffered there that initially served as the symbolic focus of demands for democratization were not injuries to property owners concerning loss of their material goods. Rather, they were injuries related to physical violence, imprisonment, torture, defamation, or even murder. To be sure, well-to-do people get more attention from the media concerning their injuries, and their injuries tend to concern harm to property and to take material form. But moral injuries to the person in East-Central Europe were both numerically more numerous than were property crimes, and they were more significant to rectify to lessen the incidence of violence than were the redressing of material damages. Moral wrongs are also, admittedly, more contentious to assess and therefore more difficult to redress.

In *Settling Accounts*, I further argue that contemporary social peace can be maintained only when there is a widespread belief in the possibility of justice through the rule of law. Punishment of wrongdoers is a necessary condition to establish this belief--but it is also insufficient. What must additionally be rectified is the moral integrity, the damaged self-worth and value, of the wronged person. Rectification of moral injuries, what I am calling "retribution," requires a public repudiation of the message of superiority--a repudiation of the wrong or the crime--which initially caused a diminishment in the injured party's worth. This repudiation should entail punishment of the wrongdoer, but it must also redress the diminished status of the victim. The fate of the wrongdoer and the victim, then, are linked in a public event that seeks to defeat the wrongdoer's claim to mastery over the victim. To punish wrongdoers in this way--by linking them to their actual victims--does not compromise their status as persons; in other words, it does not constitute an act of reciprocal revenge. Rather, such public events acknowledging the wrong confirm the victim and wrongdoer "as equal by virtue of their humanity" (Hampton 1992: 1686-7). Both victim and wrongdoer are affirmed as equal in the sense that both are recognized as inter-subjective political agents exercising free will--the minimal condition of humanity in democratic states.

In what follows I will examine two forms of apology as a specific means of establishing democratic political agency: of a state to a people and of a public commission in the name of a state to an individual. I am situating apologies within a general theory of ritual retribution in democratic regimes. My assumption is that the failure to engage in retribution--the punishment of evil and rewarding of good--will in most cases eventually lead to revenge and renewed cycles of what Maurice Bloch (1992)

calls "rebounding violence." Sincere and authentic apologies, by contrast, present one important possibility for reconciliation and forgetting, that is, the possibility for a more enduring social peace. From this perspective, apologies necessarily compliment but they do not take the place of punishment of wrongdoers. After presenting the two cases of apologies, I will briefly resituate my argument into the general concerns of the anthropology of justice. All of my examples are drawn from fieldwork in Germany between 1991 and 1996.ⁱⁱ

Example 1. A state apologizes to other people

On December 7, 1970, West German Chancellor Willy Brandt visited Warsaw as part of his policy of Ostpolitik that sought to normalize relations with the USSR and other East bloc countries. Within West Germany, this visit by a head of state was controversial. First, Brandt was prepared to sign a peace treaty with Poland without first resolving an issue of material compensation. That issue of compensation was for the expropriated property taken at the end of World War II from the millions of Germans (*Heimatvertriebene*) who had been driven from homes that were now part of Polish territories. Second, Brandt was also vulnerable to the accusation of not being a patriot, especially in his dealings with foreign states. In his teens, Brandt had been an active Social Democrat and therefore made the Nazi blacklist, forcing him to flee Germany when the Nazi's seized power in 1933 and to seek exile in Norway. His German citizenship was revoked, and in 1939 he became a Norwegian citizen. In 1936, he returned to Germany under a false identity to work in the illegal underground, and in 1937 he went to Catalonia to fight in the Spanish Civil War. When the Germans invaded Norway in 1940, he moved to Sweden, where he spent the last five years of the war. In 1947 he returned to Berlin as a Norwegian press attaché. In 1949, he reapplied for his German citizenship and was subsequently elected to the Berlin House of Representatives. From 1957 to 1966, he served as Mayor of Berlin, and from 1969 to 1974 as Chancellor of the Federal Republic (a spy scandal forced him to resign). He died on October 8, 1992 (cf. Prittie 1974).

In his diary, Brandt explains what has become known as his *Kniefall*, when he spontaneously fell to his knees in 1970 at the commemoration to the Jewish victims of the Warsaw ghetto: "An unusual burden accompanied me on my way to Warsaw. Nowhere else had a people suffered as in Poland. The machine-like annihilation of Polish Jewry represented a heightening of bloodthirstiness that no one had held possible. On my way to Warsaw [I carried with me] the memory of the fight to the death of the Warsaw ghetto, which I had followed from my Stockholm exile." Brandt remarked that he "had planned nothing" specific before the visit but felt he "had to do something to express the particularity of the commemoration at the ghetto monument. On the abyss of German history and carrying the burden of the millions who were murdered, I did what people do when words fail them." [*Abgrund der deutschen Geschichte und unter der Last der Millionen Ermordeten tat ich, was Menschen tun, wenn die Sprache versagt.*] Then he quotes a reporter describing him at the scene, "Then he, who need not have, fell to his knees, for those who do not fall to their knees, but who need to--because they dared not or could not or could not dare." [*Dann kniet er, der das nicht nötig hat, fuer alle, die es nötig haben, aber nicht knien--weil sie es nicht wagen oder nicht können oder nicht wagen können.*] (Brandt 1994: 214).

Back home in Bonn, some critics attacked Brandt for falling to his knees, claiming it was "exaggerated"; others criticized him more generally for failing to secure any *Heimatrechte*, rights for repatriation or compensation for those mass expulsions accompanying the German defeat. To many Germans, Brandt's apologetic gesture, though in the name of the Germans, recalled his wartime resistance, even disloyalty to the German cause. The immediate Polish reaction was surprise and silence. During the remainder of his visit no one mentioned the fact that Brandt had fallen to his knees. On this trip Brandt had also visited the Tomb of the Unknown Soldier, but there he laid a wreath without kneeling.

The vast majority of people did not criticize Brandt. The Polish press uniformly praised him and recognized his act as sincere and a sign of new intent in Polish-German relations. The majority of Germans, especially younger Germans who had no direct war experience, were startled and moved at this act of expiation. In 1971, Brandt was awarded the Nobel Peace Prize for his efforts in pursuing friendship and peace with the East bloc during the Cold War.

Example 2. A Vindication Commission apologizes to single individuals

Dignity and Vindication

From 1990 to 1993 I followed the proceedings of an East German Commission of Vindication/Rehabilitation, *Rehabilitierungskommission*, for Radio and Television. Much of the following description is drawn from *Settling Accounts* (Borneman 1997: 111-157) where I elaborate upon both criminalization and the creation and treatment of victims as regimes in post-socialist East-Central Europe democratized. From 1989 through 1994, workers throughout East-Central Europe created vindication commissions in many different places of employment to review claims of injury and to rectify the damaged self-worth of victims of the old regime through acts of vindication or rehabilitation.

Vindication/rehabilitation is normally a relatively minor concern of justice systems. It becomes critical in a period of radical regime change, including the collapse of capitalist and communist blocs in "1989." Five years into the regime transformations in the East bloc, however, public or media discussion of the status of victims in former socialist regimes was largely displaced by a discussion of present harms resulting from privatization and global market pressures. What happened during these crucial first five years of regime transition offers a particularly revealing example of the importance of retribution as ritual purification for the legitimacy of democratizing states.

Retribution takes on unusual import in the German case, since Article 1 of the West German Basic Law of 1949, which became pan-German law after unification in October 1990, boldly posits a fundamental, inviolable "human dignity" (*Menschenwuerde*), out of which human rights and many basic property rights were subsequently derived. Given the background of Auschwitz and the industrial organization of Nazi mass murder, postwar German authorities found it imperative to assert an essential and irreducible humanity, a personhood independent of one's social history or legal status or membership in a community (cf. Schlachter 1983: 248-254). This usage relies on the famous Kantian thought that people ought to be treated always as ends in themselves and never simply as means. It defines dignity as a pre-political substance, something belonging to the "human" as such that cannot be taken away.ⁱⁱⁱ Formulated as a notion of personhood that applies to all potential subjects in a democratic

state, it extends to all humans the meaning of the older Latin term "*dignitas*," which refers to a quality or state of being solely of persons of high rank or honor.

The National Socialist system of valuation had made personhood contingent on membership in the *Volk* community. Erecting the nation as single referent reduced large groups of persons--Jews, gypsies, homosexuals--to purely vegetative or biological existence. As postwar German authorities struggled to invert Nazi values, they were forced to go beyond the Kantian notion of dignity as an essentially pre-political substance. Dignity came to refer to a human substance that could be damaged and restored, and that could be bestowed upon individuals who had suffered or resisted Nazi authority. These suffering or resisting individuals were said to have exhibited dignity. Along these lines, human dignity was not a pre-political substance but something produced in political action, an attribute or quality that follows precisely from a specific form of behavior fundamental to democracies but antithetical to totalitarianism. Tzvetan Todorov (1996:61) has elaborated upon this regime, that is, from the exercise of free will. second reference, arguing that dignity could be asserted only as a public act, that it "must give rise to an act that is visible to others (even if they are not actually there to see it)." It is always a quality of individuals and cannot be derived from any group or collective character. In this sense, one of the most common assertions of dignity is an act of refusal to obey a command, an assertion of self against a group or community norm.

Needless to say, after a regime change, the very same community whose norms are violated finds itself in the position of conferring dignity upon a person for violating or resisting those norms. This seeming paradox points to a fundamental characteristic of dignity in democratizing states that differentiates them from other state forms: that dignity is both an inherent quality of the person (who is never simply a means) and a quality arrived at through fundamentally political action. The democratic subject is both by nature an inviolable, irreplaceable, equal, objectively valuable human (hence pre-political), and a political agent constituted inter-subjectively within a particular community.

If, in democratizing states, individuals are granted certain protections and rights merely because they have this ineffable human quality called dignity, they are also capable of affirming, losing, or gaining dignity through the retroactive recognition of inter-subjective behaviors that violate community norms. By contrast, in a totalitarian state, dignity, to the extent it might be conferred in this second sense, would ennoble only individuals who act in accord with the state's communal norms.

I would maintain that especially during periods of regime change, democratizing states require the retroactive recognition and conferral of dignity in order to reaffirm the importance of community norms about the possibility for justice, for the state's ability to rectify wrongs. Moreover, a public agent must confer this recognition on individuals whose self-worth has been damaged due to community negligence or malevolence. In the bestowal of dignity, the community acknowledges that if its moral norms also apply to itself, it must lower itself in order for the victim to regain the self worth which the community (or state, in this case), through an act by a public representative, had denied or damaged. Such was the task of the vindication commissions in states of the former Soviet bloc.

Vindication and the Law

Following the opening of the Wall, large numbers of people came forward to identify themselves as innocent victims of "actually existing socialist" political regimes. In East Germany, the victims claimed to have suffered as a result of numerous state-sponsored activities: the scandalous reuse of Nazi concentration camps by Soviet/East German authorities to imprison critical Social Democrats and Communists, Stalinist show trials, government kidnapping, "removal and forced adoption of children," criminalization and imprisonment for "Westflucht" or "Republikflucht" (attempting to flee the republic), extortion in return for freedom to emigrate, and many other less sensational acts, such as blacklisting and discrimination in employment.

From November 1989 through March 1990, the East German Roundtable discussed possible remedies for victims of three regimes: Nazi crimes from 1933-45, Soviet authorities from 1944-89, the GDR from 1949-89. On September 6, 1990, the freely-elected GDR parliament passed a rehabilitation/vindication law, the *SED-Unrechtsbereinigungsgesetzes*, dealing with rectification for non-property related harms. ("*Bereinigung*" means literally settling, clearing-up, removal.) In the preamble to this law, which was subsequently stricken from the Unity Treaty, the idea of rehabilitation and justice to the victims was defended as more than a goodwill measure to former victims; they claimed it was also necessary to establish the legitimacy of the reformed democratic state.

Article 17 of the Unity Treaty called on the united German parliament to write a new rehabilitation law that would regulate these claims. But the dissolution of the GDR was followed by a paper war in the federal and provincial ministries, and passage was delayed for more than two years. Commissions of vindication operated in a No Man's Land in this interim period, neither law nor pre-law, but simply non-law.

In 1992, the united German parliament established something like a historical truth investigation, an *Enquete-Kommission* (public investigative commission) as a lay body to inquire into "political reckoning with the repressions of the Soviet Occupation Zone/GDR." It concluded its investigation and issued a final report in 1994 (1994a, 1994b). However, after some politicians *Bundestag* and members of the commission themselves criticized the report for dealing only with the negative aspects of GDR history, parliament set up another investigatory commission in 1995. The head of the Vindication Commission for Radio and Television, Herr Grollnitz, criticized the *Enquete-Kommission* in terms similar to those I heard elsewhere, that it was interested more in "historical abstractions of what went on and in the historical evaluation of this period ... than in the fate of individual histories." It, as well as the general public, complained Grollnitz, showed "only limited interest" in the Rehabilitation/Vindication Commission's goal of "reestablishing the honor and standing of former radio and television workers."

Although the government never directly heard the victims' voices and those of the Vindication Commissions, it did eventually become parasitic of those commissions and addressed their concerns in two laws. On October 29, 1992, legislators passed the "First Law for Settling SED-Illegality." On June 23, 1994, they passed a "Second Law for Settling SED-Illegality." Article 1 of the First Law clarified the scope of the law as concerned with "rehabilitation and restitution of victims of illegal measures of criminal prosecution in the *Beitrittsgebiet* (the legal euphemism for the GDR)." This First Law established a list of GDR laws that should be considered illegal (therefore sentences were

to be nullified) and it identified the victims who were to be vindicated "insofar as the laws are irreconcilable with the essential principles of a free legal order (*Rechtsstaat*)." It uniformized the grounds for vindication and specified amounts for the financial restitution of categories of victims. The Second Law corrected some problems in the first, broadened the categories of victims, and increased the amounts of restitution for some categories.

The Case of *Frau Winkler*

Now I would like to illustrate the Commission's work through a single case of an individual--I will call her *Frau Winkler*--who was vindicated by the Commission. Of the 100 petitions received through 1993, 75% were decided in favor of the petitioners, 25% did not result in vindication. This case is one of the less sensational that I encountered, and I take it up precisely because it does not permit an easy identification with the victim as hero. *Frau Winkler* claimed that in the 1960s, while pregnant with her second child, she had been fired from her secretarial job and denied unemployment and welfare entitlements for making political statements critical of the Party and state. Thereafter, although she had been trained in radio and television production, she was unable to find meaningful employment corresponding to her level of skill. This, she thought, was because she had been informally blacklisted by the Stasi (State Security). For years, she claimed that she had suffered from feelings of inadequacy and a condition of underemployment but also had been unable to attribute this to anything but her own worthlessness. Only with the disintegration of the state and the opening provided by this Commission did she think that she might be able to document her past, understand why she had been singled out for discriminatory treatment, and procure some remedy.

The deliberations of the Vindication Commissions were not adversarial but took the form of an open yet limited inquiry into the nature of the wrong, the plausibility and veracity of the claim, and the possibility of procuring remedies. The primary need expressed in their work was for the restoration of a lost dignity, for public recognition of two kinds of injustice: injuries suffered either directly at the hands of fellow workers or from political instrumentalization of the workplace bureaucracy ("bureaucratic illegalities"). *Frau Winkler* wanted remedy for what they called "defamation because of a critical position." Petitioners rarely made claims directly in the domain of corrective justice: to reclaim property, re-obtain positions, or secure restitution--all material harms that the German legal system had indeed addressed immediately. Instead most claims concerned moral injuries: wrongs that did not result in readily quantifiable harms but were nonetheless wrong. (Attempted murder, for example, does not usually result in a quantifiable injury but it is nonetheless wrong.)

After *Frau Winkler*'s second appearance at the Commission, I asked if she would be willing to tell me more details about her case. She agreed and invited me to her home. I took along Michael Weck, a German political scientist and co-partner on parts of my project. At her home, I asked *Frau Winkler* when her problems began. She then related a story about a striptease she had done in the office of her boss, also attended by the SED Party representative to the company. A striptease? I asked, thinking I had misheard her. Yes, indeed, she confirmed, her boss, together with the Party representative, had called her into a meeting, where it seemed like she was being framed for having made offhand critical comments about the Party. "I have a big mouth," she said, referring to the well-

known "Berliner Schauze." Feeling she would be unable to defend herself, she decided to take them by surprise, and strip.

They were, of course, caught off guard (as I was in her retelling), and they never mentioned the incident again (as I also did not use this example in *Settling Accounts*). Frau Winkler took this meeting in her boss's office as the first incident confirming that she had already been placed on a blacklist. In other words, if I understand her correctly, the striptease was an act of defiance against a group norm, an attempt to demonstrate *erotic worth* simultaneously as she was being denied *socialist self-worth*. It was meant to show the men who were intent on taking her "soul"--using that word metaphorically, for employment, the ability to work, was surely the soul of the socialist person--that she had another source of worth (her body) inaccessible to them. Frau Winkler retained a value outside the domain of politics. Soon thereafter she was dismissed from her job, without proper notification. Even though she was a single mother with a child to support and another on the way, and notwithstanding the GDR's pro-natal policy, her appeals for legal support were denied. For the next thirty years, she felt socially isolated and blocked in attempts to advance her career in the field of television and radio.

The Commission, in its proceedings, did not hear the story of the strip, but only the details of Frau Winkler's employment history, and they could not verify those exact details. She was not named on any particular blacklist; her employers had not gone out of their way to criticize her in evaluations, there were no records to verify that she had actually made any politically critical statements. It determined, nonetheless, that her dismissal and punishment corresponded to a general pattern typical of the Stasi in the 1960s and 1970s. That pattern was to blacklist people who voiced political opinions without taking actual formal legal action against them and without systematically documenting the measures taken. Thereafter such people usually suffered downward mobility in their careers. It also determined, and this was crucial, that East German Radio and Television had indeed fired her and denied her benefits while she was pregnant, an act that was in violation of East German law at that time. The fact that she was later rehired at a lower level served to confirm the punitive nature of their action. Vindication/Rehabilitation Commissions were set up to determine the validity of claims brought before them and, if valid, to issue honorary declarations: letters of apology, *Ehrenerklärungen*. In these letters, the Commission for Radio and Television repeatedly used the expression: we "reaffirm the political and moral integrity" of the victim. The letters expressed "regret for the repressions and discriminations," for "the destruction of meaningful career development," for "the severe psychological stress." They offered sympathy for the suffering caused and "condemned the arbitrary measures employed" to isolate and persecute critical voices. These apologies were then made public so that either the findings could be challenged or the righting of the wrong acknowledged by the larger social community. Herr Grollnitz offered lists of people vindicated to the newspapers and other forms of media, though they only occasionally printed these lists. Grollnitz stressed that these Commissions were not primarily bodies to rectify injuries to victims, although they did actively engage in finding remedies for harm suffered. Nor did they have investigative powers that would enable them to go to court on behalf of petitioners. Their primary function was to right a wrong through the *Ehrenerklärung* and in so doing to reestablish the dignity of the victim.

If a petitioner's claims were found warranted, the Commission took it upon itself to offer an official apology on behalf of the company. If a particular individual were responsible for the violation, the Commission would often ask him or her also to apologize.^{iv} Since most of those responsible for violations had already left the company through voluntary retirement, such apologies were rare. The Commission also frequently proposed adjustments in pensions as a form of "economic compensation" for particular losses.

In the case of Frau Winkler, the Commission issued an official apology, and it wrote a letter to the West German social security commission documenting her injury and requesting an adjustment in her pension. On this basis, Frau Winkler's pension was adjusted to correct for the years of discrimination.

Together with the German political scientist Michael Weck, I did a survey of individuals whose petitions had been positively answered by the Commission. Most were uncertain about whether they felt that their dignity had been restored. The major criticism was of the Commission's failure, or inability, to link explicitly the status of victims to that of the perpetrators of wrong. A satisfactory resolution of the conflict, they seem to argue, entails both raising the status of victims back to what they had before having been wronged *and* not allowing wrongdoers to retain the gain accrued from their offensive conduct. Although the Commission was rarely able to do this, the value of its work was nonetheless later confirmed by the state. To the extent that the apparatus of the state responded to and gave legal force to the Commission's work, which it did in some cases after 1994, many people felt that it contributed to affirming principles of dignity and accountability and hence establishing its own legitimacy as an impartial moral agent (cf. Rautenberg 1994: 300-303).^v

As for Frau Winkler, the lack of severity of her victimization--job discrimination compared to kidnapping or imprisonment or murder, for example--and the her relative opportunism in the face of adversity, should not lessen our interests in her demand for justice. Agents of the state had tried to damage her dignity; that is, they tried to devalue her. She, on the other hand, in this face of this assault, resorted to asserting an inviolable eroticism as a form of power, or self-expression, to which they did not have access. Hence the East German state, here, was invoking dignity in its sense as a substance, to be taken away or granted, while she was invoking it as something pre-political and inviolable. The democratic state, in turn, referenced and affirmed both definitions of dignity, with one major difference--dignity was not something it could take away from her, as a democratic subject, but only something it might try to retroactively, and surely inadequately, to restore, as it must confirm her value as someone who showed courage in exercising free will in resisting the norms of the group. The last I heard, Frau Winkler was taking a bus trip across America.

The social significance of apologies

I have presented examples of two types of apologies: of a state to a people, and of a vindication commission in the name of a state to individuals. An apology, writes Nicholas Tavuchis in an insightful 1991 sociological study, is a "secular rite of expiation ...[that] works its magic by a kind of speech that cannot be contained or understood merely in terms of expediency or the desire to achieve reconciliation" (1991: 13). It functions as performance, an illocutionary act, with the intention of the speaker, the content of the message, and the effect on the listener equally important for the apology to

be successful. It cannot, then, be understood metaphorically as a "social text," as Paul Ricoeur (1981) in his highly influential article proposed for human action generally. A social text, Ricoeur maintained, can be understood independent of the intent of the speaker. A successful apology, by contrast, requires that the wronged person acknowledge the authenticity of the intent of the wrongdoer. Hence understanding the intent of the speaker from the perspective of the listener (in this case, the wronged person) is essential to the effectiveness of an apology.

Nor can an apology function as a "remedial interchange" or "impression management," as Erving Goffman (1971: 113-114) argued for apologies specifically. An apology that merely seeks to remedy a situation, or that is offered strategically to manage a situation, would not be accepted as authentic by the addressee. This authenticity is situated in the performative act itself, which acknowledges the impossibility of remedy or correction. Apologies, writes Tavuchis (1991: 24), are "predicated upon the impossibility of restitution." That is, material compensation or corrective justice themselves are always suspect remedies. Although restitution may, under certain circumstances, lead to reconciliation, it often casts doubt on the sincerity of the wrongdoer's contrition, for it does not require a lowering of his/her status. That is why there can be no limit in monetary awards for restitution--the money is never enough. An apology, by contrast, represents a non-material or purely symbolic exchange whereby the wrongdoer voluntarily lowers his own status as a person.

Tavuchis argues that an apology is a performance in four acts: 1) the injury, 2) the wrongdoer is called to account or put on record, 3) the apology, 4) forgiveness and reconciliation. In short, it is a relational act, dependent on the authenticity and sincerity of the wrongdoer as perceived by the victim. "Once the symbolic overture has been made, the victim alone holds the key... but his power also entails a profound moral obligation... [to convert] righteous indignation and betrayal into unconditional forgiveness and reunion" (Tavichis 1991: 34). In the event of a sincere apology where the victim is unwilling to accept this overture, his or her own moral stature is, in turn, called into question. In that case, the refusal to accept an apology, much like the refusal to submit one, functions to prevent reconciliation. By keeping the memory of the wound alive, both refusals prevent an affirmation of mutual humanity by instrumentalizing the power embedded in the status of a permanent victim. These four acts, that take one from injury to reconciliation, are clearly visible in the two examples I have presented.

I would like to stress here, to repeat once again, the significance of moral retribution as separate from material restitution. Willy Brandt's apology at the Warsaw ghetto was preceded by acts of material restitution to the Jews, the major victims of the Holocaust, in a policy called *Wiedergutmachung*. Billions of deutsche marks had already been given in the name of the German people by the Federal Republic of Germany to the state of Israel, which acted in the name of the Jewish people.^{vi} Many private individuals whose private property had been expropriated were also paid restitution. This material compensation, however important, was insufficient to return the Germans as a "people" to the human community of nations, even in the eyes of many Germans. Correcting a harm is not the same as righting a wrong. *Wiedergutmachung* is a form of corrective justice; it is not the same as retribution. Immediately after the war, Nazi leaders, and by extension, one could argue, the German nation, were tried for "crimes against humanity," initially in the highly controversial Nuremberg trials. These international trials went a

long way toward establishing Nazi crimes as the ultimate symbol of evil, that which is beyond human understanding and hence never to be forgiven. Therefore, any expression of regret by Germans individually or collectively has sounded hollow, for how could one appeal to the German people as central referent and still apologize to the human community for "crimes against humanity"? For some 25 years, no gesture seemed adequate to this task.

Herein lies the significance of Brandt's apology. He fell to his knees in front of the Polish people, among whom its Jews were singled out for annihilation. The spontaneity of his gesture reinforced the authenticity of his expression of remorse and sorrow, as did his own lack of culpability in Nazi crimes. But the apology was plausible and successful only as a symbolic and relational act intended to right a wrong. Brandt apologized as the highest representative of the German people (*Bundeskanzler*) in the name of the German people (*dem deutschen Volk*), and the Polish people accepted the sincerity of his act.

Apologies also differ from acts of witnessing or confessions of guilt in that they are not techniques for eliciting Truth. Because many people assumed that the Germans were collectively guilty of war crimes, they have frequently called for a kind of collective confession that might, in turn, lead to collective exoneration. Brandt's apology was not a confession of this sort. Historically, the confession, as Foucault (1977: 59) has demonstrated, is a technique of power that often involves torture and is designed not to admit sorrow or remorse but to produce Truth.

Along these lines, the South African Truth and Reconciliation Commission, headed by Desmond Tutu, enticed wrongdoers to speak the Truth by offering them amnesty. Their "confessions" did not result in punishment, and they did not usually entail apologies to specific victims who could validate them. Instead, a Rehabilitation and Reparation Committee was set up to serve goals of corrective justice, to screen victims and administer assistance to correct damage done in the past.^{vii} These efforts at using the Truth have been accompanied by an increase in violence, primarily directed against the middle class. As I understand it, the cause for this violence lay with the refusal to address the effects of criminality in the center of the apartheid regime, such as the effects of forced resettlement of blacks into areas such as Soweto. The Mandela government has not considered these past crimes its responsibility to rectify.

By contrast, Brandt's apology was neither a confession (he had worked in the resistance), nor did it record or give witness to any new truth as in a trial. It was an expression of remorse that functioned purely symbolically. The injury had already been admitted (in the German unconditional surrender of 1945) and the crimes had been duly documented (in numerous trials). But redressing this wrong meant invoking the German "people" who, as a symbolic entity, had come to signify the source of ultimate evil. It took the supreme representative of these people, and one who himself was untainted by these crimes, to apologize for them.

Only through such a symbolic purification ritual could "the German people" be magically transformed from a "criminal nation" to a rehabilitated member of the human community. This purification required first, a form of self-punishment, an obligation to relive the sorrowful events, the initial trauma that questioned the German nation as a moral community. Second, it required an act of forgiveness and reconciliation on the part of the victims, in this case, the Poles, including Polish Jews. This demonstrates that an

apology, while reciprocal, is also asymmetrical: there is an exchange but there can be no excuses offered. The primary function is not punishment but reestablishing the dignity of the victim. And, paradoxically, through that act of reaffirmation of the value of the other, the wrongdoer--the German people--reestablished its own value. Brandt was effective only on the basis of an admission of the People's categorical unworthiness--expressed in a literal collapse to his knees and speechlessness--before an other people, Polish Jews and Poles, whose status had been unjustly lowered.

But how exactly does one invoke the "German people" after such a rehabilitation? How does one move from illocutionary act to its historical efficacy, to its perlocutionary effects? Today Brandt's act of remorse has been memorialized as a constitutive act of the German people in the new, post-reunified German Historical Museum in Berlin. This museum, about which most historians were initially highly skeptical, serves to historicize and not sacralize the German people in the context of European political and social movements. The German nation is not portrayed as a group with a continuous history that bases its membership on principles of descent. A looped video recording of Brandt's actual act plays continuously, alongside recordings of other famous events in 20th century German history, such as both the building and the opening of the Berlin Wall. It is displayed amidst other objects of everyday life, like automobiles: the Nazi Volkswagen, West German BMW, and East German *Trabant*. In a book of 22 written testimonials to Brandt following his death, over half mention his Warsaw apology (Engholm 1992). Many German secondary schools teach the apology as an integral event of self-definition. It frequently comes up on television talk shows, especially by members of the first postwar generation, the "68ers", who identify the apology as one of the few times they were actually proud of a German statesman, or by extension, were themselves proud to be German.^{viii}

The use of the apology in this way, to originate and establish one's relation to the referent "nation," presents us with a profoundly new type of constitutive act. It departs from the usual "foundational acts" in which states, speaking in the name of a people-as-one, appropriate for themselves the moral authority necessary to authorize what Max Weber called their "monopoly on the legitimate use of violence." The usual foundational national acts include the violence of revolutions of independence; the invocations of "we the people" that call upon exclusions and inclusions; and the establishment of police and armies to create civil order, that is, to wield violence against internal and external "enemies." It is this sense of an original violence that motivates both Derrida's (1992) "Force of Law" essay, Taussig's (1997) recent book, The Magic of the State, and Coronil's (1997) The Magical State.

By contrast, Brandt's apology addresses not the repetition of the original event's violence but its traumatic core: the way its "unassimilated nature--the way it was precisely not known in the first instance--returns to haunt the survivor later on" (Caruth: 1996: 4). Nazi crimes, which indeed were crimes of pure abjection, have been the central defining event of the German nation in this century. By invoking as a form of self-identification a state apology for the wound, Brandt was acknowledging the role of the other in constituting the "we the people." He was paying tribute, engaging in retribution, for the damage done to the other as a condition of the German people's own future constitution. In this respect, the apology is an act of care that reverses roles of perpetrator

and victim (cf. Borneman 1997b: 632-635). It vindicates the victim and rehabilitates the wrongdoer.

By apologizing and admitting categorical unworthiness, Brandt constituted the German people not as presence but as lack, as a void in need of the recognition of the other. By contrast, leaders in totalitarian regimes equated themselves with the people and then filled in this self-referential space with their own power. Brandt did not assert the German nation as a central referent of value. Instead, he articulated the very impossibility of filling in the place of the people's power and completing its re-symbolization. This incompleteness and emptiness in the site of the People is a necessary condition, as Claude Lefort (1986) has argued, in constituting democratic states.

The apologies of the Vindication Commissions of the people to individuals operated as departures similar to Brandt's act of contrition of a state to a people. Those who had been harmed through East German state-sponsored injustice came before the Commission seeking the performative force of the apology, a purification that might vindicate and enable them to resume life with a restored sense of value. The Commission took upon itself the work of lowering its status to restore the unjustly damaged worth of the victims.

Here I should introduce two caveats into my argument. First, the work of the Vindication Commission is meaningful only when situated alongside other kinds of retribution. While an apology does necessary moral work, it is not a panacea for the righting of wrongs. Other actions, such as legal punishment of criminality, contestations around truth in public community forums, or historical work also contribute to establishing "the people" as a moral community. Certainly most victims were bothered by the fact that most of the actual wrongdoers went unpunished. Nonetheless, they did not reduce the reckoning with GDR's past through criminal law to the results of the trials of perpetrators. To focus on trial results alone, that is, on the conviction or acquittal of suspects, places jural work in an economistic frame of reference. Efficiency of justice becomes the primary criterion by which results, or the "rationality" of jural process, are evaluated.

An efficiency framework may be useful in the domain of distributive justice, where outcomes most frequently involve material goods whose value can be clearly measured. But it is the wrong framework for retributive and corrective justice. Employing this logic for all types of justice claims, the political scientist Jon Elster (1992: 15-16) went so far as to argue that since "essentially everybody suffered under Communism," and "because it is impossible to reach everybody, nobody should be punished and nobody compensated." Ignore for a moment that it is simply untrue that "everybody suffered under Communism." Elster here is submitting the logic of justice to the powerful logic of rational actor theory. But nowhere is criminal justice constructed around the preferred outcomes produced by the application of this logic. For example, no criminal justice system is particularly efficient, since in most places of the world most crimes are never solved, most suspected criminals go free, and most harmed individuals do not find remedies. Moreover, criminal justice systems do not assume they will solve every crime and punish every wrongdoer, and their inability to produce the same outcome everywhere, to operate with a criterion of rational efficiency, does not de-legitimize their work. Rather, justice is about morality and the principle of legitimacy, which in turn rest not on efficiency but on various cultural standards of dignity and symbolic effectiveness.

The question is not whether criminal justice is efficient but whether it is symbolically effective in reckoning with a past so that people do not turn to violence. With respect to post-unification Germany, it is generally agreed that the state had made a good-faith effort to punish those individuals most responsible for governmental criminality.

My second caveat: I do not mean to dismiss rectification through material compensation or restitution. Most of the individuals who came before the Commission did desire some material help (that is, corrective justice), in the form of increased pensions or access to meaningful employment which they had formerly been denied. And in some cases the law did eventually provide for this remedy.

Yet, the primary work of the Commission was symbolic and came in the form of apologies. This symbolic work is a major factor in explaining why the regime transition in East Germany, despite having created new forms of injustice, particularly with regard to privatization and redistribution of property, was accompanied by minimal violence. Retributive justice, then, was a necessity, a precondition for establishing the newly unified Germans as a moral community that upheld principles of public accountability. The tranquility of the German transition stands in sharp contrast to some of the other newly democratizing states of the former East bloc--the former Yugoslavia being the extreme example--which instead engaged in retributive violence, precisely in order not to have to take the rectification of moral injuries to others seriously.

Contributions toward an anthropology of justice

I would like to conclude with some reflections on the significance of the study of retribution, apologies being a specific subset of this general type, for an anthropology of justice. First, retribution is a type of justice that is the opposite of revenge, with which it is frequently confused in the anthropological literature. Retribution affirms principles of public accountability while revenge is premised on an equation of morality with an individual decision and of moral outcomes with the victor in the exercise of personal power.

Second, retribution relies for its efficacy on a symbolic exchange that is not to be confused with corrective or redistributive justice, both of which seek remedies through material exchanges. While moral injuries are frequently connected to material harms, or, specifically property loss, an effort to correct or redistribute is not sufficient to right the wrong. My argument, I hope, also suggests the importance of going beyond the "efficacy of symbols," as Levi-Strauss would have it, or the "magical power of words," as one of my mentors, Stanley Tambiah, would have it, to the political efficacy of symbolic form. From this perspective, Brandt's public speechlessness while kneeling was undoubtedly a more politically efficacious symbolic form for an apology for crimes against humanity than anything he might have said.

Third, retribution holds a unique and necessary place in legitimizing only democratic regimes; only they require retribution, which, in turn, compels the reiteration of principles of public accountability and therefore "the rule of law" over "the rule of men." Principles of accountability are reiterated by periodic cleansing of "criminality" from governmental centers, without displacement of crime to peripheral actors or areas.

Fourth, my concern with retribution is an attempt to refocus the ethnographic study of justice, of which law is one dimension, toward modes of the redress of wrong or harm--retribution, redistribution, and correction--and to their relation to the legitimation of political forms. This entails a move away from traditional legal anthropological

concerns that focused on pre-state jural systems and the nonsystematic transformation of what is called "customary law", or its integration into systems of state law. These pre-state jural systems are primarily of historic and not ethnographic interest today. Likewise, I have rejected a legal pluralist position that equates all local forms of regulation with law without acknowledging the unique demands for moral authority of state and international law. In this sense I am working on an "anthropology of the present," as Sally Falk Moore (1987) has dubbed it, which cannot avoid encounters of new kinds of international regimes with ubiquitous contemporary state forms, nearly all of which aspire to combine care and accountability, or, in institutional terms, "democracy" with "the rule of law." I take apologies and the global calls for retribution as evidence of new departures in the construction of moral communities in the contemporary world.

Notes

- ⁱ The necessity of redistributive schemes depends on the social and political location of the party claiming injury. Socialist regimes were initially motivated as redistributive responses to unjust distribution of wealth, which they, in turn, tried to rectify by creating public, shared forms of wealth. Their demise everywhere--and retransformation to capitalist systems--has meant a re-redistribution of public and private property and wealth from the historically less well-off to the better-off. The legitimation of postsocialist states has not been contingent on these new redistributive schemes but on democratic reforms. In places like Russia, for example, capital redistribution to the better-off threatens to destabilize democratic reforms. In longstanding oligarchies, as can be found in many Latin American and African countries, legitimation of newly democratizing states might depend on both retribution and a redistribution of property from large landholder to the less well-off.
- ⁱⁱ I am grateful to the following agencies and institutions for support for the research for this essay: the National Council For Soviet and East European Research, the ACLS-DAAD Joint Research Program, the MacArthur Foundation Bellagio Program, the IIE Fulbright Program, and Cornell University's Institute for European Studies and Peace Studies Program. This paper was initially given as a talk in 1997 at the American Anthropological Association, in 1998 at Washington University in St. Louis, and in 1999 at the University of California, Berkeley and the New School for Social Research. It has also benefited from criticism from Stefania Pandolfo and Paul Rabinow.
- ⁱⁱⁱ See Egonsson's (1998: 243) useful summary of the five elements comprising the standard definition of the moral importance of being human: objectivity, inviolability, irreplaceability, dignity, and equality. The German Basic Law appeals to all five elements at various times in different domains of law.
- ^{iv} German courts have only occasionally reaffirmed the importance of the apology as a remedy for a moral injury. As important as such an apology might be to the resolution of conflict, it is rarely given any legal significance. And although the meetings of victim and perpetrator have been relatively rare (in or out of court), even less frequent have been those where the perpetrator acknowledged his/her wrong. I suspect that without such an acknowledgment, the final goal of a jural process, reconciliation, is rare. In one unusual legal case, following such an apology, which was accepted by the victims, the head judge in a Berlin Court, Rainer Pannek, squashed the indictment of a former GDR Supreme Court judge. Alfred T. now 82 years old, had participated in 1950 in sentencing to life imprisonment nine members of the Jehovah's Witnesses on trumped up charges of spying and inciting war. The case was legally complicated by the fact that in 1952 Herr T. had fled to the West. Two previous attempts to prosecute him, in 1953 and in 1966, were stopped, each for a different reason, but with the end of the Cold War, public prosecutors were again obligated to investigate judicial illegality. Given his longtime residence in the West, however, it was unclear whether East or West German law applied to him. Judge Pannek applied West German law, and accordingly ruled that the statute of limitations had already been exceeded--thus avoiding a decision on the issue of "judicial illegality." Both the defense and prosecution intended to appeal the decision, the former because it wanted an acquittal, the latter because it wanted a one and one-half year suspended sentence.

^v Apologies by former East German leaders have also become an issue. Two of the members of the last three Politburo who went on trial responded in very different ways to the charges of crimes, although both refused to give a full apology. On August 25, an East German court sentenced Egon Krenz, who had ruled East Germany for just a few weeks before the government collapsed in December 1989, accountable for ordering border guards to shoot to kill. This was the last decision of some 50 trials of issues having to do with the border. More than 100 soldiers, military officers, border guards, and government officials were charged with these shootings. Fifty-five were convicted, with most receiving either short or suspended sentences. Prosecutors charged that Krenz could have stopped the guards from shooting, but instead he praised their behavior. Krenz remained defiant and pugnacious throughout, arguing that he was merely carrying out orders that ultimately rested with Soviet authorities. He cited Reagan's famous 1987 statement: "Mr. Gorbachev, tear down this wall!" Hence, not Honecker or Krenz, but only Gorbachev had the power to control what went on at the border. In his judgement, Judge Josef Hoch said that German officials' dependence on Soviet authority did not exclude responsibility for criminal activity. Nonetheless, he reduced Krenz' sentence to six from the eleven years demanded by prosecutors.

Guenter Schabowski, another member of the Politburo on trial, distanced himself from Krenz and was contrite. "Those who died at the wall are part of the burden we inherit from our misguided attempt to free humanity from its plagues," he said at outset of the trial. He still refrained from giving an unconditional apology, arguing that he had no role whatever in making border policy and had not been one "who murdered from behind a desk."

^{vi} By 1999 the reparations by the German government total approximately \$80 billion, most of which went to Jews who survived concentration camps or fled.

^{vii} Assistance included medical or psychological treatment, money to educate children, increased pensions or other entitlements, or recommending recognition for hardships such as naming scholarships or health clinics (Rosenberg 1996: 86-95).

^{viii} The chronicling of the Holocaust continues as a project, and has even expanded in post-Cold War Europe. Many European countries are now building new Jewish museums. Museums and other forms of memorialization are frequently related to the issue of retribution, but this current European wave must also be understood in its relation to contemporary competitive inter-state relations.

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