SELF-REFLECTION IN POST-CRIMINAL SOCIETIES: FROM DENIAL TO MORAL RESPONSIBILITY

by

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ABSTRACT

Victims of collective crime are targeted on the basis of their group membership; they are expelled from the moral universe of perpetrator-defined collectives with the help of large segments of the population. The absence of public disqualification of the criminal project and its ideology in the transitional period immediately following the fall of the criminal regime, I argue, should be understood as a collective problem.

I hold that the transition from collective crime to the rule of law ought to be conceptualized as a context in which the 'perverted group ethics', which attempts to justify avoidance to deal with the criminal past, ought to be morally evaluated and disqualified. This is the time when the re-establishment of the moral community becomes the necessary condition of the very possibility of the establishment of democracy. A normative change from denial to acceptance of responsibility is required because victims ask us to acknowledge and to remember.

Although I borrow from both, the individualist and the collectivist accounts of moral responsibility, I ultimately reject both in favor of a *shared moral responsibility* account, which requires that besides the *membership* criteria, the *participation* criteria be fulfilled as well. Thus, I hypothesize, that agents who share their collective identity with the perpetrators *and* who fail to uphold already accepted universal moral norms can be conceptualized as bystanders, a morally faulty group that produces harm against the community of victims, both, during the life of the criminal project (T1), and in the transitional period (T2).

ACKNOWLEDGEMENTS

DEDICATION

To the loving memory of Sonja and Stipe, my grandparents, who did not remain silent in the face of evil.

In this dissertation I follow the MLA style. Modern Language Association of America. *MLA Style Manual and Guide to Scholarly Publishing*. 3rd ed. New York: MLA, 2008.

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INTRODUCTION

> "One has the moral obligation to be responsible for one's actions and for one's words but also for one's silence." Roberto Bolaño, *The Last Interview & Other Conversations*

Mine is a study of the ethical challenges faced by individuals in societies transitioning from where there are "no rules to guide us in resisting evil" to the rule of law (Bernstein 224). More precisely, it is a normative analysis of a large segment of the population who collectively deny their responsibility for mass crime. Their predominant response is silence and their attitude may be understood as that of indifference toward the suffering of the community of victims. I refer to them as bystanders and hold that their motivation to live a 'normal' life in 'times of abominations' constitutes a moral choice. This moral choice is informed by the rejection of universal moral norms and in their stead the acceptance of a 'perverted ethics' largely defined and executed by the ideologues of war, perpetrators of crime and their collaborators. They can thus be conceptualized as voluntary, albeit sometimes unintentional, participants in mass crime.

Post-criminal societies relevant for this study are Nazi Germany and Milošević's Serbia, because they comprise a particular sub-type of transitional societies, which are faced with an extraordinary burden.[1] Besides being in transition from a non-democratic to a democratic regime, these are societies whose recent past is marked not 'merely' by 'standard' authoritarian type of non-recognition or violation of human liberty, but is rather singled out by long-lasting, systematic, violations of the right to life and basic human dignity, with, in the words of Larry May, the "added dimension of the loss of group identity for the survivors" (Genocide 90). Nazi

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1 Mine is not a comparative study of these two cases. I will also occasionally reference the case of South Africa during the apartheid.

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Germany and Milošević's Serbia exemplify what Nenad Dimitrijević has aptly termed 'collective crime'[2]. Mainly, each represents a case where subjects – or, more precisely, those subjects in whose name the regime acts – maintain symbiotic relations with the regime, substantially different from other criminal states.

Fear and abandonment mark the last nineteen years for the community of victims whose loved ones disappeared in the 1992 Sjeverin massacre.[3] The fate of the Serbian citizens of Bosnian descent remains outside of the scope of the moral universe of concern established in Serbia today. In the 1990s they were subject to systematic terror and intimidation, which resulted in ethnic cleansing and a significant decrease in the Bosniak part of the population. Today, the overwhelming majority has still not returned to their homes and the government of Serbia has done nothing to create a secure environment conducive to their return. In the village of Sjeverin, only nine of eighty pre-1991 Bosniak households remain yet the perpetrators of ethnic cleansing, murder and arson still walk the streets of many towns in Sandžak freely. Belgrade has taken no action against them, and the scope of the ethnic cleansing is denied institutionally.[4] Serbian nationalist celebrations of the destruction of Bosniaks still occur. In July of 2004, prior to commemoration of the ninth anniversary of the Srebrenica massacre, groups of Serbs walked the streets in Priboj singing songs glorifying war criminals and insulting the victims.[5]

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2 See detailed analysis in Chapter One.
3 The first serious crime on the territory of Sandžak was committed on 22 October 1992, when sixteen citizens of the Republic of Serbia and of Bosnian decent, who were making the daily journey from Sjeverin to go to work in Priboj were taken from the bus: Mehmed Šebo, Zafer Hadžić, Medo Hadžić, Medredin Hodžić, Ramiz Begović, Derviš Softić, Medhad Softić, Mujo Alihodžić, Alija Mandal, Sead Pecikoza, Mustafa Bajramović, Hajrudin Sajtarević, Esad Džihić, Ramahudin Ćatović, Idriz Gibović and Mevlida Koldžić. They were taken to Višegrad, where they were tortured and, it is presumed, killed on the banks of the Drina. Their bodies have never been found. One day before his brother Ramahudin was abducted in Mioče, Sabahudin Ćatović was abducted from his front yard in Sjeverin, and nothing has been heard of him since. For more information about the Sjeverin massacre, see (Youth Initiative for Human Rights "War Crimes in Serbia: Sandžak Case").
4 See (International Crisis Group "Serbia's Sandžak: Still Forgotten" 36).
5 Ibid.

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In the fall of 2004, I visited Sjeverin to meet one of the families who had lost two sons, Ramahudin and Sabahudin Ćatović, in the 1992 kidnappings. The father, Ramiz, said something to me then, which has continued to haunt me over the years. He told me that, after the news broke out about the Sjeverin massacre, although he had received many letters of support and condolences from people all over the world, he was sorry not to have received a single one in Serbian, the only language he understands. At the time he shared this with me I was struck; I did not understand why he wanted to hear from people whose collective had caused him so much suffering. I understand today that a letter from one of 'us' would have meant to Ramiz and his wife that their compatriots care, that they are not alone in their search for truth and justice, and above all else that we are – in our infinite shame – sorry.

I evoke this memory to highlight an empirical fact – after mass crime, the victim seeks a response from her compatriots who share their identity with the perpetrators. Bad moral luck might limit our choices but it does not define them. Our collective identities are changeable. My study is about those who fail to challenge – on the level of judgment and/or action – the ethical stance of their collective, which they share with the perpetrators. It is a study of individual moral responsibility in the production of collective harm during and in the aftermath of mass crimes.

As Ruti Teitel observed, "Transitions appear – almost by definition – to imply periods of historical discontinuity" (69). In one important way, the fall of the criminal regime implies a potential for a (normative) discontinuity. It creates a possibility for change, but the continuation of the 'criminal ideology' threatens to undermine this potential. The moral norms that guide the behavior of bystanders today are those which mitigated the crimes of the past. If we consult any of the number of sociological studies of the attitudes of ordinary citizens toward the perpetrators and the victims of yesterday's harms, we will observe that even when facts about crimes are

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established, many citizens often continue to deny the relevance of these facts, or the facts themselves. It is precisely this avoidance that allows the criminal ideology to subsist.

Yet, although the literature on the topic of responsibility for mass crime is vast and spans many academic disciplines, ranging from political science, history, sociology, to philosophy and psychology, etc. the importance of bystanders for transitional periods remains insufficiently explored. Bystanders are treated in the literature as 'new' citizens of the democratizing regime but their importance for achieving justice in transitional periods remains understudy. In both, literature on the topic, and in practice, the concept of bystander seems to lose its normative power after the criminal regime falls: bystanders of yesterday are citizens of today. This misstep consequently undermines the transitional justice efforts aimed at dealing with not only criminal and political, but also with the moral burdens faced by societies transitioning from mass crime to democracy. The problem becomes exposed when bystanders to yesterday's crimes cease to be treated as such in transitional contexts. Understanding them as *citizens* of democratizing regimes equips us poorly to distinguish between transitional agents of change and agents who stand in the way of change. A detailed theoretical analysis, supported by empirical evidence, of bystanders' behaviors and roles in the transitional period, however, immediately suggests that the 'upgrade' of the concept of bystander to the concept of citizen of the new democratizing regime unjustifiably and mistakenly relieves these persons of moral duties; unjustifiably, because their behavior, beliefs and attitudes under the criminal regime created special duties for them. To refrain from ascribing responsibility to normal human adults fully capable and competent to fulfill their moral duties is also to irrevocably undermine their equality and dignity. Establishing moral responsibility, then, when appropriate and justifiable, is a matter of upholding norms of universal morality.

Transitional justice mechanisms such as trials and truth commissions by design focus on the victims and the perpetrators; this is rightly so, for criminal and political accountability as well as public testimony of the community of victims constitute building blocks of justice. However, to ignore the moral norms that guide the behavior of the majority of the population is to ignore the harm this population produces against the community of victims in the transitional period (T2). Ignoring the relevance of the concept of bystander at T2 is to ignore the second moral collapse this segment causes. This strategy of transitional justice practitioners and theoreticians is informed by the intent to identify the perpetrator and to extinguish any notion of collective guilt. The strategy, while necessary, is hardly efficient. The point being that the majority of the population has come to accept, justify, rationalize, and normalize the norms which directly contradict the norms that guide transitional justice efforts. I aim to show that in both cases referenced, where entire collectives were prosecuted by groups, transitional periods cannot achieve normative transformations unless the moral responsibility is added to the criminal and political aspects of transitional justice.

I realize that some of the claims made in this study are controversial, but I nevertheless attempt to defend them. These are my main claims: (1) The concept of moral responsibility for mass crime must cover transition-specific harms, its agents and the duties that arise from it; otherwise, it will become unable to serve as a guide in answering the question 'How did the moral collapse happen?' (2) To properly assess moral responsibility for mass crime the units of analysis ought to reach beyond actions and their consequences, to include attitudes. The attitudes taken to be relevant here are generally those that both produce serious harm in society and that require acceptance by many individuals in a community together in order to be effective, e.g., attitudes such as racism, sexism, and anti-Semitism. I hold that this step is crucial if we are to

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understand the nature of the harm produced by bystanders, which is characterized by omissions to act, failures to respond, and an overall absence rather than a presence of harmful actions. (3) Unintentional participation is as important as intentional participation in the production of harm. As Hannah Arendt successfully argued in *Eichmann in Jerusalem* evil deeds do not require evil motives. (4) The assessment of bystander's moral responsibility should hinge upon the bystander's relations with the community of victims; this relationship is more significant morally than is their relationship with the perpetrators. (5) Unlike regime crime, the context of collective crime requires a transition-specific conceptualization of bystander, which I aim to provide in this study. (6) And, finally, I claim that the context of mass crime does not alter individual responsibility in the way moral relativists argue – it maybe limits our choices for action, provides us with a set of unacceptable choices (thereby creating moral dilemmas), tests our internal resolve, questions our beliefs, but it nevertheless cannot abolish our ability to distinguish between right and wrong.

The most general assumption underlying my hypothesis that bystanders have a moral duty to respond to the community of victims and the society at large in the aftermath of collective crime is that: (1) Moral norms are universal from which it follows that (2) Human beings have equal moral worth and because of it they are entitled to equal moral respect and protection of their rights (Kekes 9), and (3) Human beings ought to be treated as ends and never as means to an end (Kant). With this in mind, I raise four general questions: First, did bystanders violate any, or all, of these universal moral demands? Can they be identified as a sub-group by their failure to meet such universal moral standards? Is their failure different at T1 and T2? And, finally, if they indeed violated moral universals, can they be held responsible for this?

I hypothesize that bystander's moral responsibility derives from the following moral predicament – due to their preference for 'life as usual', which in the particular criminal context obtained the meaning of both passive and active forms of the support for the regime – others have suffered at the hands of those who share our collective identity. Given that this inequality was established during the collective crime, some people had rights which others did not have, which among other things meant that some people were authorized to deny basic human rights of some other people, the task of the transitional community is to re-establish moral equality. I thus claim that the important way to achieve this is for the bystanders to assume duties for bringing this normative change about.

I additionally hypothesize that bystanders are causally responsible for the harms suffered by the community of victims during as well as in the aftermath of mass crime; the loss of life, property, life chances, etc. are directly caused by perpetrators, while humiliation, fear, loneliness[6], and abandonment[7] are caused by the wrong moral attitudes and (in-)actions of bystanders. More pointedly, in the last instance, it is the perpetrators who cause physical death, but it is the bystanders who participate in bringing about what Claudia Card refers to as 'social death'. The act under moral scrutiny is the omission to help or prevent harm, or the failure to act on one's moral obligations and duties (to relieve suffering is our prima facie duty). And, the attitude under moral scrutiny is indifference toward the mass atrocities perpetrated against the victims, who are simply not human enough to matter. I argue that where the control (freedom from interference of others) and knowledge conditions (factual ignorance) obtain, attitudes instead of actions should be the primary units of analysis.

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6 See e.g. Norman Geras
7 See e.g. Jean Améry

Bystander's roles and responsibilities are varied. Although they constitute a heterogeneous collective, they are united in two morally-relevant aspects of response to mass crime – (1) they withhold their obligations towards the community of victims and (2) they remain silent in the aftermath of atrocities. A normative conclusion follows from these empirical insights – by choosing to exclude the community of victims from their moral universe and by remaining silent in response to crime committed by members of their own collective, bystanders come to share in the upholding of the 'perverted group ethics'. Some do so intentionally, others not. The two empirically observable responses – lack of care for the victims and silence in the aftermath – are further identified as 'fitting' within the collective intent, largely formulated and executed by the ideologues, perpetrators and collaborators. I am not suggesting that the bystanders necessarily intend to commit or in different ways contribute to mass murder, but that their intentions relevantly overlap with those of the criminal regime. On my approach, bystanders are not responsible for what others have done, but for what they have done, what they have failed to do, and for what they have become (moral characters). Thus, besides legally and politically liable agents including the ideologues, the perpetrators of mass atrocities and their collaborators, all of which exclude the victims from their moral universe, bystanders who constitute the majority of the population, do the same. Bystanders are moral agents who share their identity with the perpetrators and who can be said to have failed to uphold universal moral standards either via wrong attitudes or wrong actions. Their behavior is voluntary (not the result of factual ignorance or external pressure) and is thereby attributable to them in the sense appropriate for moral responsibility.

I hold that a large segment of the population comes to share their common identity with the perpetrators, and not solely by birth (involuntary membership in the nation) but by choice.

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They share this identity voluntarily in the sense that they fail to exercise their capacity to think critically about the moral facts of crime. I propose that they have the freedom not to participate in the collective crime. I argue that four sub-types of agents comprise the group of bystanders: (1) supporters, (2) 'internal collaborators', (3) 'inner émigrés'[8], and (4) transitional bystanders. This bystander typology enables me to distribute moral responsibility according to the contribution to harm of each participant. The first type can be said to participate in harm by upholding wrong moral attitudes and acting upon them; the second type remains passive but is also upholding wrong moral attitudes. Although the third and fourth types can be said to be upholding proper moral attitudes, they harm the community of victims in the transitional period via negligence (by remaining passive at T2). I will consequently argue, that all four types can be said to hold significantly overlapping intentions with the criminal regime, since each type shares the already mentioned two crucial characteristic – failing to aid the community of victims and remaining silent in response to crime.

I argue that the bystanders' attitudes toward the community of victims – during the criminal project and in its aftermath – are the result of different forms of denial and are outwardly expressed in the form of silence understood as absence of appropriate and presence of inappropriate language. Mine is not a study of guilt, for as Hannah Arendt famously asserted 'where all are guilty none is'. Also, it is not a study of forgiveness because as Geoffrey Scarre holds "not forgiving keeps at the forefront the wrongs of which human beings are capable. . ." (45). This study is rather motivated by demands of universal morality and its agents, including the community of victims.

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8 I borrow these two terms: passive support or 'internal collaboration' and passive opposition or 'inner emigration' from Cohen (147).

I further argue that individual responses to mass crime are largely informed by relational dynamics that emerge within their collectives. Discussions about collective moral responsibility mostly focus on the question whether the whole community—or large parts of it—can be held responsible for the harms produced by particular group members in cases where not all group members caused the harm directly. In cases of collective crime, I argue that the majority of the population (but not the entire population) can be held responsible for the crimes committed in the past and the harms produced in its aftermath. Mine is a shared-responsibility approach to moral responsibility. That is, it is not individualist and it is not full blown collective.

I started my analysis from a simple intuitive assumption -- that there is something deeply troubling and wrong in the culture of silence developed in response to the recent sinister past; following Chandran Kukathas, a denial of the contemporary relevance of a past suffering implies not only that the past does not matter for us of today – it also implies that the difference between justice and injustice does not matter (167). My next assumption is that the character of the criminal past rules out the very possibility of a new beginning, which by definition would be free from the legacies of the past. Therefore, I assumed that mass crimes are not merely tragic events of yesterday. Their consequences shape transitional contexts to an extent that allows one to argue that the past has not passed. It follows that the criminal past cannot be simply eradicated or made irrelevant by a political choice of a new regime.

Why the bystanders? Because I assumed with Andrew Shaap that "only to the extent that members of an offending group recognize their complicity in sustaining an unjust regime and/or benefiting from the mistreatment of another group is it possible for a new and more just society to be created" ("Subjective"). If we consider that citizens have a duty to participate in institutions and processes that enable their state to act justly and effectively in transitions from criminal past,

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moral questions concerning responsibility must be, as Jürgen Habermas argued, "discussed ... in the soft medium of public dialogue" (Double 31).

Thus, a further assumption is that the past is relevant for the present because of the presumed continuity in people's attitudes, values, behavior. The prevailing attitude toward crime is silence (this is what we saw in Germany and today in Serbia). Both of these cases demonstrate that 'not knowing' was a matter of choice. As Dimitrijević argues, "The ideological rationalization of crime was coupled with the individual rationalization of silence and denial: during the criminal regime both rulers and ruled behaved as if no crime had been taking place at all . . . Relevance of this silence is not limited to the life-span of the criminal regime but it supersedes it" ("A Continuity" 16). I argue that a moral challenge is created due to the severity of the character of the collective crime from which the society is transitioning. Once silence is identified as a problem, the question remains whether this attitude can be justified. Larry May reminds us that "the knowledge requirement could be satisfied by a failure to know what any reasonable person would have known" (Genocide 127).

If we agree with Harald Welzer's argument that only one single coordinate need be altered – social belonging that separates 'us'[9] from 'them' *to whom 'our' principles of morality do not apply* – to create conditions for complete elimination of the 'other' then, once the criminal project has ended, is it not only permissible but also necessary to investigate these inclusion/exclusion practices?

These considerations point to the crucial importance of the context. And more: they inform us that the transitional context is not an objective given. The cases mentioned provide us with the insight that the answer to the question what counts as the relevant context when

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9 For more on why the bystanders ought to be bothered by their role in the criminal project and their attitude towards it afterwards, especially from an identity point of view see Chapters Three and Four.

choosing an appropriate strategy of 'working through the past' is itself a matter of interpretation. It is typically political and cultural elites who join together to offer an authoritative interpretative identification of the context. They do this led by some preferences and perceptions of the situation. I want to argue that their choices should be not only described and explained, but also evaluated as right or wrong. Thomas Scanlon points that "when we judge a person to have acted in a way that was morally wrong, we take him/her to have acted on a reason that is morally disallowed, or to have given a reason more weight than is morally permitted, or to have failed to see the relevance or weight of some countervailing reason, which, morally, must take precedence" (What We Owe 201).

In sum, the assumptions underlying my hypothesis about bystanders are: 1. Silence is their predominant response to collective crime, 2. In the transitional process the criminal past is treated as a problem of yesterday, 3. Their complicity with the criminal regime continues into the transitional period in the form of shared wrong moral attitudes, 4. Normative assessment of the criminal past is on the margins of public discourse, 5. Claims of factual ignorance are offered as excuses for inaction, 6. Exclusionary practice (of the community of victims) continues into the transitional period, and 7. The transitional context is interpreted as the wrong time to deal with the past (too much, too soon).

These lead us to the normative level of assumptions: 1. The culture of silence during and after mass crime cannot be morally justified, 2. Closing of the books on the criminal past is a moral choice based on wrong moral attitudes, 3. Acknowledgement of complicity is owed, 4. Acknowledgment is owed publically, 5. The proclaimed ignorance of the wrongdoings is willful (serves as denial and self-deception), 6. Inclusionary and exclusionary practices during the criminal project are group-specific and as such create collective problems in the transitional

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period and 7. The transitional context marks a possibility of a normative change, which requires prioritizing according to the universally right moral standards (right is to be understood as Popper's nearing the truth concept, rather than as an ideal model).

On the metaethical level, I assume that universal moral principles[10] were well known to the bystanders (the argument of T0[11]), which they willingly and willfully rejected as binding. I will argue that they came to view the victims as not part of their moral universe where these principles remained to exert their force without interruption. I thus hypothesized that bystanders failed to uphold their own moral norms and in doing so became complicit with the criminal regime. This failure to remain faithful to universal moral standards they already knew and interiorized and succumbing to the criminal regime's propaganda grounds their duty toward the community of victims and the society at large to acknowledge their responsibility for the harms committed.

As we already saw, these assumptions reflect moral judgments that are entrenched within universalist views of morality; they rest on normative positions that hold that there are moral facts about the world we live in, which can be arrived at, and which hold true to all people equally ('hold true' in this context means that these moral facts provide reasons for people to act upon, or rather, motivate them into action). Moral truths are within our reach because moral knowledge is always accessible to us, through reason. Aristotle, Kant, Arendt and Nagel, would argue that – thanks to this uniquely human capacity to judge right from wrong – normal human adults have the capacity to arrive at universally applicable objective moral reasons. To arrive to the moral truth we only need ask ourselves can a given practice be justified to all those affected (Kant). Some practices may pass these tests but there are others that will not ever and anywhere,

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10 Such as the principles of benevolence, paternalism, justice, etc.
11 T0 represents periods prior to Milošević's rise to power in Serbia and to Hitler's rise to power in Germany.

such as willful harming of innocent people. Some may accomplish the task, others may fall short, but still the objective moral reasons exist.

To be responsible then is to be accountable for what one does and what one is (for one's own moral character), and finally for one's inactions; we are responsible to ourselves and to others. This moral fiber of human relations rests upon the idea of political equality, the rights we acquire by birth, and the duties we have toward each other, as well as to ourselves. Moral norms that guide our behavior and conduct are unchangeable, objective and universal on this account. This view of morality and more specifically of responsibility is however not shared by all.

In Chapter One titled, "Conceptual Analysis: Crime and Responsibility", I introduce the concepts that underpin my argument and elucidate the theoretical background of my research. The theoretical meaning of many of the concepts introduced in this section is widely debated by scholars. Thus as the building blocks of my argument are introduced, starting from more general to more disputed, the normative background of the research crystallizes. Leaving the metaphysical issues in moral philosophy aside (the debate of free will vs. determinism), I assume that we have freedom of choice and thus my approach is that of the compatibilists. I begin with the elaboration of criminal regimes relevant for my analysis, followed by a discussion of universal morality. With that empirical and normative background, I identify the moral predicament of collective crime: perverted group ethics and bystanders. I then engage in the analysis of their moral responsibility. I further argue that individualist approaches to moral responsibility cannot account for the troubling questions about the interplay between individual and group behavior. I introduce the arguments of individualists and aim to show that to fully capture the dynamic nature of relations between the regime and its subjects (vertical), as well as among the subjects themselves (horizontal), a collectivist approach to moral responsibility is

required. And finally, I discuss the various theoretical implications of most prominent approaches to the issue of collective moral responsibility, from which I build my own model of shared moral responsibility.

In Chapter Two, "The Conceptual and Normative Challenges," I identify concepts relevant for any study of mass crime, mainly guilt, political responsibility and moral taint. I then proceed to defend my view that the concept of moral responsibility is better suited to address the questions of bystander-produced harms, given the already identified context of collective crime. Then, I introduce and analyze the practical implications of moral relativism for our conceptualization of agent responsibility in mass crime, which in turn affect how we understand the nature of mass crime. I briefly engage with three normative relativists and then propose a response to them.

In Chapter Three, "Moral Responsibility of Bystanders at T1," I analyze how a segment of the population comes to form a group and how this group comes to constitute a collective relevant for ascription of moral responsibility. I then provide a detailed identification of the T1 context – focusing on Dimitrijević's phases: preparatory, implementation and normalization phase. I then proceed to provide both: negative (factual ignorance and coercion) and positive identification (denial, self-deception, ethical position and silence) of bystanders at T1. I sketch out what constitutes T1-specific harm committed by bystanders, by focusing on judgment-sensitive attitudes, intentions and actions (or rather, omissions to act). I then provide arguments in favor of conceptualizing bystanders as a morally liable group at T1.

I hold that although excusing and exemption conditions[12] could be argued to have altered the way people behaved under the criminal regime, they cannot be used as explanatory factors for people's morally wrong attitudes. These morally corrupt attitudes held by the bystanders cause harm to the community of victims. Not to value persons as ends in themselves harms those persons without the existence of harmful actions. In T1, the group of bystanders commits harm against the victims and the society itself, through its attitudes and significantly overlapping intentions. The contributory harm is committed by the bystanders through negligence. As long as one intends to commit harm, and the other one intends nothing to jeopardize that intention itself, harm is committed. In short, the criminal intentions of the perpetrators are uninterrupted by the intentions of the bystanders.

In Chapter Four, "Moral Responsibility of Bystanders at T2," I undertake the analysis of the T2 context and its specific demands on moral agents. I aim to respond why bystanders matter in the aftermath of crime, by drawing on empirical evidence and identifying their group-shared characteristics including their guiding norms and prevailing attitude of silence in response to the criminal past. External factors, such as coercion, threat, and duress can explain why moral agents would not resist (through action or negative judgment) the criminal regime (T1). What is puzzling now, I argue, is to observe the same moral attitude from those agents towards the crime in the absence of those external factors (T2); that is when their actions (let alone deliberation) are undoubtedly voluntary. In this chapter, I ask what would then adequately explain the persistence of the moral attitude today (not disqualifying the crime as wrong) of this group of agents who

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12 Excusing conditions obtain when a person acts under duress or coercion, when it would be unreasonable to hold her responsible for her actions. Exempting conditions obtain when moral demands cannot be placed upon a person due to lack of normative competence (people with intellectual disabilities and young children).

have full knowledge (about the crimes committed in the past) and who have full control of their individual autonomy? How should the morality of these agents be evaluated and to what end?

I provide both positive identification of denial in terms of 'the act of speech' and negative identification of denial in terms of silence, where I argue that bystanders engage in forms of denial whose outwardly expression is found in both, public narratives saturated with clichés, euphemisms, and silence. The focus of this chapter is to provide a coherent picture of the bystander roles in the transitional period. I thus sketch a relational model that aims to explain the importance of the group of bystanders in post-criminal societies. I present their roles from two different perspectives: the community of victims and the perpetrator group, in post-criminal societies transitioning to democracy. I do so in order to explicate the complex social dynamics that set the background of collective crime and for its legacies in the transition period. I then propose what constitutes a proper attitude of bystanders to the criminal legacies. I analyze what attitude entails a normative break with the criminal past, or what it means to have the proper attitude toward the criminal past. I argue this proper attitude is best understood as what Linda Radzik and Dimitrijević have called the 'duty to respond' in two senses: toward the community of victims and toward the society in its entirety. I follow up by elaborating in detail the content, the scope and the addressees of this specific duty.

CHAPTER ONE – CONCEPT ANALYSIS: CRIME AND RESPONSIBILITY

In the first section entitled "Types of Criminal Regimes," I elaborate morally relevant distinctions among criminal projects, focusing on the nature of the criminal regimes and their different relations to subjects, as well as their impact on the society at large. In the following two sub-sections "Moral Predicament of Collective Crime," I indentify and elaborate the specificities caused by moral societal breakdowns, mainly (and respectively) the perverted group ethic and bystanders, as one type of agents. In the second section titled "Universal Morality," I sketch out in broad strokes what morality is, according to different approaches, and attempt to situate my own argument accordingly. In the third section "Moral Responsibility: Conditions and Units of Analysis" and in the fourth section, "Moral Responsibility of Bystanders," I address the concept of moral responsibility, excusing and exempting conditions and the units of analysis I explore. My task is to generally elucidate the constraints of moral responsibility ascription. In other words, as much as possible, I want to avoid judging acts that are not voluntary or 'unfree'[13] since I am interested in understanding the moral character of agents. Thus, I assess what pressures were placed upon a person when she acted, how she understood the situation she was responding to, and special factors affecting her ability to deliberate and choose. The key point being that "external influences do not cause action but rather provide information (facts) which the agent, as 'helmsman', then steers according to" (Thomas May 57). So, in order to understand why agents behave and act, or fail to act, we have to understand the external influences that affect them. In section four, I explore what bystanders are accountable for and explicate their duties.

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13 As P. S. Greenspan points out, "an act is unfree if it would be unreasonable to expect the agent to do otherwise, even where he has good reason to that unreasonable discomfort, the amount sufficient for unfreedom, is discomfort too intense to expect the agent to bear, relative to some presumed or standard set of circumstances" ("Behavior" 225-240).

In section five, on "Moral Responsibility for Mass Crime: Individualist or Collectivist", I explore the main arguments put forward by the proponents of the two approaches, so as to situate my own argument. Finally, in the sixth section "Shared Moral Responsibility for Collective Crime," I offer arguments in favor of the analytical approach I employ in this study.

1.1 Types of Criminal Regimes

The political contexts that give rise to the question of moral responsibility I explore are confined to a very specific universe of cases. The most general level of analysis lies in the nature of the regime, which Hannah Arendt referred to as 'totalitarian' (Origins 305), as opposed to 'modern dictatorships', and which Nenad Dimitrijević terms 'populist criminal regime' and 'repressive criminal regime'. Latter types in each of the two categorizations signify regimes where crime is restricted to the actions of the regime and the crimes are carried out against political opponents; the former types in each of the two categorizations signify regimes where crimes are committed with a wide-spread complicity of the subjects and against "people who were 'innocent' even from the point of view of the party in power" (Responsibility 33). From this level of analysis we observe two relevant distinctions between the two regime types: both, the 'totalitarian' and the 'populist criminal regimes' raise two questions that are otherwise not observable in modern dictatorships or 'repressive populist regimes', and these are: the unique role of the 'ordinary' citizens in the crime and the unique selection of the victims. The nature of the relationship between the regime and its subjects in Dimitrijević's 'populist criminal regime' and Arendt's 'totalitarian' regimes, is best understood as that of mutual support. This leads to a particular nature of the harm produced by the different regimes. The totalitarian governments and 'populist criminal regimes' engulf all aspects of life, including the private sphere, creating what Dimitrijević refers to as 'collective crime'.

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Thus, to define the relevant scope for my project, it is not enough that mass crimes occurred (such as those of 'symmetric barbarism' as per Rajeev Bhargava[14], or Arendt's modern dictatorships or Dimitrijević's regime crime), but additionally, mass crimes had to have occurred under 'asymmetric' conditions, where one group stops to abide by basic procedural justice. Bhargava argues that,

> In an asymmetrically barbaric society, a particular group (an ethic/religious/race-based community or the class of political elites), by its violation of minimally moral rules, bears a primary responsibility for evil. Other groups in this situation, normally the victims, bear no such responsibility and, indeed, continue to hold on to a distinctly moral viewpoint (58).

This is where the issue of moral responsibility of those 'standing-by' arises as a question. Arendt refers to this segment of population as masses and says that the term applies "only where we deal with people who either because of sheer numbers, or indifference, or a combination of both, cannot be integrated into any organization based on common interest . . ." (Totalitarianism 311). Yet, these are the people that Nazis recruited members from, "totalitarian movements are mass organizations of atomized, isolated individuals. Compared with all other parties and movements, their most conspicuous external characteristic is their demand for total, unrestricted, unconditional, and unalterable loyalty of the individual member" (Totalitarianism 323).

The crime is ideologically prepared, both in regime and collective crime, but only in the second case does it rely on the consent of the in-group members. While each of the regimes requires normalization in the sense of institutionalization (Duty 25), only the populist criminal regime requires mass support for the regime and it achieves it through what Dimitrijević calls

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14 For more on symmetric and assymetric barbarism, see ("Restoring" 45-57).

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internalization of 'the perverted value system'. Dimitrijević distinguishes three phases[15] of this type of crime: preparation, criminal action or implementation, and joint acceptance or normalization, which he terms 'collective'. Similarly, Arendt argued that differentiating between the natures of criminal regimes provides a significant insight into their effects as well as inter-personal relations. As we saw, she distinguished between 'modern dictatorships' and 'totalitarian governments' both of which: deny political freedom to their subjects, seize power militarily, abolish civilian government, and deprive citizenry of rights and freedoms, but only the latter attempts to take over the private life and nonpolitical activity. In criminal populist regimes, unequivocal acceptance of the ruling principles is demanded in every institution, organization, and of every individual. In this study I am concerned with moral responsibility of agents who are faced with the moral predicament created by collective crime. In the following two sub-sections I will elaborate on the moral predicaments faced by societies where collective crime occurs.

1.1.1 Moral Predicament of Collective Crime: Perverted Group Ethics

In times of stability and peace, "a defining question of moral philosophy is the question of the rational authority of moral norms: to what extent, and under what conditions, do people have compelling reasons to comply with the demands of conventional morality?"[16] In times of 'abominations', which Norman Geras calls brutal violations, barbarous cruelties, the extremes of impoverishment and need, Dimitrijević's 'perverted group ethics' superimposes itself as 'conventional morality'. When this new moral system demands toleration, obedience, and support what can be said of rational authority?[17] The 'conventional morality' is silent in the face of "the violation of some by others, their public humiliation, dispossession, deportation,

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15 See Chapter Three for a detailed analysis of these phases of collective crime.
16 See the Stanford Encyclopedia of Philosophy (Wallace R. Jay "Practical Reason").
17 The relationship between rational authority and what Yehuda Bauer calls 'basic morality' as possibilities for judging properly between right and wrong.

enslavement, torture, murder, in the sight, or with the knowledge, of many more others who could but do not act to stop it, who stand by, look on or look away . . . ?" (Geras 27). Rational authority resists the interpretation of reality according to the conventional mores; we independently and uninterruptedly continue to critically judge right from wrong based upon rational authority, yet some of us succumb to the conventional mores. It is critical thought that helps resist the superimposition of conventional norms, or group-specific ethics. Accepting these norms represents a failure to think or to be morally decent. If we recall some scenes from Claude Lanzman's *Shoah* in which several Polish peasants who lived near concentration camps are interviewed, the utter oblivion of apathetic minds some forty years after the Holocaust is staggering. The old justifications and denial of full knowledge are immediately offered in response to the seemingly simple question "Do you miss the Jews from your village?"

Still, the practical authority of reason[18] is context-independent, and as such exists intact even in times of abomination. Kant held that moral conscience was "a 'compass' derived from the universal law of pure practical reason, pointing out right from wrong and available to every rational creature."[19] Arendt believed that 'thinking' is guided by love of the goodness of what exists, and although in many of her works she distinguished between morality and politics, she held that the refusal to think and thereby to judge right from wrong 'invited evil to enter the world' (Eichmann 48-9). In each of the interpretations, it is clear that the context cannot block practical thought, only we ourselves can choose to do so. In other words, our ability to

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18 Kant held that formal standards of reason exist that are in virtue of their rational authority sufficient in themselves to guide agents to act in accordance with them. Kant's "account of the content of moral requirements and the nature of moral reasoning is based on his analysis of the unique force moral considerations have as reasons to act. The force of moral requirements as reasons is that we cannot ignore them no matter how circumstances might conspire against any other consideration." See the Stanford Encyclopedia of Philosophy (Johnson Robert "Kant's Moral Philosophy").

19 Ibid.

distinguish between right and wrong derives from an internal rather than an external source.[20] All moral agents are in possession of a kind of rationality that is open to compelling evidence, the 'moral law within,' as Kant would say. Because we are all thinking beings who have to live with ourselves, there will be limits to what we will permit ourselves to do and where "wrong would be whatever I cannot bear to have done" (Responsibility 124).

Historical evidence from Nazi Germany and Milošević's Serbia suggests that the application of moral standards during atrocities continued in some circles, albeit selectively. This selective application allows us to understand people who remain good fathers, mothers, friends, employees, public servants, etc. They still behave in accordance with what is right and wrong. Yet, they fail to fulfill their obligations toward the victimized group identified as an enemy and to whom moral norms no longer apply, which means in practical terms that they do not apply the distinction between right and wrong in their attitudes towards targeted people. We are shocked when we hear that a perpetrator of horrendous harms is also a 'decent' person whose qualities we share. This empirical observation suggests that moral standards remain to be applicable yet not unequivocally. Naturally, a selective application of moral standards is immoral in itself, but none of these agents suffer from what might be termed 'moral ignorance'.[21]

Unlike some of the proponents of the inability thesis, which I discuss at length in Chapter Two, who claim that cultural influences can excuse wrongdoing, I follow Aristotle's claim that "an adult agent's ignorance of what she ought to do is, in general, no excuse for wrongdoing" (56-58). So, while some moral relativists argue that cultural contexts induce non-culpable ignorance thus diminishing responsibility, on my universalist account, morality continues to

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20 For more about thinking and judgment see section "Moral Responsibility" subsection "Conditions: External and Epistemic".

21 For a detailed discussion of 'moral ignorance' see Chapter Two.

govern personal conduct of all rational agents even in totalitarian societies. Bhargava refers to societies where an apparent breakdown of this public system occurs as 'barbaric.'[22] In these societies the attitude of the refusal to be confronted with the horrifying nature of the regime and its crimes is extensively accepted. So, if we reject the inability thesis[23] and accept that moral norms are known to each moral agent regardless of her context then we face the question, how do mass atrocities come to be tolerated, accepted or even supported?

From historical evidence from both, Nazi Germany and Milosevic's Serbia, we observe that morality "collapsed into a mere set of mores – manners, customs, conventions to be changed at will – not with criminal, but with ordinary people, who, as long as moral standards were socially accepted, never dreamt of doubting what they had been taught to believe in" (Responsibility 54). How did the universally accepted moral standards come to be rejected and the humanity of a group of people, become excluded from the moral concerns of others over time? In the preparatory stages of the criminal regime, 'ordinary' citizens were faced with a moral choice between the already accepted moral norms and the new system of values, whose identification and discrimination against an entire group of people, easily identifiable as crime-supportive ethics. Each step of the way, and as we progress into the implementation phase of the crime, 'ordinary' citizens are faced with a question 'Is what is happening right or wrong and is there anything I can do about it given my situation'.[24]

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22 He argues that "A minimally decent society is governed by minimally moral rules. A complete breakdown of such rules characterizes a barbaric society . . . where basic procedural justice is dismembered, the entire mechanism of negotiation and arbitration has vanished . . . As indifference and submissiveness are routinely generated in a depoliticized environment, the initial use of excessive force makes physical coercion more or less redundant…" ("Restoring" 47).

23 See Chapter Two for a detailed analysis.

24 Consider Jorge Semprun's devastating recollection in *The Long Voyage* (36): "There are some people talking on the station platform, and they have just realized that this is not just another train. They must have seen the silhouettes stirring behind the metal grillwork covering the openings. They're talking among themselves, pointing at the train, they're all excited. There's one kid about ten-year old, with his parents, directly opposite our car. He

Dimitrijević and others argue that in criminal regimes, the majority of people have effectively renounced already valid and accepted standards of distinction between right and wrong, good and bad, just and unjust and an alternative ethical position came in their stead. Along those lines, Tzvetan Todorov claims that guards in the Nazi extermination camps replaced wrong with right: "They simply believed that the 'atrocity' was in fact a good thing and thus not an atrocity at all – because the state, custodian of the standards of good and evil, told them so" (129). However, the overuse of euphemisms in the 'barbaric' systems indicates that something had to be hidden from the public's eye behind the creative terms, code names, and acronyms; and not only from the public's eye, but also as could be seen in *Shoah* from the very perpetrators of crimes themselves, such as concentration camp guards.[25] Consequentially, this selective application of universal moral norms which continues to guide the relations among the members of the in-group comes to resemble closely the renouncing of the norms altogether in their relations with the victims. The regime-sponsored new order first identifies the victims as the enemy, whose destruction guarantees salvation of the in-group. In Dimitrijević's words, "The process that will culminate in mass killings begins with the ideology that offers moral justification for the exclusion from the moral commonwealth. Discrimination, segregation, humiliation, and mass abuse are all ethically grounded practices. Finally, killing itself is the fulfillment of the highest moral duty. Call it ethics of evil" (Duty 33).

This brings us to the transitional predicament, when the majority who had been supporting or tolerating the criminal regime, after the regime change become citizens of a

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listens to his parents, looks in our direction, shakes his head. Then he dashes off. Then he comes running back with a big stone in his hand. Then he comes over toward us and heaves the stone as hard as he can against the opening we're standing beside. . ." The train is on its way to the Buchenwald concentration camp.

25 In extermination camps, the victims were not referred to as victims but as 'cargo', the 'final solution' was used instead of extermination, 'routine malfunction' instead of murder in concentration camps, 'parasites' instead of people, etc. . . I discuss *Shoah* and many other examples at length in Chapters Three and Four.

democratizing regime. Their typical attitude, silence, is a form of complicity according to Dimitrijević, which endures the fall of the criminal regime. He refers to it as the 'culture of silence' and argues that its constitutive elements – the emotional, cognitive and behavioral patterns that overtly and tacitly support the criminal regime and deny the moral wrongness of crime – continue into the transitional period, albeit in different forms due to the new dynamics. Baum says that at the time of the criminal project, this silence may be "understood as a kind of culture of selfish tolerance of injustice, i.e. of moral indifference in the face of suffering of innocent human beings" (56). The continuation of the essentially same attitude identified under the criminal regime, is also found in post-criminal periods. Dimitrijević reminds us that second to the crime itself, the 'culture of silence' and denial, constitute the most important aspects of collective crime. In the transitional context, he argues then, the 'culture of silence,'

> denotes a pattern of values, beliefs and attitudes that gives a distinctive shape to a group's stance and actions towards the past regime, mass crimes committed, and their consequences. This pattern consists of the empirically observable rejection of the majority of the population of confronting the elementary facts of the crimes, and it includes different modalities of emotions, evaluations and behavior related to the crimes (Duty 88).

So my argument goes: Prior to the crime, people are rational agents, who judge between right and wrong, and who uphold moral standards; with the advent of the regime, with the establishment of its ideology of hatred and practice of killing, although they continue to uphold these standards they reject applying them in their relations with the targeted group. This moral predicament does not cease to be relevant with the fall of the regime. The people are the same before and after; so are most of the institutions – as Arendt reminds us "Hitler had inherited civil

servants from the Weimar Republic, which had inherited them from Imperial Germany, just as Adenauer was to inherit them from the Nazis, without much difficulty" (Responsibility 35). What is new, once the criminal regime is ousted, is the possibility for change and a normative one at that. A normative change requires a moral judgment of the exclusionary, narrow scope of the application of moral norms. This narrowing aspect of the scope of morality, in the context of mass crime, signifies what Dimitrijević has termed 'perverted group ethics'.

1.1.2 Moral Predicament of Collective Crime: Bystanders

In collective crime we observe a change in the scope of the applicability of moral norms – horizontal bonds of trust are maintained among the members of the perpetrator group and its larger identity group, but are severed with the targeted community. In regime crime the bonds of trust that are broken are vertical (between the regime and its subjects). Thus, in collective crime those who have broken their horizontal bonds of trust with the victims become open to moral assessment. At this point it is important to distinguish among types of those who are related in some special ways to those who are legally accountable for harm. Iris Marion Young, inspired by Arendt's *Eichmann in Jerusalem,* distinguishes four relationships that persons have to the crime of mass murder of Jews:

> (1) those guilty of crimes (2) those not guilty, but who bear responsibility because they participated in the society and provided the guilty agents with at least passive support that undergirds their power; (3) those who took action to distance themselves from the wrongs, either by forms of withdrawal or efforts at preventing some of them; (4) those who publicly opposed or resisted the wrongful actions (8).

The moral predicament faced by societies where collective crime occurred rests upon the shoulders of agents who belong to the first two but also to the third classification.[26] Agents who belong to the first classification bear at the very least criminal responsibility for the mass crime. Agents who belong to the second, but also, as I will show in my analysis, some of which belong to the third classification, can be said to bear moral responsibility. I refer to them as bystanders as argue that their moral responsibility derives from their participation – unintentional or intentional – in the production of harm. I identify four types of agents of bystanders, which can roughly be said to belong to Young's second and third classifications.

In the aftermath of crime it seems banal to claim that a system cannot be created anew as the old norms, structural limitations, and legacies persist. The successor regime more often than not presents the problem in form of a moral dilemma – which of the two considerations (i.e. predominantly forward-looking concerns of democratic transition or primarily backward-looking requirements of justice) should be given priority? On the other hand, the empirical evidence teaches us that many post-criminal societies prefer to close the book on the past, or at least to reduce the process of coming to terms with the past to an instrument of democratic transition. The reason is simple, in cases where systematic atrocities occur large segments of society have in different ways participated in the harm. So, in the aftermath of collective crime entire groups of people aim to 'close the books' and 'let bygones be bygones', precisely because of their complicity in producing harm against the victims. In choosing to do so, they continue to remain responsible as they further the harm originally caused, they perpetuate the political inequality

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26 For a detailed analysis of bystander typology see Chapters Three and Four.

established under the old regime. By denying their past complicity they become responsible for the 'second moral collapse', which constitutes a new, T2-specific harm.[27]

The moral predicament faced by societies where collective crime occurs as a consequence of the relationship established between the regime and its subjects, which results in the internalization of norms submerged in what Dimitrijević refers to as 'the culture of silence'. Indifference toward the community of victims looms large due to the empirically observable fact (more about this in chapters three and four) that the majority of citizens internalized the values and norms of the criminal regime, which continue to guide their behavior into the transition. 'Internalization' in the most practical terms, falls within the domain of voluntary behavior, because we ourselves decide between the issues of right and wrong by thinking. Holding onto internalized regime-sponsored ethics, we have to engage in different forms of denial and self-deception so as to allow ourselves to continue living with ourselves; we stop short of self-reflection and seek refuge in suspending internal judgment. Our only response to mass crime is thus silence. These norms, which permitted a morally impermissible behavior in the past, continue to guide the moral conduct of today, because we are one and the same. Perverted group ethics survives the regime change and it is sustained by the bystanders.

Bystanders ought to ask themselves 'What should I think?' and 'What should I do?' The answers are moral in nature in so far as they aim to determine what can be done to help the community of victims, in so far as they aim to determine what one's obligation or duty is under the circumstances. The moral aspect requires a conscience preserved in the acts of self-reflection and public action when possible (certainly in the aftermath of mass crime). As long as the answer to these questions does not relate to the community of victims, they remain classified as

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27 Arendt and Amery were both referring to the 'silent period' in the post-Nazi Germany of the 1950s and 1960s.

bystanders. It might well be the case that those who were not courageous enough to publically oppose the regime at T1 remained privately moral citizens. However, when the criminal regime is toppled, these moral citizens still have a duty to fulfill which is equally distributed across the identity group, and which is the duty of valuing all human beings with equal respect and care. Unless they then politically and publically act at T2, they lose our good will to judge their lack of resistance at T1 as a failure of courage and not of conscience (these agents fall under Young's third classification). Largely influenced by Young's classifications, I identify four sub-categories of bystanders: (1) supporters, (2) 'internal collaborators', (3) 'inner émigrés', and (4) 'transitional' bystanders. I was able to classify the last type because, in my study, I focused on two socio-temporal periods – T1 and T2. This distinction between T1 and T2 allows me to evaluate actions when they are voluntary at T2, which consequently allows me to distinguish attitudes of two types of bystander who remain passive at T1 – agents who hold wrong attitudes or 'internal collaborators' and agents who hold right attitudes or 'inner émigrés'.[28] In Chapter Four, I explain how I come to this conclusion, but for now, just note that those agents who fulfill their positive duty at T2 are also agents who were classified as 'inner émigrés' at T1.

The moral predicament raised by collective crime then can be understood in terms of responsibility of a large segment of population, who harm the community of victims by excluding them from moral universe and thereby causing alienation, fear, loneliness, mistrust, or what Claudia Card referred to as 'social death'. Acceptance of 'perverted group ethics' is what allows bystanders to exclude victims from their care and consideration. Before I analyze moral responsibility of bystanders, I will first provide a theoretical background for my analysis.

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28 In this, I follow Larry May who argues in *Sharing Responsibility* that "The test for whether someone actually has a particular attitude or not is a behavioral test, or at least a counterfactual behavioral analysis, based on the assumption that is a person really does have a certain attitude, then certain behavior normally results" (46).

1.2 Universal Morality

Morality matters for practical reasons: it maintains social bonds of trust, respect, solidarity, and tolerance for it is a public system that matters to all rational people.[29] Our relations with others are guided by morality every day: there are times when we fulfill our obligations, keep our promises, help a stranger in need, and tell the truth; in other words, we do the right thing. As a consequence, we feel pride and satisfaction; we are praised, sometimes even rewarded. In other times, we fail to comply with the internal or external moral guidelines, and as a consequence we feel remorse, shame, regret, we are blamed, we are called upon to explain or make amends, or we have to incur legal consequences for our actions. We know rationally that our lives are better if we can trust each other, rely on each other for help, if our life projects and well being matter to others. The responsibility that we have toward each other builds social bonds which give our lives meaning and value.[30]

Broadly speaking, there are two main strands in moral theory: consequentialism and deontology. As the name suggests, consequentialism cares about the consequences of our acts. Consequentialists interpret moral rightness in terms of the value of the consequences of actions, policies, or other objects of moral assessment. They claim that the right action is that which leads to the best consequences, regardless of whether anyone can know which action that is. So, the rightness of an action is determined by the rightness of its consequences and vice versa.

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29 In this context, 'rational person' is synonymous with 'moral agent' and refers to those persons to whom morality applies. This includes all normal adults with sufficient knowledge and intelligence to understand what kinds of actions morality prohibits, requires, discourages, encourages, and allows, and with sufficient volitional ability to use morality as a guide for their behavior. . . People lacking these characteristics are not subject to moral judgment." See the Standford Encyclopedia of Philosophy (Gert Bernard "The Definition of Morality").

30 In *Moral Dimensions*, Thomas Scanlon points out that "Morality not only tells us to treat others in certain ways – to refrain from harming them, for example – but also gives us certain reasons for doing so. It tells us, for example, that their interests matter, and that we should take these interests as providing reasons. People who are indifferent to the interests of other rational beings are open to moral criticism on this account, whether or not they behave in ways that cause others harm or fail to help them in ways that they should." (88)

However, we all are aware that some morally bad actions may lead to good consequences, and that morally good actions may lead to bad consequences. In the context of mass crime, the distinction becomes crucial – some people's public opposition to the criminal regime may have had bad consequences, in terms of let's say an unusually harsh punishment of the entire communities, yet, this public opposition marks a normative break with the perverted group ethics. Consequences may not be the most reliable units of analysis for our study of morally decent persons. After all, as Gerald Dworkin points out in "Unprincipled Ethics," "the traditional utilitarian principle of acting so as to produce the best possible results provides us with a standard in terms of how to assess action, telling us little to nothing about what agents' moral decisions are based upon" (224). To understand the complexity of reasons for moral action we will have to explore an additional approach.

By contrast, deontological theories judge the morality of choices by criteria different than the states of affairs those choices bring about: some choices are simply morally forbidden, regardless of their consequences. What makes a choice right is its conformity with a moral norm. Deontological theories, unlike most views of consequentialist ones, "have the potential for explaining why certain people have moral standing to complain about and hold to account those who breach moral duties."[31] Without the analysis of agents' norms, attitudes, and intentions we cannot comprehend the moral problem at hand. Consequences cannot tell us – for example – what intentions can, and which is morally pertinent for the context under question, mainly "how [an agent] expects to affect the world around her, what she believes about her situation and the likely effects of her action, how she evaluates these factors – which she sees as reasons for acting the way she plans to act . . ." (Moral 11). Understanding motivating reasons for action or

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31 See the Stanford Encyclopedia of Philosophy (Alexander Larry and Moore, Michael "Deontological Ethics").

passivity allows us to understand the agent's relationship to the perpetrators, to the victims, and to the crime itself.

Given that we are dealing with cases where social bonds (between identity groups) are severed horizontally and vertically (between the victim group and the group on whose behalf the regime acts), we care about the morally relevant attitudes and behavior, as well as their actions. These are typically deontological concerns. Since members of the group of bystanders -- supporters, 'internal collaborators', 'inner émigrés' and 'transitional bystanders' -- represent different moral attitudes and since their actions alone (passivity) would not provide morally relevant insight into their respective roles in the production of harm, I propose to extend the units of analysis to include *attitudes*. By extending the evaluative judgments beyond actions then, I am able to focus on only morally relevant aspects of participation, which according to Larry May, ought to be conceptualized broadly so as to include attitudes and more precisely, judgment-sensitive attitudes (as per Thomas Scanlon). I aim to distinguish between those who are guided by the universal moral norms and others, who have chosen to apply alternative moral norms of 'perverted ethics'; the distinction is important because it draws a line between a moral and a morally corrupt person.

Besides supporters, who represent the only active sub-type of bystanders, whose individual contributions to the 'collective action'[32] can be captured easily, the other three sub-types of bystanders, remain passive and thus participate in what Larry May calls 'collective inaction'.[33] The bystanders, through a variety of individual contributions participate in what is

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32 According to Tracy Isaacs, collective action occurs when individuals "act together with the intention of meeting their joint goal" (Shared Intentions 63).

33 He distinguishes between 'collective omission' as the failure of a group that collectively chooses not to act and 'collective inaction' which refers to the failure to act of 'a collection of people that did not choose as a group to remain inactive but that could have acted as a group' (Sharing 107). 'Collective inaction' is particularly salient with

termed collective effects or ends. An analysis of their judgment-sensitive attitudes permits an insight into their moral characters and thereby of their morally-relevant contributions to the collective effects. The debate between deontologists and consequentialists is instructive here in that consequentialists are not concerned about agent character. At first glance the problem with 'collective inaction' is that it can be interpreted in two radically opposed ways: as a (private) rejection of the regime's propaganda and as tacit approval. An empirical analysis of predominant attitudes, however, allows us to interpret 'collective inaction', to identify the guiding moral norms of its agents, and to acknowledge the extent of the moral collapse faced by entire societies in transition from collective crime.

1.3 Moral Responsibility: Conditions and Units of Analysis

Different theories of morality provide radically different accounts of the responsibility of agents involved in mass crime. In my analysis, I have relied on what broadly may be termed the universalist-based conception of moral responsibility. According to this approach, holding people – who have had the bad moral luck of being socialized in what David H. Jones refers to as 'bad political culture' (104) – responsible is justified if the following conditions are fulfilled. The first condition requires that a person possesses the capacity-responsibility, or power of agency, which means that she has sufficient cognitive power, power of deliberation and power of volition (Jones 28). Secondly, it has to be established that the agent has to have performed a wrong act, failed to act, or maintains the wrong moral attitude, while having factual knowledge and being free from coercion. On this understanding, normal human adults are considered to posses the

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respect to what May speaks of as 'putative groups', in which 'people are sometimes capable of acting in concert but in which no formal organization exists and, as a result, there is no decision-making apparatus' (Sharing 109).

power of agency. The principal excuses[34] for moral responsibility are: *non-culpable ignorance* (or lack of relevant factual knowledge), *acting unintentionally* (accident or mistake) and *lack of ability or opportunity* to do otherwise due to coercion or duress (What We Owe 77), whereas the principal mitigating circumstances for agent responsibility are considered to be recklessness and negligence. These are directly relevant for evaluating *actions* whereas only non-culpable ignorance (mistake of fact) is a directly relevant excuse for evaluating *attitudes*. I agree with Scanlon's interpretation, that coercion, duress, and factual ignorance are conditions that do not block attribution of an action or an attitude to an agent, but change the character of what can be attributed (What We Owe 279). The reason for this is that agents can still choose how to respond to the coercion.

Since I analyze moral responsibility of a specific segment of population, bystanders, who range from supporters, sympathizers, indifferent, egocentric to disinterested and disengaged citizens, and whose roles in producing harms are varied, my conception of moral responsibility is relevantly inclusive. As already stated, conditions of control from external pressures and the epistemic (knowledge) condition have to have obtained in order for agents to be open to ascription of moral responsibility. If these conditions obtain, then I propose to expand the units of analysis of moral responsibility of these agents to include: actions, omissions to act, their consequences, and attitudes, which – I hold – are not the result of the agents' bad moral luck (say of having been born a German or Serb) but are rather the result of having made bad choices in what to believe and how to act. Agents who have justified moral excuses for their inactions at T1

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34 An 'excuse' is taken to mean (as per Scanlon) "Rather than blocking altogether the attribution of an action or attitude to an agent, these conditions alter the character of the action that can be attributed" (What We Owe 279).

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– such as factual ignorance[35] or coercion, but who act upon their proper moral attitudes at T2 are not considered proper targets of moral responsibility ascription on this account. Before I provide a detailed analysis of the group of bystanders, I will first propose a working definition of moral responsibility, identify conditions which exculpate moral responsibility and the units of analysis relevant for my approach of establishing moral responsibility of bystanders.

Only a moral agent – the one who possesses a capacity for decision – is properly subject to ascriptions of responsibility. A moral agent acts according to her motivations and judgments which are within her powers of self-control. I presume that every normal adult is a moral agent. On my universalist approach, moral ignorance is understood to signify an excuse which grounds moral responsibility. Thus, I answer the question – is it justifiable to hold that an agent's "normal mechanism of practical reasoning" (Responsibility 40) is her own in the context of collective crime – in the affirmative. In other words, I hold that an agent is reason-responsive in cases of mass-induced moral corruption. Even if everyone around us makes morally corrupt choices, as long as we are not forced to behave like them, we can be said to have the freedom and control (the autonomy in practical reasoning). Or, as Mark Ravizza would argue as long as an agent's action is within her 'guidance control' meaning that her act is appropriately connected to her reasons, the conditions of possibility for moral responsibility are fulfilled[36]. The underlying assumption of my dissertation is that a normal human adult is responsible for her actions or character as long as certain conditions prevail.[37]

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35 Lack of factual knowledge is taken to mean, in this study, reasonable lack of access to facts. I have argued the 'reasonable' factual ignorance can be distinguished from the claims of ignorance intended to deny responsibility or justify crime. E.g. a remote villager living in some rural area of Serbia, whose access to information is dependent upon word of mouth would be considered 'factually ignorant'.
36 For a detailed analysis of 'guidance control', see (Responsibility and Control 28-61).
37 A more detailed account will be provided in the following chapter.

The concept of responsibility may signify accountability which is retrospective or backward-looking, or it may signify duties, which are forward-looking. In the case of accountability, we ask what the agent has done or has failed to do (this kind of responsibility is causal and retrospective). In the standard case of responsibility for harm there can be no liability without contributory fault, for which it must be established that: the person either committed the harm or by omission contributed to it, the causally contributory conduct was in some way faulty, and the causal connection between the faulty aspect of her conduct and the outcome exists. For Bernard Williams, responsibility is constituted by four elements: cause, intention, state of affairs, and response. As he pointed out, "Before there can be any account of an agent's responsibility for a bad state of affairs, she needs to somehow have brought it about. Being cause of a bad state of affairs, however, is not only necessary but also sufficient for a minimal account of one's responsibility for it."[38] Williams' account is concerned with answering the question 'What is the person responsible for?' This is a question about backward-looking or retrospective responsibility.

As mentioned above, responsibility can also be prospective or forward-looking, such as implied in the question 'what are a person's duties.' These can be determined through professional or personal roles, but also through non-voluntary group memberships, or better yet from aspects of what constitutes our identity – gender, race, ethnicity, religious affiliation, sexual orientation, etc. Thus, even belonging to a non-voluntary group (such as sharing one's identity with the perpetrators of crime) may ground both retrospective (what is the person responsible for) as well as prospective responsibility (what are a person's duties). Retrospective responsibility ascription on my account is justified in reference to this prospective responsibility

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38 Quoted in (Abdel-Nour Farid 693-719).

in the sense that once I establish what duties agents failed to fulfill I deliberate what they are responsible for.

1.3.1 Conditions: External and Epistemic

Aristotle argues that only 'voluntary' actions and/or dispositions can be appropriately judged as right or wrong. According to him, a voluntary action or trait must have its origin in the agent. That is, it must be up to the agent whether to perform that action or possess the trait – it cannot be compelled externally. Aristotle held that "what comes about by force . . . seems to be involuntary. What is forced has an external origin, the sort of origin in which the agent or victim contributes nothing – if, e.g., a wind or human beings who control him were to carry him off" (53). Similarly, John M. Fisher and Mark Ravizza argue that if one is acting in the absence of undue force then it follows that one is in control of one's behavior. In Chapters Three and Four, I analyze whether and if so, to what extent, these external conditions impacted the behavior of bystanders in Nazi Germany and Milošević's Serbia.

The control condition is relevant in evaluating moral responsibility for action and for omission to act, but it is not relevant for attitudes. Thus, to determine whether an agent bears moral responsibility for his (in-) action, we want to make sure that we are evaluating only voluntary acts (ignoring those actions that can be perceived as having resulted as a consequence of outside pressure). In evaluating the rightness or wrongness of voluntary acts, we are aiming to understand the moral character of agents, including reasons that motivate them, so that we may better understand the process of coming to selectively apply moral norms.

The epistemic condition is also known as the 'knowledge condition'. Aristotle argued that "the agent must be aware of what it is she is doing or bringing about" (57). The epistemic

condition corresponds to the excuse of ignorance[39] where moral responsibility ascription is deemed unjustifiable unless an agent "knows the particular facts surrounding his action, and acts with the proper sorts of beliefs and intentions" (Responsibility 13). I will devote the entire next chapter to the knowledge/ignorance debate, largely defined by the disagreements between moral relativists and moral universalists about what kind of knowledge is required for moral responsibility to obtain. For now, I will simply state that "one is morally responsible for an action (or its consequences) only if one has relevant true beliefs about the nature of the action (or its consequences), or one is negligent in failing to have those beliefs" (Joseph Campbell 5). True beliefs can be held, on this approach, if the agent possesses relevant factual knowledge and is a normal human adult, whose actions are appropriately connected to their reasons and who have the capacity to understand how their acts affect the state of affairs.

The argument that there exists human capacity to recognize our own motives immediately and without exception brings us before a choice how to act. This claim that judgment that, even if evaded, can be evaluated (i.e. moral concepts apply to us because we are able to see ourselves objectively) is the consequence of freedom. Reflecting on the nature of human judgment and the ability to tell right from wrong, in the ultimate context of a criminal regime engaged in both extermination of those who are identified as 'others' (enemies) and in securing consent of its subjects, Hannah Arendt notes that those who chose not to kill refused it on the grounds of not being able to live with themselves, which did not require 'highly developed intelligence' argued Arendt, but instead it required 'thinking' or "having a dialogue with one self" (Responsibility 44-45).

In *Responsibility and Judgment,* Arendt wrote:

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39 'Moral ignorance' is elaborated in Chapter Two and 'factual ignorance' is discussed in Chapter Three.

> The purging element in thinking . . . that brings out the implications of unexamined opinion and thereby destroys them – values, doctrines, theories, and even convictions – is political by implication. For this destruction has a liberating effect on another human faculty, the faculty of judgment, which one may call, with some justification, the most political of man's mental abilities. It is the faculty to judge *particulars* without subsuming them under those general rules which can be taught and learned until they grow into habits that can be replaced by other habits and rules.[40]

Thus, no regime can strip us of our ability to judge something as right or wrong, because we are thinking beings. While individual capacity to act maybe denied under certain extreme conditions, no such condition can deprive us of the ability to judge. In other words, moral autonomy of each individual ensures that one never ceases to be capable to evaluate.

Similarly to judging or choosing between right and wrong, we form intentions for which we can be held accountable. "Often, on the basis of practical reasoning, one makes up one's mind to do a certain thing. In doing so, one comes to have an intention to do that thing. As well, one often engages in theoretical reasoning and, on that basis, makes up one's mind how things stand in some matter, thereby coming to have a certain belief" (Clarke 67). These agents – or rather, bystanders – are understood as morally responsible for their judgment and intention. Gary Watson holds that we are "as responsible for the judgments we make as for the intentions we form. In both cases I am open to normative appraisal and answerable for my commitments. It makes sense to press me on my reasons, and to say of me, 'You should have reached a different

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40 Arendt holds that "The faculty of judging particulars (as Kant discovered it), the ability to say, 'this is wrong' . . . is not the same as the faculty of thinking. Thinking deals with invisibles, with representations of things that are absent; judging always concerns the particulars and things close at hand . . . The manifestation of the wind of thought is no knowledge; it is the ability to tell right from wrong" (Responsibility 188-189).

conclusion (formed a different intention)'."[41] The epistemic or knowledge condition is particularly relevant when we are assessing the moral responsibility of particular subtypes of bystanders: the internal collaborators and inner émigrés who participate in the mass crime via omissions to act and whose attitudes become the central point of our assessment.

1.3.2 Units of analysis

In the next level of analysis of moral responsibility, I identify units of analysis, which on my account reach beyond *actions* and their *consequences*, to include *attitudes*. I hold that this step is crucial if we are to understand the bystanders' individual contributions to mass crime, mostly characterized by omissions to act, failures to respond, and an overall absence rather than a presence of harmful actions. Larry May argues that our understanding of participation in some contexts (such as mass crime) may have to be extended so as to include attitudes. On his social-existentialist approach, the domain of responsibility "is not confined to those isolated actions which have effects on others, but also includes those decisions that form the self into the kind of agent it is and that influence the way that self then acts in the world" (Sharing 17). He does not consider attitudes to be mere opinions, but as dispositions to behave. As he explains, "Attitudes are not merely cognitive states, but they are also affective states in which a person is, under normal circumstances, moved to behave in various ways as a result of having a particular attitude . . . Those who have racist attitudes, as opposed to those who do not, create a climate of attitudes in which harm is more likely to occur" (Sharing 46). He proceeds to argue that "the members of a community who share racist attitudes also share in responsibility for racially motivated harms produced by some of the members . . ." (46). However, as we will see, when we evaluate

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41 Quoted by (Clarke 67-85).

attitudes the freedom condition is of no relevance for the assessment of moral responsibility – the only condition that remains relevant is the epistemic one.

Also, Scanlon focuses on judgment-sensitive attitudes in *What We Owe to Each Other* and *Moral Dimensions* where actions as well as dispositional traits of character are appropriately followed by responses such as praise or blame. Simply, when we evaluate actions of bystanders, they are more often than not morally permissible and yet they lead to abhorrent consequences. Yet, by merely extending our evaluation units to attitudes, we are able to follow the atrocious logic of mass crime in all its complexity, in which the move from morally permissible actions to atrocious consequences becomes identifiable and logical.[42] To put it differently: an assessment of the agent's guiding norms is due where we are trying to understand how an agent who commits morally permissible actions contributes to morally abhorrent consequences.

As I already argued, supporters and transitional bystanders are morally responsible for their morally wrong actions and inevitable consequences. Agents who are morally responsible for their wrong judgment-sensitive attitudes and omissions to act are, respectively, internal collaborators and 'inner émigrés'. I will rely on Fischer and Ravizza who interpret omissions as ". . . whenever a person does not do something *A,* he fails in the relevant sense to do it, and he omits to do it . . . [which] need not require explicit deliberation about *A,* and it need not require the ability to do *A*" (Responsibility 124). To understand the reason for the omission to act, I will focus on these agents' relevant judgment-sensitive attitudes.

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42 For example consider the action of a bystander who is merely passive and silent – her actions 'to isolate herself from the perpetrator community' is morally permissible and even morally commendable, yet her attitude can range from 'internal collaboration' to 'inner emigration' which are two distinct moral attitudes, the first is wrong and the second is right. Yet the consequences of these two distinct attitudes – until they are outwardly expressed in 'the soft medium of public dialogue' from the moral point of view of the victim – produce harm.

A quick digression may explicate the significance of assessing attitudes – we already said that to determine whether a person is a free agent (within the compatibilist framework) we have to identify internal (factual knowledge) and external conditions that apply. So, although acts performed under duress or coercion and acts committed out of non-culpable (factual) ignorance cannot block causal responsibility on Aristotle's approach they block moral responsibility. If neither external nor internal conditions apply, the agent can be said to have acted freely. If both or either of the conditions can be said to explain the behavior of agents, then their traits of character cannot be properly assessed. Fear from coercion or non-culpable ignorance, rather than their moral characters, might explain these acts. In these situations, that are 'mixed' as Aristotle referred to them, we may be advised to assess attitudes and not only actions (54). The empirical analysis of the culture of silence for example allows us to assess predominant attitudes, while remaining aware of the extent of available relevant information to the agents (so that we are able to determine to what extent the epistemic condition is obtained). In other words, when actions of agents cannot be said to be fully their own (such as in 'mixed cases'), we can focus on objects of moral responsibility attributions that are fully and always their own – their attitudes.

1.3.3 Conclusion: Conditions and Units of Analysis

So, in the context of collective crime, moral responsibility in this study is understood as: 1) *a failure to act* upon proper moral attitudes, and 2) *a failure[43] to reflect* upon one's actions and omissions to act and ensuing consequences, as well as one's attitudes by which the normalization of crime is allowed to subsist. I have argued that normal human adults who have failed on both of these two accounts are fair targets of ascription of moral responsibility. More specifically,

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43 'Failure' should be understood here as caused by negligence – failure to give weight to reasons that no rational person would reject.

bystanders are: those who form wrong moral attitudes at T1 (supporters and 'internal collaborators') and who at T2 do not – through action – have a change of heart; those who fail to act at T2 upon their proper moral attitudes which they also had at T1 ('inner émigrés'), who come to form a new, T2-specfic sub-type, the 'transitional' bystander. Thus, agents who at T2 claim factual ignorance are considered culpably ignorant and who fail to act upon their proper moral outlooks at T2 are considered morally corrupt because they participate in the normalization process of the collective crime in the transitional period.[44]

I have argued that 'ordinary citizens' in mass crime decide to establish morally relevant relations with the group of perpetrators on the one side and the community of victims on the other. When 'ordinary citizens' suspend[45] their capacity to reason and thereby resist to (or failing to) critically judge, they become identified as bystanders, a group of agents which is causally responsible for the harm committed against the community of victims, and whose members bear moral responsibility for the collective effect of harm. Thus, on my account, agents are responsible for what they come to believe and to intend, what norms they chose to uphold, what reasons they consider motivational and what moral characters they develop. As we already saw, at T1, coercion and factual ignorance[46] are conditions that suspend my ascription of moral responsibility in cases of some agents, whose behavior is open for assessment at T2 to determine their moral responsibility.

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44 A complaint might be raised to the last point made that an unintended act ought not to be judged, but the consequence of that act is not difficult to predict for a normal adult because passivity (when no outside factors are limiting our actions) communicates lack of care. As Nagel reminds us the question "'How should I act, given that these things are true of me or of my situation?' is always in order" ("Ethics" 241-259). So those who share their identity with the perpetrators and who upheld right moral attitudes at T1 yet who at T2 decide to remain passive are expected to ask themselves whether their inaction in the transitional period is contributing to disqualification of the criminal project or whether it provides indirect support in the process of crime normalization. The failure thus to reflect at T1 and to reflect and act at T2 constitute agents who I consider to be proper targets for ascription of moral responsibility.

45 Whether through self-deception or denial, or due to mad motives.

46 Both of which represent conditions that may obtain at T1, but neither of which obtain at T2.

1.4 What Bystanders are Responsible for

I have already argued that it is the perpetrators who cause physical death, but it is the bystanders who participate in bringing about what Claudia Card refers to as 'social death'. Bystanders' failure to act upon moral obligations and duties (to relieve suffering is our prima facie duty) and their attitude of indifference toward the mass atrocities perpetrated against the victims are under scrutiny. In order to understand how the bystanders caused harm against the community of victims, an investigation of the following concepts is due: obligations, rights and duties. During collective crime, these fundamental features of the system of moral reasons are applied and distributed unequally, so the refinement of these normative categories is essential. Rights can be passive or active, prima facie or absolute: so, among one's active rights may be the right to go where one pleases which is often referred to as 'the right to liberty'; among one's passive rights may be the right to be unharmed, which is characterized collectively as 'the right to security'. Prima facie are for example rights of property, assembly, free speech, while absolute rights are, as per Feinberg "the rights to equal protection under the law, equal consideration, and the right to be treated with human dignity" (96).

Dimitrijević's criminal populist regimes and Arendt's totalitarian governments strip citizens of absolute rights, which, as we already saw, imply loss of human dignity denied not only by the regime, its supporters and collaborators, but also by all those citizens who fail to act in accordance with their moral obligations and duties toward the victims. These are bystanders and they can thus be said to harm the community of victims by denying their human dignity. Since rights entail obligations and duties and vice versa, the loss of rights impairs societal relations in so far as the once shared obligations and duties are not forthcoming. Moral obligations are: voluntary, incurred by joining groups, owed to specific persons, and their content

is acknowledged by all contracting parties. Sanctions include moral sentiments of guilt and shame in the case of moral obligation. Moral duties are different in so far as they are not voluntary, but assumed through roles or circumstances, they are morally binding and are owed to persons generally.

Being treated as less than human or unequal perpetuates 'social death'. The positive special duty at T2 lies with those who benefitted[47] from the negative special duties at T1. Undeniably, suffering or harm has moral significance which "we have a prima facie duty to relieve . . . (because) suffering is bad for the individual who experiences it. Second, suffering is bad from an impersonal perspective. Third, the impersonal badness of suffering implies a prima facie duty on our part to prevent suffering" (Mayerfeld 85). Thomas Nagel argues that badness of suffering is a self-evident truth. Indifference is one of several human attitudes linked to suffering: "it causes us to overlook our indirect contributions to suffering and weakens our determination to prevent it" (90).

As already argued, in collective crime, moral duties and obligations are incurred within the in-group, whose members still can claim some rights. However, the targeted group suffers in two inter-related ways: 1. for having 'lost' all its rights (legally and socially), which can be termed *a vertical loss*, and 2. for having 'lost' the protection that we each acquire from fulfilling our duties and obligations toward each other, which can be termed *a horizontal loss*. These two parallel 'losses' or rather wrongs are suffered by the community of victims only in the context of collective, and not, regime, crime. The *horizontal loss* is not at stake in regime crime, because duties and obligations continue to be observed amongst the citizenry.

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47 In the sense of benefitting from belonging to the in-group within which duties are upheld.

The harm bystanders perpetuate is denial of humanity of the community of victims, who are targeted by the criminal regime as enemies. Todorov reminds us what it means to be identified as an enemy: "Even before she was sent to her camp, Eugenia Ginzburg was told by one of the examining magistrates, 'Enemies are not people. We're allowed to do what we like with them. People indeed!' (*Journey* 63). To be classified as an enemy is enough to be excluded from humanity" (159). Although this observation is derived from the most extreme contexts of all – the concentration camp – Todorov is right to claim that it is instructive for what unequal treatment of human beings produces. Along those lines, it may be argued that bystanders say to the perpetrators exactly what the examining magistrate said to Ginzburg 'you are allowed to do what you like with them'. This is the case while the criminal regime commits the atrocities.

The process of de-humanization is gradual as we know; it starts with the identification of an enemy group, usually ascribing to 'them' some detrimental role for 'our group', passing of the laws to strip them of any power as individuals and a collective, humiliating them in broad day light and publically, and only then removing them from the gaze of onlookers where all is possible and nothing is forbidden. Raul Hilberg in his seminal work, *The Destruction of the European Jews,* identified three stages of the Holocaust: the loss of rights and seizure of property (1933-1939), ghettoization (1939-1941), and annihilation (1941-1945). In every phase of this process, agents who are neither targeted as enemies nor perpetrating the criminal policies, are faced with a choice to respond, to become involved; whenever they choose to alienate themselves from the regime's policy of de-humanization they make an impossibility possible – their disinterest allows for an existence of space where nothing is forbidden.

In Chapter Four I provide a detailed analysis of how the community of victims continues to be harmed by the bystanders well into the transition (T2): past the regime change, past the

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declarations of new principles of governance and the new mandates granted to institutions, past the new social contract between the citizens and their elected representatives emerges, past the policies of integration with the world. On my account, bystanders are held morally accountable for the harm they themselves cause – the harm of 'social death'. For now, just consider Jan T. Gross' account of the Jewish fate in the Polish village of Jedwabne, who argues that the attitude of Poles, who failed to recognize a fellow victim before 1945, continued in the post-war period; as he observes "Antipathy toward the Jews in Poland after the war was widespread and full of aggression . . ." (97). This attitude permits the unimaginable, for example that after some fifty years, a man who returns to his native village in Poland, finds his mother's grave after her violent death in 1941 in *an uncultivated field* that marks the mass grave of the Jews murdered in Czernovitz. Being held accountable for the atrocities committed by their national group members is closer to other approaches of collective responsibility – that of Hannah Arendt on political responsibility, Oshana's moral taint, Karl Jasper's metaphysical guilt, or Nenad Dimitrijević's collective moral responsibility beyond causality. My account of bystander moral responsibility is causal and in the case of Czernovitz village, the local population's failure to mark the site of the mass grave they all knew about is representative of the harm bystanders continue to produce in the aftermath of mass crime, referred to as 'social death'.

The de-humanization process started in the beginning phase of the collective crime continues well into the transitional period, I hold, until duties are upheld equally. Before that, moral responsibility for the *failure of action* – understood as failing to uphold prima facie duty to prevent harm and remaining passive in the transitional period – and *failure of reflection* –

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understood normatively as intentionally refraining from thinking during mass crime and in its aftermath, ought to be assessed[48].

To conclude, I argue that in collective crime, bystanders' moral responsibility is at stake because they themselves directly harm the community of victims[49]: firstly, and as I already argued, moral norms or rational thinking does not disappear, rather what changes is the scope of morality which practically changes the character of morality beyond recognition. This effectively means that there is a group of people whose rights are de-facto cancelled by the regime, and to whom moral duties and obligations are not owed. So, the moral universe is reduced to the members of the in-group, where moral duties and obligations are fulfilled. This reduction of moral universe referred to by Dimitrijević, as we saw, as 'perverted group ethic', is based on reasons that cannot be willed to hold universally and as such would not govern the behavior of rational persons.

1.5 Moral Responsibility for Mass Crime: Individualist or Collectivist

The description of collective which aims at identifying the *kinds* of collectives is less controversial; it is generally agreed that some collectives are randomly organized (for example, when witnesses of a car accident come together and form a shared intention to help the victims), others are randomly disorganized (such as sports hooligans after a game), some are, as Michael McKenna argues, 'simple collectives' that do not require an authoritative structure, and finally there are corporations which represent elaborately organized collectives (Shared 16-34). The ontological status of collectives, however, is controversial. An aggregate collectivity, Peter French writes, is merely a collection of people. It is not, from the perspective of most of those

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48 I identify morally wrong attitudes and actions of bystanders in Chapters Three and Four.
49 To borrow Linda Radzik's term.

now writing on collective responsibility, an appropriate site of collective responsibility. A conglomerate collectivity, on the other hand, is an "organization of individuals such that its identity is not exhausted by the conjunction of the identities of the persons in the organization."[50] It is, from the perspective of most of those now writing on collective responsibility, an appropriate site of collective responsibility, since, unlike an aggregate collectivity, it may supply us with a moral agent capable of purposeful action.[51]

The collectivist approach to moral responsibility is helpful to me in the initial phase of identifying the individual members who – in the context of collective crime – commit morally permissible actions yet produce morally impermissible 'collective effects'[52]. Dimitrijević points out that:

> Collective crime . . . presupposes the collective intention to commit a particular type of crime, collective awareness about the nature of the intended crime, organized effort to realize the intention (to perform the chosen action), and collective awareness about its consequences. The construction of collective crime unfolds in three stages, which, taken together, form a peculiar implicit pact between the regime and its subjects (Moral 5).

So, in order to understand collective crime-specific harms we have to look beyond ascriptions of moral responsibility that are individualist. In other words, in the context of mass crime, unless we start our analysis of moral responsibility of agents from the 'cumulative effects' of individual contributions to harm, the majority of individual actions appear morally permissible. If we stay at

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50 See the Stanford Encyclopedia of Philosophy (Smiley Marion "Collective Responsibility").
51 Ibid.
52 Kenneth Shockley argues that "Individual consequences, when aggregated, constitute a harm different from that of the individuals, different in kind…Insofar as there is an in-eliminable reference to a collective in the explanation of the production of that harm, the collective should be attributed responsibility for the production of that harm, including blame" ("Programming" 442-455).

the level of individual analysis we are left with a logically incoherent approach – morally permissible actions lead to morally impermissible consequences. We would thus be wise to approach the problem from the larger context – the collective – and then work our way back to the individual. This is how I approach the question of moral responsibility for mass crime. Shockley provides my approach with a theoretical jumping board, from which I begin my analysis of responsibility, but which I ultimately reject in the final assessment. He says "The upshot for collective moral responsibility is this: while we can attribute moral blame to blameworthy actions of individuals, we can also attribute moral blame to collectives that program individuals to perform blameworthy acts where those acts, on aggregation, constitute a different form of harm" (451).

I will first outline the objection of methodological individualists to this account, and then I will respond to it. The gist of the objection is that non-perpetrating members cannot be held accountable for the crimes of the group. This position holds that someone who did nothing legally and morally wrong cannot be held responsible. Thus ascribing responsibility to a group is meaningless. As Joseph Heath wrote:

> Finally, collective responsibility leads to morally unjustifiable inferences: we first identify a group, then we observe that one or more individuals from the group committed a crime, then we blame the group as a whole, which finally practically means that we assign blame to each and every individual who belongs to the group. Ascription of blame to a person is done on the basis of belonging only, not on the basis of the morality of her or his action.[53]

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53 See the Stanford Encyclopedia of Philosophy ("Methodological Individualism").

My approach to assigning collective moral responsibility does not consider legally wrong action to immediately mean morally wrong action. Someone might not be legally liable but certainly can be held morally responsible. Secondly, participation in my approach has a central role in assigning moral responsibility. However, on my account, participation of bystanders in committing harm is understood broadly, as acts that are motivated by the morally wrong attitude[54], not directed at preventing harm committed by the perpetrators, and expressed through active silence (considered to be a strategy for justifying crime).

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

Nigel Pleasant explains, "An account of moral responsibility for systemic atrocity that puts the onus on individuals is too thin" (188). As I said in the introduction of this chapter, mass crimes are committed by groups against groups. How can assessing individual moral responsibility elucidate what brought about these collective crimes, how they came to be, how they came to last? Committing collective crime is certainly what Peter French would consider to

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54 Attitudes without actions suffice to ground responsibility on my account.

be representative of the 'the class of predicates' that cannot be true of individuals, but only of collectives. According to French, "Examples of such predicates abound . . . and include 'disbanded' (most uses of), 'lost the football game', 'elected a president', and 'passed an amendment' . . . Methodological individualism would be at a loss in this context."[55] The very nature of the harm committed suggests involvement and coordinated activity of a large segment of population. If methodological individualists would agree that "making consideration of the victims central to our conception of responsibility [which] is itself a way of responding to them and acknowledging their dignity" then how would they go about proposing a workable response-based account?

What is specific about the cases I investigate is that there is possibly not a single sector of society that remained outside of the grasp of the populist criminal regimes – each and every institution was either destroyed, coerced into supporting the policies, or had voluntarily supported the regime. The criminal regime's policies were institutionalized early on[56]. To speak of individual responsibility in cases where entire populations and societal structures were in one way or another employed to serve and/or support the criminal regime seems to miss the point. Legal responsibility bodes well in these situations; it can tease out the specific individual's wrong conduct in collective crime, but the issue of moral responsibility requires that we take a look at the relations that come to be formed and their effects on the members of the in-group and the harms they cause for the outsiders. Collective responsibility offers a possible venue, but it cannot properly distinguish between morally decent and morally corrupt agents.

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55 See the Stanford Encyclopedia of Philosophy (Smiley Marion "Collective Responsibility").
56 In each of the cases, the institutionalization of crime takes place at the very beginning of the criminal regime's rule: in Nazi Germany in 1933 and in Serbia as early as 1989.

Also, as Nigel Pleasant argues "Individual wrongdoing consists in offenders acting in violation of their society's consensually held legal and moral rules, whereas institutional wrongdoing consists in offenders acting in conformity with them" (113). He holds that criminal acts of murder, rape, torture, etc. are acts of individuals, who violate laws and societal norms. Then he makes a distinction between this individual wrongdoing and another kind of wrongdoing, which is not recognized as morally wrong and is in line with the societal values and laws. He calls this kind of wrongdoing, institutional and explains that in these cases individuals are acting in line with the common good of the in-group, causing pain and suffering to the group targeted as victims. "These *institutionalized* practices are not generally regarded as morally wrong by the members of those dominant groups, except by a few unorthodox critics" (96).

The individualist conception of moral responsibility presupposes that one is responsible for the harm only when 1. One's act makes a difference to the harm, 2. One has control over the events and 3. One is not held to an account for the harm others cause. These three principles are known respectively as the *Individual Difference Principle (IDP)*, the *Control Principle (CP)* and the *Autonomy Principle (AP)*. Following Christopher Kutz, I attempt to show that not all three of these principles are applicable to moral responsibility of agents for mass crime. Kutz explains, "If substantially the same harm would have occurred regardless of what I have done, [the IDP] I cannot be accountable for it. The Control Principle holds that I am only accountable for events over which I have control, and whose occurrence I could have prevented. Finally, the Autonomy Principle holds that I am not accountable for the harm another agent causes, unless I have induced or coerced that agent into performing and act" (3). The IDP cannot help us make sense of situations when agents contribute to collective effects of harm by simply refraining from acting. The IDP is action-centric and as such misses the contribution to harm grounded in

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morally wrong attitudes. The second principle, the CP, holds that one is accountable only if one can prevent the occurrence of harm (has control), but people can still judge properly even when they have no control over the state of affairs. The CP is too stringent and so it cannot distinguish between the morally good and morally bad behaviors. The third principle (AP) holds that one is not accountable for the harm another agent causes and I believe that this principle retains force in the context in which we are assessing responsibility. The larger point, however, is that individual conceptions of responsibility in the context of mass crime misses the target.

Dimitrijević and Radzik's notion of 'collective crime' captures nicely the conformity of the regime's subjects toward institutionalized atrocities. This conformity marks a point where we cannot avoid breaking with the individualist tradition which holds that – in the words of H. D. Lewis – "no one can be responsible, in the proper ethical sense, for the conduct of another. Responsibility belongs essentially to the individual" (17). When atrocities are structural, individual responsibility is insufficient because 'collective crime' is an act of a group, whose wrongdoings are dependent upon active as well as passive members. Even at their most radically atomized the agents' lives become inter-related within the power structure of the identity group, through the normalization process and most significantly via the internationalization of values and norms upheld by the criminal regime. The relational structure of co-dependence, between the regime and its subjects, and among the subjects themselves, poses grave difficulties for the individualistic principles of accountability as – through 'collective (in-)action' – they produce collective harm. Individuals have little if any capacity to prevent these yet they still participate and contribute the production of harm.

1.6 Shared Group Responsibility for Collective Crime

Individuals in the cases we are examining are not acting in a vacuum; they collaborate within the power structure of the society: written or unwritten legal framework, institutional support, and eventually 'cultural' agreement. Moody-Adams argues that "Every culture develops intricate patterns of normative expectations about emotion, thought, and action – expectations that not only help structure each person's formative experiences but also help shape many of the fundamental desires and purposes that influence action . . ." (83). Yet, she argues against the deterministic account of culture where rules function as natural 'forces' or 'causes' that compel individual compliance; rather she suggests, "Cultural survival . . . depends on the preservation, and even enhancement, of the capacities of individuals for creativity and spontaneity in emotion, thought, and action. It depends, that is, on individuals' developing the capacities for self-evaluation and self-correction" (83). Rather, she says, rules must be selected, interpreted, understood, and applied in multifarious situations and circumstances. Ultimately, it is "the individual who chooses how to perpetuate the[ir] culture" (305).

Although I incorporate some aspects of Dimitrijević's shared moral responsibility approach, my theoretical interpretation is relevantly different. I hold that a specific segment of population that belongs to a community of perpetrators (collective identity), based on its sufficiently formal structure (that is formed by authorizing the regime to represent this group's interests), common attitudes, and solidarity with the criminal regime, shared intentions and common goals form a group. What applies to them, then, is what Dimitrijević and Radzik hold applies to the entire population of faulty collectives (in collective crime) – a duty to the community of victims and a duty to the larger collective (to correct their own attitudes). The metaphysical guilt (Karl Jaspers) and political guilt (Hannah Arendt) for each member of the

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larger collective (the identity group) is upheld on this approach; I hold both *membership* and *participation* to be essential in ascribing *moral* responsibility to groups and that membership in a faulty collective alone is sufficient for holding each member metaphysically/politically guilty. The theoretical discussions of Arendt and Jaspers, identify responsibility with shame and guilt, while I see more value in ascribing moral responsibility that is identified with duties, in response to which deliberative public reflection is due. Arendt's approach appears not to elucidate well the role morality plays in guiding our attitudes and actions.

The reason I refrain from aligning my approach entirely to the full-blown understanding of collective moral responsibility is that I find it to be insensitive to the personal autonomy principle. This fairness principle, in the case of collective crime, I argue, holds additional relevance than its classical one, to fairly treat agents who are targets for ascription of moral responsibility. In this context, it is a principle of fairness toward the community of victims as well in so far as the community of victims upholds the personal autonomy principle itself. The actions of dissenters are recognized by the community of victims as acts of individuals, and expressions of solidarity and maybe even common identity with the victims. On my approach of shared moral responsibility, and following May, each member of the group of bystanders is morally responsible for their choices. The most obvious of these choices is the failure to distance oneself from the identity group,[57] which in practical terms consists of choosing to reject: the criminal regime's norms, the ideological justifications for the committed wrongs, the claim that some people are more valuable than others, silence as a justified strategy for responding to mass crime. This group's moral responsibility is then both individual and shared, by which May means 'divided'. He argues that "Dividing responsibility for harm is also different from assigning to

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57 Contrary to what some relativists argue led by a 'passive learner' moral of agency, which I discuss in Chapter Four.

each of several people full responsibility for harm. Some or all members of a group may be assigned less than full responsibility for harm in cases of divided or shared responsibility" (Sharing 38).

In conclusion, in collective crime, individuals came to share responsibility when they knowingly risk harm to others, while acting within a recognized set of goals. They do so with their actions, omissions to act, as well as with harmful attitudes (such as racism), which "create a climate . . . in which harm is more likely to occur" (Sharing 46). Attitudes are relevant for May because holding can be said to contribute to a climate in which crime is more likely to be perpetrated, and thus its agents can be held partially responsible for the harm itself. To participate in a shared venture of wrong attitudes consolidates identity group membership, which is in collective crime largely homogenized according to the perpetrator goals and intentions. Agents thus accept, actively or passively, and intentionally or unintentionally, the programming normative control of the in-group, which with its authority structure defines, as per Moody-Adams, 'the normative expectations embodied in social rules'. The choice to selectively apply moral norms harms those who are excluded from consideration, and to de-facto deny duties are owed, in turn gives rise to questions of causal moral responsibility. Moral responsibility, thus understood, is shared and divided amongst the members. On my approach, which is largely influenced by May's, moral responsibility is distributed according to what harm can be said to have been produced by the agent herself.[58]

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58 For a detailed analysis see Chapters Three and Four.

CHAPTER TWO – CONCEPTUAL AND NORMATIVE CHALLENGES

Objections may be raised to my claim that bystanders bear individual responsibility because of their morally-relevant contributions to mass crime. Some may argue that concepts such as guilt, political responsibility, and moral taint rather than that of moral responsibility may be more appropriate for a study of bystanders in mass crime. So in the first three sections of this chapter, I address the conceptual challenges posed to my argument by those three concepts, which although important, I deem insufficient to fully understand how bystanders contribute to the production of harm.

In the second half of the chapter, I deal with the normative challenge posed by moral relativism to my moral universalist-based argument. I argue that bystanders harm the community of victims by failing to fulfill their positive duty to help and negative duty to prevent harm, and that they do so although their capacity to judge between right and wrong remains intact. The central question of this last half of the chapter is whether an agent is responsible or not for his failure to be morally decent in societies where crime is the norm. The answer to this question largely depends on how we conceptualize the epistemic condition, which states that an agent cannot be appropriately held responsible for something she does out of ignorance. As we already saw, universalists hold that all normal human adults everywhere have the capacity to distinguish between right and wrong and that right and wrong are objective, stable and universally applicable categories. Thus if the freedom (from external pressure) and the knowledge (factual) conditions obtain, and they commit harm they are open to ascription of moral responsibility. As we shall see, relativists object to this position for a number of reasons. In this chapter, I introduce different relativist positions, mostly focusing on normative moral relativism. The relativist view is of relevance for my study of moral responsibility in mass crime because it inspires a radically

different conceptualization of responsibility, of human agency more generally, and thereby of the morality of our lives.

1.7 Conceptual Challenge: Guilt

Guilt[59] is usually attributed to those who commit wrongs, or directly contribute to them, whereas responsibility has a broader reach. In recent literature on collective accountability, some have argued that not only individuals but also entire nations can be bearers of guilt. Laurel Fletcher , for example, argues that collective wrongdoing is followed by collective guilt when the leadership commits crime and indirectly implicates an entire population. She goes on to argue that in order to maintain power dictators seek support and consent of many societal segments including the military, business leaders, professionals and seek the tolerance of the public as a whole. As Jeff McMahan points out, "In the face of a dissenting public incessantly banging on pots . . . or marching in the streets . . . no dictator can maintain power. The failure to protest generates a basis for holding the public at least partially responsible for the ongoing dictatorship" (7).

Karl Jaspers made a major contribution to this debate when he suggested that there are types of guilt which are based on who one is and not on what one had done (The Question 65). The former type of guilt, which he called metaphysical guilt, does not necessarily translate into moral guilt, but it does entail some form of moral responsibility. May similarly argues that metaphysical guilt calls for some kind of moral judgment, which requires some form of self-reflection, and which may lead to changes in attitude and dispositions, since, as he observes, when one changes her stance toward the world, one changes herself (Collective 240). However,

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59 For the purposes of this study, 'guilt' is intended as a synonym for criminal responsibility, which implies that guilt is a special kind of legally-defined responsibility.

he does not believe that we can talk about moral guilt in cases of those who share their identity with the perpetrators, but of moral responsibility.

Arendt maintained that the number of those who are both responsible and guilty is relatively small. Likewise, she held that many share responsibility without being guilty. "Among these are those who continued to be sympathetic to Hitler as long as it was possible, who aided his rise to power, and who applauded him in Germany and in other European countries," (Responsibility 125), which she thinks was possible because a sense of morally right and wrong disappeared from Nazi Germany. But, as we now know, the majority of the population largely remained silent; yet, still causing harm against the victims. The majority's intention to live a 'normal' life sustained collective crime. However, we can hardly talk about guilt in this context (for who can hold someone guilty for wanting to live a normal life), but the question of responsibility remains pertinent. So, an intention to support is not sufficient to understand the complexity of the silent majority phenomenon observed in collective crime, an intention to abstain from participation is just as important.

Scanlon brings up yet another very important point about the nature of the wrongdoing which points our attention away from guilt. Namely, as he points out, that the blameworthiness of agents who share their identity with the perpetrators of crimes arises from these agents' impaired relations with the community of victims and not from their failing to condemn crimes committed by the members of their identity group. Thus, according to him, collective guilt is not at stake in collective crime cases (Moral 175). Finally, a nation's guilt is of little interest to me because as Arendt well put it 'where all are guilty no one is'. In summary, guilt, as a legal category does not cover morally relevant contributions of bystanders to collective crime.

1.8 Conceptual Challenge: Political Responsibility

Political responsibility may be understood as the responsibility every government assumes for the deeds and misdeeds of its predecessors, or in other words, as responsibility for the world that presupposes a minimum of political power. This conceptualization is offered by Arendt, and I will be using it as a working definition. Transitional justice mechanisms, such as lustration and vetting, specifically designed to address the aspect of political responsibility in mass crime are those that identify agents who held specific public offices, retained a level of political influence in criminal regimes, or who actively participated in public life (such as journalists, writers, philosophers, etc.) whose contribution to harm – due to their influence and standing in the society – was considerable in the sense that they could have and should have predicted the harmful consequences of their acts or written word. Their political responsibility, argues May, can be summarized in terms of both, positive duty (to speak out about the injustices and to act against them) and negative duty (to refrain from causing harm) (Sharing 143).

Along similar lines, Jaspers also argued that while the perpetrators are criminally liable for the harms they commit themselves, the 'fellow travelers' bear another kind of responsibility for the mass crime. Jaspers called it their 'political liability' and argued that we all incur some such burdens by virtue of our political agency. "Politically everyone acts in the modern state, at least by voting, or failing to vote, in elections. The sense of political liability lets no man dodge" (56). He held that Germans are collectively liable – in the political sense – for the crimes committed in the name of the Reich.

Arendt agreed with Jaspers in that a collective can be responsible only in political and not in moral terms. There are, Arendt says, two conditions for such collective responsibility: (1) I am responsible for what I have not done, and (2) the reason for my responsibility is my membership

in a group which no voluntary action of mine can dissolve. The only example of such a collective that Arendt has in mind is a nation or political community (Responsibility 147-158). Both Japers and Arendt were referring to identity groups. Arendt held that moral and political domains of responsibility stand as far apart from each other as personal opinion and public action do. She argued that "In the center of moral considerations of human conduct stands the self; in the center of political considerations of conduct stands the world" (Responsibility 153). I argue in this study that these two spheres, instead of being two polar opposites as Arendt maintained, are in fact intimately intertwined and co-dependent so that (although the usefulness of separately analyzing the concepts may still stand) we could regard political responsibility as derivative of moral. Moral responsibility hinges upon the most basic of human capacities, rational thinking, which informs and necessarily predates political collaboration.

Finally, Arendt's account seems not to capture well the essence of collective crime, which is predicated upon morally relevant attitudes – and not only actions – that sustain it. The responsibility of an American citizen for Guantanamo and the responsibility of a Serb for Srebrenica are different in the sense that in the latter case we are dealing with the 'collective effects'. This simple difference changes our perception of the agents' involvement in bringing about the harm. In the case of Srebrenica, the moral standing of a large segment of Serbs is in question from the point of view of those who were harmed: 'Did she condone the crimes? What role did he play? Why didn't she help? Why did he remain silent? Can she be trusted? Etc.' Questions about the bystanders' values, attitudes, behavior, and actions in the context of collective crime are posed as an immediate consequence of the nature of the systematically perpetrated crimes as opposed to, say, regime crimes.

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Also, in the context of retrospective responsibility, it seems misplaced to talk of political responsibility in the sense Arendt envisioned it; consider the case of Nazi Germany where German citizens by and large failed to honor their political responsibility to organize and publically oppose Hitler. To argue that 'they' were politically responsible does not enrich our understanding of their duties and obligations in the aftermath. Yet, on the account of moral responsibility much remains to be addressed – they owe moral repair to themselves and above all to those who were and continue to be harmed. In post-criminal societies, understanding and evaluating the conduct of people during and after the crimes is essential for our understanding of who we are, what we did and what we ought to do. Evaluating right and wrong behaviors in the face of systematic atrocity offers a possibility for re-establishing human relations promoted and protected in decent societies. To understand the criminal legacies of the past, a component of morality is necessary; we cannot satisfactorily answer the question 'how did – that which happened – become possible?' without understanding the morally relevant failures of our conduct.

To recap – political responsibility is not concerned with the quality of moral character, which is of practical concern for the victims. The concept of moral responsibility allows us to probe into the collective crime-specific predicament of bystanders which the concept of political responsibility is not designed for. The predicament that arises in collective crime is that some people, if not the majority of people, participated in the normalization of mass atrocities. It is not enough to say that bystanders did nothing to prevent the atrocities or to help the victims; they also participated in the normalization of these crimes by internalizing norms. They are complicit not only for what they did not do, but just as importantly for what they have become.

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1.9 Conceptual Challenge: Moral Taint

In the literature pertaining to collective harm, moral taint is a category frequently discussed. Marina A. L. Oshana proposes that moral taint means having "one's moral personality . . . compromised by the introduction of something that produces disfigurement of the moral psyche. Less metaphorically, taint significantly diminishes the degree to which one's moral personality qualifies as virtuous and one's moral record as unblemished" (356). Moral taint is that which "generates the phenomenon of having one's moral record sullied by the unjust conduct of those with whom one is associated . . ." (354), regardless of one's own moral responsibility. Also, she says that inter-human relations marked by grave injustices ground moral taint, whether they are immediate and direct, or remote (356).

Moral taint is then appropriate in the sense that it has an explanatory value on accounts that conceptualize collective harms as products of both participating and non-participating members of a collective; such is the account of Dimitrijević and of Radzik who hold that responsibility rests with an 'identity group' not causally but morally. On my approach, on the contrary, a group is identified to represent only participating members, and is as such causally responsible for harm. Given that each agent causes an outcome which is evaluated as wrong, the category of moral responsibility is more appropriate, because unlike moral taint it implies liability. It is clear that moral taint[60] is a useful concept for those who investigate responsibility by focusing on 'nations' or 'identity groups' where membership alone grounds responsibility. However, if we are interested in identifying the agents who perpetrate harm, and in understanding how they come to cause harm, then we are more likely to employ the concept of

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60 As Marina Oshana explains, "What we call moral taint . . . is the product of moral failure, at minimum the failure to exhibit an adequate measure of concern for relevant moral considerations in one's interactions with others . . . Many philosophers treat moral taint as an effect of vicarious liability and treat liability as a product of collective responsibility" ("Moral Taint" 358).

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moral responsibility which can elucidate the answers to these questions. Thus, when we add participation to the condition of membership, moral taint misses the point.

The overall argument in conclusion of these three sections "Why Not Guilt, Political Responsibility and Moral Taint" is as follows: Guilt, as we saw, is too strong because it requires a faulty action and in dealing with the bystander's roles in collective crimes on the level of action we are mostly dealing, precisely, with omissions to act. Political responsibility, as was illustrated above, fails to capture an important element of the nature of collective crime: namely, those who are being judged are those who participated actively or passively, intentionally or unintentionally, in the normalization of mass atrocities. Their conduct under scrutiny is not merely their support for the regime, or their omissions to help the victims; they produce harm by failing to properly judge the committed crimes thereby creating a moral problem for the society at large. Finally, moral taint derives from harms caused by 'others' who are our fellow group members, and therefore, as May argues, "The group solidarity which Jaspers identifies as one of the key ingredients in metaphysical guilt creates a moral taint for all of those members whose group is in any way implicated in evils or harms" (Collective 244). Yet, in this study, where 'harms' are conceptualized as a much broader category than physical death, I am interested in the duties and the obligations of agents who harm the community of victims themselves, by causing 'reasonable fear', 'social death', 'second moral collapse', etc.

1.10 Normative Challenge: Moral Relativism

Moral relativists hold that a person's cultural background strongly influences her modes of perception and thought – so much so that in the case of Nazi Germany for example, some relativists claim that "all perpetrators were in fact subjected to intense socialization that rendered them unable to realize that genocide was immoral" (Jones 234). Moral relativism, however, is

not a unified field and is traditionally subdivided into three main branches: descriptive, meta-ethical and normative. Descriptive relativism is a family of empirical claims maintaining that certain groups have different modes of thought, standards of reasoning, or the like. These claims are meant to describe but not evaluate the principles and practices of the group. They mainly draw from the work of anthropologists such as Richard B. Brandt and Clifford Geertz (The Interpretations) who held that ethical values are relative (both in fact and normatively) to their respective cultural frameworks. Meta-ethical relativism states that moral judgments are not objectively true or false (they deny that these judgments are true in the ordinary sense of the word). "Meta-ethical realism presupposes the falsity of moral realism, the view that there are 'moral facts' . . . and that moral judgments or standards are objectively true independently of the beliefs and attitudes of human beings (even ideally rational human beings) about those judgments or standards."[61]

Finally, normative relativism is a family of non-empirical evaluative claims that, similarly to descriptive relativism, maintains that modes of thought, standards of reasoning, or the like are only right or wrong relative to a particular framework, but that believing other practices and cultures cannot be evaluated refrain (in theory at least) from basing its claims on empirical evidence provided by anthropologists the way descriptive relativists do. Normative relativists such as Gilbert Harman, Michael Zimmerman and Geoffrey Scarre, among others hold that ethical principles are never correct (something is wrong if an individual or a group thinks it is wrong), but they recognize the moral wrongness of crime. However, they draw conclusions radically different from mine about the moral responsibility of participating agents. This view

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61 See the Stanford Encyclopedia of Philosophy (Swoyer Chris "Relativism").

represents the position that one cannot be held morally accountable for something she believes to be right ("Moral" Harman 3-22).

Normative moral relativists hold that we can only go as far as to describe and explain events. All three of the relativists considered below, grant that Holocaust is a moral evil, yet they stop short of holding the participating agents responsible. The argument roughly goes like this – participating agents act within their own (individual or group) moral frameworks, with the belief that they are doing the right thing and thus acting on what they perceive to be the right reasons. On this view, understanding the 'other' is not a viable alternative since one can only fully understand and be moved (motivated) by one's own reasons. Socio-political conditioning overpowers our ability to see alternatives. In this sense, they argue that we lack the freedom (voluntariness, control), which is a condition necessary for establishing moral responsibility. So, agents who commit harm do so through no fault of their own and thus cannot be held responsible for their actions.

Contrary to my claim that agents who participated in the collective crime retain their moral compasses, but they chose to disregard them, or reject them, normative relativists conceive the agents' capacity to choose (to properly judge) as significantly diminished either due to external or internal factors. 'Diminished' capacity means either that the agent is not motivated by moral norms or believes that it is her duty to commit the wrong (Moral Philosophy, Scarre 109). As we already saw, descriptive moral relativists focus on external-based explanations (the argument of 'bad political culture'), while normative moral relativists take a different route. They argue that the epistemic condition, which Aristotle identified as the knowledge condition, refers to 'moral ignorance' rather than 'factual ignorance'. They each take different yet related routes in defending the view that agents sometimes lack moral knowledge in an objective sense.

Instead, they ask us to withhold our judgment of these agents because: our reasons for acting a certain way do not necessarily apply to others (Harman), they may be acting out of ignorance (Zimmerman) for which they are not culpable, or they act "strictly according to their conscience" (Scarre 110). In short, they each warn us against attributing responsibility because the agents we are targeting (be they perpetrators of crimes or bystanders) have no capacity-responsibility.

1.10.1 Harman on 'Acting out of Ignorance'

Harman's relativist point of view is that "people with very different moral outlooks may be justified in their moral views and may be justified in taking themselves to know various moral truths" (Moral 167-8). He argues that moral right and wrong are always relative to a choice of moral framework maintaining that, "no moral framework is objectively privileged as the one true morality" (Moral 3). Unlike moral absolutism, which holds that there is a single true morality (it is always wrong to kill babies for fun – to use Harman's example) and moral nihilism which holds that if none of the different moral frameworks are more correct than the others, then we have reason to reject morality altogether, relativists – says Harman – hold that even though there is no single true morality, but many different frameworks, "relative moral judgments can continue to play a serious role in moral thinking" (Moral 6). I will attempt to illustrate that his position in the context of mass crime, however, is no different than the position of moral nihilism; consequently, I will argue that relative moral judgments do not play a role in moral thinking.

Harman holds that "What someone takes to be absolute rightness is only rightness in relation to (a system of moral coordinates determined by) that person's values. Most people's values reflect conventions that are the result of 'continual tacit bargaining and adjustment'" (Moral 22). His position rests on the assumptions of descriptive relativists in that once

conventional morality has been established, it becomes relatively difficult to modify, because of the social pressure not to violate the conventional principles, including social penalties for such violation. Culture is again seen as an omnipotent source of norms from which citizens derive their meaning for actions: culture as an independent variable is what moral norms are derived from (a dependent variable).

Then, from cultural relativism Harman slips into subjectivism, by claiming that moral requirements one accepts do not apply to someone else because she may not have compelling reasons to act in accordance with those moral requirements: "what moral requirements a person has compelling reasons to follow will depend on that person's principles and values" (Moral 47), and not on failing to appreciate reasons to observe. He argues that even if people agree on the facts, if their starting positions in life differ, so will the political reasons they are subject to. (Moral 48).

However, he does argue that 'motivational content' exists in the first person judgment only. Now, an external judgment implies a judgment made of another agent, not merely one made from outside a culture. Although, "a spectator can evaluate an agent who has different values from those of the spectator," (Moral 59) depending on what sort of moral judgment he makes of the agent he may or not take the agent's values into account. One type of moral judgments attribute and the other type do not attribute compelling reasons to the agents, argues Harman. He then asserts that Hitler may not have had any compelling reason to refrain from the annihilation of the Jews, so his argument goes, when Hitler seems to have had all the reasons to proceed with his plan, judgments implying that he had compelling reasons to refrain must be false. He proceeds to argue that "the claim that Hitler ought morally not to have ordered the extermination of the Jews would not be true, if in fact Hitler did not have compelling reasons to

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refrain and if the claim that Hitler ought morally not to have ordered the extermination of the Jews implies that Hitler had compelling reasons to refrain" (Moral 61).

The basic point being that Hitler behaved in accordance with his own moral outlook or rather that his acts were in accordance with Nazism. The implication is that we cannot say (objectively) that it was wrong of Hitler to have acted in the way he did. Yet, we can judge him from a personal point of view; in other words, we have to recognize that although what Hitler did was morally wrong, it was right for him. This distinction between subjective and objective points of view permits Harman to judge Hitler's actions as wrong, only not wrong for everyone (such as Hitler). He holds that 'my' moral reasoning is not relevant for 'you' in so far as 'I' am motivated by my own moral norms and 'you' may not be motivated by them. He is here concerned with individual moral frameworks: as he explains, we all have them and they are not comparable because there is no background to compare them against (no objective point of view). The assumption here is that although there may be moral facts we all agree on or share, there are no objective facts to judge against. Central beliefs which determine the behavior of perpetrators in evil times, are derived from bad cultures, and are as such not something one is responsible for holding. Thus, a perpetrator acted according to his moral framework, for which he cannot be held responsible because he acted out of ignorance.

Harman's view stresses that an appropriate assessment of a person's conduct must take into consideration her control over the attitude she holds towards the deed. So, should an agent fail to be moved by what is right, we have to ask if he failed to act upon what is right because he knows what is right (that morally universal right he concedes) and knowingly rejects it (for let's say hedonistic or selfish reasons) OR because he does not know what is right (believes that what is wrong is right) and is thereby acting wrongly out of ignorance. The two options change the

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outcome for moral responsibility ascription: the former option suggests that the agent has the capacity to judge but makes the wrong choice, the latter that the agent is in a sense innocent because he does not know any better.

1.10.2 Zimmerman on 'Non-culpable Ignorance'

Zimmerman argues that besides freedom, a mental condition must be fulfilled when it comes to moral responsibility; this is his entry point into the discussion of culpable ignorance, which he claims occurs much less frequently (if ever) than we think. He contends that if an agent is willfully harming an innocent person then he is morally responsible. However, in his view, if the agent does not intend to harm the victim, but does so unintentionally then the agent cannot be held morally responsible, because the agent acted out of ignorance for which he is not culpable. Here we may ask what it means to harm unintentionally in the context relevant for this study. From a normative and empirical point of view, what does it mean – for example to say – that Rudolph Hoess (Zimmerman's example) did not intend to harm the Jews? Maybe what he means is that an agent does not know that doing harm is morally wrong. We shall return to this point. Also, what kind of ignorance is Zimmerman talking about? He argues:

> Ignorance is ignorance of facts. It is the failure to know the truth. Such failure can itself come about in one of two ways: either by way of a failure to believe the truth [presumably failure to believe that Auschwitz is morally wrong] or by way of believing the truth but without justification [presumably wrongly believing that Auschwitz is morally right]. It is not clear to me that the second of these can be properly said to constitute ignorance (412).

But then he tell us the following too "It is only when ignorance of P is due to the failure to believe P that we excuse a person's acting in ignorance of P. Henceforth, when I speak of

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ignorance, I shall mean ignorance that is constituted by failure of belief" (412). But, failure of belief which comes to constitute ignorance that is not based on ignorance of facts. In the last instant of moving away from factual knowledge, Zimmerman points out "The ignorance that is directly relevant is his ignorance of his doing something morally wrong. . . ." (412).

In Zimmerman's view, we can never be in direct control of whether we are ignorant, ". . . all culpability can be traced to culpability that involves lack of ignorance, that is, that involves a belief on the agent's part that he or she is doing something morally wrong" (418). So an agent must be aware/know that he is doing something wrong for his ignorance to be culpable. An agent who is not aware that he is doing something wrong can be said to have acted out of ignorance that is not culpable. What remains to be explicated is why we should assume that Hitler for example did not hold a belief concerning his own wrongdoing. As we know people commit wrongs knowing that they are committing wrongs (e.g. a woman who is physically abused by her husband whom she kills). Why are we to assume that the wrongdoers acted in ignorance? It seems easier to assume that one is acting out of ignorance when one is acting out of good will but commits a wrong in the process. However, so if an agent is acting out of bad will (intends to harm) and commits a wrong in the process, ignorance is much more difficult to assume.

Now, the issue is the following – while Aristotle believed that moral knowledge is a responsibility of all adults, and that moral ignorance reflected some failure of moral character, Zimmerman argues that where one's decision to act is not 'cognitively connected' to its consequence (cannot be said to have been the case of direct culpability) these consequences are not indicative of the extent to which the agent is culpable and hence it seems quite inappropriate to say that the agent is – even indirectly – culpable for the consequences. He then goes on to say that moral ignorance can be traced to one or the other of two sources: moral and non-moral error.

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He tells us that the error of reasoning is a non-moral error, while not knowing that there is something wrong with harming innocent people is ignorance concerning wrongdoing and is to be traced to a type of moral error (an error concerning a moral fact). He holds that although it is easier to excuse one who acts out of ignorance based on a non-moral rather than moral error and since lack of ignorance is a root requirement for responsibility, this is a mistaken view (424). So, he argues against the view that engaging in behaviors that are racist is blameworthy even though they engage in it in ignorance because such moral vices and the consequent behavior are often not in agent's control. "For lack of ignorance concerning wrongdoing is a root requirement of responsibility. . . And, absent such awareness, one is not responsible" (426). Zimmerman opened with ignorance of facts, but concluded with ignorance of moral norms.

1.10.3 Scarre on 'Moral Blindness'

Geoffrey Scarre's *After Evil: Responding to Wrongdoing* represents a paradigmatic relativist conception of moral responsibility. In chapter nine, entitled "Moral Responsibility and the Holocaust" Scarre turns our attention "to one of the greatest and most traumatic evils of our time, namely the Nazi genocide of the Jews" (159) in order to answer the question – how should we deal with agents who knowingly and deliberately bring about gross evils? He tries to develop a picture of an intentional wrongdoer, who is mislead by his society's misconceptions, and who commits crimes thinking that he is doing the right thing. He proposes that we think of these agents as victims of bad moral luck, "who are exposed to false but powerful ideological messages – as happened to the citizens of Germany in the period following the First World War" (160). Scarre cautions us to look into agents' motivations and intentions, rather than to "read off the moral character of the agent directly from the qualities of the deed itself" (161), because – as he says – that leads to the error of failing "to distinguish properly between the wrong character of

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the deed and the guiltiness of the doer" (162). By referring to historical evidence from the Holocaust, he constructs the following profile of a wrongdoer: he believed that Jews were threatening and dangerous for the survival of the German race; he thus acted violently but in self-defense; and he got his facts wrong (163). In other words, the moral predicament faced by agents in Nazi Germany "almost guaranteed that they would act badly" (164). So, says Scarre, if we were to conceive of moral responsibility in this way, we would be less likely to see agents as wicked and more as ignorant, prejudiced, thoughtless, fearful and phobic. And certainly, Scarre contends, we can relate to those factors that lead people to hatred and violence.

Scarre quotes Richard Arneson in saying that "the capacity to do right can be factored into two components, the ability to decide what is right and the ability to dispose oneself to do what one thinks is right" (167). Arneson thinks that doing what one thinks is right is admirable in itself. Scarre contends here and reveals that "Indeed, we may find it hard to justify assigning *any* moral blame to a person who acts strictly according to her conscience" (168). The cultural conditioning, presumed in Scarre's view, which overpowers the agents is best illustrated in his claim that:

> the Holocaust happened when it did not because twentieth-century Germans were more wicked than the average, but because they lived in a politically and economically dislocated world in which an extreme racialist philosophy might come to seem reasonable. This was a world in which Heinrich Himmler could unblushingly inform his SS subordinates in 1943 that they had moral responsibilities to their own blood and to no one else; honesty, decency, loyalty and friendliness were, he concedes virtues, but they were out of place in dealing with racial inferiors (165).

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Yet the question – who is responsible for this situation – remains unanswered; better yet, it remains unclear who were the agents of this 'politically and economically dislocated world' who carried out the transformation necessary to create consensus on the question of annihilation of an entire people.

Scarre concludes that "it takes a person of rare independence of mind to be critical of the received wisdom of his day; it also takes self-confidence and courage where allegiance to that wisdom is a condition of inclusion in a church, state, nation or party" (172). He cautions us, if we think we would have done better than the average German did in Nazi Germany, then we are welcome to hold them responsible. He understands moral evil to be produced by the intentional acts or by unintended consequences of intentional acts (2). Scarre tells us that an 'evil' person suffers from 'moral blindness', a form of motivational deficiency, which prevents him from seeing reasons to refrain from doing the wrong acts – "he cannot hear the screams of the victims he is torturing as supplying reason to desist" (9). He holds that agents who commit wrongs should be understood as incapable of recognizing relevant moral reasons; there is ". . . a failure to be moved by, rather than an inability to grasp, moral reasons" (12). The motives for doing evil are varied – "malice, misanthropy, sadism…selfish indifference or moral naivety… sense of duty" (13). Thus moral reasons – although can be grasped according to Scarre – fail to motivate perpetrators of evil, who are morally blind to them and as such cannot be attributed moral responsibility.

1.11 Normative Challenge: Response

Differing relativist conceptualizations of moral responsibility pose serious objections to the universalist-based assumptions I base my analysis on. These are that agents who have capacity-responsibility and who failed to prevent harm against the victims, failed to help the

victims, or harmed the victims by holding wrong judgment-sensitive attitudes, did so in full knowledge of the facts and free from coercion for which they bear moral responsibility. The assumptions underlying this claim that agents ought to be held accountable for their (in-)actions and their judgment-sensitive attitudes are that: (1) morally wrong actions are the result of a combination of two conditions – (sometimes) external force and (always) the choice how to respond to one's objective situation (including one's own wrong actions as well as those of others'), and (2) morally wrong judgment-sensitive attitudes are the result of e.g. one's lack of care for others. Agents are culpable for these actions and attitudes.

As we saw, moral relativists would object to this on the ground that there are no moral universal standards to speak of (moral norms are only relative to the individual/societal framework). I argue the relativists move toward denying moral responsibility for wrongful conduct lead their position uncomfortably close to the position of moral nihilism. In the context of mass crime, the relativist position is thus (normatively) vacuous and as such comes to resemble very closely the perspective of 'perverted group ethics'. On the contrary, relativists hold that a normal human adult may be driven to act in accordance with perverted ethics not contrary to his conscience but in accordance with it; as long as he has reasons to act as he does (his moral compass permits his actions) he is morally immune from responsibility for his actions. The consequence of the positions of the three normative relativists I addressed above for moral responsibility for mass crime is radical – as long as the perpetrator of crime believes that he is doing the right thing he cannot be held responsible for his wrongdoings. A perpetrator's act communicates his moral norms to us. Although there is no *objective* moral framework against which we can judge persons' behavior, still – they concede – the behavior can be judged as right or wrong within the person's moral framework. However, since they argue that the perpetrating

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agent is always acting according to his conscience (and never against it) it seems that in the last instance, these three relativists hold that the actions of agents are never free but are pre-determined.

In the context of mass crime, in its last analysis, relativism not only communicates that we (the 'outsiders') cannot judge others (perpetrators, bystanders, etc) because we do not share their moral framework but it suspends the victims' right to judge, in so far as it renders even the victim's point of view external and thereby unjustifiable. The moral conflict between the victims and survivors and those against whom grievances, resentment, anger, demands for truth and justice are directed (perpetrators, supporters, bystanders) is irresolvable; equal moral weight is given to each point of view, which simulates the inequality established under the criminal regime.

From the point of view of universal morality, we establish moral facts, and harming innocent people is an objective moral fact, thus the moral point of view of the victims comes to the fore when we consider responsibility in mass crime. In the words of Tannsjo, this is one moral universe (that of the victims) that will not tolerate conflicting moral judgments, which will have to address that moral fact of mass crime which we started with. The judgment (of the victim and about the bystander) is made from within – it is an internal judgment in the sense that the judges and the judged come from the same moral framework at T0 and only at T1 thanks to the criminal regime's propaganda, does the community of victims become viewed as a group external to those who will at T2 be the 'judged'. It can hardly be argued that the victims' point of view is external (in which case we would be accepting the perpetrator's ideology). Thus, there is no reason why we should not consider the victim's moral framework as internal to the spacio-

political-cultural universe within which moral agents are judging or being judged. If we accept that it is internal, then it has to be resolved even in the understanding of the relativists.

When the explanations of the descriptive and normative moral relativists are consulted in the context of mass crime and the responsibility of those involved, their arguments appear to draw from the meta-ethical moral relativist concept of moral reasoning, which in their view is only first person singular or plural. From my reading of these three strands of moral relativism, it seems that descriptive and normative relativist theories collapse into subjectivism (there is no right answer for an evaluative question) and into the meta-ethical relativist position (moral judgments are not objectively true or false), which consequently lead to moral nihilism. These are the steps: cultural socialization overpowers individual efforts to answer the question how we should live and why, it immobilizes the objective aspect of moral reasoning (putting oneself in another's shoes) and reinforces the conventional, collective framework as an un-reflected individual subjective framework. So, in a sense it might be argued that moral relativists have to claim not only that one is born a German, but in consequence of having been born a German, one is destined to become a Nazi (or at least a Nazi supporter) once his co-nationals successfully establish the regime. In the absence of the 'view from nowhere' (Nagel) there is no autonomy and thereby no responsibility to speak of and, contrary to what Harman argued, relative moral thought plays no role in moral thinking. The power of reason ends when the evil times begin. So, it is a real puzzle in the end: we have a crime, a victim but nobody to hold responsible. On the relativist account, we have the perfect crime.

CHAPTER THREE – BYSTANDERS AT T1

In this chapter, by combining a normative and an analytical perspective, I explore the role of moral agents (I refer to as bystanders) during the life of criminal populist regimes in Nazi Germany[62] and Milošević's Serbia.[63] Not having committed the crime themselves, bystanders are neither criminally nor politically liable, however, as we will see they still contribute to the production of harm against the 'community of victims'. As Victoria Barnett argued in *Bystanders* although being a bystander is a matter of accident, it requires a shift from prior convictions and behaviors to something new. Being born in Nazi Germany or in Milošević's Serbia does not define a person; it rather informs us of the person's objective situation in which she lives, deliberates, and acts. How a person decides to be does, because her behavior impacts her relations with others, be it the regime on the one side or the victim on the other.

I argue that bystander responsibility derives from the harmful collective effects they produce individually, by engaging in the processes of justification, rationalization and normalization of crime. I have proposed the following typology of bystanders: (1) supporters, (2) 'internal collaborators' or passive supporters, and (3) 'inner émigrés' or passive resisters[64]. The wrong attitudes and actions of the first type, the wrong attitudes of the second, and the right attitudes but wrong actions of the third type coalesce into a collective effect that communicates lack of care for the community of victims. Although they do not come to form a group

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62 http://www.ushmm.org/wlc/en/article.php?ModuleId=10005143: "In 1933, the Jewish population of Europe stood at over nine million. Most European Jews lived in countries that Nazi Germany would occupy or influence during World War II. By 1945, the Germans and their collaborators killed nearly two out of every three European Jews as part of the 'Final Solution,' the Nazi policy to murder the Jews of Europe."

63 http://www.ictj.org/our-work/regions-and-countries/former-yugoslavia: "Throughout the 1990s, as the former Yugoslavia broke apart, its territories—including Croatia, Bosnia and Herzegovina (BiH), Macedonia and Kosovo— were battlegrounds for the worst violence in Europe since World War II. Violence included widespread attacks against civilians, population expulsions, systematic rape, and the use of concentration camps. Between 1991 and 2000, more than 140,000 people were killed, and almost four million others were displaced."

64 I will identify one more sub-type of bystander, the 'transitional' bystander; elucidation provided in the following chapter.

intentionally, by breaking off their horizontal ties with the victims, they voluntarily remain members of the in-group whose values and goals are dictated by the criminal regime.

In collective crime, bystanders come to represent the largest segment of the population, whose individual moral responsibility is at stake in the context of institutionally approved crime. The collective to whom they belong to by birth, metamorphoses into a collective whose values and goals are largely determined by the criminal regime in power and which demands acceptance from its members in return. Individual choice will determine the size and the power of the new, perpetrator defined, in-group. A bystander chooses to comply and in doing so, voluntarily narrows her own autonomy, by transferring it to the collective.

My approach requires a precise account on the concept of collective identity, which distinguishes between belonging by birth to a collective and a moral choice of belonging. While belonging by birth to a collective, is obviously not a matter of choice, one's beliefs, attitudes, actions, obviously are. I share Larry May's belief that when we think about what it might mean to say that one's shared identity with a group implicates one in the wrongs that that group commits, we need to think that one's identity is itself a matter of choice. May rightly points out that although our nation, race, or family is not a matter of choice, we choose how to react to these memberships.

Many of those now writing about collective responsibility agree that moral responsibility cannot be distributed to those group members who openly resist or fight against their communities' bad actions or policies.[65] I hold this to be a morally justifiable condition, thus when I speak of a morally liable collective I am not referring to an identity group (Germans or Serbs) but I am referring to a derivative group – the group of bystanders. Although there may not be

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65 See here, for example, the arguments of Michele Moody-Adams (Fieldwork).

freedom to *do otherwise,* there is freedom to *judge otherwise* which marks the moral choice of belonging. To retain responsibility for what one does and becomes is crucially important for our identification of bystanders (Sharing 101). To 'disassociate' oneself from one's group, on this account requires one more step: to establish a correlation between one's responsibility for one self and one's responsibility for others who are victimized by our own group through action (even if delayed).

In this chapter, I analyze the responsibility of agents who respond to the 'intolerable' either by supporting it or by passively co-existing with it. In order to determine whether these responses are morally justifiable in the context of mass crime, I assess whether the *control* (freedom from interference of others) and *knowledge* conditions (factual ignorance) obtain. The nature of the regime that gives rise to collective crime presupposes mass internalization of regime's values. This complex relationship between external and internal factors in mass crime is well captured in Vlasta Jalušić's observation that "there is something exceedingly risky in the belief that . . . under Nazi totalitarianism or during Milošević's regime, as well as in the cases of other 'collective crimes', the dominant causes were 'abuse' of power, manipulation and respective 'evil' on the side of the power(full) elites and politicians; while the 'people' (or 'masses') were 'innocent,' naturally good, or simply misled" (1180).

On my account, bystanders are those who had the freedom from external factors (coercion and duress) to act according to the universal ethical standards but did not do so. They are those who know the facts about crimes being committed, but who judge the harm committed in their name as justified, becoming either supporters or internal collaborators,[66] or they judge it

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66 What distinguishes them from dissenters is that they share common attitudes toward crime (murder is sometimes justified), towards victims (they deserve what they get), towards national identity formed on the bases of the perpetrator group's explicated values and goals (to purify the nation, to expand, etc). Dissenters had the bad moral

as wrong, thereby becoming 'inner émigrés' but they fail to act upon their right moral attitudes either during or in the aftermath of mass crimes. Each of these types of bystanders employs different types of denial[67] which resists regime change and continues well into the transition (which I provide an in-depth account of in the next chapter).

Mine is a *backward-looking, causal claim of moral responsibility.* In this chapter, I argue that bystanders come to form a group which is causally responsible for the production of harm at T1, or during collective crime. The 'Autonomy Principle'[68], which holds that I cannot be held accountable for the harm another agent causes, I try to show, is not violated by this approach. I identify a bystander by analyzing his (in-) actions and attitudes[69], carefully tracing the causal relationship between them and the production of harm. Although all members of a group might be considered metaphysically guilty (Karl Jaspers), morally tainted (Marina Oshana) or politically responsible (Hannah Arendt), on my approach they are not identified as proper targets for ascription of moral responsibility. It is a *choice* (to reject the regime's values and goals) that separates those whose moral responsibility is in question from others – the dissenters.[70] Although in his *Duty to Respond,* Dimitrijević holds that when a group's identity rests upon violated common values then the values of each member of the nation are also harmed, I have refrained from this membership-based account of moral responsibility. In Chapter Two, I have argued that

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luck, yet their ethical position toward the crime, the victims, and the perpetrators remain their own (authentic as Sartre would put it). They exercise their capacity to think critically (Arendt) and to reason (Nagel) which enables them to continue to treat the victims as members of their moral universe.

67 I argue in the following chapter that should 'inner émigrés' fail to act upon their proper moral attitudes in the transitional period, they may be interpreted as having engaged themselves in a form of denial, by which they neglect to interpret their lack of assistance to the victims as harmful.

68 According to Rawls, in ascribing responsibility we have to consider persons separately and focus on their own actions so as not to violate principles of justice, principles of justice that for Rawls themselves begin with the value of discrete individuals ("Collective Responsibility," The Stanford Encyclopedia of Philosophy).

69 See Linda Radzik who argues that "…we can disconnect the concepts of responsibility and control without violating the separateness of persons" ("Collective Responsibility and Duties to Respond" 461).

70 Criterion of dissent is not standard, but perhaps only a 'negative' condition (not giving up basic moral values).

Oshana's *moral taint*, Arendt's *political responsibility*, or Jasper's *metaphysical guilt* are appropriate categories when moral responsibility for mass crime is conceptualized as solely membership-based. Dimitrijević argues common values are harmed in so far as they are shared with the perpetrators who kill in the name of each member of the group, which permits us to conceptualize collective moral responsibility as a 'duty to respond'. Individual belonging to the collective on this account is a fair target for ascription of moral responsibility because in sharing the identity with the criminal regime (membership) these individuals come to share the duty to respond to those who are harmed. This membership-based account implies that regardless of what the individuals do, their duty to respond to the victims is grounded in their collective identity marred with mass crime. Although this account certainly provides valuable insights into the nature of the in-group, further narrowing is needed still to identify bystanders on my account.

In summary, in this chapter I will: in Section One conceptualize what constitutes a collective relevant for ascription of moral responsibility, in Section Two provide an overview of what constitutes crime at T1, in Section Three provide positive and in Section Four negative identification of bystanders in collective crime, in Section Five identify harm committed by bystanders in T1, and finally, in Section Six offer a conceptualization of the group of bystanders at T1.

1.12 What Constitutes a Liable Collective at T1

Although I incorporate some aspects of the membership-based moral responsibility approach proposed by Dimitrijević and Radzik, as I already discussed in Chapter One, my theoretical interpretation is closer to a *shared moral responsibility* position that requires a criterion of participation. I hold that a specific segment of population that belongs to a community of perpetrators (collective identity), based on its sufficiently formal structure (that is

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formed by authorizing the regime to represent this group's interests), common attitudes, solidarity with the criminal regime, shared intentions and common goals forms a group, which in turn owes a response to the community of victims. It is not the group itself, but the individual members who comprise the group of bystanders who owe a response or have a duty toward the victims. What applies to them, then, is what Dimitrijević and Radzik hold applies to the entire population of faulty collectives (in collective crime): a duty to the community of victims and a duty to the larger collective (to correct their own attitudes). As I already stated, I hold both *membership* and *participation* to be essential in ascribing moral responsibility to agents, but that membership in a faulty collective alone is sufficient for holding each member metaphysically guilty or morally tainted.

The reason I refrain from aligning my approach entirely to this membership-based account of moral responsibility is that I find it to be insensitive to the Autonomy Principle. This fairness principle, in the case of collective crime, I argue, holds additional relevance in the context of mass crime, when the community of victims itself upholds the personal autonomy principle when responsibility is being ascribed. Dissenters, who act in solidarity with the victims and on their behalf, and who thereby open themselves up to sharing the same or at least similar fate with the victims, are unlikely candidates for ascription of moral responsibility. The community of victims is not likely to have any reasonable fear toward them and would not seek a response.

Having identified the primary characteristics – membership and participation – of moral agents whose behavior is at stake, I turn to the shared responsibility accounts relevant for my approach. As I elaborated in Chapter One, there is a number of different collective responsibility accounts, which aim to explain what constitutes a blameworthy collective or group. Four

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approaches are directly pertinent to my argument: Joel Feinberg's account which focuses on the aspect of *solidarity* among the group's members, Christopher Kutz's and Larry May's accounts which focus on extending our notions of participation and membership (respectively), and Kenneth Shockley's account which focuses on the *normative authority* which 'programs' the behavior of its members. Each of these is important for my own approach in establishing what constitutes a morally liable group in the context of collective crime. I focus on individuals who contributed to mass crime intentionally or not, via morally impermissible action, omissions to act, and attitudes. An assessment of such varied individual contributions to mass crime benefits from each of the above mentioned approaches, thus I conceptually draw from each depending on the empirical problems that emerge.

The first approach relevant for my analysis is that of Joel Feinberg who argues that collective responsibility exists when there is group solidarity, prior notice to the liable party, and opportunity for control by the liable party. As he remarked, "Group solidarity exists when all members of a group share interests, feel pride when one of its members does something noteworthy, and feels shame when one of its members acts badly."[71] On his understanding, groups with members who share interests or common needs can be conceptualized as morally liable. Two assumptions prevail here: the first is that groups whose members share interests or needs in common show signs of group solidarity, which Feinberg defines in this context as a matter of individuals taking a strong interest in each others' interests.[72] The second is that groups that show signs of group solidarity understood in this way are capable of acting and intending in the sense relevant to collective responsibility, since while they are made up of individuals, they

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71 Quoted in (Collective Responsibility, Howard McGary 81).
72 Ibid., 36

pursue projects together.[73] This approach is particularly useful to understand the normative background which sets the stage for the responsibility of agents who are neither perpetrators nor victims but who share their identity with the perpetrators.

The second approach distinguishes between appropriate and inappropriate sites of collective responsibility by focusing on conceptions of collective action and individual responsibility as they relate to a notion of *participation.* Christopher Kutz analyzes collective action through an individual 'participatory intention', which he defines as "an intention to do my part of a collective act, where my part is defined as the task I ought to perform if we are to be successful in realizing a shared goal" (169). His account of a conception of individual accountability and "a theory of agency that explains our capacity for collective action, both in its weakly coordinated and fully cooperative forms" (11) leads him to conclude that "individual, intentional participation in a collective act warrants individual accountability for the consequences of that act" (11). So where there is 'participatory intention' to do my part so that 'we' may realize a shared goal, there is a collective act to speak of. This approach distinguishes between intention and action, what warrants responsibility, and how we distinguish between the two.

The third approach, which is also relevant for Kutz, requires a concept of moral responsibility thicker than membership alone if it aims to uphold the Autonomy Principle, which insists that one cannot be held responsible for the actions of another. This is the principle that further narrows down my conceptualization of a morally liable group. As Larry May argued "It is [only] those [who] knowingly risk harm to others, even when their behavior does not directly cause any harm, share responsibility for the harm caused by those whose similar actions directly

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73 Ibid.

produce the harm" (Shared 45). Harmful attitudes, such as racism, increase the likelihood of harm and thus May invites us to conceptualize participation so as to include attitudes. The core of his arguments rests on the following premise, "once one is aware of the things that one could do, and one then does not do them, then lack of action is something one has chosen."[74] May's insights then suggest that both omissions and attitudes are relevant in understanding the nature of harm committed in collective crime. The two individualist principles, the Individual Autonomy and the Control Principles, which I introduced already in Chapter One, are not applicable to anything other than actions. The individualist approach, thereby, fails to account for most of the bystanders' behavior in mass crime, which is exemplified by omissions and attitudes. This aspect of the individualist accounts renders them helpful for understanding of only one type of bystanders – the supporters; other types remain outside their purview.

May argues that collective inaction of a group may make the members of that group at least partially responsible for harms that the group could have prevented. He distinguishes between 'collective omission' and 'collective inaction' where the first is defined as the failure of a group that collectively chooses not to act and the second as the failure of people to act as a group. This second case refers to groups where no formal organization exists, which is pertinent for my study of bystanders who are members of a group that cannot be said to have a rigid organizational structure. May's conceptualization of 'collective inaction' as a choice allows me to investigate moral responsibility of agents who engage in it via moral attitudes, which I argue causally contribute to harm. Furthermore, in determining the (causal) moral responsibility of bystanders, in which an agent can be said to have caused some state of affairs, where their conduct and their judgment-sensitive attitudes are at stake, their 'causal responsibility' (such as

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74 See Vetlesen 523.

paying taxes) is of little relevance; it sets them apart from others (Serbs from the Germans for example) who are not under moral scrutiny, but it is only the preliminary level of evaluation, which requires further narrowing down.

May reformulates group intentions within a concept of *interdependence*. He relies on the work of Jean Paul Sartre to develop his account of group intentions and posits what he calls a "pre-reflective intention", i.e., "an intention which is not yet reflected upon by each of the members of the group" (Morality 64). May argues that group intentions of this sort arise out of the relationships between particular members of a group rather than from any one group member. Hence, while they are not trans-individual or collective in any sense that stands totally above individuals, they can be thought of as collective. These intentions are group-based in the sense that each member comes to have the same intention either reflectively or pre-reflectively, which is different from their individual intentions. Indeed, "the sameness of intention is collective in the sense that it is caused by the group structure, that is, it is group-based" (Morality 65). This approach explains how group structures affect individual intentions of its members.

The fourth approach can be termed *contributory* (or programming control) normative account. Shockley argues that, when production of some harm cannot be explained without referring to a collective, we are justified in attributing responsibility to it. He argues that in order to attribute responsibility to a collective, we do not need to show that the collective has agency, but to identify the contributory actions of its members, and only "some form of control over those contributory actions, on the part of the collective" (447). This collective responsibility approach is applicable to cases where the collective provides normative authority without which

the state of affairs produced cannot be explained;[75] the collective enables production of harm not otherwise available to individual members; and, in Shockley's own words, "The collective has coordinating normative control over individual members – not necessarily through autonomy or agency but by means of programming control" (448). Thus, he argues, his approach to collective responsibility, covers groups as diverse as: mobs, street gangs, jazz ensembles and government agencies. What is crucial for Shockley's approach to responsibility of collectives is whether it can be said to have caused a state of affairs.

For my study, his approach is important when we consider the larger context within which the bystanders act – the identity group to which they belong. The normative relevance of the collective intention to destroy a group of people plays a key role in our understanding of inter-group member relations among themselves and with those who are targeted as victims, in as much as it creates solidarity among the members of the in-group and defines this group's relations with the outsiders. The normative background that sets the stage for what Dimitrijević calls 'the culture of silence' is systematic degradation, alienation, dehumanization and annihilation of an entire people. The normative background is 'controlled' by the perpetrators as individuals, as a collective, as institutions, as policies, and it produces 'collective effects' generated by 'collective action' and 'collective inaction' of bystanders, who individually contribute.

On my account, then, which is largely influenced by Feinberg, Kutz, May, and Shockley, a group of people can be said to be acting together and thereby sharing their moral responsibility

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75 Shockley rejects the notion of collective agency, and instead argues that "we look at the causal significance of groups, and work from the causal relevance of groups in the production of harms and benefits to an account of collective responsibility. After all it seems clear that groups enable the production of certain states of affairs. In a very real sense, a sense which I intend to explicate in what follows, groups make things happen. More formally, collectives control for the production of certain states of affairs—and this gives them a great deal of causal significance (of course causal significance is not to be confused with moral significance)" (443).

for a certain outcome when it can be established that they: 1. Have solidarity with each other, 2. Are related in some special ways (interdependence), 3. Have common attitudes and goals, 4. Have a 'participatory intention' to do their part, and 5. A normative control of the collective can be said to have been secured. The approach employed in this study is eclectic, which gives it flexibility to assess responsibility of the variety of agents who contribute to mass crime (supporters, internal supporters, and internal dissenters). Because of their focus on the interplay between individuals and their larger contexts, Feinberg's concept of solidarity and Shockley's normative control concept help explain the interplay between subjects and the criminal regimes, i.e. the *centrifugal forces* defining a morally liable group. Whereas, Kutz's and May's accounts, due to their focus on the relational aspects of acting and behaving, help identify the *centripetal forces* that bring individuals together in a group via their intentional and unintentional participants. I will propose a conceptualization of a group of bystanders at the end of this chapter, but before doing so, I will elaborate on the relevant socio-political context relevant for T1, or during the life of the criminal project.

1.13 Collective Crime at T1

The context relevant for the ascription of moral responsibility to a group is collective crime. Radzik suggests that collective crime should be understood "as the one committed by a significant number of members of a group, in the name of all members of that group, and upon individuals identified as a target on the basis of their belonging to a different group" (Collective 456). This primary conceptualization points to a specificity of mass crime, which is common to both collective and regime crimes (each is well organized bureaucratically and ideologically).

Dimitrijević points to the next level of conceptualization[76], which allows us to distinguish between collective and regime crime. He argues that they are differentiated by their intentions towards and expectations from their subjects, with whose complicity the regime establishes conditions for justification and normalization of mass crime, and which in turn produces a type of criminal legacy for the society that resists regime change. Mainly in collective crime, the populist criminal regime attempts to secure as homogenized a response to its ideological and practical intentions and actions as possible and uses instruments of repression reluctantly (these are employed primarily against the targeted victims). In regime crime, obedience of subjects is secured through strong coercion (employed against the subjects).

This characterization of collective crime invites us to investigate agent responsibility by focusing on the nature of the relationship between the regime and its subjects. In order to properly assess moral responsibility of agents in collective crime, who hold morally wrong judgment-sensitive attitudes and commit morally impermissible actions, two conditions have to be addressed – coercion and factual ignorance. To assess the explanatory value of these two conditions for the behavior of agents I draw from empirical evidence from the two cases relevant for the study of responsibility in collective crime: Nazi Germany and Milošević's Serbia.

The relational element of accountability in collective crime directs my analysis away from individualist accounts and toward collectivist accounts of moral responsibility. I draw from Dimitrijević who rightly argues that in collective crime the notion of 'ordinary people' constitutes something normatively and empirically different from an aggregate, which raises the question of collective moral responsibility. In this chapter, I analyze the responsibility of moral agents in collective crime at T1, or while the criminal project lasts, so I focus on the first two

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76 For more detail see (Dimitrijević Nenad "Moral Responsibility for Collective Crime").

stages of collective crime, as proposed by Dimitrijević – the preparatory and the implementation. Although the third normalization stage is present already at T1, I discuss it in detail in the next chapter, when I focus on the post-criminal or transitional period.

1.13.1 Preparatory Stage

The first stage of collective crime is identified by Dimitrijević as *preparatory,* which requires both ideological mediation and legal-political institutionalization. The former includes political and cultural propaganda aimed at achieving maximum cohesion (or in the words of Dimitrijević 'unconditional loyalty') of the subjects in respect to the proclaimed values and goals; whereas, he argues, the latter is:

> formalized through legal and political institutionalization of arrangements that define binding distinctions between allowed and forbidden, good and bad, right and wrong. An integral part of this demand for internalized and institutionally formalized loyalty will be the requirement that the subjects consciously and unquestionably accept the basis of legitimation and the institutional patterns of crime. The very act of expressing support for crime means agreeing to de-subjectivization (Moral Responsibility 5).

Serbia serves well as case in point. The Serbian Academy of Arts and Sciences' (SANU) publication of its Memorandum[77] in 1986 marks an emergence of the ideologues of war onto the public scene. The Memorandum came to be known as a blueprint for a Serbian national program. This document became the most discussed topic in the political life of Serbia and as such "made the greatest contribution to the shaping of public opinion in the subsequent years."[78] SANU with

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77 Much has been written about the Memorandum; for a detailed analysis, see Serbia's Road 274.
78 Ibid., 279

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its Memorandum, its political ambitions and direct collaboration with the political regime of Slobodan Milošević marked the beginning of the creation of what may be referred to as the morally liable collective. The normative background was crystallizing, the values and goals were being communicated to the public, the bounds of solidarity were being established, and the outer boundaries of the in-group were emerging. It was the subjects turn to respond and they did.

The year 1988-89 was the year of the masses in Serbia[79]. The night between February 27 and 28, 1989 marked one of the biggest mass protests in Belgrade: students and professors staged a protest in response to a meeting between Slovenian intellectuals and politicians who supported the Albanian miners in Kosovo, which was broadcast, live on Feb. 27, 1989. The student and professor protest was soon joined by industrial workers and the number of protesters soon reached one million.[80] Nebojša Popov, points that students, professors and workers added new energy into the movement which was up to that point mainly associated with the Serbian Academy of Science and the Serbian Orthodox Church. The sheer numbers of the new participants empowered the regime's potential for action. The values and the goals proclaimed by the regime and its collaborators were publically validated by the masses. The subjects responded in exaltation.

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79 The massive outburst of protests began in second half of 1988. On October 5, around 150,000 people gathered in Novi Sad to protest against the Vojvodina provincial government. Before the event, the provincial government tried to find a middle ground and negotiate with Milosevic, expressing cautious support for the constitutional changes while trying to keep their and Vojvodina's position intact. However, on October 6, the entire government of Vojvodina resigned and was soon replaced with Milosevic's men of trust.

80 "The demonstrators cheered one another, but above all the 'beloved leader' [Milosevic], in the form of the clichéd slogan heard at many rallies 'Slobo slobodo'. . . The crowd demanded weapons and the arrests of the 'troublemakers', especially Azem Vllasi, the head of the ruling party in Kosovo. The Leader indeed confirmed the righteousness of these demands, and echoing the frenzied crowd, promised that the 'instigators' of the miner strike would be 'punished and arrested'. His remarks were greeted with the wild cheering of a lynch mob, and he added: 'It will be so, and it cannot be otherwise'. . . On January 30, 1990 students again gathered . . . in response to the situation in Kosovo . . . demanding that measures be taken immediately to normalize the situation in Kosovo. . ." (Nebojsa Popov 318).

An important background assumption that one finds in both Germany in the 30s and Serbia in the 80s is that at the time when the whole ideological counter-revolution started, members of the 'titular' group were privy to basic moral standards of right and just. Just consider that – in October 1990 – the Institute for Political Studies in Belgrade found that nationalism was not the prevailing ideology, where only 18.5 percent of the citizens in Serbia considered their nation sacred, 48.5 percent thought that the state should be democratically governed (The Road of Serbia 443).

German historian, Claudia Koonz pointed out that in the nineteenth-century, Jews participated in the political, professional, cultural, social, academic, business, etc. life of Germany. She writes:

> During World War I Jewish Germans fought and died for their fatherland in the same proportions as Christian Germans. Of 38 German Nobel Laureates named between 1905 and 1937, 14 had Jewish ancestors. More Jewish young people married Christians than married Jews, and until 1933 the term 'mixed marriage' referred to Protestant-Catholic and African- or Asian-German unions, not to Jewish-Christian couples (9).

Victoria Barnett also clearly argues in *Bystanders: Conscience and Complicity during the Holocaust,* which prior to 1933 German Jews were integrated members of the German state. She points to a study conducted in 1980 by a Canadian anthropologist Frances Henry in the small German town of Sonderburg, which Henry and her family fled from after the so-called *Kristallnacht* in November 1938. Neither Jews nor non-Jews who were Henry's respondents, remembered any problems prior to the Kristallnacht. "Christian and Jewish children attended the same schools, and . . . Relationships among the different groups in the town were uncomplicated

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by any marked political, ethnic, or religious tension. Even at the height of the Nazi era, Sonderburg was not a Nazi stronghold" (2).

The rights and freedoms of the targeted victim community[81] are practically taken away incrementally. At a more fundamental level, this can be seen as the process of gradual denial of recognition, or the process of gradual exclusion of the targeted victims from the moral community. Victims are ideologically excluded from the group, which is understood as the ethical community, by arguing that they do not qualify for full membership to humankind (moral community). In the first phase of collective crime, values and norms that guide behavior according to universal ethics in civilized societies are interpreted so that proposed limitations upon the victim rights directly reduce the duties toward them. The subjects' rights and freedoms are increasingly challenged as well in a process of negotiations and mutual agreement with the regime (as Dimitrijević argues, through the process of surrendering individual identities to the appointed representatives of the nation). Mutual agreement or negotiation is meant to represent the relations between the perpetrator group and the onlookers within the larger identity group, from which the victims, identified as the enemy of the group, are exempt. Scanlon's claim that violations of moral requirements are tantamount to disregarding other people is instructive here; as he writes: "Doing wrong is to flout the legitimate demand others have on us to regulate our actions in compliance with mutually acceptable principles. The value of responsibility lies in the contribution of ascriptions of responsibility to maintaining this 'system of co-deliberation' in which moral criticism and moral argument consist in the exchange of requests and justifications" (Significance 166). The negotiations in this preparatory stage are focused on identifying and recognizing as valid the proposed reasons for the exclusion of the victims from the moral

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

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requirements of the group. Only in the later phase, will the negotiations between the perpetrators and the bystanders require approval of the policies toward those who are excluded.

On July 14, 1933 a package of decrees was passed in Germany that stabilized Nazi rule. "The new laws intruded into public and private life. A stiff-armed salute and a sharp 'Heil Hitler' replaced the traditional 'Good Day'. All non-Nazi political parties and organizations were outlawed . . . The federal constitution, which had preserved ancient regional identities and states' rights, yielded to centralized rule in Berlin . . ." (Koonz 72). Two years later, in 1935, the Nuremberg Laws[82] were passed marking the beginning of the moral abyss facing the increasingly status-less victims. The first racial law (the Reich Citizenship Law) deprived Jews of citizenship and defined Jews as 'persons belonging to the Reich' while the Law for the Protection of German Blood and Honor criminalized marriage and sexual intercourse between Jews and citizens of the Reich" (Koonz 184). These laws encroached onto economic and private domains which were off limits until then. Nazis confiscated between 75,000 and 80,000 Jewish businesses in 1935 and by the end of 1936, two hundred and sixty of the Germany's largest Jewish-owned firms were confiscated. Three paradigmatic responses to the laws can be explicated: 1. That of the victim, as expressed by Jean Amery in *At the Mind's Limits:* "I do not believe that I am inadmissibly projecting Auschwitz and the Final Solution back to 1935 when I advance these thoughts today . . . that in that year, at that moment when I read the Laws, I did indeed already hear the death threat – better the death sentence . . ." (viii); 2. That of the collaborator, as expressed by Carl Schmitt at a conference in October 1936 who praised the Nuremberg Laws for "restoring German constitutional freedom . . . our conception of constitutional principles is again German. . . ." (Koonz 205); and 3. That of the 'ordinary people'

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82 The coauthor of the legal commentary explicating the 1935 race laws, Hans Globke, became Conrad Adenauer's key advisor for national security from 1953 to 1963.

"who made their peace with regulations against their Jewish fellow citizens . . . because criminal laws became part of a mirage of law and order, and the perception gradually took hold that Jews were strangers in their own homeland" (Koonz 192).

Likewise, in Serbia, Milošević and his regime instituted constitutional reforms in 1989, revoked the status of autonomous provinces and substantially suspended the institutional changes set in motion by the previous government. Among those abuses in 1989 were "the arbitrary arrest and detention of hundreds of prominent ethnic Albanians, some of whom spent months in solitary confinement; the imprisonment of hundreds of ethnic Albanian peasants for verbal statements against Serbia's takeover of Kosovo province; and the firing of many of the ethnic Albanian intellectual and technical elite solely because of their ethnicity."[83] These institutionalized policies serve to first identify who does not belong to the in-group; thus, it can be argued that the preparatory stage identifies groups and announces the rules of the group relations to come.

In this phase, a reasonable person could be expected to exercise both, positive and negative duties. In failing to do both, their solidarity with the regime may be concluded from the stand point of the victim community. Put differently, in the words of Paul Formosa, "We might formalize these two points by the (provisional) normative claims that (in Kantian terms) there is a perfect duty to neither participate in nor support through obedience evil persons or practices, and an imperfect duty to combat or reduce evil (without, in the process, perpetrating evil) whose normative force is proportional to one's power to in fact do so" (508).

Given that a person's intentions are often influenced by others more can be said about individual responsibility. From Larry May's observation that "leadership, solidarity, and inter-

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83 For more information see, http://www.unhcr.org/refworld/publisher,HRW,,SVN,467bb49d1e,0.html.

subjective communication are well-known features of putative groups that have sufficient structure to act as a group" (Sharing 110) the following may be implied: at this preparatory stage, a segment of the population who are neither perpetrators nor victims are faced with a choice to come to form a group in order to more effectively fulfill their moral duties, or by refraining from forming a group, they run the risk of unintentionally yet voluntarily being submerged into the perpetrator group[84]. The perpetrator group provides the first of the three features (leadership) necessary to establish "a mechanism by which individual intentions of the members of the group can be coordinated in such a way that purposeful action can be accomplished by group members acting together" (Sharing 110). By refraining from joint action, this population's (in-) action is determined by the leadership already provided by the regime.

At the preparatory stage then, May argues,

> [t]hat radical transformation occurs due to a combination of social identification and role-defining policies or practices. Elements of both formal organization and social identification manifest themselves in many different settings. Some role-defining policies will intensify and reinforce what individuals already feel in interacting with other members of the group. Values will be transformed more swiftly and certainly in such a setting (Sharing 79).

He is here making an observation about how individuals shape each other's values within collectives, be it through informal groups like mobs or the institutions such as the military. Since I am interested in bystanders, I will focus on groups most similar to them, which lack organizational structure, such as the mobs. May argues that social identification plays the role of value transformation or moral perspectives of individual members who seek to conform to the

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84 This is an important observation, which also helps us understand how dissenters think and behave (in Serbia).

norms of the majority. The socialization that individuals undergo in mobs is illustrative of the 'happenings of the people' in the late 80s in Serbia, which I discussed earlier. The normative background forming by the rising criminal regimes both in Nazi Germany in the early 30s and Milosevic's Serbia in the late 80s, created an atmosphere in which mob behavior was encouraged. For example, consider that in 1934, "All over Germany, tens of thousands of Jewish apartments were taken over . . ." (Hilberg 196).

This is the stage when groups begin to emerge in the nation: perpetrators and collaborators voluntarily join the regime's vast bureaucracy and other well-structured organizations. Those who are not identified as the enemy and thereby targeted as victims are faced with a choice. They can choose to accept the regime's values and goals or reject them.

To summarize: the regime communicates its beliefs and its goals to the subjects, policies that limit the rights of the community of victims are implemented, the regime seeks support from its subjects for its policies and depending on how the population responds, the perpetrator group emerges. A moral agent is informed. As Arendt points out "In their prepower stage the [totalitarian] movements can never afford to hide their true goals to the same degree – after all, they are meant to inspire mass organizations" (Origins 413). Thus, a person would presumably not only hold a critical attitude toward the new policies but would also be motivated to act on it. It would be reasonable to expect that active opposition takes place – in form of protests and collective actions against the attempts of the regime to strip away the rights and freedoms of the victimized group and/or in form of withdrawing support through non-participation in the participating institutions. This is, after all, a stage of negotiation between the regime and its subjects – and this is the stage when actions can largely be defined as free of coercion and fully informed. Thus, in the preparatory phase, we would hold agents morally responsible for their

judgments and actions, as well as for the collective effects their non-actions and negligence produce.

1.13.2 Criminal Action Stage

Dimitrijević invites us to clarify between the careful preparation and the coordination of the execution of collective crime. He explains that the realization of this execution requires more than just support from the subjects. In this phase, the 'division of labor' is planned and executed, the goals are formulated and publicized, and the subjects are put before a test. The regime actively seeks that subjects prove their loyalty to them and the criminal project itself. Provided justifications for crime and the regime's classification of what constitutes a moral wrong and right are to be internalized and expected to be expressed in attitudes resembling allegiance.

Dimitrijević's 'particular division of labor' is the key element that binds individual responsibility with the (as we already saw in the preparatory stage), legalized authority trough institutional arrangements. This is characteristic of modern bureaucracy as described by Max Weber. Before the advent of Nazism, Weber recognized that a new form of organization had emerged, whose governing principle was rationality. According to Weber's conceptualization of ideal bureaucracy, the demand to obey commands of the superiors pointed toward total identification with the organization and marked the fundamental principle of rational action. Zygmunt Bauman recalls Weber's famous remark "'The honor of the civil servant is vested in his ability to execute conscientiously the order of superior authorities, exactly as if the order agreed with his own conviction. This holds even if the order seems wrong to him and if, despite the civil servant's remonstrance, the authority insists on the order'" (Modernity 22). Weber believed that a purely bureaucratic type of administration is capable of attaining the highest

degree of efficiency and is in this sense formally the most rational known means of carrying out imperative control over human beings (24).

In the context of the Holocaust and the mass crimes committed by Milošević's Serbia it can be argued that bureaucratic organization achieved 'efficiency'. Barnett quotes Herbert Kelman, who held that in Nazi Germany "the erosion of moral inhibitions against violent atrocities: [through] (1) The *authorization* of violence; (2) The *routinization* of violent actions; and (3) The *dehumanization* of victims" was achieved (41). Also, in his influential *Modernity and the Holocaust,* Zygmunt Bauman launched one of the most sustained critiques of bureaucratic rationality, where he argued that the rational bureaucratic culture leads to social production of moral indifference, and the social production of moral invisibility. He held that modernity itself has developed political structures that, under the influence of bureaucratic rationality, have become ethically blind. He argued that bureaucracy was actively responsible for generating the innovative means by which the massive task of genocide became possible. For Bauman, bureaucracy brings 'relief' in so far as it socially produces moral invisibility. His critical analysis of bureaucracies is helpful in so far as it informs us of the conditions, which the agent, as a helmsman, steers according to.

Also, Barnett argued in *Bystanders,* that the compliance of political and social institutions is crucial to the success of the totalitarian government, where refusal to comply shatters the image of a stable society (44). Serbia's compliant institutions included: the military, the police, universities, schools, media, the church, trade unions, and writers' association, the Serbian Academy of Art and Sciences, among many others. Much like it was in Nazi Germany, no major institution refused to comply with the criminal regime's policies. Thus, the regime is able to justify its measures by claiming to have been authorized by the people, while the people can

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claim innocence for they are 'only' doing their jobs and obeying the authority. It is a mutually re-enforcing process of denying responsibility for physical harm, which marks the implementation phase of collective crime. Yesterday's ideologues, their interpreters and promoters, who in the preparatory phase commit harm by creating a 'new' moral universe, become perpetrators of legalized crime. Therefore, the move from ideological to legal, and from legal to physical harm rests on propaganda and stable institutions, whose efficiency depends upon subordination to authority and to the internalization of its values on the side of those subjects in whose name the regime allegedly acts.

To summarize: in this phase, the perpetrators (killers, collaborators, as well as political and intellectual leaders) are no longer only morally but also criminally and politically liable for their actions. What about the group of bystanders? In this phase, given the presence of physical harm, it might be argued that while freedom for action is limited, a moral agent's sense of universal right and wrong is within his control, which renders him culpable for his failure to properly judge (for example, for not judging torture of civilians as wrong).[85] To put it more pointedly, and as Thomas Nagel holds, a moral agent cannot but face the question 'How should I act, given my situation?' (The Last 106) At T1, I identify those agents who judge harm as wrong but who refrain from acting upon their proper moral attitudes as 'mixed cases', which in Aristotle's terms do not deserve blame or praise. I hold that although they disassociate themselves (morally) from the collective defined by the criminal regime, and they may not be blamed, they retain moral responsibility. A strong 'empirical' argument for this might be the insight that at the stage of the rise of the criminal regime, and before it got stabilized and all-

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[85]The question still remains to be answered – how do we know that people who failed to act are liable to failure to judge ascription? How do we know who failed to act out of fear and who failed to act because of agreement with the regime? These answers will be provided in Chapter Four.

powerful, people clearly had an opportunity to see what was going on, and they had the opportunity to react. So, even if at the implementation phase there is no room for action, this can be seen as the consequence of yesterday's failure to act.

1.14 Negative Identification of Bystanders at T1

By negative identification, I refer to 'external' conditions that excuse or alter moral responsibility of agents in collective crime. Aristotle identifies: force of events, threats and coercion, ignorance, intoxication and bad character as excusing and exempting factors. In this section, I assess whether and to what extent these conditions impact the behavior of bystanders. *Excusing* conditions affect attribution of moral responsibility when acts are committed under duress, or coercion, in which holding persons fully responsible would be deemed unfair. *Exempting* conditions also affect attribution of moral responsibility and they obtain when a person is in a state (factual ignorance) where holding them to moral demands would be unfair. Paul Formosa argues that "Among other things, this condition also implies that responsible agents will possess normative competence and an awareness of the foreseeable consequences of their actions" (501). Aristotle argued in the *Nichomachean Ethics* that "what comes about by force or because of ignorance seems to be involuntary" (53). Thus, to ascribe moral responsibility, it must be demonstrated that excusing conditions do not obtain and that participation is *voluntary* or that the participation may be mixed, as per Aristotle, suggesting that it is partly voluntary and partly not (thus praise and blame may or may not be granted in response).

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1.14.1 Coercion and Ignorance

Were bystanders' (in-) actions the result of coercion? I will rely on J. Gregory Keller's working distinction between 'being coerced' (which grounds responsibility) and 'being strongly coerced or compelled' (which does not ground responsibility). He holds that:

> *coercion* [should be] understood to allow the agent an alternative to the coerced action and *strong coercion* [should be understood] to offer only normally unacceptable alternatives. When one is *compelled* there is not an alternative available to one. . . Thus, since being either strongly enough coerced or compelled to act as one acts makes one not responsible, not being either so coerced or compelled is a necessary condition of responsibility. Further, this implies that one's being capable of acting without compulsion or strong coercion is a necessary condition for the possibility of moral responsibility (10-11).

So, if an agent is strongly coerced, or compelled, one is not responsible for one's actions, or in the words of Aristotle "What is forced, then, would seem to be what has its origin outside the person forced, who contributes nothing" (56). So, how do we determine whether bystanders were faced with 'unacceptable alternatives'? Can we reach the conclusion, as Keller suggests, that the existence of an alternative depends on whether one is being responsible? Dissenters, for example, believe they have alternatives to participating in the collective crime, whereas others legitimately yet falsely may not.

A distinction between the coercion-based behavior and political conformity of citizens might be pertinent here. Barnett argues that there was enough evidence of brutality in the early months of the Nazi rule to impact and explain some of the bystander behavior. She points out that the Nazi state was marked in the early 1933 by mass arrests and sporadic political violence

carried out by the local SA groups. "By autumn of 1933, almost 100,000 people had been arrested" (85). Koonz suggests, furthermore, that based on her archival research in the 1990s, bystanders had considerable leeway to not conform to the state policies:

> Because the dreaded Gestapo had actually been understaffed and inefficient, ordinary citizens without Jewish ancestors or close ties to Marxism had considerable leeway to circumvent Nazi measures of which they disapproved. Memoirs by Jews who emigrated from Nazi Germany bear out this conclusion in their descriptions of the few loyal friends who offered comfort and aid – usually without suffering harsh reprisals. Even soldiers at the front could avoid obeying orders that disturbed them (12).

Barnett also recognized that it was not systematic retaliation to dissenters that secured obedience, but expressed that there was enough arbitrary brutality to impact the behavior of bystanders. Both of these accounts are action-centered.

Since – and as these two accounts suggest – it is not a simple task to determine whether bystanders committed morally impermissible actions (such as refusing the help to a Jewish neighbor) under the pressure from external factors, or due to their bad moral characters, we might have to reach beyond their actions to establish whether ascription of moral responsibility is due. For now, we might have to resign ourselves to identifying most of their actions as 'mixed'. But, our analysis does not have to end there, because we have an alternative route to take in order to assess whether bystanders' actions were voluntary or not; we can focus our analysis on their predominant attitudes in the context where coercion is indirectly directed at them. In order to determine whether agents were strongly coerced and thereby cannot be responsible for their (in-)

actions or had alternatives available to them, I propose that instead of analyzing their (in-) actions, we focus our attention on their attitudes.

But, before doing so, I will make one more claim about the level of coercion agents faced in Nazi Germany. Consider Christopher R. Browning's insightful claim that perpetrators seem not have been under duress when they committed crimes. He argues that while standing trial, perpetrators who attempted to use the excuse of having been placed in a situation of impossible duress put their defense attorneys in an impossible position; for, since the commencement of war crimes trials in 1945, no defense attorney "has been able to document a single case in which refusal to obey an order to kill unarmed civilians resulted in the allegedly inevitable dire punishment" (170). Clearly, we are here concerned with the choices bystanders faced when deciding what to do; still, Browning's account reveals that the objective context was hardly as coercive as some claimed. Thus, what I have argued above about the 'mixed' cases of bystanders may be entirely due to the lack of information regarding their objective situations. However, since mine is not a historical account of bystanders in Nazi Germany, and I cannot establish whether bystander excuses correspond to the reality of their situations at the time, I will now turn to the already suggested alternative route for the analysis of moral responsibility, which is attitude-centered.

The predominant attitudes of bystanders by and large reflect a form of laziness, but as Arendt argued, thinking is a context-independent human capacity and so this laziness in the face of questions of life and death may be judged as a failure to exercise one's capacity. Thus, what some have referred to as 'moral ignorance' to imply – literally – incapacity to think, due to some extreme circumstances is a result of our own making. In other words, one cannot suspend thinking. As Arendt explains "Thinking in its noncognitive, nonspecialized sense as a natural

need of human life, the actualization of the difference given in consciousness, is not a prerogative of the few but an ever-present faculty of everybody. . . ." (Responsibility 187). Thus, claims of inability to think are strategies of denial, and what some have termed 'moral ignorance' is more accurately (empirically and normatively) understood as 'affected ignorance' or culpable ignorance. Drawing on Primo Levi's distinction between the 'saved' and the 'drowned', we can see that it is only really the case that the latter perhaps shows us what it means for total domination to actually remove the possibility of thinking. Coercion used in concentration camps is considered strong, and the 'drowned' are those who are no longer capable to think. There is a complete isolation of alternative views (Formosa 502). So, a criminal populist regime's coercion can be considered to limit alternatives for the bystanders, but, does not constitute an excusing coercive situation for ascribing moral responsibility for wrong moral attitudes.

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

Koonz, one among many authors on the topic, dispels the excuse bystanders offer when confronted with the facts. Their 'I did not know what was happening' claim fares ill when checked against the facts. As Koonz writes "In the first study of the concentration camps, published in 1947, Eugene Kagon, a Viennese journalist who survived five years in Buchenwald, quoted a credible witness "The methodicalness of the killing must certainly have become visible even to the totally blind . . . There is no doubt whatsoever that there was not a single person in

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Germany who did not know that the Jews were being harmed, and had been for years" (269). Nuremberg Laws were publically passed, anti-Semitic ideology was public, Jews were removed from public life, schools, ghettoized and they were deported to concentration camps in broad day light.

We would seek to ascribe moral responsibility to an agent who does not judge crime as wrong and as a result does nothing to prevent the harm, whereas we would be less likely to consider ascription of moral responsibility appropriate should the agent judge the crime as wrong and fail to act upon this judgment due to fear (for example, or simply would not be motivated to act on this right judgment). I would consider the latter case to be 'mixed' (using Aristotle's terminology). In terms of outcome, these two cases are the same: non-action, but in terms of moral worth they are not, one's judgment is right and the other's is wrong. The first is the agent who would be held responsible, all other relevant circumstances being the same. How do we know ex post facto that an agent in T1 was evaluating harm as wrong?[86] As I have already stated, *participation in collective silence*, identifies agents who might be appropriate targets for ascription of moral responsibility. The analysis of their behavior continues past T1.

The underlying assumption is that a reasonable person is normatively competent, which thereby merits the ascription of moral responsibility. So, how to assess the guiding norms of subjects participating in collective crime? If the claim that subjects in the preparatory phase of collective crime internalize moral norms that are wrong then are we denying that the subjects in populist criminal regimes posses this normative capacity? Moody-Adams argues that these

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86 As I have already argued, on my approach an agent who judges well and acts accordingly by actively taking responsibility for the victims is not a proper sight for the ascription of moral responsibility. All other 'combinations' (intention and action) are vulnerable for assessment of moral responsibility: 1. One's judgment is right but the act is wrong (passivity at T2), 2. One's judgment is wrong but the act is right (Serbia's nationalistic opposition to Milosevic serves as evidence), 3. One's both judgment and deeds are wrong.

subjects would rather be accused of *affected ignorance* than of *moral ignorance.* Historical evidence suggests that this may be so. In Milošević's Serbia, those who have internalized the values of the criminal populist regime, do not make claims that would suggest moral ignorance (killing is good), but rather they engage in all kinds of literal and interpretative denial (such as "yes it happened, but 'they' did the same," "they started first," or "we were defending legitimate national interests").[87]

However, this claim points that we are in fact dealing with affected ignorance because they do not make any effort to know (whereas those who I refer to as dissenters, do make that effort – factual information was in fact available from the beginning of the criminal project). As Moody-Adams argues, they "asked no questions about some states of affairs, in spite of evidence that an inquiry might be needed in order to stop or prevent wrongdoing" (Culture 13). The claim that "Much of moral ignorance might best be understood by affected ignorance. . ." (Culture 13) seems to hold true in cases of Nazi Germany and Milošević's Serbia.

Paul Formosa discusses Eichmann's case to illustrate that even his surroundings were not sufficiently corrupt to excuse him. He argues that:

> This is because he was certainly not subject to the sort of systematic indoctrination and complete isolation from alternative views that would be required to justify his having such outrageously unjustifiable moral beliefs about, for example, the permissibility of genocide. Thus, it follows that the 'normal' adult Eichmann suffered neither from a global (incapable of thinking) nor local

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87 For my study one of the most relevant forms of denial is the 'inability to act' claim; in other words, I have to distinguish those who justifiably claim they could do nothing from those who make the same claim as a strategy of denial. I will argue in Chapter Four that agents who justifiably claim they could do nothing do not engage in denial at T2, but rather face a moral challenge, or moral residue. Those who engage in denial in the transitional period also engaged in denial at T1.

(incapable of thinking under totalitarianism) impairment of normative competence, nor from factual ignorance, from which it follows that we can safely resort to the default position of holding him to be responsible for his actions (505).

Even more importantly, before Nazism, the majority of those who would become bystanders were demonstrably decent persons; so, unless they were dramatically manipulated overnight, it follows that they chose to embrace a new corrupt ethics.

Koonz also argues that "Hitler's decision in January 1939 to speak openly of Jews and even to predict their extermination in the event of war suggested that he believed public opinion had been sufficiently prepared to accept a harsh solution to the Jewish question" (256). On April 20, 1939, on the celebration of Hitler's 50th birthday, "the nation turned in a 'veritable sea of flags'. An observer in central Germany described the scene: 'Hardly a store could be seen without a picture of the Fuhrer with victorious symbols of the new Reich" (257). Each of these insights suggest that factual knowledge was available, and that it would be reasonable to judge people's behavior under these circumstances as (relevantly) informed, rather than ignorant. Stanley Cohen argues that in Nazi Germany the majority knew at an early stage; he points out that:

> the general outline of the extermination policy, though not all the details . . . the massacres in the Ukraine, Lithuania, the Baltic countries and Eastern Galicia became known to millions of Germans almost immediately. Laquer concludes about this early period – from June 1941 (the euthanasia programme nearly over, half a million Jews already slaughtered by the *Einsatzgruppen*) to the end of 1942 (concentration camps and gassing well under way) – that although only a handful

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of Germans knew everything, very few nothing . . . 'they knew enough to know that it was better not to know more' (149).

The regime's values and goals are communicated to the subjects in the preparatory phase. In the implementation phase, the facts about crime being perpetrated are a public secret – they are not communicated to the subjects but the crime is conducted in full view. One cannot deny that the regime tried – clumsily – to hide the fact of extermination camps, at least that it was not made public, but removal of the Jews from Germany was made public. Many bystanders witnessed mass executions and Jews being forced en masse onto trains in broad day light. Although many later claimed that they did not know Jews were being sent to their death, they *knew*[88] that the Jews who they saw being deported, were also never to be seen again. Likewise, in Serbia in the early 1990s, those who wanted to know what was happening in Dubrovnik, Vukovar, Sarajevo, Srebrenica, Sjeverin, Štrpce, etc. could easily find out. In fact, citizens of Serbia witnessed first-hand the abductions of Serbs citizens of Bosnian descent in western Serbia, the forcible removal of non-Serbs and the destruction of their property throughout Serbia. Besides, information sources were available and easy to access – foreign news agencies (including radio stations that broadcasted in Serbian) covered the wars extensively in former Yugoslavia, as well as domestic media such as B92, "Republika," and "Naša borba." The problem of knowledge crystallizes as we consider Cohen's insight that what the bystanders "lacked was moral recognition, a sense of concern that motivates one to want to know more" (151). Empirically, the availability of facts about crimes during the life of the three criminal projects referenced in this study is undeniable. What can be said of the relationship between

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88 They knew means that since they have not seen any of their former neighbors return, they could form a true belief; this belief would have been presumably based upon their perception (which relies on five senses), introspection (self-reflection), memory (ability to retain knowledge acquired in the past), reason, and testimony and would – as such – provide good reason to consider their beliefs reliable, thereby suggesting that they knew.

individuals, the regime propaganda and the facts? We now turn to the process of denying facts, misinterpreting them, and finally denying or minimizing the implications that conventionally follow these facts (Cohen here implies strategies of justifications, rationalizations and evasions).

1.15 Positive Identification of Bystanders at T1

1.15.1 Denial and Self-deception

Cohen argues that literal denial (nothing happened) or the refusal to acknowledge facts can be due to genuine ignorance, unconscious defense mechanisms or due to bad faith (which become assertions of deliberate lies). Interpretative denial (what happened is really something else) deals not with denial of facts, but their interpretation (what happened is not what it looks like). Finally, implicatory denial (what happened is justified) occurs when there is no attempt to deny facts or even their conventional interpretation but the implications are being minimized or denied. Literal denial can be employed as a result of non-culpable ignorance, of self-deception or as a result of calculated forms of lying. Cohen argues that "Interpretive denial ranges from a genuine inability to grasp what the facts mean to others, to deeply cynical renaming to avoid moral censure or legal accountability" (9). As I already argued in Chapter Two, the 'genuine inability to grasp' claim depends upon assumptions which are difficult if not impossible to observe empirically: was the political culture in Nazi Germany and in Milošević's Serbia so corrupt that no alternative points of view were allowed (as is the case in the Lagers, as described by Primo Levi)? Are the subjects undergoing severe cognitive incapacitation in such environments so that they are unable to know the nature of their acts, to make informed choices, to have self-control? I aimed to show in Chapter Two that the subjects in Nazi Germany and Milošević's Serbia are not lacking the power of agency due to their situations and thereby they retain responsibility for who they are and what they do. In most simple terms, I asked, is it not

still reasonable to expect from a normal human adult to understand by mere empathy at least that what constitutes harm against herself constitutes harm against somebody else?

To be self-deceived means that one understands what is right and what is wrong and then chooses wrong while arguing that the choice is right. According to Henry Allison,

> self-deception presumes a certain level of thoughtfulness, of an attempt to formulate universalizable maxims of action . . . if one is deceiving oneself it must first be recognized, at some level, that what one is doing is, at least potentially, wrong, but then nevertheless proceeding to deceive oneself about this, more than likely through some "rationalization" that ignores or obscures morally salient features (513).

Thus, on this view, self-deception or lying to oneself is the result of culpable ignorance, being aware to some extent that it is 'better not to know'. Similarly, Jones argues that self-deception "interferes with the ability to publically accept responsibility for one's own wrong-doing, ask for forgiveness, and make amends; it also destroys any motivation to engage in self-criticism or strive to become a better person" (79). Self-deception then harms the victims whose suffering is being largely ignored and the society at large whose subjects evade responsibility. Typical strategies of self-deception include: avoiding to know about the evil deeds, rationalizing, ignoring available evidence, blocking emotional responses to the suffering, and evading engagement in any activities that relate to the suffering (Jones 79-96). Jones argues that "A sustained project of evasion, of this kind, results in a state of self-deception that is best characterized as *willful ignorance"* (82). 'Willful' in the sense that in order to achieve it, one has to intend to maintain it and protect it and thus understood self-deception in mass crime is above all purposeful.

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Serbia during Milošević epitomized Stanley Cohen's states of denial. Institutional and individual denial of crime was predominant in every walk of life including (but not limited to) – the institutional level – the judiciary, education, media, the military, the church, academia, economy, politics, civil servants, sports, entertainment, and culture – and on the individual level – judges and lawyers, teachers, journalists, soldiers, priests, writers, artists, business persons, politicians, bureaucrats, police officers, sports fans, etc. Cohen's detailed study of knowledge of atrocities in *States of Denial* eerily summarizes the predominant response of Serbia's institutions and citizens to the facts about crimes as they were committed in the 1990s, most of which were publically known. This response, which Dimitrijević identified as the 'culture of silence', is a combination of different strategies of denial, including literal denial (denial of facts), interpretive denial (denial of conventional interpretation of facts), and implicatory denial (denial of political and moral implications that conventionally follow) employed. The response in form of silence is a normative stance toward the fact of crime, on the official and personal levels, which rejects universal norms of right and wrong.

The paradox is glaring – the greater the absence of morally justified responses to mass crime the greater the need for it. A failure to acknowledge and condemn the crime and its perpetrators, and a failure to protect, empathize with, and support the victims, is a consequence of denial and self-deception. Denial restricts individual autonomy, which only responsibility affirms, and synchronizes the populations' ethical stance with that of the regime. The normative power is gradually seized by the perpetrator group and denial serves as a cohesive force for the survival of collective identity. In practical terms, denial serves the interests of the criminally and politically liable for the mass crime. All others are losers in the strategy of denial – again, to deny one's responsibility is to deny one's freedom, which tarnishes one's sense of self, since as

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Ervin Staub writes "In any society, 'people have not only individual but also collective self-concepts. Their 'societal' self-concept includes shared evaluation of their group, myths that transmit the self-concept and ideal self, goals that a people set for themselves, and shared beliefs (e.g., about other groups)" (Barnett 16).

In a socio-political context that encourages denial, denial is membership-relative: initially, the regime defines the outer boundaries of the in-group (exemplified by involuntary belonging or moral luck) and soon after it attempts to define further requirements of membership. Fairly early on, as we saw earlier, the criminal populist regimes in the two cases referenced in the study, communicate, directly or indirectly, their beliefs and goals to their subjects; they do so because they seek approval. The subjects are faced with a choice to either accept or reject the regime's values and goals. Those who accept them, enter into a sort of a 'contract of mutual indifference', to borrow Norman Geras' term, in which moral obligations to provide mutual aid are null and void, in which enormous suffering is met with 'blank inaction'. This contract reflects our world where, as Geras observes "One day on a station platform at Weimar, Austrian Jews in transit between Dachau and Buchenwald are struck and kicked by the SS unit receiving them into its charge. Passengers on a train standing opposite crowd to the windows and applaud the SS" (5). The applause communicates approval and secures the membership in the group submerged in denial about a crime which, although public, remains veiled in silence.

Whether or not to partake as a member of the in-group is a matter of choice, not of bad moral luck. One can morally disassociate oneself from his collective. To disassociate form one's collective means to hold victim-centered reasons for moral action. Victim-centered reasons may not result in actions during the life of a criminal project but must result in action in its aftermath

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if they are to be identified as such (e.g. aiding the process of transitional justice). Otherwise, these reasons are identified as victim-indifferent, which brings us back full circle to the membership in the morally liable collective.

1.15.2 Ethical Position and the Language of Silence

At T1, during the preparatory phase, a break in the social contract occurs: a social contract which existed at T0 and which regulated people's behavior to comply with, in Scanlon's words, "standards that others could not reasonably reject insofar as they, too, were looking for a common set of principles" (Significance 151). People who were 'suitably motivated' in the past (T0) in the sense that they aimed to justify their actions to others who were moved by the same concern, have to intercept this 'reciprocity of respect' at T1. In the context of collective crime, this space where 'reciprocity of respect' is exercised exists but in a reduced form. It comes to exclude members (from work, public life, society, human commonwealth) of the victim community to whom justification is then no longer owed. Thus the intentions and the actions of the perpetrator and bystanders groups are justifiable solely to each other in terms of mutually acceptable principles.

The transformation to an ethical position of 'perverted group ethics' to borrow Dimitrijević's term, is well explained by Ervin Staub, who identifies some of the major mechanisms that make bystander complicity 'acceptable' to themselves. He points out that by remaining passive, bystanders make it more difficult for themselves to internally oppose the perpetrators and empathize with the victims. Thus, he argues, to be able to live with themselves, bystanders distance themselves from the victims, they engage in 'just-world thinking' that allows them to see victims as deserving their fate, and to devalue them. My point is the following – to be motivated to live a 'normal' life in 'times of abominations' is a moral choice that requires

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excluding the victims from one's moral universe, or distancing oneself from the crime committed by one's group, and achieves what Staub termed 'resocialization' and what Dimitrijević more strongly termed 'perverted ethics'. It is an intricate moral shift, on the level of individuals identified as bystanders, which is motivated by a choice to lead a 'normal' life, and which ends in the rejection of the principles of practical or universal morality (whether that was the starting position or not) either by consenting to the proclaimed principles of 'social good' or in failing to be motivated to act upon the principles of universal morality.

The process of distancing oneself from the victims, the objective situation, etc. is in its core voluntary, or put differently, one is in control of how one relates to his situation, and certainly (at least) how one (privately) thinks about the victim; both, the ability to judge and the rightness of moral perception are intact. It requires that one chooses not to care – or not to think – as Arendt classified it. As she wrote,

> The faster man held on to the old code, the more eager will they be to assimilate themselves to the new one; the ease with which such reversals can take place under certain circumstances suggests indeed that everybody is asleep when they occur. This century has offered us some experiences in such matters: How easy it was for the totalitarian rulers to reverse the basic commandments of Western morality – 'Thou shalt not kill' in the case of Hitler's Germany . . . (Responsibility 178).

To be 'asleep' in Arendt's sense stands for distancing oneself, and to distance oneself requires that one either not care about the victims, or that one justifies the harms committed against the victims, or that one rationalizes one's situation so as to deny having any relations to the crime, or to deny crime is happening at all.

How does an ethical position of a bystander relate to the regime and to the victims, and how is it impacted by the regime and the victims? Arriving to a position of perverted ethics on the level of entire communities requires, among other things, language. Language comes to play an important role in solidifying group ethics on the one hand, and in permitting individuals to deceive themselves that a 'normal' life in abnormal situations is possible. Language that the regime uses in communicating with its subjects and with its subordinates, with its victims even, is language that precisely denotes the ethical position upheld. As Victor Klemperer's seminal work on language and the demands placed upon it by the Third Reich suggests, language secured ideological hegemony in Nazi Germany and even created its culture. *Lingua Tertii Imperii* amounted to loud silence or mute truth. Klemperer reminds us that ". . . books, newspapers, official communications and forms issued by administrative departments all swam in the same brown sauce, and it was this absolute uniformity of the written language which explained the homogeneity of the spoken language" (12). He makes clear that anyone who bore a star was prevented from buying or borrowing books, journals and newspapers, not to mention hiding them as one's home. The criminal regime is communicating with its carefully selected audience, the targeted group is excluded even from the communicative act.

Ernst Klee also pointed out that "Everyone knows the facts, but society has adjusted itself to them and learned to live with them; not, of course, to speak of them, or even publicly to show knowledge of them, but to recognize them as the necessary and by now natural condition of life in the new age of victorious Nazism" (xvi). Thus, the negotiation process, which started in the preparatory stage of collective crime when the criminal regime began to communicate to the subjects its justifications for the exclusionary practices of the group identified as enemy, and which continued into the implementation phase when the criminal regime communicates through

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codified language its policies towards its victims, ends when it meets with silence from the subjects. In Nazi Germany, instead of 'killing' or 'execution' the following terms were used: 'special treatment', 'evacuation', 'resettlement', 'thinning out' (removal of ghetto inhabitants), 'pacification', 'cleansing'. 'Auxiliary equipment' came to signify vans which were used as mobile gas chambers, 'bath arrangements' were used instead of 'gas chambers', when referring to the Jewish victims, terms such as 'figures' and 'pieces' were used, etc.[89] The implementation phase of collective crime is characterized by a patchwork of distorted, clichéd, euphemistic language of 'normalcy' and silence. Anne-Marie Roviello pointed out that:

> The ultimate stage of psychological violence is to ban speech: it is specifically prohibited to talk about this violence, recount it, or make it into an object of interest and thereby dissipate part of the diffuse terror it engenders. The hammering of propaganda is accompanied by a law of absolute silence on the 'real' future of totalitarian lies. Thus, in Nazi Germany, it was strictly forbidden, under penalty of serious reprisals, to spread 'rumors' about the camps (927).

The language of silence is not appropriated by the supporters, who are vocal and ready participants in the communicative exchange with the criminal regime. However the other types of bystanders, who remain passive in response to the implementation of mass crime, silence is the preferred communicative choice. By making this choice, they become valuable to the regime, for they do not disrupt its goals with their silence. The negotiations determining the limits of toleration are ended with silence. Of course, silence holds for both types of bystanders – the 'internal collaborators' and the 'inner émigrés' – who seek to retain a sense of 'normalcy' in conditions of life marked by mass crime. For the latter group, integrating the private life of the

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89 For a detailed analysis of language used in Nazi Germany see (Echoes, Barel Lang 341-361).

dissident with the public life of the silent observer becomes a heavy burden. Barnett also reminds us that silence "is what they [bystanders] did and who they were, it shaped their identity and their actions" (126). She concludes, "For bystanders, silence *is* their language – sometimes as an absence of speech, at other times as a retreat into euphemisms" (128). Thus, the negotiation process, between the criminal regime and its subjects, to secure approval, which begins with direct language delivered in bombastic declarations and public accusations, ends in mass murder couched in silence and codified language.

1.16 Harm Committed by Bystanders in T1

What constitutes the harm committed at T1 by bystanders? Feinberg understands harm as "the wrongful setting back of an interest. Conduct is wrongful by this standard when . . . A's action harms B only when A's acting in that manner is morally indefensible-that is, neither excusable nor justifiable" (McIntyre 105-106). Feinberg implies then, that beside intentional actions, both unintentional actions (omissions) and attitudes are legitimate targets of moral assessment for they also produce harm. As Neta C. Crawford has argued "if the conduct of war results in moral wrongs, the state, and in some cases the public, can be held morally responsible for negligence, in other words, the failure to change practices that will likely result in future wrongs" (197). Holding on to harmful attitudes, such as racism for example, increases the possibility for future wrongs; thus, holding these attitudes may be perceived as morally culpable negligence.

1.16.1 Harmful Attitude

How can attitudes be harmful? Scanlon explains that

> a person is open to moral criticism if he does in fact hold judgment-sensitive
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> attitudes that are morally objectionable, such as the attitude that he has no reason

to take any account of other people's interests or the possibility of their being harmed by his actions. . . Such attitudes betray a kind of disregard, a failure to recognize and respond appropriately to [other people's] value as persons (Reasons 511).

Not to value persons as ends in themselves harms those persons without the existence of harmful actions. This is especially important in the preparatory phase of collective crime.[90] May also holds that "insofar as people share in the production of an attitudinal climate, they participate in something like a joint venture that increases the likelihood of harm" (Sharing 47). He argues that by holding wrong attitudes, agents acting in collectives, come to participate in the production of harm either by negligently creating an opportunity for the perpetrator to commit the harm, or by knowingly reinforcing the wrong attitudes of others who commit the harm. Then, to uphold wrong attitudes means to engage in group-based production of harm. Kutz also argues that "the relation between agent and harm need not be mediated by either causality or intentional conduct" (43). He holds that it is the notion of participation that is at the heart of complicity and that who we are affects how we relate to others; "Responses to conduct are not so much responses to actions as to the intentions and attitudes underlying those actions" (140). Finally, to hold and express an attitude is a 'morally significant action', which Dimitrijević defines as actions "based on certain standards of right, good, and just" (Moral Responsibility 8).

The outcome of the harmful attitude held by the perpetrators, the collaborators and the bystanders alike,[91] provides the basis for what Radzik refers to as 'reasonable fear' of the victim

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90 In section 1.3.2 "Units of Analysis," I discuss Larry May's insights on the conceptual place of attitudes is his account of responsibility.

91 One particular sub-type of bystander, the 'inner émigré', does not uphold the harmful attitude, however, this agent's passivity and silence can be perceived by the perpetrators (on the one side) and the victims (on the other side) as an intention to participate in the harm.

community. In the preparatory phase, the community of victims cannot yet determine whether the bystanders' wrong moral judgments (perverted ethical beliefs) will motivate them (or not) to commit harm[92] and this is sufficient to feel fear. Cohen holds that "Fear is a morally significant harm. Fear is emotionally painful in itself. It can limit one's life projects. Also, if fear and suspicion persist between two groups, the danger of further outbreaks of violence or other wrongs is more likely. Fear causes a rift in the community and prevents its functioning" (159). Radzik's perceptive point about reasonable fear expressed by the community of victims summarizes very well the harm caused. A member of the harmed community might say to a member of bystanders,

> Even if I believe that you did not kill with your own hands, I don't know how you feel about the people who did. I don't know if you encouraged or approved of them. I don't know whether you will act like they did in the future. So I am afraid of you. If you apologize, if you express regret, I will have less reason to be afraid, and maybe we can find a way to live in peace together (Collective 466).

The bystanders' responsibility is then judged on the basis of their belonging to the collectivity of perpetrators. At the same time, those who disqualify the regime-proclaimed values and attitudes towards the victims will have acted according to their duty.

Besides representing behavior or a moral stance, Barnett tells us, indifference is also an attitude. As she explains, "'We often think of indifference as simply the absence of deep emotions like love or hatred. In reality, it is a complex, often unconscious mechanism that can hide a number of emotions, ranging from fear of the Nazis to silent approval for what the Nazis

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92 Thomas Nagel and Thomas Scanlon, among other philosophers, argue that moral belief can itself give rise to motivation. See the Stanford Encyclopedia of Philosophy (Rosati Connie S. "Moral Motivation").

were doing.'" (118).   Along those lines, Christopher R. Browning points out that in the early 1930s, 'ordinary Germans' accepted the legal measures of the regime. He reminds that:

> . . . a gulf had opened between the Jewish minority and the general population. The latter, while not mobilized around strident and violent anti-Semitism, were increasingly 'apathetic', 'passive', and 'indifferent' to the fate of the former. Anti-Semitic measures – if carried out in an orderly and legal manner – were widely accepted for two main reasons: such measures sustained the hope of curbing the violence most Germans found so distasteful, and most Germans now accepted the goal of limiting, and even ending, the role of Jews in German society (200).

1.16.2 Harmful Intentions and Action

I am interested here in identifying intentions and actions of bystanders that harm the victims by causing 'reasonable fear', alienation, humiliation, etc. In other words, I am interested in the morally-relevant contribution to harm. Supporters' actions causally contribute to harm, the 'internal collaborators' and the 'inner émigrés' contribute to harm less directly. Besides the 'internal collaborators' who cause harm by upholding wrong attitudes, both of these sub-types also participate in the production of harm via non-actions. On my approach, omissions to act – when one has a negative duty to prevent the harm or positive duty to help – are considered to constitute harmful actions.

When we are dealing with the sub-types of bystanders who are identified as supporters and internal supporters, we are dealing with intentional actions. According to Scanlon an action is wrong "if its performance under the circumstances would be disallowed by any set of principles for the regulation of behavior that no one could reasonably reject as a basis for informed, unforced general agreement" (The Significance 153). He argues that people who act in

ways that are justifiable to others are already moved by right reasons. Public displays of support and passive or private support serve as a backdrop for criminal activity, neither of which can be justified to the community of victims. They are thus engaging (even if they solely participate in 'the culture of silence') in morally impermissible actions. Membership (in the perpetrator collective) *alone* causes fear, while the silent participants justify it.

When we are dealing with the third sub-type of bystanders, or the inner émigrés, we are dealing – I argue – with what we would consider unintentional participation. Although in the context of collective crime, perpetrator intentions differ from those of bystanders, in relation to the consequences suffered by the community of victims this distinction is not morally relevant. For example, a relevant intention of the group of bystanders might be to lead a 'normal' life in a criminal state. How is this then an intention shared with the perpetrators whose goal is, let's say, to harm the victim? Here we turn to Kutz's conceptualization of *participation* to include *participatory intention*, by which we can understand both the bystanders who approve the regime's intentions (types one and two) and the bystanders who 'simply' want to lead a 'normal' life (type three and as we will see in the next chapter, type four) as a form of intentional and negligent participation in the collective action of the perpetrators. As long as one intends to commit harm, and the other one intends nothing to jeopardize that intention itself, harm is committed. The criminal intentions of the perpetrators are uninterrupted by the intentions of the bystanders. Not to challenge harmful intentions, when the conditions of control and knowledge are obtained, can be interpreted as participating in the harm.

When we consider all three sub-types of bystanders relevant for T1: supporters, 'internal collaborators' and 'inner émigrés', we observe that they predominantly engage in a wide-spread response to crime – silence, understood as both, an absence of appropriate language and a

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presence of inappropriate language. Even in the preparatory stage of collective crime, during the 'happenings of the people' in Serbia or the mass rallies of support of Hitler in Germany, the mass crimes are not the topic of the communicative performance. Inappropriate language is intended to signify the 'talking around the subject of crime', which is normatively and analytically similar to the silence itself (signifying something like a loud silence). 'Inner émigrés' affectively seek peace, thus they avoid confrontation and do not seek information out, under which resides either indifference, according to Cohen, or genuine internal opposition (159). It is crucially important to distinguish between the position of 'genuine internal opposition' and 'inner emigration' – the moral relevance of this distinction is clear. I have already argued that in order to reliably distinguish between these two moral positions, these agents' attitudes in the post-criminal period need to be carefully identified and studied, which I embark upon in the next chapter. For now, I argue that the silence and the omissions to act (upon their positive and negative duties), which these two types of bystanders share – regardless of their intentions – produces fear and thereby causes harm to the community of victims. As per Radzik, fear is a consequence of wrongful (in) action and attitude. As I already argued, bystanders participate in the production of harm via omissions to act, by which I mean, omissions to prevent harm or to help. Thus the harm committed by each of the four types of bystanders consists in having failed to uphold their positive duty to help and in their negative duty to prevent the harm. Again, those who attempt to prevent the harm committed by the perpetrators against the victims are not considered bystanders.

1.17 Bystanders as a Group at T1

In this section, I am looking to defend the view that although bystanders do not form a group voluntarily, they ought to be conceptualized as a collective. I argue that since we are

dealing with collective crime in this study, and if we are to understand bystanders' individual contributions to the collective effect of harm, we ought to include the collective level. Before I continue with the analysis of the bystanders, I will first remind us of the normative background that sets the stage for bystander behaviors. This normative background is established largely by the ideologues of war, perpetrators, and the collaborators, whose solidarity, overlapping interests and goals, and individual intentions, are so closely related that they can be said to form a group. May's account of collective intentions is instructive here, "the group structures contribute to the formation of the individual intentions that are components of collective intentions . . ." (Shared, Isaacs 70). Thus, this group of perpetrators can be said to have collective intentions. May argues that although groups lack intentional capacity, the identification of members with each other and shared goals and intentions produce the solidarity and cohesiveness of a single body (Shared, Sheehy 80).

Now, it is more difficult to argue that bystanders come to form a group and even less so that they have a joint intention to perform a joint action, still, they contribute to collective effects or ends. Raimo Tuomela argues that the I-mode is an intention of a private person, and the We-mode relates to a group intending (Shared 35). My argument that the bystanders do participate in the collective intentions of the perpetrators hinges on the following assumption – the regime that speaks in the We-mode, does so strategically – to include all its subjects in the in-group. The regime announces 'we will perform X', and the jointly intending agents must believe that there are joint action opportunities (Shared, Tuomela 37-44). The perpetrator group has a pro-attitude and the authorization for the intention formation (Shared, Tuomela 47). Bystanders are related to the group of perpetrators in the sense that they can choose whether or not to partake in the We-mode. If they choose not to disassociate themselves from the collective, I have argued that they

become a derivate group of the regime-defined in-group. Before I explain, let us first consider the victims.

So far, I have argued that the community of victims suffers a harm of fear, loss of trust and human dignity, alienation, etc. caused by the collective effects produced by the group of bystanders. The group of bystanders is, thus, causally responsible for the harm produced and it is the individual members who are morally responsible and not morally guilty (Collective, May 239) via their acts, omissions to act, and attitudes. The 'collective effect' or 'collective end' (Shared, Miller 177) is normatively different from the aggregation of the individual effects in the sense that it signifies an atmosphere of fear (Collective, Downie 51) To understand how the bystanders contribute to the collective effects, I have argued we should analyze relations between the perpetrators and the bystanders, which are mutually reinforcing. The populist criminal regimes, as we saw, seek support and approval. At the implementation phase the group of perpetrators forms and they can be said to act jointly (Shared, Miller 179). The only way to avoid becoming member of the derivate group of bystanders on my approach is to withhold support from the perpetrators at T1, which effectively means that the community of victims would recognize the agent's act as an act of disassociation.

This relationship between the bystanders and the regime 'solidifies' – as May argues, "The shared attitudes within a community come, over time, to create a shared identification: a shared feeling of solidarity" (246) – as the bystanders remain mute, disengaged and indifferent to the fate of the victims. Miller argues that "an individual's action need be neither a necessary nor a sufficient condition of an outcome for the individual to be fully morally responsible for that outcome. If an individual makes a causal contribution to an outcome, and does so in the service of an intention or end to realize that outcome, then this is sufficient . . ." (Shared 181). So,

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intention may or it may not be relevant. The regime can thus be said to retain normative control over the questions of life and death in the collective, thereby largely 'controlling' the outcome of their policies. Some of the bystanders bear moral responsibility for failing to fulfill their positive duty to help the victims, others for failing to fulfill their negative duty not to harm the victims, while others still bear moral responsibility for holding the wrong moral attitudes toward the victims. Each of these may be considered, as per Kutz, to be a 'participatory intention' to do their part in the collective action as designed and envisioned by the criminal regime. I believe that I have upheld the Autonomy Principle, because every morally-relevant contribution to the collective effect is carefully analyzed upon which the bystanders are identified.

Thus, the typology of the group of bystanders which I already discussed in Chapter One, addresses the question of each individual's contribution to the collective effects: (1) supporters, (2) 'internal collaborators', (3) 'inner émigrés', and (4) transitional bystander. This typology, I have argued, represents types of morally-relevant contributions to the harm of 'reasonable fear', but note that the first two types share responsibility for the harms committed by the perpetrators, the mass crime itself. This responsibility is based on the wrong judgment-sensitive attitudes, which do more than tolerate the crime; they enable the crime, justify it and normalize it. Some of these bystanders become collaborators and perpetrators, others, still remain bystanders with a moral responsibility for the harm of fear, but also for the crime itself. They share – like other two types of bystanders – their collective identity with the perpetrators, but – unlike the other two types of bystanders – they also share also the moral outlook of the perpetrators (the share solidarity in Feinberg's sense and in McGary's sense (Collective 81). They do so by upholding the wrong moral attitudes. Thus, similar to May, I argue that moral responsibility of individual members of the group of bystanders is unequally distributed and non-vicarious.

This brief outline suggests that I identify the bystanders as a group due to their shared intentions (on the one side, not to disrupt the perpetrators, and on the other, not to help the victims), solidarity, and wrong attitudes, while I argue that the regime seizes normative control because bystanders fail to provide a morally permissible response to the question 'what should I do'. The group of bystanders does not have a separate ontological status from its individual members, but it is relevant in explaining how individuals come to participate in mass crime. What I began with is the collective effect of fear, which is caused by the group of bystanders. As I said, although the bystander group does not possess a decision-making structure, its collective effects are largely affected by the regime. Unlike in regime crime, where the population or a group within it is not identified by its positive attitude to the regime and criminal practices, in the context of collective crime, we observe crime-specific individual and relational characteristics. In the cases of Nazi Germany and Milošević's Serbia, we observe that the criminal regimes in the preparatory phase of collective crime openly proclaim their values and goals. Thus, the subjects are presented with a choice. The group of bystanders is formed when a segment of population chooses to uphold the proposed norms. In doing so, they give authority to the criminal regime not only to represent them but to interpret (judge and evaluate) and subsequently re-interpret the reality for them. As Howard McGary argues, "the person is liable because his emotional support for the group that engages in faulty practices enables the group to remain powerful and to continue its unjust practices . . . and the emotional feelings of security that group members feel contribute to the disadvantage and oppression of members of other groups. . . ." (Collective 84). So, although bystanders are not an organized group, and at the preparatory stage they resemble a mob, in the implantation phase, via their lack of response to the policies of the regime and also via their support for the regime, they come to form a group. May argues that

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"When a group develops a culture, then that group is not merely an aggregate, for like a decision-making procedure a culture allows for the amalgamation of individual actions and attitudes into something more than the mere sum of its parts (Collective 246).

Now, I have argued that disassociation – as I have defined it, an act of aligning one's interests with the community of victims and acting on their behalf – exempts agents from ascription of moral responsibility. This relevance of participation is questioned by Cassie Striblen: "When other members of these identity groups cause harm, you cannot easily disassociate yourself from the group and in that way avoid responding to the harm" (469). Dimitrijević and Linda Radzik would also argue that disassociating yourself from the group does not relieve one of moral responsibility because a response is still owed to the victim community who hold demands due to their reasonable fear.[93] I incorporate some of the aspects of May's, Dimitrijević's and Radzik's approaches into my own, by directly linking the acts of disassociation from the group with the duty to respond thesis.[94] Again, I hold that as long as the disassociation from the perpetrator collective correlates with the fulfillment of the positive and negative duty toward the victim community, the act of disassociation is morally significant; the act of disassociation is not considered a morally significant act per se. It is thus the *reason* for disassociation and not the *act* of disassociation that is morally significant. McGary recognizes that the act of disassociation may not be based on morally relevant reasons (Collective 85), but I

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

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

believe that my approach is sensitive to this. Thus, I argue that membership alone does not ground moral responsibility.[95] Or rather, that membership – as May argued -- ought to be conceptualized so as to include attitudes.

To reiterate, in order to understand how the aspects of solidarity and normative programming control play a part in understanding how bystanders produce harm, we have turned to the larger context within which bystanders act. This is the context of a nation and subsequently of an 'identity group'. Nations have a shared culture, history, tradition, etc., where members share at least some relevant common interests and identity. As the criminal regime emerges, however, collective crime changes the identity of a nation in the sense that a more cohesive 'identity group' comes to be formed. Once claims are made against entire groups of people, 'identity groups' over time achieve homogenization, with structure, hierarchy and authority. 'Identity groups,' to which Striblen assigns moral agency, bear relevance for the concept of bystander to be properly understood, because a bystander is related to the mass crime not only by being a witness, but also by sharing her identity with the perpetrators in the larger identity group.

These larger contexts help identify mechanisms for establishing and imposing norms and 'controlling' behavior. Shockley pointed out that the group can be said to have collective control over its members when agents abide by the practices and conventions of the group (445). In the case of collective crime, the identity group to which perpetrators belong can be said to control the behavior and actions of its members, whether these are intentional participants or not. As in gangs, members of the bystander group – as Shockley observed "might have a wide range of interests and values, and there may be no common end which moves them to act, other than the

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

common identity that binds them to the conventions of the group," the most adhesive being the lack of care for the well being of the victimized group (444).

As already stated, in collective crime, unlike in regime crime, intentions are openly communicated and their 'proper' ('correct') interpretation is provided because it is not *mere* obedience that is the goal of the regime but agreement and approval from the subjects. In doing so, the criminal regimes use the public space to build their support: in the preparatory phase, the public space is the space for negotiation between the regime and its subjects. Failing to dissent at the preparatory phase, leads to complicity in the implementation phase (be it internal collaboration or inner emigration), which serves to solidify the regime's normative control over its subject. Thus, it can be argued that a collectively produced state of affairs occurred not only because of the bystanders' intentional actions and omissions to act but also due to unintentional participation. Unintentional acts in no way disturb perpetrator intentions and simultaneously communicate indifference toward the suffering of the community of victims. Depending on the point of view, then, as May argues, "bystanders represent the potential of resistance, or for the victims may represent the only source of hope left" (Genocide 521). As already argued, and as per Kutz, bystanders do not have to endorse any common ends of the larger collective (extermination) for us to be able to speak of a collective action; all that is needed is the bystanders' intention to do something that in no way disturbs the regime's intentions (to live normally).

Since "complicity need not imply intentional action" (Payson 9) an explanation of the typology of the members of the group of bystanders introduced in Chapter One is due. The first sub-category refers to the unintentional sustaining of an unjust system due to factual ignorance or real/perceived fear, and the second refers to intentional sustaining of an unjust system due to

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culpable ignorance and wrong attitudes. I identify members of the group of bystanders via two considerations: *the centripetal force* of shared common attitudes and behaviors (positive identification discussed earlier) and *the centrifugal force* of external factors (negative identification). Thus, I have proposes a total of three types of bystanders at T1: (1) 'inner emigrants' or internal dissenters, (2) 'internal collaborators', and (3) supporters; the first sub-type represents non-intentional participants, while the last two types represent agents who intentionally sustain the criminal regime. In addition to these three types there is yet one more. There is a category of agents who publically opposed the criminal regime at T1 but who in T2 remain/become private citizens. In the following chapter, I analyze whether these agents' passivity in T2 can be morally justified. For now let me state that although it is not easy to argue that the opponents of yesteryear can be held accountable for their wrong acts of today, I aim to show that although they are not complicit for their behavior at T1 they become complicit in perpetuating a secondary harm at T2. Thereby, they come to constitute yet another type of bystander, (4) the 'transitional' bystander.

What distinguishes bystanders from their compatriots who also had the bad moral luck of sharing their identity with the perpetrators is their choice to uphold the proclaimed values. May argues that "individual identity is intimately connected with group membership. From a moral perspective, it is vitally important that people continue to feel motivated to shape and reshape their communities and other groups" (Collective 252). Their compatriots who reject these values only in private remain targets of the interest of this study and are further analyzed in chapter four; others, who act upon their proper attitudes, and who fulfill their duties to help the victims or prevent harm against the victims, as I already argued, are not considered bystanders on my approach.

In sum, members of the group of bystanders will sometimes: blame ignorance (a form of denial) for their inaction, blame fear or threat (real or imagined) for their wrong actions, blame lack of any power to change things for their passivity, deny that they have a duty to care for the victims, deny the victims' moral worth and equality by upholding wrong moral attitudes. And yet, others will deny having any responsibility just because they share their identity with the perpetrators (they did it, not me). Some will think of themselves as victims so as to not recognize others' suffering or will consider themselves as victims of their own or other perpetrator groups, thus claiming that their moral responsibility is excused because they themselves already suffered. All of these amount to strategies of denial and self-deception and help us identify agents who belong to one of the three sub-types of bystanders. They share with each other: bad moral luck, rejection of universal moral norms, denial of moral duties toward the community of victims, failing to act upon their duties, and passive coexistence with the criminal regime. These shared characteristics communicate indifference to the victims and solidarity to the perpetrators.

CHAPTER FOUR – BYSTANDERS AT T2

In section one titled "Transitioning from Collective Crime," I assess the transitional period (T2[96]), where I explore the tense relationship between the group ethics and universal moral values. In the following two sections, "Positive Identification of Denial: The Act of Speech" and "Negative Identification of Denial: Silence," I argue that bystanders engage in forms of denial whose outward expression is found in both public narratives and silence. In section four, "T2-specific Type of Bystander" I aim to show that the concept of bystander ought to be extended so as to include yet a new sub-type. In section five, "The Importance of the Group of Bystanders at T2," I sketch a relational model that aims to explain the importance of the group of bystanders[97] in post-criminal societies; I present their roles from two different perspectives: the community of victims and the perpetrator group, in post-criminal societies transitioning to democracy. I do so in order to explicate the complex social dynamics that set the background of collective crime and for its legacies in the transition period. In section six, "Accepting Moral Responsibility as a Strategy for 'Dealing with the Past'", I propose the proper attitude of bystanders to the criminal legacies. I analyze what attitude entails a normative break with the criminal past, or what it means to have the proper attitude toward criminal past. I argue this proper attitude is best understood as what Linda Radzik and Nenad Dimitrijević have called the 'duty to respond' in two senses: toward the community of victims and toward the society in its entirety. In section seven, "The 'Duty to Respond'," I address the content, the scope and the addresses of this specific duty.

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96 T2 (in post 2000 Serbia and post 1945 Germany) is immediate after regime change; the so-called transitional period when what to do about the crime is being decided.

97 At T2, the group of bystanders represents agents who are not criminally or politically liable for their actions, so the group includes supporters and the 'silent observers'. The group of bystanders is diverse, but the plurality of roles, does not reveal a plurality of attitudes toward the crime. In fact, these attitudes are homogenous in so far as they diverge within a set of norms that Dimitrijević referred to as 'perverted group ethics'.

1.18 Transitioning from Collective Crime

As Ruti Teitel observed, "Transitions appear – almost by definition – to imply periods of historical discontinuity" (69). In one important way, the fall of the criminal regime implies a potential for a (normative) discontinuity. It creates a possibility for change, but the continuation of the 'criminal ideology' threatens to undermine this potential. The potentiality of transitions (T2) to responsibly account for the criminal past is elegantly observed by Jean Amery, a survivor of Auschwitz, who wrote in April 1945, "Still for quite some time there lasted what was for me a totally unprecedented social and moral status, and it elated me to the extreme: being what I was – a surviving resistance fighter, Jew, victim of prosecution by a universally hated regime – there was mutual understanding between me and the rest of the world" (64). Jean Amery's words capture the gravity (albeit the brevity) of the moment in German history saturated with potential for the moral point of view of the victim and the universal moral norms to jointly confront the 'perverted group ethics'. With the fall of the criminal regime, in the transitional society universal moral principles of the indigenous and exogenous agents begin to challenge the predominant 'perverted group ethics'. In the two cases of collective crime I reference in my research, the agents of change are those who uphold universal moral principles: they consist of those who were expelled from the moral universe and the exogenous agents, whereas in the cases of regime crime, they consist of entire populations, or rather indigenous agents because the horizontal bonds of trust amongst the population are not broken. In societies where collective crime occurred, the largest segment of the population does not constitute agents of change.

Although in each of the two cases criminal regimes were ousted, the 'criminal ideologies' survived. In *Postwar: a History of Europe since 1945,* Tony Judt extracted some opinions from surveys conducted in post Nazi Germany that confirm this observation. According to Judt, a

majority of Germans in the years 1945-49 stated National Socialism to have been a good idea, badly applied; in 1946, 37 percent in the U.S. occupation zone said that 'the extermination of the Jews and Poles and other non-Aryans was necessary for the security of Germans'; in 1946 one in three in the U.S. occupation zone said that Jews should not have the same rights as those belonging to the Aryan race; in 1950 one in three said the Nuremberg trials had been unfair; in 1952, 37 percent said Germany was better off without the Jews; and in 1952, 25 percent had a good opinion of Hitler (58).

A number of public opinion surveys from Serbia since 2000 also serve as evidence to remind us that the norms that guide the behavior of citizens today (after the fall of the criminal regime) are those which mitigated the crimes of the past. If we consult any of the number of sociological studies of the attitudes of ordinary citizens toward the perpetrators and the victims of yesterday's harms, we will observe that even when facts about crimes are established, citizens continue to deny their interpretation and their relevance. It is precisely this avoidance that allows the criminal ideology to subsist. A response given in a 2003 study undertaken by the *Institute for Philosophy and Social Theory* from Belgrade is representative of the majority's position; when asked whether there was a need to deal with the past, a respondent said "I cannot feel responsible for something specific groups such as the paramilitaries, did . . . I cannot feel guilty for something done by my people."[98] So, we observe that in the aftermath of crime, denial continues to be employed (criminal activities were not an official policy of the state, but of some illegal groups, and the like) as a strategy for 'dealing' with the past.

The term 'criminal ideology' is used here to depict the relational complexity of an undertaking bound by its bureaucratic (structural) necessity and normative aim (of group ethics).

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98 Translated from *Politika i svakodnevni život*: 158.

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Ideologies, unlike regimes, resist clear temporal breaks. Dimitrijević has characterized this criminal ideology in terms of what he calls 'normalization of crime' which he uses as a criterion for identification of *criminal regimes*. This criterion, according to him, has two aspects: institutionalization of crime and internalization of the regime's values (Duty 20). In other words, as regimes fall, the bureaucracies that served them and the agents who uphold their ethics continue to represent the two aspects of criminal regimes that survive the regime change.

Thus, transitional periods from mass crimes to democracy hold two conflicting aspects simultaneously: (1) transformative potential, which did not exist prior to the regime change, and also (2) criminal legacies of the past – the complicit bureaucracy and a large population that upholds 'perverted group ethics'. T2 is a period of transformation from a system "where crime was the law" towards the rule of law, which has the potential for legal, political and moral change, on both social and individual levels. Yet T2 is also a period of stagnation where agents who have internalized the criminal regime's values -- "to turn the ultimate evil into the criterion of a politically and morally good action" (Duty 42) engage in the normalization of crime through denial and silence.

Transitional justice, in its many forms, aims to resolve this conflict in post-criminal societies. Juan E. Mendez argues it makes good political sense to pursue retrospective justice as "an urgent task of democratization, as it highlights the fundamental character of the new order to be established, an order based on the rule of law and on respect for the dignity and worth of each human person" (1). Undoubtedly, proponents of the new order to be established, guided by universal moral norms come into conflict with the forces that "retain a quota of power and are likely to create new obstacles along the path of reform. An early test of their residual powers is, precisely, the attempt to protect their own representatives against any settling of accounts for

past human rights violations. . . ." (Mendez 12). These residual powers largely determine the success of the frequently made 'empirical' claims of the constraints transitional regimes face in the aftermath of mass crime (claims made against full blown transitional justice mechanisms due to political and economic frailty, etc.). Jon Elster, for example, argues that establishing official truth and justice (via trials) might create instability in the already frail society. Yet, the proponents of comprehensive transitional justice hold that post-criminal societies have obligations toward the victims and to the society at large.[99]

In each of the two cases, Nazi Germany and Serbia, different transitional justice (TJ) mechanisms to deal with the criminal legacies of the past were employed. However, the myth of the innocence of the bystanders resulted to a lesser or greater degree because TJ mechanisms are simply not designed to target this sector of the population. In Nazi Germany and in Serbia, while a number of perpetrators had been criminally charged in the international and domestic war crimes trials, the roles played by bystanders have largely been ignored. Fletcher, for example, points out that the "international criminal convictions single out and stigmatize the accused, normalizing the behavior of bystanders and potentially creating a false moral innocence for the unindicted and their bystander supporters."[100] Similarly, in other cases of collective crime such as South Africa, where TJ mechanisms were also employed, the role of bystanders remained largely

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99 Juan Mendez argues that the state has four obligations: 1. to do justice (prosecute and punish the perpetrators), 2. to grant victims the right to know the truth (the ability to investigate all aspects of a violation that mean veiled in secrecy and to disclose this truth to the victims and to the society enlarge), 3. to grant reparations to victims in a manner that recognizes their dignity and worth as human beings (apologies, monetary compensation, etc), and 4. those who committed crimes must not be allowed to serve in the reconstituted, democratic law-enforcement or security-related bodies.

100 "Finally, international criminal law constrains the doctrinal ability of international justice mechanism to address more directly the role of bystanders in atrocities. The principles of fundamental fairness and due process which strengthen the credibility of these institutions also limit their ability to promote role acknowledgment among bystanders" (Fletcher Laurel 1076).

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unexplored.[101] TJ mechanisms may influence bystander behavior at T2, but they certainly do not explore them.

Thus, the moral predicament created by the role of bystanders in creating conditions for collective crime is left largely unchallenged by these mechanisms. The result is that norms which permitted tolerance of crime and which are in direct conflict with the guiding principles of equal liberties and human dignity that are the norms of liberal democracies being aspired to, are embedded. To 'deal with the evil past' means to engage in Jürgen Habermas' words in 'authentic communication systems' – to reach outside the moral universe of the group.

So, on the one side we observe the criminal legacies which persist in transitional periods – complicit bureaucracies with institutional memory revised to fit internalized values and silent agents who have accepted the criminal regime's justifications for crime and who thereby continue to engage in denial, both of which lead to what Hannah Arendt has referred to as the 'secondary moral collapse'. On the other side, we observe a potential embodied in the community of victims and agents who uphold universal moral norms.

1.19 POSITIVE IDENTIFICATION OF DENIAL AT T2: THE ACT OF SPEECH

Bystanders are in the transitional period faced with a moral choice, between the 'perverted group ethics' (attitudes in support or toleration of the violent policies of the exclusion toward the victims) and universal moral values which were prevalent moral norms[102] before the criminal regimes came to power and which came to be rejected at T1. In fact, it can be argued that *a bystander* personifies *a transition*. Bystanders at T2, I will argue in this and in subsequent

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101 See (A Country Unmasked Boraine).

102 Jews had been fellow citizens before 1933 (T0), although by the time Germany invaded Poland in 1939 they no longer belonged to Germans' universe of moral obligation (T1). Slovenes, Croatians, Bosnians, Albanians had been fellow citizens before 1987 (T0), by the time Serbia waged wars in 1991, they no longer belonged to Serbs' universe of moral obligation (T1).

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sections, fail to respect, in Scanlon's words, "the value of human (rational) life [which] requires us to treat rational creatures only in ways that would be allowed by principles that they could not reasonably reject insofar as they, too, were seeking principles of mutual governance, which other rational creatures could not reasonably reject" (What We Owe 106). They commit a secondary harm at T2 against the community of victims by engaging in denial and participating in the 'culture of silence'. In Chapter Three, I argued that bystanders harm the victims at T1 by causing: loss of trust, humiliation, fear, loneliness and abandonment and finally by what Claudia Card termed 'social death'. To deny having caused these harms at T1 is to commit additional harm at T2.

To provide an example of the positive identification – understood here as 'the act of speech'[103] – of denial, I refer to an event held in Belgrade some years ago. A decade has passed since Serbia has been admitted into the community of democratic nations, yet numerous public opinion polls, in-depth interviews, sociological studies and media analysis suggest that the largest segment of the population express contempt towards the victimized group(s), not the perpetrators. A panel discussion was held on May 17, 2005 at the law faculty of Belgrade University,[104] in Serbia. The panel was organized by a Belgrade-based NGO *Nomokanon*[105] under the title of 'The Truth about Srebrenica', during which the crimes committed against the Bosnian population in 1995 were not denied in literal terms; instead, we observe what Cohen referred to as interpretive and implicatory denial. Hundreds of participants insisted that the victims were soldiers of the 'Muslim army sacrificed by Alija Izetbegović to provoke a foreign military intervention.' The event was marked by chants of support for the former Bosnian Serb leader and

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103 Or, rather, active presence of denial (as opposed to silence, the passive presence of denial).
104 For detailed information about the Faculty's official response to the "Srebrenica Debate" see: http://www.ius.bg.ac.yu/informacije/stavPFengl.htm
105 *Nomokanon* is an organization of law students which was founded in 2002.

ICTY indictee Radovan Karadžić. Several young men in the audience wore T-shirts bearing the inscription 'Serb Hero Karadzic.' When the journalist Ljiljana Bulatović (one of the four panelists) greeted the audience with a three-finger salute[106], a number of spectators reciprocated, rose to their feet and chanted 'Karadžić, Karadžić!' Bulatović called the memorial to the victims at Potočari a 'fictitious location and an occupied part of [BiH entity] Republika Srpska where they [the Bosnians] claim the victims of Ratko Mladić lie' and suggested the Bosnians 'relocate the memorial to their territory.' The second panelist, Slobodan Milošević's legal counsel, the attorney Dragoslav Ognjanović, said that the events at Srebrenica were a tragedy, but in reality, the lies about that crime are an even greater tragedy. The third panelist, the retired army general Radovan Radinović, argued that although the Srebrenica crime had brought discredit on all, the greatest responsibility for it was borne by the UN 'under whose protection Srebrenica was at the time.' One of the speakers congratulated *Nomokanon* for talking about "the truth, so nobody can force us to be ashamed of what deserves our respect. A journalist, Miodrag Žarković, later wrote:

> an action provokes a reaction. There is no simpler or truer principle. If you are a wife beater, your daughter is certain to fall in love with a local thug. This law of nature operates on us Serbs as well. If every night, before going to bed, we are told the story of Srebrenica, we will wish never to hear it again in our lives. If every sitting of the parliament turns into a quarrel about Srebrenica, next time we will elect a parliament that will quarrel about something else.[107]

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106 See Catharine A. Mackinnon: http://www.nytimes.com/1997/01/02/opinion/l-serbian-salute-998036.html; some include: "This salute was used to swear in troops of the Nedic-Ljotic Nazi collaborationist regime in Belgrade, Serbia, that was complicit in the Holocaust; Survivors of mass crimes report being forced to use the salute during torture, rape and killing by Serbian forces; Neo-Nazis in Germany today, denied the Hitler salute by German law, use the three-fingered salute in its place."

107 The source is BBC Monitoring Europe, political service: Serbian paper condemns "hysterical" Srebrenica blame campaign (July 1, 2005); Excerpt from commentary by Miodrag Žarković: "Srebrenica and Reaction," published by the Belgrade-based newspaper *Glas javnosti* on June 29, 2005.

This revisionary rhetoric does not represent a marginal effort, but an institutional reality. The marginal voice still belongs to those who remind the citizenry that sixteen years ago genocide was committed by Serbian forces in Srebrenica. Walter Benjamin's instruction to historians that "to articulate the past historically does not mean to recognize it 'the way it really was' (Ranke). It means to seize hold of a memory as it flashes up at a moment of danger" (255) serves as a reminder to Serbia that the moments of danger remain to be seized yet. Until then, strategies of denial exemplified in the revisionary rhetoric, language of euphemisms and superlatives will loom large. This example from Serbia illustrates the point that what we see in Serbia today is interpretive denial (the crime happened because the victims were in fact perpetrators) and implicatory denial (the 'real' crime is not Srebrenica itself, but lying about it; thus, the 'real' crime is committed against the Serbs). The first strategy – interpretive denial -- presumes that citizens are no longer denying the facts themselves; instead these are assigned different meanings, euphemisms, technical jargon. In the second strategy, or implicatory denial, the facts and their conventional interpretations are not being denied. Rather, the psychological, moral and political implications are minimized or denied. As Cohen wrote,

> Interpretive denial ranges from a genuine inability to grasp what the facts mean to others, to deeply cynical renamings to avoid moral censure or legal accountability. Implicatory denials come from some rather banal folk techniques for avoiding moral or psychological demands, but are invoked with mystifying degrees of sincerity (9).

Literal denial is largely missing from the transitional period, because as Aryeh Neier argued ". . . the emergence of war correspondents in the mid-nineteenth century, who were able to present the horrors of modern warfare to their readers at home . . ." (Oklick 333) blocked the

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possibility for engaging in denying facts in the aftermath of mass crime. In Chapter Three, I also argued that, following Aristotle, factual ignorance of agents at T1 – although in very rare cases (of genuine or non-culpable ignorance) – could have played some explanatory role in their judgments and/or actions. In T2 however, information about the facts permeate the public domain, whereby the exculpating condition of factual ignorance no longer obtains. The strategy of literal denial employed at T1 is thus largely ignored at T2; instead, we observe the majority of the population engaging in denials of interpretations of facts and their implications.

What more can be said about the characteristics of denial people typically engage in the aftermath of mass crime? Cohen argues that besides being individual, denial can also be shared, collective and organized. Individual denial is well illustrated in the cases of Eichmann and the notorious former Minister of Police in South Africa Adrian Vlok; each of the individuals denied (one at a trial in 1961 and the other before the SA Truth and Reconciliation Commission) responsibility (did not murder anyone, nor did he order that anyone be harmed) and denied knowledge of the whole picture (was only aware of the fragmented bits). In Cohen's own words,

> Collective versions of psychological concepts – collective memory, cultural repression, collective denial, shared forgetting, and social amnesia – assume that an entire society can forget, repress or disassociate itself from its discreditable past record. This may happen either through official state policy – the deliberative cover-up, the rewriting of history – or through cultural slippage in which information just disappears. Personal denials of historical events draw on this shared narrative (132).

From the earlier example, we observe that denial employed in Serbia only five years after the criminal regime was ousted, is at least *shared* if not organized, and as such provides a safety net

for the individual strategies of denial. The narrative about Srebrenica also represents a form of *historical denial*, which Cohen argues deals with memory, forgetting and repression.

Also, at T2, we observe what Cohen termed *cultural denial*[108], which does not require official organization by the state, rather people pretend to believe information they know is false. Bystanders (who were agents of what Cohen termed *official denial* at T1) become agents of cultural denial in the aftermath of collective crime, which simultaneously necessitates and results from the political strategy of 'closing the books'. The motivation for employing denial at T2 is the same as before – to live a 'normal' life. Is thus the observed avoidance of bystanders morally justifiable at T2? In terms of social relations, cultural denial of bystanders impacts the state of affairs in the post criminal society because it serves the interests of agents who are criminally and politically liable, thereby harming the interests of their victims. In terms of transitional justice, these agents of denial empower the political choice of the ruling elites to 'close the books' and obstruct the effort to face the past. In terms of morality, bystanders occupy an ethical position of selectively applied universal norms.

Finally, denial as per Cohen includes cognition, emotion, morality and action which can respectively be understood as: avoidance of the facts, avoidance of being disturbed, avoidance of responsibility, and avoiding taking active steps in response to knowledge. Avoidance keeps what Barnett referred to as 'parallel worlds' (128) bystanders maintained at T1 in relations to the victims. Avoidance keeps bystanders from coming to terms with their own role in perpetuating the suffering of the victims and it represents a choice made upon deliberation. One must decide to engage in avoiding to confront the proper interpretation of facts, and their implications for oneself and others. The expression of avoidance is located at the level of judgment-sensitive

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108 As distinct from official denial which we witnessed at T1 and which is initiated and sustained by the state.

attitudes, which are not permanent by definition. By judgment-sensitive attitudes, I mean "attitudes that an ideally rational person would come to have whenever that person judged there to be sufficient reason for them and that would, in an ideally rational person 'extinguish' when that person judged them not to be supported by reasons of the appropriate kind" (Moral 20). Judgment-sensitive attitudes can be overruled (Moral 24) by definition and in fact, the success or failure of this individual transformation of attitudes will determine the success or failure of the social, political and normative transformation of the society.

To summarize then, the positive identification of the denial bystanders engage in after criminal regimes fall refers to the 'acts of speech' the T2- specific denial is cultural (unlike the T1-specific denial which is official), shared (unlike the T1-specific denial which is organized), interpretive and implicatory (whereas T1-specific denial is also literal). Also, denial is a matter of choice, which makes the action and attitude of denial voluntary and as such subject to assessment of moral responsibility.

1.20 Negative Identification of Denial at T2: Silence

In this section, I aim to provide a negative identification of denial which refers to *silence,* or rather to *an absence of proper response.* I aim to answer three questions: (1) What is the meaning of silence, (2) Does the meaning change its permissibility, and (3) Is silence morally permissible at T2?

What is the meaning of silence? In the previous chapter, I have argued that silence is an outward expression of indifference. In the words of Elie Wiesel,

> Indifference reduces the other to an abstraction . . . In a way to be indifferent . . .
> is what makes the human being inhuman. Indifference, after all, is more
> dangerous than anger and hatred. . . And, therefore, indifference is always the

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friend of the enemy, for it benefits the aggressor – never his victim, whose pain is magnified when he or she feels forgotten.[109]

Indifference in mass crime, thus understood, connotes an ethical position in which the 'dead silence of unconcern' (Bauman 74) and apathy amounts to a concept filled with presence, content, or existence of an ethical position. Indifference in the context of mass crime resists its standard interpretation of indifference as *lack of feeling.* To lack feeling when one is witnessing torture of another person requires an ethical stance: this suggests that indifference is filled with both absence (of reaction) and presence (of perverted ethical values). To hold onto the standard concept of indifference commits one to missing the proper meaning it holds and the role it has in mass crime. Consider for example, Daniel J. Goldhagen's argument that indifference does not appropriately capture the predominant attitudes of Germans because it is "little more than the absence of (recorded) expression with regard to some anti-Jewish measure" (441). He passes by the concept he thinks insufficient, and in doing so he misses its moral significance for understanding mass crime; for one can hardly be responsible for *lacking a feeling,* but as argued in this absence of feeling there is a presence of the perverted ethical norms. Thus, I hold that in the context of mass crime, indifference is an ethical position of a moral agent, which finds its outwardly expression in silence and which is a result of denial, which, if we stay with the same example of witnessing a person being tortured, must originate in culpable ignorance, for one can hardly remain indifferent to his mother being tortured.

In the aftermath of mass crime indifference predominates still and what Thomas Scanlon argues continues to hold at T2: "People who are indifferent to the interests of other rational

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109 Holocaust survivor and Nobel Laureate, Elie Wiesel, gave this speech in the East Room of the White House on April 12, 1999, as part of the Millennium Lecture series, hosted by President Bill Clinton and First Lady Hillary Rodham Clinton.

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beings are open to moral criticism . . . whether or not they behave in ways that cause others harm or fail to help them in ways that they should" (Moral 88). Thus, at T2 we observe a presence of a (1) wrong ethical position toward the community of victims for whom indifference is reserved, and (2) wrong ethical position toward the criminal past, which Cohen referred to as historical denial, which deals with memory, forgetting and repression and is most succinctly expressed in the phrase 'I can't remember' (Barnett 126). Bystanders engage in silence, understood as both, silence constructed by meaningless words (as we saw in the example of the panel on Srebrenica organized by law students in Belgrade) and literal deafening silence, in the aftermath of mass crime due to indifference, which is caused by rejection of universal moral norms whose reach extends to include the community of victims and by denial of memory.

Does the meaning of silence change its permissibility? The meaning of silence in the aftermath of regime crime has a different meaning than in cases of collective crime (remaining silent in response to crime and its consequences). If we consider cases like Spain (after Franco) we will see that the majority of the population was in this sense silent. Simply put, silence was agreed to in order to avoid bloodshed, thus the meaning of silence is a morally valuable end, to keep the peace. In Serbia, silence does not serve the purpose to prevent bloodshed. As a matter of fact, in the Serbian case, there is no moral end that is aimed at with silence. Consider how the meaning of the act of silence changes when we think about the silence of the survivors, or as Barnett says 'the silent world of survivors', which she describes as ". . . a world where the voices of loved ones – children, parents, brothers, and sisters – had been silenced, terribly" (126). The meaning of bystanders' silence is indifference whereas the meaning of survivors' silence is

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possibly best understood as the impossibility to speak. Scanlon's argument, then, that the meaning of the act changes the permissibility of it seems justified.[110]

Finally, is it morally permissible for those who share their collective identity with the perpetrators to keep quiet about the criminal past? As Robert Sparrow argues "The failure to respond appropriately in the knowledge of a wrong involves a failure to morally distance oneself from the wrong-doer which is not only itself morally culpable but also risks sharing the responsibility for the original crime" (11).

Answers to the three questions raised confirm that the same attitude identified under the criminal regime is found in the post-criminal periods. Thus, Dimitrijević's conceptualization of the predominant silence in the transitional context as the 'culture of silence' denotes:

> a pattern of values, beliefs and attitudes that gives a distinctive shape to a group's stance and actions towards the past regime, mass crimes committed, and their consequences. This pattern consists of the empirically observable rejection of the majority of the population of confronting the elementary facts of the crimes, and it includes different modalities of emotions, evaluations and behavior related to the crimes (Continuity of Silence 124).

Engaging in denial and remaining silent in the face of the suffering of the community of victims during and after the criminal regime falls are considered morally wrong attitudes and actions. This silence causes, as Brudholm reminds us, ". . . the loneliness of the person whose normative expectation of inter human solidarity and care are most radically disrupted. When the reality of the injuries is repressed, when impunity and forgetfulness reign . . . the victims' protests are set aside as expressions of pathology or barbarity . . . existence in abandonment is the fate of the

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110 Silence by the victim community is certainly not impermissible, because the meaning of that silence is to survive the memory of unbearable suffering.

victims" (125). Arendt, Amery, Ralph Giordano and several others refer to this silence – or absence of meaningful response – as not understandable or harmless but rather as the 'second moral collapse' or the 'second great guilt' in the German case (Brudholm 75). The moral abyss is the created in the standoff between the victims' abandonment and loneliness on the one side and the communicational force of the deadly silence offered by those who refuse to come to terms with what really happened (Arendt).

1.21 T2-Specific Type of Bystander

I now turn to the T2-specific categorization of bystanders. I will argue that the majority of them derive from what I identified as the 'mixed cases' in the previous chapter, with only one type emerging specifically from the T2 context. Before I identify these types let me first sketch out the characteristics of a morally decent person at T2: I have assumed that if it can be reasonably argued that an agent had no alternative to chose otherwise, but to remain passive and silent at T1, and he holds proper moral attitudes then he will act upon those attitudes at T2. The assumption is that he will at T2 recognize that the duties he was morally required to fulfill at T1 are easy (in the sense that they no longer require courage) to fulfill at T2 (let's say to help the victims achieve justice). As Radzik and Dimitrijević argue, an expression of a moral attitude in response to the crime is owed or rather morally required, and a morally decent person recognizes this. What does it mean to have a morally right or proper attitude? According to Scanlon, "Being moral involves seeing reason to exclude some considerations from the realm of relevant reasons (under certain conditions) just as it involves reasons for including others" (Moral 157). Again, failing to be moved by reasons that would motivate one into action on behalf of the victims at T2, is to be open to moral criticism.

Consider now the following 'mixed' cases: (1) An agent who was passive at T1 chooses to remain passive at T2. Is he a morally decent agent or is he a bystander? Let's say that he was passive at T1 due to fear, which he no longer feels at T2. At T1 his passivity did not tell us anything about his moral character, but should he remain passive at T2, it does. How? We could proceed to ask ourselves why would an agent who holds the victim in equal esteem choose not to act upon his duty to help the victim when he can at T2? Why would he, who acknowledges at T1 that he has duties toward the victim but is unable to fulfill them because of fear, choose not to fulfill his duties at T2, when he is no longer afraid? My response is − because he held and continues to hold wrong moral attitudes, and is thus a bystander.

(2) An agent who at T1 and due to factual ignorance forms morally wrong attitudes[111] toward the victims, the perpetrators and their crimes. In the face of new information at T2, she re-visits the reasons for holding these attitudes upon reflection and engages in critically judging the criminal past (including her own role in it) and its legacies today. In this agent's case, factual ignorance is taken to behave as an explanatory factor for the wrong attitudes held at T1.[112] She decides to disassociate herself at T2 from her collective that committed the crimes ('I don't see myself as a member of the collective'). I hold that Cassie Striblen's claim "When other members of . . . identity groups cause harm, you cannot easily disassociate yourself from the group and in that way avoid responding to the harm" is especially pertinent for the transitional period (469). On my account, at T1, the cost of disassociating (meaning aligning one's interests with the community of victims) oneself from the collective that perpetrates crime are high enough to make the move morally relevant. However, at T2, they are too low to matter. Thus, if this agent chooses not to act (again, in the interest of the community of victims) at T2, but instead distances

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111 For which he/she would not be held morally responsible.
112 Since this is certainly a possibility (albeit a rarity), I have included it.

herself by remaining passive but holding the right attitudes, she is identified as a bystander regardless of the 'change of heart'.

(3) An agent disassociates herself at T1 from her collective that is committing harms; she does so by aligning her interests with the community of victims and thereby exposes herself to retaliation by her own group. She at T2 decides to become passive. Dimitrijević and Radzik[113] argue that disassociating oneself from the group does not relieve one of moral responsibility because a response is still owed to the victim community who hold demands due to their reasonable fear. Presumably this agent knows that by choosing to remain passive at T2, she is failing to fulfill her responsibility. Thus, she is identified as a bystander.

I tried to illustrate three different cases, which only become open to our assessment at T2 (prior to that, or at T1 they represented 'mixed' cases). Let me now explain how I arrived to the above conclusions. My contention is that, at T2[114], moral agents should experience moral residue due to the fact that before the criminal regime was ousted they were the silent majority. Why? Even under coercion (in the light of which presumably this population remained silent) they did not lose the basic moral capacity to distinguish between right and wrong; they knew, or should have known, that what was going on was wrong. A hero is not faced with a moral challenge, neither is a morally corrupt person, nor an ignorant person (whose factual ignorance is justifiable).[115] However, a morally decent person is faced with a moral challenge. Moral challenges should have arisen: perpetrators commit crimes, thereby creating choice situations, where all available options are in some sense morally acceptable and unacceptable for the agent

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113 Radzik says "Duties of response often cannot be quickly and finally discharged. Response is necessary because of a reasonable fear on the part of the victimized group. . . And reasonable fear often does not disappear with one expression of regret or one caring interaction. The duty to respond lasts as long as the other's fear continues, and continues to be reasonable, even into the next generation" ("Collective Responsibility and Duties to Respond" 469).
114 T2 refers to the time period that begins (is differentiated from T1) when the criminal regime falls.
115 A coerced person might be faced with a moral challenge, although these cases of coercion are rare (in the sense that someone at a gun point has to choose) so I will for now leave them out.

(regardless of how remote the agent might be from the actual crime; the issue here is how to answer the question 'what can I do to help?'). In fact it seems that if an agent does not face a moral challenge, then his/her character is at least questionable.

The moral challenge looks like this – a morally decent person would have been faced with a choice to do as much possible to help a victim (or to prevent harm) *and* at the same time to keep his loved ones out of harm's way. Some might argue that often at T1, decent persons are faced with a lack of choice, (they see the criminal practice and grasp its moral harm, but there is nothing – they think – they can do), which would make having a moral challenge impossible. But I argue that this is not necessarily the case. In the case of an agent who judges the crime as justifiable, non-action at T2 is easy to understand. But what happens when we have an agent who judges the crime as wrong but who was prevented from acting on that right judgment due to fear at T1 (otherwise he/she would have)? Does this conflict between the right judgment and the perceived inability to act on it not create a moral difficulty? A moral agent who judges the crime as wrong, due to a perceived threat from the regime, has a choice. It can be argued that the agent who chooses self-preservation over rescuing a victim is somehow facing a moral challenge, in which there is a choice between two moral actions, that exclude each other: either this proper moral attitude leads to no action (she avoids presumed harm to oneself or to the loved ones) *or* she acts on this thereby possibly putting herself or her loved ones in danger. Either choice is equally morally acceptable or unacceptable. Although, it is morally permissible not to have acted on a morally proper attitude, and therefore risking oneself or the safety of the loved ones, still we can say that a person in such circumstances faces at least a theoretical moral challenge, because the choice is real for a moral agent. If not, then are the acts of helping the victims or preventing harm not given sufficient weight in reasoning of the moral agent?

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At T2, when there is no fear from the criminal regime, this moral person would presumably express a certain attitude due to his having chosen one over the other option at T1. When remorse is not experienced and regret is not expressed at T2, about their actions and choices at T1, this suggests that there is no 'moral residue', or that there was no moral challenge faced in T1. Some would argue there is one more possible interpretation, mainly that they believe today as they believed yesterday that their attitudes, intentions and (in)actions at T1 were not morally wrong, thus (in their view) they behaved and acted in a morally right way. They regret nothing because what they did (not do) in the past represents their best self – they think this is the best/the most they could have done given the circumstances (what they would define as subjective and objective factors). They regret nothing because if they would be able to do it all over again, they would do it the same way. How is this possible? At T2 presumably we know better. How is it possible not to regret when we now know that we could have done so much more (the threats were not as real as they appeared to us at the time)? Even heroes regret. Why should we not expect the morally decent persons to feel regret?

What does it mean to be a morally decent person in the absence of this expression? Crime should bother decent morally persons in the sense that they ask themselves what they can do to help or to prevent harm. If the person decides there is nothing she can do, other than protest, but later learns that others did much more, would she not regret having judged the situation more accurately? The only true excuse for inaction is the existence of a true moral challenge at T1 that necessarily implies regret at T2. Having a moral conflict implies that the importance of the action (in fulfillment of one's duty to care for others, to offer help, or to prevent harm) is at least theoretically as important as keeping your family safe. If there was no threat at T1, is it morally permissible for a person not to help the victim? Protest does not help the victim. In other words,

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even if the agents felt like they could not make a difference (external threats prevented them), they would still look to explain at T2 why there were not able to help. The lack of remorse in transitional periods, following atrocities, suggests that they behaved in accordance with their conscience and not in response to the outside threats at T1 (thus the two conditions – of control and knowledge -- needed to establish moral responsibility seem to be fulfilled). They behave at T2 as if they were not morally bothered at T1.[116] Thus, I propose that a new type of bystander be added to the typology – the 'transitional bystander' and each of the three cases I discussed in the beginning of this section belong to this type of the bystander group.

1.22 The Importance of the Group of Bystanders at T2

Questions of moral responsibility, unlike criminal and political guilt, extend beyond individual actions. Methodological individualists, including Max Weber, Friedrich von Hayek, Karl Popper, and Jon Elster, argue that "social phenomena must be explained by showing how they result from individual actions, which in turn must be explained through reference to the intentional states that motivate the individual actors,"[117] while the normative individualists such as H. D. Lewis, claims that "no one can be responsible, in the properly ethical sense, for the conduct of another. Responsibility belongs essentially to the individual . . . no one is morally guilty except in relation to some conduct which he himself considered to be wrong" (3). Both methodological and normative individualist accounts fail to provide guidance in assessing moral responsibility of bystanders for mass crime: the first cannot account for the unintentional (non-) actions, which constitute the majority of bystander roles and the second cannot account for the

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116 Imagine a person who has a proper judgment-sensitive attitude (the regime is targeting a group in my community). Due to coercion the person does not act on his/her judgment-sensitive attitude. At T2, this regime is ousted, the person X responds to the victims 'I am sorry about what had happened, I did not know or I was not able to help you'. Remorse, shame, etc. follow.
117 See the Stanford Encyclopedia of Philosophy (Heath Joseph "Methodological Individualism").

simple empirical fact – that judgment-sensitive attitudes ground moral responsibility. In fact, the argument of H. D. Lewis resembles the account of normative relativists who hold that normal human adults can become morally ignorant due to enculturation. On individualist accounts then, unless there is evidence of intent to harm – i.e. unless there is evidence of political or criminal liability, the moral judgment of a passive agent is a private matter. Yet, moral judgments constitute a fabric of social relations, they weaken or strengthen the powers that be, and in times of 'abominations' they decide on questions of life and death. Individual moral choices are of public interest.

An alternative to the individualist approaches is to focus on *social relations* among agents who share their moral universe with the perpetrators of crime. A question relevant for the T2 context then is, how do social relations, characterized by exclusionary practices of the victims, established at T1 affect victims (and the society at large) at T2? Agents who denied having moral duties toward the victims largely defined these social relations, even if unintentionally or passively. These agents rejected universally accepted moral norms in favor of 'social good' or living a 'normal' life.

I argued in the previous chapter that bystanders[118] should (can) be conceptualized as a group, because of their shared norms and overlapping interests, which allow the perpetrators to continue to infringe 'morally protected interests' in the aftermath of crime. Kutz argues that "morally protected interests [represent] interests of agents in autonomy, substantial well-being, integrity or property and person, and fair consideration . . . Agents are held morally accountable

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118 In the previous chapter, I argued that those who publically rejected the proclaimed norms of the criminal regime and who aligned their interests with those of the victimized group, are not proper targets of ascription of moral responsibility. Their acts and actions set them apart from the perpetrating collective. These moral agents have critically judged and individually distanced themselves so as their authenticity can not be subsumed into the collective identity as defined in the plural, first-person proclamations of the ideological fathers, sympathizers and perpetrators of crime.

for intentionally threatening or acting indifferently towards morally protected interests, inadvertently causing those interests harm. . . ." (26). In the transitional period, it is of practical relevance for a member of the harmed group to seek to know whether "moral principles [that] did not take priority in their [perpetrators] dealings with certain human beings or groups" (French 40) are shared by others in the society.

This is an important insight that shifts our focus from the past to the present – i. e. on the role of bystanders in the transitional period. Bystander roles have been examined relatively well during the life of the criminal project, but their participation and the lack thereof in the period immediately following the fall of the criminal regime, remain largely unexplored. Yet, as I have demonstrated in Chapter Two, it is precisely the attitudes of bystanders that provide the wind, as it were, for Arendt's 'second moral collapse', Ralph Giordano's 'second great guilt', Claudia Card's 'social death' and for what the 'mothers of Srebrenica' (as we will see) have called 'mere existence'.

Relations established by the group of bystanders with those who are directly implicated in the crime and those who suffer as its victims continue to exist after the criminal regime is ousted. My presentation of these relations from each of the three relevant group perspectives relies on Kutz's 'relational responsibility'[119] theoretical model and that of May's, which proposes to view social groups as individuals in relationships, since "In unorganized groups, solidarity and other relationships allow the group to have action and interest even though no decision-making structure for the group exists" (The Morality 180). Relying on these two theoretical frameworks,

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119 Responsibility has two distinct senses, an internal and an external. The first one refers to psychological competencies a person must have in order to be answerable for harm. I will be concerned with the second aspect of responsibility, which "refers to a set of normative, external affiliations, the duties of the agent to other surrounding agents"(Complicity 18). Responsibility is understood as foundationally relational. Christopher Kutz argues "In difficult cases, agents' social and moral relations to others are especially important to agents' seeing their acts as causally connected to harms . . . This is particularly true of omissions. . . ." (Complicity 40).

in the next few paragraphs, I sketch out the group of bystanders' relations with others, which carry into the post-criminal period marring the efforts to bring about political transformation (or normative change) and continuing to aid the politically and criminally liable.

When the criminal regime is ousted, the three distinct groups (I ignore morally decent persons in this section) identified at T1 do not disintegrate. Likewise, their inter-group relations formed at T1 resist regime change (they remain relevant but they are different). These groups at T2 are: the perpetrators, the victims, and the bystanders[120]. Perpetrators,[121] who intentionally formed a group to bring about states of affairs that they otherwise could not carry out individually, became highly centralized and thereby well structured at T1, and as such they subsist at T2. The only difference in the group of perpetrators at T2 is that they no longer have (direct) access to the institutions of power. However, they continue to have common interests even when the regime is ousted. They continue to act together with a jointly shared intention still, to bring about states of affairs that best suit their interests as a group and individually (seeking impunity for their crimes). The victims[122] were identified as targets at T1 on the basis of their belonging to a different group. At T2, some of the common ends shared by the group of victims include: achieving accountability for the committed crimes, establishing conditions for official, narrative and shared memory, achieving acknowledgment, establishing the truth,

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120 The group of bystanders at T2 comes to include all those who fail to act in accordance with the duty to respond. This is explicated in a later section. The main point being that the morally decent persons who at T1 did not act because they felt they had no choice, can be conceptualized as bystanders at T2 should they fail to respond to the victim community.

121 I have relied on Primo Levi's subtle yet steadfast conceptualization in defining the perpetrator and the victims – "the oppressor remains what he is, and so does the victim . . . they are not interchangeable" (The Drowned 25).

122 At T2 the community of victims should be viewed as active, they aim to share with the rest of the society their ends – demanding, uncovering and acknowledging the truth about the criminal past so their role in changing our political form of life as Habermas would say, is that of active, equal, rightful participants/citizens. The criminal ideology without this source of communicative force (the real outside) is an intrinsic value of a democratizing society.

affirming their own dignity and equal standing in the society which violently excluded them from its moral universe.[123]

The bystanders are a segment of the population that belongs to neither of the two groups. They are in theory, and with some difficulties,[124] perceived as a group that can be assigned moral responsibility. Drawing from empirical evidence, I argue this group's active engagement in complex social dynamics that set the stage both for collective crime and for the transitional period is unique (distinguishable from other agents), relevant for the consequences, and universalizable (elements that define this group are observable throughout the world). Put more succinctly, their relations (of inter-dependence) with the perpetrators and the victimized group implicate them in enabling criminal actions at T1. Important commonalities are observable among the inter-group perceptions (relations) in each of the two cases referenced.

Relations between the perpetrators and the victims are relevant for this study because the bystanders are implicated by the official ideological definition of the relationship between the two groups (this is what justifies killing, the perpetrator-victim relationship). *What can be said of the relations between the victims and the bystanders at T2? From the point of view of the victim -* - As the majority of the population remains silent in response to the growing body of factual evidence at T2, the relationship of the victimized group toward the bystanders is that of fear and distrust. The victimized group's responsive attitudes of resentment and indignation, expressed in the post-criminal period, target not only the perpetrators but the society at large.

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123 Hundreds of thousands of testimonies given by victims in hearings of truth commissions throughout the world, before international and domestic courts, in the media and in public events, memoirs of survivors published immediately after the gruesome events and sometime decades later, all serve as evidence.

124 In the previous chapter, I discuss criteria that I use to conceptualize them as a group. They present a special problem for theory on collective and shared-group responsibility because they are easily identified as a 'random collection of individuals'. I argue that they have a structure of authority which they acquire through their close relation with the perpetrator group.

On July 11, 2005 in Belgrade[125], Kada Hotić, a survivor of Srebrenica, gave a chilling account of the events that took place in Srebrenica in July of 1995:

> I am here with you so that we could, somehow, make it clear who it was that made us quarrel, what happened to us. Until yesterday, my neighbors, who we used to drink coffee with, suddenly decided to kill us . . . Instead of being good neighbors, this is the way they had planned. Had it not happened, I would still have had my Samir, my husband, my brothers. By killing them, they have killed me. What is my life like without them? This is a life without joy. This is a senseless life. The only mistake those who caused all my suffering made was that they failed to kill us all so we have remained here, to testify . . . While I was looking at my son leaving, he was tall, I believe, a head taller than all those youths who went into the woods with him. I was looking at those boys, their torn T-shirts, the sleeves cut here and there, with holes in the back, but his back was beautiful. It was the youth walking there through the woods. And it was the youth that they were shooting at. Their intention was to kill them, to destroy those young men. I called to him: 'Samir!' He turned toward me and I said to him: 'Good luck, son!'. . . He did not make it . . . I say, I won't forgive the criminals their crimes, never, and they should not be forgiven, but I would like the sane people to start reasoning and to condemn the crime, so we can build a better future for all of us.

Hiba Mehmetović, another 'mother of Srebrenica', said in her closing remarks:

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125 At the Belgrade conference "Srebrenica - Beyond Reasonable Doubt," organized on June 11, 2005, by a Belgrade-based NGO, the Humanitarian Law Center, where survivors of Srebrenica, three mothers, addressed the public in Serbia for the first time. International community and civil society representatives constituted the majority of the audience.

I am not satisfied with the penalties pronounced on the criminals going to The Hague. Personally, I believe this is an injustice. I, personally, am offended. Sometimes, I ask myself: Good God - is human life so valueless? I am alone now, I live all alone I have friends, I have these friends here, but I am just vegetating, like a plant, and waiting for the day I die. I live for that day. I don't know why I live. I would like to find them, to give them a decent burial. Sometimes I think - God, they may be alive, they may come back to me... Here's my Kemal. Here's Nedžad. They are coming . . . Sometimes, I call them in the morning . . .

Every mother, every daughter, every wife has a similar story to tell. In some cases three generations were wiped out in Srebrenica. The survivors live unable to move forward, denied even the right to grieve. "It was not just that the boys and men were slaughtered in cold blood . . . it carried on in the hearts and souls of these women and their children. Classed as 'internal refugees,' they lived for years in appalling refugee camps in Tuzla and Sarajevo. Denied housing, food, medical help or justice, many of them committed suicide."[126] Since the regime change, the survivors and the family members of those massacred in Srebrenica, suffered a 'second harm', characterized by the loss of rights-protections, social status and group identity. As Card argues, responsibility for physical death requires criminal accountability, but responsibility for 'social death' rests with entire communities. If members of perpetrator communities fail to respond to the calls for acknowledgement by the community of victims they cause new harm at T2, for which they are morally responsible still.

What are the relations between the perpetrators and the bystanders at T2? From the point of view of the perpetrator group, 'ordinary citizens' were in the beginning an amiable

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126 (Fatima Hassan "Genocide: In Memory of Srebrenica").

audience; as they internalized the criminal regime's values and accepted their goals they became allies in establishing the parameters of the 'in' group. Later still, their silence identified them as loyal defenders of 'perverted group ethics'. They are recognized as a capable force that can determine the fate of the perpetrators in the transitional period. From this perspective, the bystander's benevolent attitude can help build conditions in the society to excuse or at least lessen the perpetrators' legal and political accountability for the committed crimes. In the post-criminal period, as we saw, interpretative and implicatory denial is at work and the participation (passive or active) in it by bystanders is essential in relativizing the consequences of the criminal past and thereby diminishing perpetrator accountability. In 'transiting' from the criminal regime perpetrators are looking to create conditions in the society where their past crimes would become irrelevant; this group seeks solidarity from bystanders. The goal of the group of perpetrators and their collaborators is to achieve impunity for their criminal actions, and in consequence to achieve minimal (if any) political transformation at T2.[127]

In his remarkable *Resentment's Virtue: Jean Amery and the Refusal to Forgive,* Thomas Brudholm recounts the 'silent' period in Germany's history, when – between 1945 and 1965 – a policy of amnesty and rehabilitation immediately followed the criminal trials administered by the Allies. Konrad Adenauer, who served as the first chancellor of the Federal Republic of Germany from 1949 to 1963, pursued a policy of reintegration and rehabilitation of those who were politically and criminally liable. Yesterday's perpetrators and collaborators continue to pursue their interests in the aftermath of crime, how much leeway they achieve depends upon the

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127 Published works by ideological fathers in Serbia, after the criminal regime was ousted, serve as evidence. These revisionist historians, public intellectuals, academics – who collaborated and supported the perpetrators – continue to fight for the hearts and the minds of their amiable audience well into the transition. They have reasons to, or rather they have a common end – to justify, rationalize, relativize the consequences of crimes and thereby their own responsibility.

opposition they face or rather how much support they receive from both the individual and the institutional bystanders. Consider for example how, the Roman Catholic church and the Protestant church, both of which are termed 'bystander institutions' in the Third Reich by Barnett, continue to hold the same position in the aftermath of crime, a position that greatly resembles Adenauer's (who was himself a devout Catholic and a leader of the Christian Democratic Union). Along those lines, Brudholm writes:

> In Germany, immediately after the war, both Protestant and Roman Catholic churches used their moral capital to mobilize nationally and internationally on behalf of forgiveness for the perpetrators . . . The Clemency Board of the US Military government received thousands of letters from laity and clergy, who used Christian arguments in their denunciation of Allied punishment for the perpetrators . . . Christian attitudes of mercy and forgiveness were represented as superior to 'Jewish' calls for justice and judicial prosecution of perpetrators. The Jewish survivors' refusal to forgive was seen as a hateful attitude rooted in revenge rather than a form of necessary justice (75).

The closely knit relationship between the perpetrators and the bystanders survives the transition intact. The solidarity between the bystanders (in this case, two churches) and the perpetrators is expressed openly in the period following the moral collapse.

From the point of view of the bystanders, in the early phase of collective crime, the other two groups are not recognized as 'perpetrators' and 'victims' (interpretative denial). This group consists of individuals who in a variety of roles created conditions for carrying out the atrocities - - some by dutifully fulfilling their administrative roles, others by improvising history in favor of the perpetrators' original claims that some human lives are less valuable, some by keeping quiet

and distant[128]. Given the diversity of roles played by the various agents involved in creating the necessary conditions conducive to crime, the task of determining commonalities among the various agents may appear difficult at first. However, once the historical accounts are consulted, this is not the case. In fact we observe a high level of homogenization in opinion and attitudes and behavior of this segment of population. As I already argued, the fathers of the criminal ideology have a common interest in the transitional period to evade responsibility for the consequences. Their compatriots − or the 'silent majority' have a common interest to live a normal life − the outcome is that with silence in the background the most vocal and public responses (attitudes) expressed are those that seek to obstruct the ends of the community of victims and the dissenters, to seek justice and to establish and tell truth about the criminal past. Thus, from the perspective of the bystanders, in the absence of its expression, we observe the lack of a morally proper attitude towards the crime and its legacies.

In the transitional period (T2), some members of this group deny that any relationship with either of the two groups exists (or better yet, existed at all). As already argued, the group of bystanders in T1 and T2 is different. Those who were morally decent persons at T1, yet who fail to fulfill their duties at T2 are perpetrating a 'the second harm' against the community of victims. Thus, it can be said for some members of the group that although their moral principles are not harmful in themselves, their acts (such as remaining passive or silent at T2) become harmful because they contribute to the continued suffering of the community of victims. I have thus included them in the category of bystanders at T2, and I refer to them as 'transitional

128 Although this is not necessarily a form of tacit approval at T1 because morally decent people could feel that duress is such they cannot act (even if their fear is exaggerated, which is not often the case, they cannot really be blamed); however, at T2, if they are not motivated to act upon their proper moral attitudes, to publically uphold the goals of the victim community, to respond and to engage in the process of coming to terms with the past, then their passivity can easily be interpreted as lack of care for the community of victims; as such, it continues to cause suffering of the survivors. Thus, keeping quiet and passive at T2 is not morally justified even if the agents are 'morally decent' persons.

bystanders'. The moral predicament of such moral agent is the following – if he/she holds (and held at T1) a proper attitude toward the criminal regime and its ideology, on the basis of which he/she denies that the perpetrator acted in their name, how can he/she avoid to respond to the reasonable fears of the victimized community? On what moral grounds can this response be denied? To avoid to respond (or to insist on one's innocence) is a morally relevant attitude in itself. Since at T1 they may not have shared the wrong attitudes with bystanders, it might seem unfair to identify them as targets of moral responsibility ascription at T2. However, the nature of responsibility is different at T1 and T2: in T2 we do not simply remain 'saddled' with yesterday's responsibility, because T2 creates its own responsibility. The bystanders carry over the responsibility for yesterday's behavior, attitudes, intentions, while morally decent persons in T1 are faced still with a T2-specific duty to respond and this in T2 creates their responsibility.

Thus, the most vocal voices of the bystander group aim to establish consent in the society that the past should be put to rest. The tragic conclusion is this – members of the group of bystanders range from (on the one extreme) those who believe crime was justified to those who (on the other extreme) believe the crime was wrong but see no reason to re-order their preferences (they seek not to disrupt their lives). Given that (in the best case scenario) the bystanders want to move on with their lives, they employ denial[129] for handling their relations with the two groups who continue to disturb their 'normal lives'. And these relationships grow strained as transitional justice mechanisms start to unravel facts, which usurp justification and rationalization of mass crime.

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129 'Transitional bystanders' (all those who remain passive in the sense that they do not aid the transitional justice efforts at T2) engage in denying their own responsibility in harming the victims for the second time (at T2). The first time, or at T1, they harmed the victims unintentionally – they could not act on their proper moral attitudes due to external coerncion (real or percieved) but at T2, the harm they cause is intentional, because they are free to act.

In conclusion, at T2 from the point of view of both, the victimized group and the perpetrators, their respective relationship with the bystanders is relevant; for the former, to achieve justice and to establish truth, and for the latter to obstruct transitional justice. From the bystanders' perspective, their relationship with the two groups is burdensome. With the group of perpetrators, bystanders continue to feel solidarity in T2, but the normative demands of this new context – largely affected by the regime change, the official facts established in the courts of law, or public testimony of the victims – place new moral burdens upon the group of bystanders. It can be argued that each sub-type of the bystander group, including the supporters, the 'internal collaborators', the 'inner émigrés' and 'transitional bystanders' engage in interpretative and implicatory denial for different reasons, some in response to the solidarity they have with the perpetrators, others as a result of lack of care for the community of victims. What remains at stake is 'doing the right thing' or as Cohen argues ". . . knowledge itself is not at issue, but doing the 'right' thing with this knowledge. . . ." (9). Bystander relations with the community of victims on the other hand, at T2 – and in the wake of trails, public victim testimonies, commemorations, etc. – comes to resemble the one they had with the victims at T1, the goal to live a 'normal' life is yet again 'disrupted' by the victims.

1.23 Moral Responsibility as a Strategy for 'Dealing with the Past'

As Jessica Payson writes, "even if one's personal contribution in the perpetuation of an unjust system may be negligible – the injustices would continue whether one participated or not, and one's resistance would do little-to-nothing – one never the less retains responsibility" (3). This responsibility arises from the moral duty to help or prevent harm during the criminal regime but also – just as importantly – to acknowledge the moral impact of crime and to work towards overcoming, or at least minimizing its consequences in the aftermath. Rational agents have new

duties at T2. In terms of actions, these members with a conscience who acted on behalf of victims at T1 would presumably be faced with something we could refer to as *moral residue* at T2 – have I done enough? In terms of attitudes, members with a conscience who did not act on behalf of the victims, but who held proper moral attitudes, would be faced with something similar to *moral remorse* – I should have done something! Thus, in each instance, the agent upon reflection comes to a realization that more is owed. Action is required at T2.

At T2, some have a change of heart due to 'new' information, while others (the intentional agents) do not. Given that moral duty to help those who are harmed rests on action, not on attitude alone, it is only morally relevant actions at T2 that block moral responsibility ascriptions. However, the group of bystanders grows if those who were either passive or opposed the criminal regime at T1, fail to act on their right moral attitudes at T2. They are considered not to have fulfilled their duty towards the community of victims and the society at large until they act on their good conscience at T2. This is because the obligation not to in any way sustain the secondary moral collapse of 'social death' continues to apply in the period transitioning from collective crime. A positive duty (to help) and a negative duty (not to harm) in the aftermath of collective crime continue to ground moral responsibility in T2, just as they did at T1.

In the transitional period[130] from the criminal regime to democracy, society as a whole and each member therein is faced with a choice. From historical evidence (in the two relevant

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130 In the early phase of collective crime, when the ideological fathers negotiate with their subjects the membership of the *We*, the move from the *I* to the *We* is that of a choice. This *We* differs from the previous T0-specific *We*, as some of *Us* became *Others*. So the new T1-specific *We*, which is an identity that follows a point of violent rupture with the previous group identity that requires moral positioning. Informed by May's existentialist account, an agent is faced with a choice to become a member of the new group (in the sense in which one judges that group). Clearly, those who are not 'invited' to become members, so those who are excluded from participation in establishing the new *We*, perceive this acceptance (or lack of resistance) of the population as a move that marks the abandonment of universal moral standards, and embracing new ethics. This phase of collective crime is followed by the implementation phase. Again, the population is faced with a choice – either to embark on disassociating oneself from the *We* or not to.

cases), we observe that the predominant response to the criminal past is silence, indifference and denial. Yet, as the period of transition progresses and some transitional justice efforts bear fruit in so far as (mostly) confirming what was already known, bystanders (all four types) engage in different forms of denial, which leads to a further transformation of the first person collective identity. Bystanders have to either deny the relevance of the confirmed facts of crime (interpretative denial) or deny the implications of this reality for themselves (implicatory denial) both of which cause a practical but not a normative rupture in the group. Since it is less burdensome (morally) to deny that the first person plural refers to you, than to continue to share the first person plural with the perpetrators of crimes, the outcome often is a creation of 'the good' and 'the bad' Serbs, Germans, etc. The other option is to deny the perpetrator accountability for the crime, or to deny the relevance of the crime, and to remain comfortably lulled in the old T1-established group.

So, there seem to be two options to preserve the collective's identity (from the points of view of those who subscribe to it): to disassociate the perpetrators from the group (we are the 'good' Serbs, he is the 'bad' Serb, thereby denying any responsibility for the acts of the 'bad' Serbs) OR to justify the crimes and continue to include perpetrators in the first person plural. The case of Serbia serves as evidence: whether or not the first person plural includes war criminals does not suggest a normative break with the past, since the collective identity remains exclusive (the victimized group are not members of the in-group moral universe). The norms that guided behavior in the past continue to be relevant, those who are criminally 'caught' are expelled, and thus there is no normative change. In order to make a normative break with the past, the move from the first person singular to the first person plural is needed to be made in the aftermath of atrocities. The process of coming to terms with the criminal past is necessary for an agent to

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make that move, without which we cannot speak of moral or rational agents, but 'moral idiots' to use Cohen's term. This is what taking responsibility means in the context of collective crime, acknowledging one's role for having made the choice to allow the violent exclusion of others.

1.24 The 'Duty to Respond'

Who has a duty to respond to the victimized group in the aftermath of collective crime? What is a duty to respond? How does it differ from other duties in the post-criminal context? The new regime is a clear duty-bearer or in the words of Hannah Arendt, "every government assumes political responsibility for the deeds and misdeeds of its predecessor, and every nation for the deeds and misdeeds of the past" (45). From this quote from *Eichmann in Jerusalem,* it follows that there is more than one duty-bearer. The question is does the responsibility for the harm committed by the perpetrators attach to all those who share their identity with them? Transitional justice mechanisms such as criminal trials, truth commissions, lustration and vetting, serve to assign individual duty and establish individual responsibility. I argue that even if every perpetrator and collaborator is held legally and politically liable for his/her actions, those who share their collective identity with them and who commit harms against the community of victims by holding wrong moral attitudes at T2, or by holding the right moral attitudes but failing to act upon them at T2, are legitimate bearers of the duty to respond. Clearly, there are other types of duties attached to other members of the society, based on their roles (in the government, the judiciary, educational institutions, social services, etc). These are duties to remedy, to punish, to educate, to provide safety, etc. in service of transitional justice. I am arguing that citizens are proper duty-bearers regardless of their social roles (whether they had or have control and the ability to influence state of affairs is not relevant). This argument is advanced based on Linda Radzik's and Dimitrijević's 'duty to respond' thesis.

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Radzik argues that "one's shared identity with the perpetrator group can ground 'duties to respond' to the 'reasonable fears of [a] victimized group" (Shared 141). This 'duty to respond' has two addressees: the community of victims and the society itself. This duty is grounded in the shared reasons that give rise to conditions which normalized the practice of committing systemic and wide-scale crime. These reasons were largely accepted at T1, the consequence of which led to the exclusion of others, whose humanity was denied. While perpetrators of crimes have violated the basic right to life, other agents or bystanders can be said to have caused harm by not seeing reason[131] to uphold this groups' humanity in the light of these crimes and then additionally can be said to have caused 'secondary harm' through their lack of fulfillment of T2-specific duties. A group of persons is killed because they are characterized as less worthy (because of their religion, race, nationality, etc). The obvious point is that 'ordinary citizens' would be moved by reasons of morality to actively or passively (judgment) participate in defending humanity (their own and that of their equals).

Other duties, that are role-dependent, cannot address this point. As we saw, the victimized community in the post-transitional period has reasonable fears even if perpetrators are held to account. These fears come from the memory of not being treated as equally valuable members in the past and from the lack of security, trust, humiliation, loneliness, alienation that silence and indifference perpetuate today. Omer Hodžić, the son of one of the abducted, at the commemoration in Priboj on the 17th anniversary of the abduction of Bosnians from Sjeverin said: "That day when my father was kidnapped was my tenth birthday. Instead of a birthday present I saw the well-concealed grief of my mother who hid her tears. After 17 years the

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131 It can be argued that this does not apply to all, i.e. does not apply to decent persons, the criterion of their decency being exactly their 'seeing reasons', even if not acting.

greatest pain is the fact that we do not have the mortal remains of our loved ones, and the state in which we live has done nothing to find them. We feel abandoned, alone".[132]

Thus, it is up to the addresses of the duty to respond to restore the principles of humanity and of practical morality in the aftermath of mass crimes. The beneficiaries of such political transformation are not only the victims but each citizen of the political community. The duty to respond is owed by bystanders to the community of victims as well as to the citizens of the polity.[133] So, in addition to the new transitional regime (which is possibly the sole duty-bearer in cases of regime crime), in the cases of collective crime, where large segments of population were implicated in causing harm, the majority of the citizens become duty-bearers too.

Unlike in cases of newly elected political representatives, who have this duty based on their roles, and exemplified in terms of political responsibility, the citizens' duty to respond is grounded in practical morality, the possibility of living in a community burdened with fear, lack of safety, violence. As Scanlon points out in *Moral Dimensions*, "the attitudes a person is justified in deciding to hold will depend not only on what the agent has done and his or her reasons for doing it, but also on the person's prior relations with the agent. . . ." (Moral 211). In cases of collective crime, from the perspective of the victimized group, 'prior relations' means perceptions of relations with the perpetrators of crimes, not necessarily relations with specific individuals.

Those who were prevented (at T1) from acting based on the proper attitudes, at T2 assume the duty to respond. They are led by the obligation as understood by Christine Korsgaard "To say that you are obligated is not to say that duty is your purpose but to say that you see the whole action as one that is necessary for you because of some claim that your humanity or the

132 http://www.hlc-rdc.org/Saopstenja/1817.en.html.
133 To themselves, to the dissenters, to those who are not moral agents yet.

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humanity of somebody else makes on you. Obligation is not a substitute purpose but a reason for adopting the whole action including its purpose" (67). This insight suggests that the duty to respond is backward-looking, i.e. independent of any claim of constraints imposed by transition-specific forward- looking considerations.

In times after moral collapse, we have to acknowledge that we have a duty. To say that some people were not and are not treated as equally valuable, means that some people at T1 held this to be true. Thus, the duty to respond, on this account, should be a practical concern of transitional justice so as to help acquire a sense of duty where it is lost. Unlike Linda Radzik, who claims that even the non-perpetrating members of the perpetrator community have metaphysical responsibility which grounds their duty to respond to the victimized group, I claim that members of the society who aligned their interests with the community of victims and fulfilled their duties toward them by helping, preventing harm, supporting and aiding the transitional justice efforts, cannot properly be included in this 'perpetrator community'; their ethical position belonged to the moral universalist position and they thereby bear no responsibility on this account. Thus, on this account, there are: direct perpetrators of crimes (supporters and collaborators), there are indirect perpetrators of harm (bystanders), there are victims and there are morally decent persons. As I already argued, one's identity is itself a matter of choice and the dissenters made the right choice.

1.24.1 The 'Duty to Respond' is Context-Independent

It is the 'reasonable fear' of the community of victims that grounds the duty to respond. The duty exists for as long as the fear is present. The duty bearers are the fellow citizens, whether they are in politically relevant roles or seemingly distant relations, because they share their identity with the perpetrators. This is so because the community of victims has reasons to

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be afraid of their fellow citizens still. Silence does not communicate to the victims that they should no longer be afraid. Given the nature of the collective crime they have a reason (as rational agents) to fear those who might not have committed a crime (victims don't know that), but whose outwardly expression of silence suggests that the victims are less valuable.

These are special obligations,[134] which "universal principles can support" according to Michael Freeman (141), that bystanders have toward the victim community and their society. There might be some – limited so to say -- moral worth in distancing oneself from the common identity with the perpetrators, although that is a birth-acquired identity, so from the point of view of the victim community, who were targeted based on the same birth-acquired identity, that still means inequality. The defense of this view is based on evidence that a group of people selected a particular group for extermination. It is precisely the criminal ideology that granted rights and obligations among the select few. Inclusion of those whose rights were violated yesterday into the collective's identity is not sufficient or even possible because the identity itself is morally corrupt. The inclusion and the identity-reflection are simultaneous processes.

Who is the obligation-bearer, what are the costs to the obligation-bearer and is the cost to the obligation-bearer intolerable on this account? There is no contention that "We are responsible for our actions and thus for remedying their harmful consequences" (Freeman 151). But when we are associated to those whose actions are harmful then who should be responsible for remedying the consequences? It is important to note that bystanders have maintained special obligations during the criminal ideology – toward their friends, their families, themselves, and (in most cases and in large numbers) to their political leaders. Thus we are not assessing whether these agents have the capacity or better yet the moral knowledge to judge right from wrong.

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134 Not in a voluntarist sense – that special obligations are assimilated to promissory or contractual obligations.

They have the capacity and thus we are not starting from a moral vacuum. Given that ordinary morality is intact (without a qualification) then Kant's conception that "ordinary morality is about prioritizing, weighing and balancing of duties and of the obligating reasons based on them" (Allen 5) is helpful in making sense of the moral predicament – we do not have to be without qualification for radical evil, it is not beyond the scope of reason.

Radical evil does not represent the absence of moral reasoning. Rather it represents the wrong ordering, 'weighing and balancing of duties and obligating reasons'. The hidden (in 'normal times') danger of not prioritizing the paramount principle that all human life has equal value reveals itself in the times of political disasters. Once a group, is for whatever political purpose (all of which are arbitrary from the universal point of view) stripped of its rights, the rest of the rights-bearers are that much more vulnerable. It's a system of precedents of rights violations, which is 'protected' by perverted group ethics, which are intrinsically inconsistent and arbitrarily applied moral principles that serve the interests of the perpetrator group. Who protects these group ethics and how? The atomized yet homogenous group of bystanders protects these group ethics by responding ONLY to particular moral duties to oneself, family and friends. This is what grounds the duty of the bystanders towards their own group, or/and victims' group.

So, although at T1 appealing to the special obligations we have toward let's say family members, which is not infrequently invoked to excuse our failing to condemn the perpetrators (to say, keep a job, etc.) might soften the blameworthiness of our failure to honor our commitments to other parties in the contract, at T2 once the crime has already taken place (meaning that we see the outcome of our non-doing or non-aiding) these appeals are hollow. The special obligations are born out of this moral predicament – at the expense of living without interruptions, by disallowing to be involved, others have suffered at the hands of those who share our collective

identity. We have become right addressees along the side of the state. Common national identity (of bystanders and the perpetrators) grounds special obligations, because national identities "are former first, and foremost, in close, intimate groups, and the sentiments that arise in such groups are the strongest motivators of human action" (Freeman 143).

To this let me add the following: who can and who cannot forget? Whereas some might be able to forget, whereas some members of the community of perpetrators could really be capable of self-induced amnesia, the victims and their community cannot forget. Moreover, any claim to establish a policy of forgetting is in one particular regard deeply unjust and as such immoral: it equals perpetrators and their community to victims and their community.

The duty to respond holds even if the transitional context appears to be impenetrable due to restraints of all kinds. To care for others' suffering, to see our role in no matter how distant we are to it (temporally or geographically), to help others, to empathize and to learn, to know, to discover, etc. these are matters of practical morality, which enrich our context-dependent lives with universal principles. The criminal legacies will continue to be morally relevant if the duty to respond is ignored. Employing transitional justice mechanisms must not fail to challenge the response owed to the community of victims by their fellow citizens.

1.24.2 Analysis of the 'Duty to Respond'

Human beings have rights and duties, which are acquired by birth, through our relations with others, through our many social roles. A rational person may deny duties but not rights. It is not possible for a person who is reasonable to claim he/she has no rights. Thus, although we can deny some duties we cannot go through life without acquiring them due to our relations with others, it is not possible for rational persons to deny that there are some people who have no rights. The first person plural follows from the insight that the first person singular is never going

to claim not to have rights. Having said that in order to conclude that the third person plural has no rights is unreasonable unless 'They' are not of equal value as 'Us'. Given that this inequality was established during the collective crime, some people had rights which others did not have; the task of the transitional community is to re-establish moral equality. The only way to achieve this is for the un-interrupted rights-bearers (bystanders) to assume duties for bringing this normative change about.

We have to acknowledge crime, i.e. acknowledge that what we did or what was done in our name was morally wrong, and that it cannot stand the test of moral justification. The duty that we have toward our 'dearest and nearest' and the society at large is to de-mystify the criminal ideology through learning, knowing and acknowledging the truth about the nature and consequences of crime, and the attitudes and norms that permitted them. These duties are one and the same in the sense of our required actions. We have to re-build our critical selves.

CONCLUSION

In collective crime, bystanders are not 'mere observers', 'ordinary citizens', or 'fellow-travelers'; without them, the goals of criminal populist regimes, as we saw in the cases of Nazi Germany or Milošević's Serbia, cannot be realized. Annihilation of an entire people requires en masse participation and bystanders' acquiescence is needed to accomplish the criminal goal. Although the question of their voluntariness in supporting the crimes committed is an important one, it does not exhaust the moral challenges resulting from the moral complexities which result from their contribution to mass crime. Throughout this study, I have argued that bystanders are morally responsible not only for their inactions but also for their moral character (what they are or have become), which is always voluntarily formed.

In Chapter One, I argued that bystanders are normal adults and thus should be held morally responsible for their acts and attitudes, if we were to uphold the principles of universal morality, which, by definition, are accessible to rational agents always and everywhere. These moral agents' acts (including omissions to act) are excused at T1 if the harm committed is done due to non-culpable ignorance (or lack of relevant knowledge), or due to strong coercion, as questionable as recent historical scholarship has proven this notion to be. Bystanders, however, whose actions and attitudes at T1 cannot be excused, cause harm either directly or indirectly to the community of victims.

In this chapter, I located the bystander responsibility at the moment of *choice* of how to respond – in the form of critically judging how to be and what to do – when confronted with the fact of crime and later, when confronted with its legacies. I have defended the view that 'the bad political culture' may have affected the bystanders' ability to act to some morally relevant extent, but that their ability to judge was left intact. I have further argued that their wrong judgment-

sensitive attitudes were fully attributable to them; or in the words of Richard J. Bernstein, ". . . we can hold individuals responsible for their failure to think and judge" (223). In other words, and as he pointedly remarks, we can always ask why one becomes merely a 'cog' in a criminal system.

In Chapter Two, I argued that moral relativists provide a serious objection to this view and I thus engaged with some of its proponents. As we saw, they argue that agents who are socialized in bad political cultures have diminished capacity to judge and can thereby not be properly held responsible for their actions. I have argued to reject this conclusion first by pointing out that the 'bad political culture' thesis rests on general assumptions about concepts of culture and moral responsibility, which can be challenged. For example, the one-way conceptualization of the interaction between an omnipotent cultural framework and the 'fragile and passive' subject, can be reformulated, as we saw, to reflect the same interaction but in a more dynamic and less stagnant relationship, this time characterized by reciprocal interactions between evolving and fluid cultural frameworks and engaged participating citizens. This new formulation of the two concepts impacts instantaneously our understanding of moral responsibility of agents.

In Chapter Three, I further elaborated on the proposed typology of bystanders, which aims at clarifying their various morally relevant contributions to the production of collective harm. The T1-specific sub-types are: (1) supporters, (2) 'internal collaborators', and (3) 'inner émigrés'. Although, only some of those actually come to uphold the perverted group ethics, each of these sub-types shares their rejection of the moral duty toward the community of victims. The role in the production of harm in the first two types is easily identifiable at T1. The role of the third type is not as obvious, but its distinction from the category of 'internal collaborators'

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matters morally. I do not consider the 'inner émigrés' of the third type as bystanders at T1, but proposed to analyze these agents' behavior at T2 retroactively, as it were. That is, they become bystanders only if they fail to act upon their proper moral attitudes at T2 (when the knowledge and the coercion condition no longer apply). Finally, in my study I identified a fourth type of bystander – the 'transitional' bystander – which comprises all those moral agents who remain passive at T2 (including now also all of the dissidents at T1) regardless of their attitudes. The relevance of their moral character, beyond the realm of pure actions, seems undeniable precisely in the context of 'dealing with the past' when – almost inevitably – the victimized group is in urgent need to know not only who but also why the harm was committed.

A strong 'empirical' argument for this might be the insight that at the stage of the raise of the criminal regime, and before it got stabilized and all–powerful, people clearly had an opportunity to see what was going on and therefore had an opportunity to react. So, even if at the implementation phase there is no room for action anymore, this can be seen as the consequence of yesterday's failure to act. For bystanders in Germany this was the period of the early 1930s and for bystanders in Serbia the period of the late 1980s. As we saw from the empirical evidence, bystanders largely approved the policies of criminal regimes early on, during the preparatory phase of collective crime. Some, by actively upholding the regimes' values and goals, others by staying disengaged because they simply wanted to live their lives uninterruptedly.

In both, Nazi Germany and Milošević's Serbia, we could observe a symbiotic relation emerging between the regime and its subjects; from the 'happenings of the people' in Serbia to the boycott of Jewish business in Germany and from the mute acceptance of the implementation of the 1935 Nuremberg Laws, to the en masse approval of the annulling in 1990 of the rights of citizens of Kosovo and Vojvodina, whose status of autonomous provinces was protected in the

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previous Yugoslav constitution of 1974. The ideologues of war, within merely a year or two after having been elected into power, publically proclaimed their values and goals to their approving subjects. If anyone still had any doubts about the 'real' intentions of the regime, the immediate implementation of their criminal policies which followed the regime's seizing of power should have served as sufficient evidence.

I argued that, bystanders, even if unbeknownst to them, belong to a group at T1, due to the links of solidarity they share with the members of their same identity group, and even come to hold overlapping intentions with the criminal regime. Their behavior at T1 – be it support of the criminal policies, or their passive and silent 'going along' with them – communicates lack of care toward the community of victims, which inevitably perpetuates suffering. The first two types of bystanders – the supporters and 'internal collaborators' – come to reject universally accepted moral norms; they do so by their mere deployment of different strategies of denial, ranging from literal and interpretive, to implicatory. As we saw, these strategies enable the agents who deploy them to internalize the criminal values of the regime, and then to accept its sinister goals by first justifying them and eventually by normalizing the atrocities committed by the perpetrators and their collaborators. These agents of denial participate in what Dimitrijević referred to as the 'culture of silence'.

In Chapter Four, I claimed that, in the transitional period, bystanders are faced with a choice again. Some agents, the ones who were considered 'mixed cases' at T1 because their actions were the result of external pressure or due to the lack of relevant knowledge, are faced with a new challenge. Now, they are open to ascriptions of moral responsibility if they choose not to help the transitional justice process. At T2, they have a specific duty to respond – this time in form of an action – to the 'legitimate demands of the community of victims'. The

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normalization phase, which carries over into the transitional period, and which typically coalesces with the burdens of the transitional period is crucial for my study of the moral responsibility of agents who cause harm against the community of victims. Yet, it very easily slips from the radar screen not only of the transitional government, but more importantly from the transitional justice efforts. The moral problem at hand is that we are still poorly equipped analytically to address publically and responsibly the question of the mass suffering caused by the bystander, possibly the largest segment of the population in collective crime. The main obstacles posed to transitional justice efforts emerge from the lack of ethical stance of bystanders: best summarized as lack of care for the victims, the survivors and their suffering. This moral position denies equal worth to those who have already suffered and so it adds and additional harm to the original harm. The T2-specific harm causes, as we saw a 'second moral collapse,' which societies phase after the fall of criminal regimes. To avoid this 'second moral collapse,' reckoning and self-reflection is required followed by the critical judgment of others who committed the crime in our name. That is, this 'second moral collapse' demands an acknowledgment of one's own responsibilities for creating conditions conducive to the physical and social destruction of the 'other'. In short, it grounds duties for each and everyone one of us who did not uphold the universal moral norms.

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