

Fiduciary Duties and the Ethics of Public Apology

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ABSTRACT *The practice of official apology has a fairly poor reputation. Dismissed as ‘crocodile tears’ or cheap grace, such apologies are often seen by the public as an easy alternative to more punitive or expensive ways of taking real responsibility. I focus on what I call the role-playing criticism: the argument that someone who offers an apology in public cannot be appropriately apologetic precisely because they are only playing a role. I offer a qualified defence of official apologies against this objection, considering them through the lens of fiduciary duties. This focus draws our attention to formal or impersonal relationships that are nevertheless normatively rich, capable of sustaining trust, concern, and care. At the same time, I highlight several pitfalls for fiduciary apologisers, including the tension between apology as a mode of truth telling and the duty of confidentiality. I consider whether the fiduciary apologiser, in reflecting on her fiduciary obligations, has ‘one thought too many’ for genuine apology, and argue that the issue of mixed motives is not limited to fiduciary contexts, cautioning against excessive idealism in our conception of apology. I conclude with some reflections on possible conflicts between fiduciary obligations and the conscientious desire to apologise.*

1. Introduction

The practice of official or public apology has a fairly poor reputation. Dismissed as crocodile tears or cheap grace, such apologies are often seen by the public as an easy alternative to more punitive or expensive ways of taking real responsibility. Certainly, philosophical discussions of official apologies have identified significant pitfalls facing the would-be public apologiser, both metaphysical and material: these range from the temporal strangeness of apologising for events in the distant past¹ to the vagaries of collective intention and responsibility² when public apologies are made by representatives of larger groups or organisations, as well as concerns about apology providing a quick substitution for other, more demanding forms of accountability, both legal and financial.³

Yet there exists another source of scepticism about public apologies that tends to play a large role in public criticism of the practice, yet is featured less prominently in academic discussions: we might call this the role-playing criticism. This criticism cuts across individual and collective apologies, and arises even when questions of responsibility and the standing to apologise are not at issue. At its simplest the concern is this: someone who offers an apology in public cannot be appropriately *apologetic* precisely because they are only playing a role. Without a sufficiently intimate context – individual history, face-to-face sincerity, a personal touch – to add depth and meaning, the role of apologiser remains empty and shallow.

I take the role-playing criticism seriously, and I take it to capture an important aspect of what goes wrong with certain undeniably bad apologies. But I believe it is a mistake to attribute the emptiness of public apologies to their status as *public* or official. In this article, I demonstrate that the role-playing criticism need not apply to all public apologies, by considering the practice of official apology through the lens of fiduciary duties. I do so because this focus draws our attention to formal or impersonal relationships that are nevertheless normatively ‘thick’, capable of sustaining trust, concern, and care.

The fiduciary framework serves two purposes. First, it responds to at least one charge against the practice: namely, that it takes place in contexts insufficiently personal for meaningful apology. Second, attention to this framework highlights several moral risks facing official apologisers – again, whether individual or representative – which are not faced by private, interpersonal counterparts, and which are often overlooked in other philosophical discussions of public apology. I identify several pitfalls for fiduciary apologisers, including the tension between apology as a mode of truth telling and the duty of confidentiality. I consider whether the fiduciary apologiser, in reflecting on her fiduciary obligations, has ‘one thought too many’ for her apology to be genuine, and I argue that the issue of mixed motives is not limited to fiduciary contexts – cautioning against excessive idealism in our general conceptions of apology. Finally, I conclude with some reflections on the possible conflicts between fiduciary obligations and the conscientious desire to apologise.

2. Understanding and Evaluating Apologies

The precise nature and value of apologies has become a subject of growing philosophical debate in recent years. Many theorists have devoted significant ink to identifying precisely when something qualifies as apology, as opposed to a quasi- or non-apology.⁴ Philosopher and legal theorist Nick Smith is a notable exception to this trend; he argues that, given the ‘loose constellation of interrelated meanings’ associated with apologising, a binary standard dividing genuine apologies from imposters will necessarily fail.⁵ Instead, Smith argues for a regulative ideal governing apology – the categorical apology – which ‘offer[s] considerable significance across all the central forms of meaning’ and thus functions as a standard by which we can understand and evaluate apologies with less or more limited meanings.⁶

Like Smith, I have doubts that a singular theory of apology could ever satisfyingly explain each and every meaning an apology might hold, given the diversity of apologetic practices. There is no universally authoritative account of what it means to apologise well, and the grounds for claiming one are dubious at best; Alison Dundes Renteln’s work, for example, illustrates how apologies may involve – and mean – very different things in different parts of the world, while sharing sufficient common elements to be recognisable *as* apologies.⁷ Even within a given society, what we take to matter – or to matter most – in giving and receiving apologies will vary, depending on how we were inculcated into the practice.⁸

Similarly, like Smith, I am persuaded that the practice of apologising requires some normative constraint – that is, ways of distinguishing good apologies from bad. There are unquestionably better or worse ways of apologising and, if there is value in

apologising following wrongdoing, then there is additional value in apologising well. Indeed, apologising badly is sometimes worse than no apology at all; it adds insult to injury. But I am not convinced that appropriate normative constraint ought to take the form of a regulative ideal.

Instead, my approach to apologies starts with an insight from Alasdair MacIntyre about the complex normativity of practices, understood as follows:

A coherent and complex form of socially established cooperative human activity through which goods internal to that form of activity are realized in the course of trying to achieve those standards of excellence which are appropriate to, and partially definitive of, that form of activity.⁹

MacIntyre's discussion actually identifies several different normative features that, taken together, highlight the characteristic nature of practices. Practices are organised forms of social activity; they are organised insofar as they have entry norms – rules that must be obeyed for one's actions to qualify as engaging in that practice in the first place – and, also, criteria for judging excellent performance, within the limits of obedience to those entry rules. In MacIntyre's own example of chess, these include the basic rules of chess (e.g. the initial arrangement and characteristic move for each piece) on the one hand, and the standards by which a move, a gambit or an entire game is judged to be excellent, on the other (e.g. a ruthless strategy that defeats a given opponent in five elegant moves or less).

While we can specify and delineate the entry norms for a given practice in the abstract, it is more difficult to precisely identify all and only those features that distinguish excellence practitioners from the merely good. The entry norms are norms governing the practice insofar as they establish its minimal features or threshold: what it means to be doing *this* and not something else. Standards of excellence, on the other hand, provide internal normative assessment: what it means to be doing this *well* and not badly. In any sufficiently complex and rich practice, there will be multiple ideals – that is, different ways of modelling excellence, each of which are equally 'appropriate to and partially definitive of' the practice as a form of activity.

I endorse this understanding of the normativity of practices in my approach to apology. That is, I take it that the theorist of apology can identify a singular threshold – a set of minimal entry norms – for what it is to apologise, even while I remain sceptical that a singular regulative ideal (even one as extensive and flexible as Smith's categorical apology) can capture the rich variation in what it means to apologise *well*.¹⁰ Instead, I would argue that the entry norms represent axes of evaluation – a dimension along which a given apology can be assessed – but that the normative assessment itself must always be done contextually, *in situ*. What it means for an apology to be meaningful (that is, excellent according to the practice of apologising) will depend on the particularities of victim and perpetrator, their relationship, and the severity of the harm. It cannot wholly be determined in advance.

What are the entry norms of apologising – that is, the conditions under which we are able to recognise an utterance as an apology?¹¹ First, the act of apology takes place following wrongful harm.¹² Second, one person or persons (the apologisee) *offers* the apology to another or others (the recipient), and in doing so, she recognises them as importantly affected by that wrongful harm. Third, apologies tell or imply a particular kind of story, which contains at least the following elements:

- i The actions, policies, or events in question were wrong and harmful.
- ii The recipient was negatively affected by these actions, policies or events.
- iii The speaker takes responsibility for these actions, policies or events;¹³
- iv At the same time, the speaker disavows them – and the intentions, practices, or procedures that led to them – and acknowledges the recipient as someone who deserves better.¹⁴

These elements represent the ‘entry norms’ for the practice of apology; they are necessary conditions for an utterance or gesture to ‘count’ as apologising but they do not, in themselves, determine whether an apology is a *good* or *meaningful* or even a *successful* apology. Furthermore, not every element is always explicit. In many relationships, much can be taken for granted – but, on the other hand, if I were to express something *like* an apology, and yet go on to dispute that my action was wrong, or deny responsibility for what happened, or suggest that my audience was not really harmed or they do not actually deserve any better than this kind of treatment, then I may well be making excuses, offering sympathy, crowing, or confessing, but I am not apologising.

In addition, most apologies will contain:

- v Some forward-looking element, in which the speaker commits not to do these or similar wrongs again, or to make appropriate reparations or remedy, or to become somehow *better*, meeting certain standards or values that are inconsistent with their past behaviour

I say ‘most’ and separate this element because chronic, struggling wrongdoers may wish to apologise while being unable to truthfully make any such commitment. Remorseful and self-aware long-term addicts may express sincere apology alongside a sense of helplessness about future change, for example. Such apologies are perhaps less likely to be successful, but they are recognisably sincere attempts at apologising and may well be meaningful to the recipient. Thus v. may be an importantly characteristic feature of many apologies, but it cannot be an entry norm for the practice.

Finally, apologies express:

- vi Some degree of sorrow or another negative affect.

The affective dimension of apology (vi) is complicated, as no one single emotion entirely captures what it is to *be* apologetic. Depending on the circumstances, an apologisee may express sorrow, guilt, regret, shame, or anger – at herself, or at people for whom she holds responsibility. She might primarily convey relief at finally coming clean, or gratitude at her audience’s willingness to listen. She can well seem guilty, sheepish, heartbroken, despairing, hopeful, or resolute – and, still, sincerely apologise. An apology for a small offence may express little overt affect whatsoever (‘whoops – I’m sorry! I shouldn’t have said that’) and the affective quality of utterances will vary along lines of culture, gender, and neurodiversity, among other variables. Still, some feelings – irrepressible joy or outright hostility, for example – would significantly undermine her claim to be uttering an apology because they are inconsistent with the attitudes presupposed by the claim to apologise (e.g. recognition of harm, responsibility for harm, and disavowal of that harm). Such feelings can thus be ruled out.

Meeting entry norms and possessing these characteristic features does not guarantee that a given apology will be, *or ought to be*, successful; that is, they do not tell us whether a given apology is good or meaningful. Whether an individual apology is accepted will depend on whether the speaker is able to persuade her audience of the truth of these conditions, and – in particular – the depth and sincerity of her responsibility and disavowal, as well as the reliability of her commitment; whether the apology *ought to be* accepted will depend on whether it is reasonable for the audience to be so persuaded. Contextual factors beyond the speech act will also play a role here. These include but are not limited to the timing and setting of the apology, the extent to which the wrongdoer's version of events matches her victim's understanding,¹⁵ the performance of additional acts of amendment or repayment, the presence of third party or community support, and the broader history between apologist and victim.

The list is not haphazard; such contextual factors relate to the victim's ongoing vulnerability, the wrongdoer's sensitivity and responsiveness to that vulnerability, as well as to the victim's needs more generally, and the background understandings that frame how the apology is taken up and interpreted. Moreover, a morally appropriate apology will not always result in acceptance and forgiveness; some victims are more or less responsive than others.¹⁶ In other words, we cannot determine what *the* ideal apology looks like – or even, I would argue, catalogue all the possibilities for what *the* ideal apology might look like, in advance of contextual investigation.

3. Taxonomies of Apology

The growing practice of public, official apologies has expanded our categories of apology, as theorists have noted important differences between apologies offered between private individuals, on the one hand, and heads of state, on the other. The most familiar category remains the interpersonal, private apology, offered among friends and family, co-workers and neighbours, or even between colliding strangers on the street. Indeed, this kind of apology is often treated as a normative model for other variants.¹⁷

In contrast to the private, interpersonal apology, we can distinguish at least three kinds of public apology. These are, respectively, what we might call *public-personal apologies*, offered by celebrities and those whose personal life takes on apparent public significance; *public political apologies*, such as those offered by a head of state or on behalf of political entities;¹⁸ and *public apologies by non-governmental figures and organisations*, understood broadly: for example, official apologies offered by non-governmental individuals acting in a professional rather than a personal capacity, or speaking on behalf of corporations, churches, non-profits, community, and other institutions.¹⁹

Many philosophical discussions of public apologies have tended to focus on national apologies for historical wrongdoing, and thus have concentrated on the second category. While my prior work on apology has focused, for the most part, on political apologies,²⁰ my concern in this article lies with the third – often overlooked – type of public apology, i.e. official apologies by non-governmental organisations, and from this point, I intend to refer to such public, official apologies when speaking of either 'public' or 'official' apologies.²¹

Of course, not every official apology (whether political or not) is public. If a leader or CEO calls me personally to offer an apology on behalf of their organisation, they

are speaking in their official capacity, but they are not doing so publicly. If I record and leak the phone call, I have publicly exposed a private official apology, but the official apology is not thereby a *public* official apology. If, on the other hand, an official apology is issued in front of a wider audience than simply the recipient, or in a formal and public setting, or the apology is made part of the public record *by the apologiser*, then that individual official apology is now a public apology.²²

The increasingly complex typology of apology has raised interesting questions for normative theorists of apology, since the barometer by which we judge the quality of apologies in our personal lives doesn't always seem to apply in the public realm.²³ While the scope of this article does not extend to a full-fledged normative theory of public apologies,²⁴ even in the absence of such a theory we can note that the minimal entry norms, listed above, assist us in making judgments about better or worse instances of apology.

Apologies that communicate genuine responsibility for wrongdoing, as well as disavowal and commitment, that name wrongs and acknowledge victims, that demonstrate a sincere effort to rebuild trust and become trustworthy, that express shared moral values and reveal an understanding of those values – these apologies will typically be better than those that fail to do one or more of these things, or that do so in ways that are clumsy, thoughtless, and inept. Apologisers who are attuned to the interests and needs of their victims are more likely to produce such apologies than those who remain insensitive. While the mechanisms for achieving each function – and the shifting priority given to each function in a given context – are certainly issues of philosophical interest, my focus in this article is on the very *possibility* of good or meaningful public apologies, and so the finer distinctions between better and worse instances are of secondary concern.

4. Role-Playing and the Case against Official Apologies

What's so bad about public, official apologies? Certainly, would-be sceptics have a wealth of examples to draw upon. Most of us can recall acts of hasty, ill-conceived, or misguided apology that downplay responsibility and ignore the needs of victims, in an effort to restore the public face of a corporation. Examples of recent and indisputably *bad* apologies include that offered by British Petroleum executive, Tony Hayward, following the catastrophic and deadly 2010 Gulf Oil Spill, and the apology by MMA Railway Chairman Edward Burkhardt, following the 2013 Lac Megantic rail disaster in Quebec, Canada (which killed fifty people and levelled a small town).²⁵ Not only did these apologies fail to perform any of the functions described above, but they also exacerbated the grief and anger of victims and the broader public, doing little more than pouring salt in an already painful wound. Yet, in some ways, critiquing individual *bad* apologies only serves to underscore the ethical potential of the practice – perhaps the public gets so angry about bad apologies precisely because we believe better ones are valuable, and worth aiming for.²⁶ Individual bad apologisers are condemned, in part, for their failure to do something important.

This kind of concern sits in tension with a broader, mainstream criticism – expressed in traditional and social media – which states that official apologies, by their very nature, can never be meaningful. This second critique of official apology (that

they are necessarily ‘empty’ or insufficiently meaningful) starkly contrasts the personal with the professional, and the private with the public. In its strongest form, such sceptics claim that all official apologies are – to some degree – bad apologies.²⁷

Such a broad generalisation requires clarification. Sometimes, the concern seems to be that an official apology alone is not capable of repairing serious wrongs and breaches – a claim with which I agree, but which only serves to condemn all official apologies as bad apologies *if* the function of apology is taken to be total moral repair. This seems an unnecessarily high standard in public *or* private life. An apology can be personally and morally satisfying while still remaining the first step in a much longer journey towards the restoration of trust and demonstration of trustworthiness.²⁸

Sometimes the cynicism emerges from the sheer prevalence of public apologies (a weary ‘OK, who’s sorry now?’). Here, the implication is that once upon a time, official apologies were rare and unprecedented, and so they represented sincere efforts to reach out by especially responsible figureheads and leaders. Now, apologies are predictable rituals and, like all rituals, are ultimately empty.

Again, I am sympathetic to this concern; it seems true that less scrupulous CEOs and others have seized on the public apology as a quick, low-cost, way to appear to deal with serious issues. As any practice grows in popularity, we will see more and more examples of bad or mediocre participants, diluting the efforts of committed practitioners. Certainly, the familiar gold standard of corporate apology remains Johnson and Johnson’s official apology in 1982 – well before our present ‘apology epidemic’ – following the discovery that someone had tampered with Tylenol capsules, inserting cyanide. Johnson and Johnson’s apology is consistently praised for its promptness, sincerity, its focus on public interest, and its attention to immediate remedies.²⁹ Yet equally praiseworthy, and far more recent, is Maple Leaf CEO Michael McCain’s apology, following the discovery of listeria-infected packaged meat products in 2008. McCain immediately took responsibility – even before the source of the infection had been fully determined – and went on to make the following statement:

Going through the crisis there are two advisors I’ve paid no attention to. The first are the lawyers, and the second are the accountants. It’s not about money or legal liability; this is about our being accountable for providing consumers with safe food. This is a terrible tragedy. To those people who have become ill, and to the families who have lost loved ones, I want to express my deepest and most sincere sympathies. Words cannot begin to express our sadness for your pain.³⁰

McCain consistently focused on the public interest, taking risks with his own reputation and that of his company, and even followed up, one year later, with a full-page letter to consumers in all major national newspapers, once again taking responsibility, marking the tragedy, and stating ‘on behalf of our 24,000 employees, we promise never to forget’. This apology was made in an era in which corporate apologies are routinely expected, and yet it still stands out as an excellent instance. We might note that as apologies proliferate, the standard for what qualifies as an *exceptional* apology rises, but this appears to be a good, rather than a bad, development for the practice.

Blanket scepticism about public apologies is not so much an empirical generalisation as it is an interpretive claim, comparable to that made by the psychological egoist. Just as the latter argues that ‘why yes, it may *look* as though people do altruistic and non-

selfish things, but that's not really what's motivating them' and resists empirical counter-evidence, so too the official apology sceptic claims, 'why yes, it may *look* as though some apologies are appropriately meaningful, but such appearances are inevitably deceptive'. At root, the most persistent version of the role-playing criticism is this: whatever standard we set for good official apologies and whichever examples meet it, even the very best cases will always remain corrupted versions of the ideal of apology, because real and genuine apologies belong to relationships that are normatively *rich* in ways that the relationships involved in public apologies cannot be. The speech act of apology has the power it does because it draws on already-existing networks of trust and goodwill, and because we can reliably expect expressions of responsibility to match up with the motivation to change and become *better*, through feelings of guilt and remorse. Without the kind of trust, concern, and care we see in interpersonal contexts, public and professional relationships simply lack appropriate mechanisms for the transmission of accountability through speech act, however much they might appear to simulate them.³¹

5. Fiduciary Relationships – a Source of Optimism?

It quickly becomes apparent why the nature of fiduciary relationships may give the defender of public apologies grounds for optimism – at least when it comes to responding to the claim that official apologies emerge out of relationships and roles which lack the normative substance to sustain them. Fiduciary relationships are marked by the normative *expectation* that one party will use their judgment to act in the best interests of the other. Sometimes, this expectation is circumscribed: it refers to a single investment or set of contracts. In other contexts, fiduciary obligations are more open-ended, and will extend over a wide range of responsibilities related to the health, wellbeing, and interests of the other person.

Our notion of fiduciary is rooted in the Latin verb *fidere* (to trust) and trust is crucial to fiduciary relationships in two ways. First, fiduciaries involve trust in the sense of *entrusting*; a fiduciary is entrusted with something of the beneficiary's and the beneficiary³² is made vulnerable to the fiduciary as a result.³³ This vulnerability produces the second sense in which fiduciary relationships are relationships of trust. We are made vulnerable to others in all sorts of ways, all the time, but when we willingly entrust someone else with our vulnerability and they, in turn, accept this trusteeship, that trust carries a normative expectation. Not only is the beneficiary to some degree vulnerable to the fiduciary but, as a result of this vulnerability, the fiduciary ought to become *trustworthy* as her decisions and actions relate to this vulnerability.

Trust and the normative expectation of trustworthiness are the foundation for the normative framework governing fiduciary relationships. Within the scholarly literature on fiduciaries, this normative framework is described either as 'fiduciary loyalty'³⁴ or in terms of a shifting list of duties, including duties of loyalty, care, candour, confidence, and good faith.³⁵ The exact legal and moral standing of such duties remains a subject of philosophical debate, but – as theorist Matthew Hardin notes – most theorists emphasise the extent to which fiduciary relationships are grounded in trust, and the expectation of trustworthiness.³⁶

While ‘fiduciary’ has been used to explain relationships as different as citizen and state or parent and child, prototypical fiduciary relationships are found in the realm of business, the professions, and private law more generally: that of a lawyer and client, for example, or doctor and patient, or director and shareholders. In other words, standard fiduciary relationships are excellent examples of bonds that are not necessarily intimate, yet are widely recognised to be normatively ‘thick’. Successfully discharging fiduciary duties requires that the fiduciary engage in acts, practices, behaviours, and expressed attitudes that, taken together, constitute a significant degree of concern and care for another.³⁷

That we recognise the care and trust inherent to fiduciary relationships suggests that the stark contrast between the supposedly meaningful realm of intimate personal relationships and meaningless domain of ‘empty’ public ones – presumed in the role-playing critique of public apology – is overstated. If there exist categories of official or formal relationship *defined* in terms of responsibility for another, as well as concern and trust, more work must be done to motivate the claim that a speech act whose purpose is to express responsibility, exhibit concern, and repair trust is necessarily out of place in a official or formal relationship, *per se*.

Of course, not all fiduciaries will be trustworthy or will successfully discharge their fiduciary duties. Some will be careless or negligent, or even exploitative and dishonest. Indeed, fiduciaries who are in a position to apologise are *more* likely to have been careless, negligent, exploitative or dishonest. But the same is true for personal relationships. To say that family and friendships are relationships of intimacy and love, mutual concern and care is to make a statement of normative expectations, not descriptive fact. One need only glance at rates of child abuse and domestic and intimate partner violence (or even, less drastically, consider how much time is spent discussing the various failings and betrayals of parents and family, friends and neighbours, in an average therapy appointment) to recognise this. The fallibility of fiduciaries does not, in itself, place them in a different category from friends and family.

Importantly, fiduciary relationships are sites of morally weighted vulnerability. They are almost always asymmetrical, and they concern the interests of the less powerful or less knowledgeable party. Clients entrust professionals with sensitive personal information (e.g. legal or medical details) and in doing so trust them both not to exploit or expose it and to use this information *well*, in order to act in their clients’ interests. Clients often make themselves physically and emotionally vulnerable as well – we need only consider the mundane but stark examples of lying mostly naked on an examining table, waiting for the doctor to enter or telling your most painful story to a new lawyer, in a cold and unfamiliar office, to recognise this. The decisions made by fiduciaries are based on the judgment and discretion of one person, and concern the interests and wellbeing of another. It is hardly surprising that lists of fiduciary obligations express a preoccupation with the conditions for warranted trust. Along with such discretion, comes considerable scope for harm and, in particular, for wrongful harm – thus the need for the duties and the expectations of trustworthiness described above.³⁸

The issue of trust – and its restoration – is central to norms of apology.³⁹ Daryl Koehn argues ‘a corporate apology is ethically good only if it aims at restoring trust . . . an apology by its very nature has a purpose, goal, or *telos* of “bridge-building” or trust restoration.’⁴⁰ Earlier treatments of apology by Trudy Govier, among others, have also focused on their role in restoring conditions of trust.⁴¹ Apologies, as a rem-

edy for restoring trust in the aftermath of harm, may potentially have a larger role to play in fiduciary contexts – and it is no coincidence that the examples of official, non-governmental apologies given so far were uttered by those standing in (at least one) fiduciary relationship.⁴² In other words, fiduciary relationships seem to provide an excellent example of what some critics of public apology apparently believe impossible: an impersonal context that is nevertheless capable of providing the trust, concern, and respect that endow words like ‘I’m sorry’ with the power to repair relationships following wrongdoing.

6. Truth-Telling and Confidentiality

The apology defender’s optimism may be short-lived, however. While both fiduciary duties point to a context in which ‘thick’ norms are at work in formal relationships, in many cases or even most cases, explicit fiduciary duties may actually conflict with the normative demands of apology. This is perhaps most clear when considering the fiduciary duty of confidence, and related norms of discretion.

Apologies potentially contribute to moral repair as a form of truth telling; they air out the story of wrongdoing, while identifying and acknowledging the dignity of those who suffered from its effects.⁴³ This function of apologies is widely acknowledged in the philosophical literature – Smith, for example, argues that the appropriate identification of harm(s) represents an essential part of the ideal or categorical apology.⁴⁴ Moreover, good apologies express and confirm *narrative convergence*; an apology is likely to be successful the more the wrongdoer’s understanding of what happened, and why it was wrong, matches the understanding of her recipient.⁴⁵ Narrative convergence holds particular significance in the public realm, where incomplete and conflicting versions of the story may have been available through various media sources, and doubly so if the apologiser holds more authority and more credibility than their victims – especially if the victims’ own testimony (as well as their backgrounds and characters, more generally) has been publicly scrutinised and unsympathetically portrayed. A public apology is often the most effective way of cementing the official version of events in the public eye and in the historical record, which is one reason that political apologies for historical wrongdoings hold value for the descendants of original victims, even apart from accompanying compensation or other reparations.⁴⁶

Practices of public, official, truth telling may be undermined by fiduciary duties of confidence. The value of apology emerges – at least in part – from the apologiser’s willingness to name the wrongdoing, perhaps going into details that were previously undisclosed, and her decision to address the victim with acknowledgement and respect. But the fiduciary duties of confidence – the duty to protect the principal’s interests by maintaining their privacy and keeping vulnerable information secret – may prevent the apologiser from addressing her victims personally, or even from knowing (let alone saying) exactly how they have been harmed – to do otherwise would be a second ethical violation. Indeed, a fiduciary apologiser may be similarly prevented from naming the wrongful harm with any specificity, given issues of confidentiality. The question of fiduciary confidentiality is perhaps most likely to arise for apologies in the context of medical harm. If a doctor culpably confuses two courses of treatment

for two different patients, she may not be able to explain exactly what happened to one without exposing the other's confidential medical file.⁴⁷

Indeed, public apologisers are also constrained by *other people's* fiduciary duties of confidence. Consider, for example, the following cases: samples of medicine promoted and distributed to a number of family doctors by a particular pharmaceutical company had ambiguous and confusing instructions about dosage, leading to patient errors and resulting medical complications. In the second case, suppose it emerges that one component of a widely prescribed particular drug has been manufactured in a jurisdiction known to have dubious safety standards, leading to contamination with low levels of toxic substances. While the pharmaceutical company was not aware of the particular contamination or had not written the dosage instructions, their ignorance is morally – if not legally – culpable, given widespread awareness of the problematic safety standards and difficulties with prescription dosages.⁴⁸

A responsible director of such a pharmaceutical company might conclude that – among other things – an apology was in order, and might know, further, that one of the standards of good apology is that it acknowledges victims by addressing them personally. Furthermore, she might conclude that while her company has let down the doctors they work with, by failing to provide sufficiently clear and comprehensible instructions, the ultimate victims of this error are the patients themselves, who suffered the side effects. Indeed, insofar as the trust between doctor and patient will most likely have been profoundly shaken by this pharmaceutical error, the goods inherent in that fiduciary relationship are themselves casualties of the wrongdoing.

Nevertheless, the fiduciary duty of confidentiality requires that the doctors not disclose their patients' personal information, including their names – at least not without permission, which (let's imagine) these doctors have not been able to obtain. Moreover, this responsible representative also knows that *timeliness* is important when it comes to apologies, and realises she cannot wait for permissions that may never arrive. If the patients' personal information is kept confidential, the representative of the pharmaceutical company may never be in a position to acknowledge or address the primary victims (i.e. the patients) directly – indeed, the representative may never even learn of their identities. While respecting medical confidentiality is the *right* thing to do, it places a very clear limit on the extent to which the apology can function; even an ardent defender of meaningful public apologies will recognise that an act of apology aimed at 'those anonymous individuals whose lives were affected by this error' has significantly less emotional and rhetorical weight than a more personal address. The pharmaceutical company's ability to meet and excel at the conditions referred to above as the 'entry norms' of apologising (see Section 2) is severely constrained.

The conflict between practices of truth-telling and relationships of confidence is not insignificant, since privacy protections play a significant role in most codes of professional ethics and, in particular, in contexts of health and health information. Health is an area where the beneficiaries of fiduciary relationship are also especially vulnerable to harm, and where an increasing amount of theoretical attention is being paid to issues of post-harm repair and remedy. It is important to recognise ways in which fiduciary obligations constrain remedies that rely on truth telling, given the emphasis on truth as a mode of accountability and trust-restoration in many theoretical approaches to post-harm repair,⁴⁹ and more broadly, in public perceptions of what makes an agent or organisation trustworthy. We tend to equate trustworthiness with

transparency. This conflict points to how the restoration of trust pulls in two different directions: restoring public trust may require disclosure, while maintaining fiduciary trust means maintaining confidentiality.

7. Fiduciary Apologisers

The constraint placed on practices of public apology by duties of confidentiality is not insignificant, but it remains true that the duty of confidence does not characterise all fiduciary relationships and – most importantly – does not define what it is to be in a fiduciary relationship. Not all trust requires secrecy. Not every public apology in a fiduciary context will be limited by concerns over confidentiality. Indeed, the more pressing philosophical question may concern the decision to apologise itself, even when confidentiality is not at issue.

As I argued above, the role-playing criticism directed at official apologies focuses on the figure of the apologiser, and articulates a suspicion that, however much a public apology might *seem* to hit the right notes, such notes are false. Precisely because they are engaged in an official role, such public apologisers will never be motivated in the right sorts of ways, by the rights sorts of reasons, and with the rights sorts of attendant concerns and cares. Considering the figure of the fiduciary certainly demonstrates a fairly common case of an agent whom we regularly expect to be motivated by appropriate reasons (i.e. the conscientious assessment of another person's needs and interests, and a sincere willingness to act to further those interests, as best they are able) and is able to express similar concerns and cares, even though they are motivated by their role within a professional or business relationship and not a personal one. We might say that official apologisers ought to direct their good judgment and discretion towards the best interests of the apology-recipient *qua* apology-recipient, in a way that expresses responsibility and trust-worthiness, just as we expect fiduciaries to direct their good judgment and discretion towards the best interests of the principal.

We could push the analogy further and suggest that wrongdoing *creates* a subsequent relationship between wrongdoer and victim, replete with attendant duties and powers, not unlike the fiduciary relationship, duties, and powers that stretch between fiduciary and principal. This analogy is reminiscent of philosopher Claudia Card's account of victims and wrongdoers in *The Atrocity Paradigm*, in which she describes how serious wrongdoing creates new relationships between those involved:

[Evils] create moral powers in survivors, obligations in perpetrators, beneficiaries and bystanders, and new options for many . . . Like creditors and benefactors who can forgive or exact debts, voluntarily releasing others or holding them to obligation, victims have moral powers to release or hold perpetrators to obligation.⁵⁰

The comparison captures the way that the obligations of both wrongdoers and fiduciaries are open-ended, without being limitless. We cannot always specify, in advance, *what* precisely must be done to fulfil one's fiduciary obligations (or precisely when these obligations have been satisfied) in the same way that a would-be apologiser cannot always ascertain *what* precisely (if anything) ought to satisfy a victim and restore a trusting relationship. At the same time, just as there are limits on fiduciary

obligation and conditions under which existing obligations are nullified, so too – as Card notes – ‘unscrupulous or abusive victims can cease to deserve apologies or reparations, involuntarily releasing perpetrators from obligation’.⁵¹ There are cases where enough is simply enough.

What happens when these two roles overlap? Both are defined in terms of the priority that must be given to a specific person’s interests, and the obligations that can be demanded by or on behalf of that person, as a result. Can a fiduciary apologist succeed from the perspective of both practices? *Qua* fiduciary, she ought to focus first on her principal; *qua* apologist, her attention ought to be directed towards her victim. In other words, one of the norms shared by practices of apology and of fiduciary relationships is that the value of the acts in question derives, in part, from the locus of the actor’s attention: it is not simply that she acts in a way that is in another (particular) person’s interests, but rather, these interests are what *ground* and *motivate* her actions and her identity within that relationship.

This poses little difficulty when the two sources of obligation are one and the same – that is, when the wrongdoing in question victimises the principal and represents some failure of fiduciary obligation (a breach of trust, for example). Then, these two sets of demands will reinforce each other. The reasons the fiduciary has to apologise will echo the reasons they have to act, concerning their principal, more generally.

Indeed, we might argue that any wrongdoing that victimises the principal will affect the fiduciary relationship, insofar as the latter is characterised by trust, whether or not it is also a breach of a specifically fiduciary duty. If my lawyer hits me with my car as I’m leaving the parking lot after my session, this is likely to affect our working relationship even if ‘don’t hit me with your car’ wasn’t specified among their fiduciary obligations. We might say that my lawyer, *qua* fiduciary, has more reasons to apologise than a stranger would, in any instance of wrongdoing, or even someone in a non-fiduciary relationship would have – their fiduciary obligations, even when not specifically violated, still characterise the relationship as one of responsible concern, and so may give the fiduciary additional reasons to apologise when their actions fail to express that responsible concern.⁵² Of course, insofar as the apology appeared to be purely instrumental to the restoration of our professional relationship, it would be a poor apology – but equally, recognisably cynical or instrumental acts of trust-building more generally would fail to meet the norms of a fiduciary relationship, since they ultimately undermine trust and demonstrate insufficient concern and care for the wellbeing of the principal.

Now, consider a fiduciary apologist whose primary victims are not also their principal(s). This is the case for most official corporate apologies, for example. The director or their representative is called upon to apologise *on behalf of* the corporation and thus, indirectly, on behalf of its shareholders – to whom the corporation has a fiduciary duty – to external victims: either consumers or affected bystanders. There are several ways in which the apologist’s fiduciary and apologetic obligations might intersect, in the case of apologies to a non-principal.

First, and perhaps simplest, imagine that the wrong in question has little or no bearing on the wrongdoer’s fiduciary capacity. Instead of my lawyer negligently hitting me with their car, it is the director of a corporation with a significant public profile. Indeed, imagine further, that this incident receives public attention (perhaps irony plays a role here – the roads are icy and the corporation in question manufactures

snow tires). The media picks up on it, and bloggers and social media are momentarily horrified. It seems reasonable to say that, among other things, the director owes me – their victim – an apology. Given the media furore and given the relevance of their position to the incident, this will likely be a public apology. Some of the reasons that they owe me an apology are identical to the reasons why anyone who hit me with their car would owe me an apology. But the director may have additional reasons to apologise, stemming not from their obligation to me, but from their obligations to the company to represent it well, and not to damage its reputation and thus its stock. An apology to me may become one of their fiduciary obligations to their company, in addition to being a moral obligation to me. This may strike some readers as odd, when viewed from the perspective of apology – more on that shortly.

Now, imagine a second, slightly different scenario. In this case, the fiduciary apologist is doing just that – apologising in their fiduciary capacity. Suppose that the director of Snow Tires Inc. has now offered an apology, publicly, for a manufacturing flaw that has led to several multiple-vehicle crashes (thankfully, none of them fatal). The apology is well-timed, sincerely uttered with appropriate affect, appropriately names the harms involved, acknowledges the victims and is sensitive to their experiences and to the severity of the wrong, and comes with assurances of compensation, a widespread recall, and appropriate reforms to the manufacturing process, as well as a thorough, independent investigation into the source of the error. In other words, it is – by any reasonable standard – a *good* public apology. We might still want to consider the *decision* to apologise by the fiduciary apologist. On what grounds can they decide to apologise, in their fiduciary capacity – what motivates the apologetic instinct? A conscientious fiduciary will be motivated at least partly by either a direct mandate from their principals or the reflective decision that it is in their principals' interests. If motivated in this way, the apology would meet the director's fiduciary obligations – but does it now lack some other quality? Is the apology lessened because it also meets an obligation unrelated to the needs of the victim? Is this also odd, from the perspective of apology?

A responsible fiduciary will presumably reflect (consciously or unconsciously), 'is this in the best interest of my principal/beneficiary?' before taking certain actions. A public apology is likely to be among them. While this is admirable from the perspective of fiduciary loyalty, some might wish to insist that, from the perspective of apology, such a question is 'one thought too many' – to borrow Bernard Williams' phrase.⁵³ Considering whether the apology is good for the interests of their principal, even if they decide that it is *and* they also sincerely believe the apology is owed to the victim, appears to undermine the value of the apology. The obligation to the victim is weakened by its overlap with the obligation to the principal. The decision to apologise is over-determined by reasons, and with that over-determination lingers the thought that – without the second set of reasons (that apologising is good for the company's image and for 'the bottom line') – the apology would not have been forthcoming. We can't be sure which among their reasons to apologise actually motivates the fiduciary apologist to do so. This is a question of appearance, of course, but not of *mere* appearance, since one of the criteria for meaningful apology is acknowledgement of the victim and sensitivity to their needs and vulnerabilities. Victims do not want to feel as though they are incidental to the process – or that the apology is not really *about* them.⁵⁴

In fact, there are two ways in which concern for fiduciary duties may weaken the value of an apology. The first concerns the motives and attention of the fiduciary apologist (as described above). If they appear more concerned with the welfare of their principal than the welfare of their victim, they risk failing to meet the entry norms of apology described in Section 2; specifically, (ii) acknowledgement of the victim's suffering and (iv) recognition that the victim deserves better, as well as (vi) the expression of sincere and appropriate affect. But even if the concerned fiduciary manages to offer a *good* apology – that is, if they give every indication that their concern lies with the victim, and it is clear that the victim's plight and the fiduciary apologist's responsibility for that plight form the reasons for their apology – their apology may still be conditional on it also being 'good for business', as it were. The fiduciary's concern for the interest of their principal may not be the reason they apologise, but it still operates as a constraint on the practice; had it been significantly bad for business, the same reasons might have been in place and yet the fiduciary would not have apologised. I have used the example of fiduciary responsibilities to shareholders here, because worries about 'bean-counter' apologisers often arise in corporate cases, but we can imagine fiduciaries with similarly conflicted loyalties (i.e. to victim and to principal) in other institutional contexts. Indeed, this is one example of the conflict between moral obligations and institutional role obligations that Jean Harvey addresses, noting that these conflicts have often been overlooked precisely because of the priority granted to fiduciary obligations: 'professions have embraced the mistake of believing that only their role obligations have a call upon them while they are in their professional role.'⁵⁵

Does the presence of such attention to fiduciary obligations – or any external obligations – negate the value of the fiduciary apology? The intuition is compelling, and may well motivate the broader scepticism towards public apologies I described in Section 3. We resist public apologies because we suspect they are never about us, and only ever about the interests of the organisation we take the speaker to represent.⁵⁶ But ultimately, it expresses a problematic purism about apologies that is unwarranted, and is unfeasible in the private or the public realm. Critics who condemn public apologies for mixed motives also tend to contrast them with 'good' private or interpersonal apologies. Yet the idea that most interpersonal apologies – even most *good* interpersonal apologies – are offered without mixed motives seems almost laughable. Interpersonal apologisers will act out of concern and care for their victims, yes – and also out of guilt and remorse, a craving for things to return to normal, the fear of loss, the need to get something off one's chest, discomfort with victim anger, vaguely remembered habits from childhood, and so on. Some of these mixed apologies will nevertheless be sincere, meaningful, and attentive to the process of repair; they meet the threshold for a 'good-enough' apology, if not an ideal one. Indeed, there are plausible scenarios where someone apologises, in part, out of a sense of obligation to a third party ('my mother didn't raise me to be this kind of person'; 'What would my grandfather think if he could see me now?'; 'We owe it to the kids to work this out'; 'After talking to so-and-so, I realise I have to get past this, for her sake as well as for ours').

Instead of condemning mixed motives and external constraints in practices of good apology, therefore it makes more sense to ask: under which conditions does attention to non-victim-related reasons for apologising *undermine* the value of the apology past the threshold of acceptability? Or rather, how might we set up frameworks to guide fiduciary apologies (where mixed reasons seem almost inevitable) to prevent fiduciary

– or other – obligations from displacing the centrality of the victim altogether? Competing obligations means that fiduciary apologisers may walk a slipperier tightrope than individual apologisers, but this is reason to continue revising and reframing guidelines for better apologies, not ruling out their possibility.

It also points to the unlikelihood of there being a single template for the ideal public apology, since what is entailed by appropriately attending to competing obligations will vary widely from case to case. Some fiduciaries must negotiate the need for truth telling from within the constraints of confidentiality, while others will need to focus on how they can prioritise victims without over-extending their fiduciary mandate. Given the importance of fiduciary responsibility *and* corporate responsibility, more generally, we have every reason to be demanding in our standards for official apology. But we do not, in my view, have reason to rule out their possible value altogether.

8. A Final Worry

I have argued that, while fiduciary obligations may complicate the process of apology for a would-be apologiser, they do not rule out the possibility of an ethically adequate apology. Rather, they highlight the need for normative guidelines specific to the concerns of official apologies, and also suggest that ethically admirable public apologies may vary widely, given the need to balance specific obligations from case to case.

There is one final scenario to consider, for the figure of the fiduciary apologiser. I have shown how parallel obligations complicate the process of apology even when they overlap, but such obligations might also pull in entirely different directions. Apologising is not always in the best material interests of an institution or professional body; in some contexts, apologising may increase its vulnerability to financial and legal liability or prolong media coverage, keeping the wrong in the public eye, or it may be impossible to clearly apologise without exposing additional sources of corporate vulnerability. Apologising could damage the company, overall.⁵⁷ Yet, even in those cases, from the perspective of the victim and within the practice of apology and moral repair more generally, apologising may simply be the right thing to do.

What, then, of the fiduciary whose individual conscience tells her an apology is warranted but who knows – or is instructed – that it would not be in the interests of her principal? This is a profoundly compromised position, especially if the fiduciary is not personally responsible for the wrongdoing but rather is implicated by the fiduciary relationship she holds to those who *are* responsible. This is not merely a question of conflicting obligations. If the fiduciary wants to apologise on behalf of her principal, but her principal does not issue an apology and explicitly instructs the fiduciary *not* to issue an apology, and the fiduciary knows that, in her best judgment, it is not in her principal's interest to apologise, then it is not clear to me she *can* apologise, *qua* fiduciary. In other words, a fiduciary role can put someone in a situation where she feels implicated by the wrongdoing of her principal *because* of their fiduciary relationship but, without an appropriate mandate, she lacks the necessary standing to express her sense of responsibility, to signal her disavowals, and – in particular – to make appropriate commitments towards change.

It is far from clear what counsel an apology theorist should offer the conscientious fiduciary would-be apologiser in this case. She can make personal apologies, of course,

but these risk sounding like excuses or exculpation ('although I was not personally aware of the incidents in question, I am shocked and saddened...'). She can express her moral protest in other ways – perhaps even by resigning her position. She may look to other forms of truth telling, taking on the role of a whistle-blower. But, given the constraints that define our practice of apologising and the constraints of a fiduciary relationship, it would seem that the one thing she cannot do, in response to this wrong, is apologise.⁵⁸

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NOTES

- 1 See, for example, Janna Thompson, 'The apology paradox,' *Philosophical Quarterly* 50: 470–475; and *Taking Responsibility for the Past: Reparation and Historical Injustice* (Cambridge: Polity Press, 2002).
- 2 See, for example, Nick Smith, *I Was Wrong: The Meanings of Apologies* (Cambridge: Cambridge University Press, 2008), pp. 173–220.
- 3 See, for example, Roy Brooks, *When Sorry Isn't Enough: The Controversy over Apologies and Reparations for Human Injustice* (New York: NYU Press, 1999); Linda Radzik, *Making Amends: Atonement in Morality, Law, and Politics* (Oxford: Oxford University Press, 2009); Anne MacDuff, 'Do sorry statements make you liable?'. Paper presented at *Forgiveness: Probing the Boundaries* Conference (Salzburg, 2008); Elizabeth Spelman, *Repair: The Impulse to Restore in a Fragile World* (Boston, MA: Beacon Press, 2002).
- 4 L.F. Kort, 'What is an apology?,' *Philosophy Research Archives* 1 (1975): 80–87; Nicholas Tavuchis, *Mea Culpa: A Sociology of Apology and Reconciliation* (Stanford, CA: Stanford University Press, 1991); K.A. Gill, 'The moral functions of an apology,' *The Philosophical Forum* 31,1 (2000): 11–27; Trudy Govier & Wilhelm Verwoerd, 'The promise and pitfalls of apology,' *Journal of Social Philosophy* 33,1 (2002): 67–82; Aaron Lazare, *On Apology* (Oxford: Oxford University Press, 2004); Marguerite La Caze, 'The asymmetry between apology and forgiveness,' *Contemporary Political Theory* 5,4 (2006): 447–68; Margaret Walker, *Moral Repair: Reconstructing Moral Relations after Wrongdoing* (Cambridge: Cambridge University Press, 2006) 191–229; Luc Bovens, 'Apologies,' *Proceedings of the Aristotelian Society* 108 (2008): 219–39; Adrienne M. Martin, 'Owning up and lowering down: The power of apology,' *Journal of Philosophy* 107,10 (2010): 534–553.
- 5 Smith 2008 op. cit., p. 12.
- 6 Smith 2008 op. cit., p. 23.
- 7 Alison Dundes Renteln, 'Apologies: A cross-cultural analysis' in M. Gibney et al. (eds) *The Age of Apology: Facing Up to the Past* (Pennsylvania, PA: University of Pennsylvania Press, 2008), pp. 61–76.
- 8 Examples include the relative significance of eye contact or the appropriate timing.
- 9 Alasdair MacIntyre, *After Virtue: A Study in Moral Theory* (Notre Dame, IN: Notre Dame University Press, 1984), p. 190.
- 10 Given the focus of the article, my defence of this approach is necessarily brief. I discuss my resistance to regulative ideals of apology elsewhere. See Alice MacLachlan, 'Beyond the ideal political apology' in M. Mihai & M. Thaler (eds) *On the Uses and Abuses of Political Apology* (New York: Palgrave MacMillan, 2014), 13–31. Here, I make only a few brief remarks. While Smith is confident that an appropriately extensive and flexible regulative ideal can reflect the variation in practices of apologising and the multiplicity of functions of apology, I worry that a definitive ordering of these functions into a singular apology creates an incremental norm of apology: an apology that fulfils more possible functions will always be better or more meaningful than one that fulfils fewer. But this incrementalism may not always reflect the contextual needs of apologisee and recipient. Second, for morally-inflected practices like apologising, a regulative ideal takes on the role of paradigm in both a descriptive and normative sense (this is evident in Smith's work as he discusses the limited nature of 'non-categorical' apologies, for example). It tells us both what an apology does and ought to look like. I take these two functions to be importantly separate, and argue that the latter must be worked out contextually. Moreover, there is a *sui generis* quality to an outstanding

- apology, which is perhaps related to the fact that apologies are often performed. It may be as difficult to identify what made a particular apology so powerful as it is to identify what makes a particular jazz riff so compelling. As Mihaela Mihai puts it, a 'a check-list model of apology fails to capture faithfully the kind of imaginative act that an apology must be.' See Mihaela Mihai, 'When the state says "sorry": State apologies as exemplary political judgments,' *Journal of Political Philosophy* 21,2 (2013): 200–220, at p. 209.
- 11 Use of speech-act language should not be taken to imply that an apology is always uttered verbally: as well as written apologies, we can recognise apologies expressed through meaningful glances, appropriate gestures, symbolic gifts, rituals, joint declarations, works of art and even a change of (place or institutional) name.
 - 12 I say 'wrongful harm' rather than wrongdoing because of the relational nature of apologies – apologies are not just a moral stocktaking by the wrongdoer, but also a gift or gesture to the recipient, who has been affected (i.e. harmed) by the wrongdoer's actions. Someone who had benefitted from the wrongdoer's misdeed would not be an appropriate audience for apology; the presumption, in apoloising, is my audience has been negatively affected by my actions, and I am in some way accountable to them. A wrongdoing that harmed no one would be an unlikely candidate for apology (unlike, for example, religious confession).
 - 13 The expression 'to take responsibility' is intentionally broad. These are intended to be conditions under which something is recognisable as apology; the way in which someone who hits my dog with his car takes responsibility is different than the way the parent whose teenager hits my dog with the family car does, which is again different than the responsibility taken by the vet who gives my dog an inadvertent overdose, or that of the CEO of the dog food company, after a warehouse filing error leads to my dog's illness. Yet each form of responsibility might appropriately be expressed within the narrative of an apology, and I am outlining the minimal conditions under which something is recognisably an apology.
 - 14 In the case of complex harms with multiple victims, it may be that several people deserved better.
 - 15 I discuss the role of narrative convergence further in Section 5.
 - 16 Further, it's not at all clear that a morally appropriate apology always *ought* to result in forgiveness. Some victims will have valid reasons not to forgive even after a meaningful apology. The pressure to forgive is one reason *good* apologies can be as morally risky as bad apologies. See Alice MacLachlan, 'Gender and public apology' *Transitional Justice Review* 1,2 (2013): 126–47.
 - 17 I dispute the wisdom of this for several reasons. First, I believe a singular regulative ideal of apology is an inadvisable goal, in any context (as discussed in note 10). Apologies have multiple moral and relational functions, which resist lexical ordering (and which may not be individually salient in each case, depending on the relationship and wrongdoing in questions). Second, a normative model based on interpersonal apologies imports inappropriate measurements of success, such as the interior emotional state of the apologizer, rather than looking to specifically public or political measures of responsibility, disavowal, and trustworthiness. I discuss this at greater length in MacLachlan 'Beyond the ideal political apology' op. cit.
 - 18 I discuss political apologies in 'Beyond the ideal political apology' and 'Gender and public apology' as well as in the following pieces: Alice MacLachlan, 'The state of "sorry": Official apologies and their absence,' *Journal of Human Rights* 9,3 (2010): 373–85; Alice MacLachlan, 'Government apologies to indigenous peoples' in A. MacLachlan & C. Allen Speight (eds) *Justice, Responsibility and Reconciliation in the Wake of Conflict*, vol. 1, Boston Studies in Philosophy, Religion and Public Life (Dordrecht: Springer, 2013), pp. 183–204. Neither 'impersonal' or 'official' precisely captures the kind of apology I have in mind here, since political or institutional apologies can be profoundly personal and deeply moving for their recipient or even for the representative who offers them, and not all political apologies are accurately described as 'official'. Instead, I refer to the capacity in which the apologiser publicly presents themselves, and the nature of the wrongdoing; President Clinton's apology for US inaction in Rwanda would qualify, but an apology for his sexual infidelity would not. Additionally, the separation between political and non-political apology is murky at best, given the political role played by many non-state actors and institutions.
 - 19 My understanding of non-governmental organisation is thus broader than the type of institution typically described as an 'NGO', which is often used to refer to non-profit and political advocacy organisations.
 - 20 See MacLachlan 'The state of sorry'; 'Government apologies to indigenous peoples'; 'Gender and public apology'; 'Beyond the ideal political apology' op. cit.
 - 21 Academic work on apologies has also categorised them as either collective or individual, depending on whether they are offered by one person to one person, by many to one, by one to many, or by many to many: see Tavuchis op. cit. This division does not match the private/public division, since private apolo-

- gies can be collective (e.g. mass apologies between neighbouring families) and public apologies can be individual (e.g. between two heads of state or two CEOs). I touch on the issues raised by collective apologies in Section 4.
- 22 For example, when Canadian Prime Minister Stephen Harper publicly released a letter of apology he had sent to Canadian citizen Maher Arar on behalf of the Canadian government, that apology took on the status of a public apology. The apology was issued along with a compensation package, for Canada's role in allowing Arar to be deported to Syria, where he was tortured and detained for over a year on false grounds 'Prime Minister Releases Letter of Apology to Maher Arar and His Family and Announces Completion of Mediation Process,' *Prime Minister of Canada, Stephen Harper*, 26 January 2007, <http://www.canada.com/topics/news/national/story.html?id=54e0c760-750d-4b18-9f6d-15501296a7b2&k=69081>.
 - 23 See Smith 2008 op. cit., p. 167-244, as well as Nick Smith, 'An overview of the challenges facing collective apologies' in D. Cuyppers *et al.* (eds) *Public Apology Between Ritual and Regret* (Amsterdam: Rodopi, 2013), pp. 29-44.
 - 24 See MacLachlan 'Beyond the ideal political apology' and 'Government apologies to indigenous peoples' op. cit.
 - 25 Burkhardt publicly blamed several others (ranging from volunteer fire-fighters to the train engineer), effectively hedging his own responsibility, and his focus on himself, rather than on his victims. Additionally, Burkhardt repeatedly referred to his own emotional state and moral standing – asking, rhetorically, 'am I a compassionate person?' and repeating 'I feel absolutely awful' – and even went on to joke about the loss to his net worth. His perceived self-absorption was reinforced by his request for a police escort during his visit and his verbal speculation that he might need to wear a bulletproof vest, when appearing publicly (See John Baldoni, 'How Edward Burkhardt is making the Lac Megantic accident even worse,' *Forbes* 15 July (2013); online at <http://www.forbes.com/sites/johnbaldoni/2013/07/15/how-edward-burkhardt-is-making-the-lac-megantic-accident-even-worse/>) Hayward also appeared to prioritise his own welfare and standing. Immediately after he first said 'I'm sorry' publicly, he went on to insist 'There's no one who wants this over more than I do. I would like my life back' – a shockingly insensitive remark, given the eleven people who lost their lives on the drilling platform, and the massive ecological, economic and social damage to surrounding communities (See 'BP Chief Tony Hayward: 'I'd like my life back', *The Huffington Post*, 1 June (2010); online at http://www.huffingtonpost.com/2010/06/01/bp-ceo-tony-hayward-video_n_595906.html.) Only after this did Hayward issue a full apology statement, as part of his testimony to Congress (See 'BP Chief Tony Hayward's statement in full,' *The Guardian* 17 June (2010) online at <http://www.theguardian.com/business/2010/jun/17/bp-tony-hayward-oil-spill-statement>.) While the statement, taken out of context, appeared to fulfil many of the criteria for an adequate public apology, the contextual factors surrounding it (including the delay, the fact it was prompted by a congressional hearing, and his earlier remarks) significantly drained it of meaning.
 - 26 Anger at a bad public apology could be read as the desire for a better public apology, on the one hand, or it could be read as desire for something other than an apology (the implication being that apologies are, as a category, insufficient or unsatisfying). Some public outrage at bad apologies takes the latter form, definitely, especially when the apologies in question do not commit to material reparations. Yet other criticism is directed at bad apologies *as* apologies – e.g. that they fail to communicate responsibility, that the apologiser doesn't yet 'get it', and so on. That suggests a desire for a *better* apology (among other things) behind the reaction to a bad one.
 - 27 It is important to clarify that my focus here lies with mainstream and not scholarly critiques of public apologies. Much of the academic scepticism about official apologies centres on their representative or collective nature. Scholars have argued that *collective* apologies face a host of challenges in addition to the requirements facing individual apologisers: these include the problem of consensus and the question of *standing*. What does it mean for one person to take responsibility and offer sincere remorse on behalf of a larger group – is it possible for them to do so if not every member of the group feels sufficiently remorseful? Does the apology lose its meaning if even one person refuses to acknowledge the victim's suffering? While the questions of collective intention, action, and responsibility raised by representative apologies hold undeniable philosophical interest, they are not my focus here for three reasons. First, not all official apologies are collective – the two categories tended to be equated because of the focus on political or state apologies, in which a political leader speaks on behalf of their own administration, a previous administration, or the state as a whole. My focus, on the other hand, lies with fiduciary apologies, many of which are individual and not collective. Second, insofar as I address identifiably *collective* apologies in this article, my focus is on the highly structured collectives that Tracy Isaacs identifies as '*organizations* ... the most

- obvious and least contestable candidates for moral agency'. Isaacs contrasts organisations with goal-oriented collectives, social groups, and aggregates, and notes that in each of the other three cases, it is significantly more difficult to identify collective intention and responsible action, above and beyond the responsible actions of specific individuals. The issue of (lack of) consensus is more salient for aggregates and social groups, where decision-making procedures and hierarchies are often implicit, informal and contested. In contrast, Isaac notes that, in organisations, 'roles and authority structures are outlined and the organization's policy – including its mission and goals, as well as procedures for making organizational decisions and for the organization taking action – is articulated.' Official apologies by a designated trustee or CEO, or indeed by an appropriately appointed spokesperson *for the individual in the appropriate role*, are widely (and I would argue appropriately) accepted as authoritative. See Tracy Isaacs, *Moral Responsibility in Collective Contexts* (Oxford: Oxford University Press, 2011), pp. 26–29. Third, as I indicated above, I am concerned to address a criticism of public apologies that cuts across the individual/collective divide and which is often overlooked by scholarly discussions. For a thoughtful and detailed discussion of collective apologies, see Smith 2008 op. cit., pp. 167–244, as well as Smith 2013 op. cit.
- 28 See Alice MacLachlan, "'Trust me, I'm sorry": The paradox of public apologies,' *The Monist* 98 (2015): 441–56.
- 29 Jerry Knight, 'Tylenol's maker shows how to respond to crisis,' *The Washington Post* 11 October (1982): online at <https://www.washingtonpost.com/archive/business/1982/10/11/tylenols-maker-shows-how-to-respond-to-crisis/bc8df898-3fcf-443f-bc2f-e6fbd639a5a3/>
- 30 Tony Wilson, 'The best legal advice is often an apology,' *The Globe and Mail* 1 February (2011); online at <http://www.theglobeandmail.com/report-on-business/small-business/sb-growth/day-to-day/the-best-legal-advice-is-often-an-apology/article626797/>.
- 31 This seems to be the implication behind Nick Smith's concern that corporate apologies do not resemble good or (or in his words) 'categorical' apologies, because the blameworthy agent cannot possibly demonstrate appropriate emotions: 'it would be as if we expected an animated corporate mascot to somehow embody the mind of the organization: a remorseful Ronald McDonald means that McDonald's corporation suffers negative emotions and therefore should be viewed as appropriately contrite.' Nick Smith, 'Political apologies and categorical apologies,' in M. Mihai & M. Thaler (eds) *On the Uses and Abuses of Political Apology* (New York: Palgrave MacMillan, 2014), p. 49.
- 32 I will use either the term 'principal' or 'beneficiary' to describe the person to whom fiduciary obligations are owed, within a given fiduciary relationship, unless it is appropriate to specify their role more precisely (patient, client, shareholder etc.).
- 33 In this sense, fiduciary relationships are formalised versions of any relationship of trust since, as Mark Warren suggests, by trusting someone I am 'granting them discretionary power over some good': Mark Warren, 'Democratic theory and trust' in M. Warren (ed.) *Democracy and Trust* (Cambridge: Cambridge University Press, 1999), p. 311. Russell Hardin argues that to trust just is to take someone to be trustworthy in a given context, where trustworthiness is defined in terms of *encapsulated interests*: I believe it is in your interests to take my interests into account. Karen Jones connects trustworthiness to trust-responsiveness – trustworthy people respond directly and favourably to the thought I am counting on them – while Carolyn McLeod grounds trustworthiness in the hopeful or confident judgment about a trustee's moral integrity. See Russell Hardin, *Trust and Trustworthiness* (New York: Russell Sage Foundation, 2004); Karen Jones, 'Trust as an affective attitude' *Ethics* 107: 4–25; Carolyn McLeod, *Self-Trust and Reproductive Autonomy* (Cambridge, MA: MIT Press, 2002).
- 34 Deborah DeMott, 'Disloyal agents,' *Alabama Law Review* 58 (2006): 1049–68; Matthew Conaglen, *Fiduciary Loyalty: Protecting the Due Performance of Non-Fiduciary Duties* (Oxford: Hart Publishing, 2010).
- 35 Andrew S. Gold & Paul Miller, 'Introduction' in A.S. Gold & P. Miller (eds) *Philosophical Foundations of Fiduciary Law*, ed. (Oxford: Oxford, 2014), pp. 1–17.
- 36 Matthew Harding, 'Trust and fiduciary law,' *Oxford Journal of Legal Studies* 33,1 (2012): 81–102.
- 37 Of course, a doctor-patient relationship can, very quickly, become intimate, but it need not. It is not in the nature of the relationship to be intimate.
- 38 There has been increasing attention paid to the aftermath of wrong in medical contexts, and the potential role for remedies like apology and forgiveness. It's interesting to speculate whether this focus on moral repair – to borrow Margaret Walker's terminology (Walker 2006 op. cit.) – will eventually extend to other fiduciary contexts, such as the aftermath of financial and legal misconduct. To the best of my knowledge, while there has been a great deal written about mechanisms of institutional accountability in the aftermath

- of the 2008 financial meltdown, there is less literature on practices of relational repair between financial experts and clients, following such a significant rupture.
- 39 I develop the centrality of trust to public apology further in MacLachlan 'Trust me, I'm sorry' op. cit. .
- 40 Daryl Koehn, 'Why saying "I'm sorry" isn't good enough: The ethics of corporate apologies,' *Business Ethics Quarterly* 23,2 (2013): 239–268, at p. 240.
- 41 Trudy Govier, *Dilemmas of Trust* (Montreal-Kingston: McGill-Queens University Press, 1990); Trudy Govier & Wilhelm Verwoerd, 'Trust and the problem of national reconciliation,' *Philosophy of the Social Sciences* 32,2 (2002): 178–205; Govier & Verwoerd 2002 op. cit.
- 42 Of course, not all apologies offered by a fiduciary are uttered in the context of their fiduciary relationships. Indeed, the recipient of the apology is often *not* the principal, in the case of corporate official apologies. See Section 6 for more discussion.
- 43 I discuss the narrative role of apologies at greater length in MacLachlan 'Government apologies to indigenous peoples,' 'Gender and public apology' and 'Beyond the ideal political apology' op. cit.
- 44 Smith 2008 op. cit., p. 55–63.
- 45 The task of narrative convergence should not be underestimated. Situations of wrongdoing are often complex, and few wrongdoers appreciate the magnitude of their actions (and consequences) as these appear to the victim. Indeed, psychologist Roy F. Baumeister has studied what he calls 'the magnitude gap' between perpetrator and victim perceptions of wrongdoing, noting that while both tended to distort facts, perpetrators will consistently underestimate and victims will consistently overestimate the offense. Roy F. Baumeister, *Evil: Inside Human Cruelty and Violence* (New York: Freeman, 1997), pp. 18–19.
- 46 I defend this claim at greater length in MacLachlan 'Beyond the ideal apology' and 'Gender and public apology' op. cit., although my focus in these cases is primarily on political apologies.
- 47 The ethics of apology in fiduciary medical contexts is discussed in greater detail in Nancy Berlinger, *After Harm: Medical Error and the Ethics of Forgiveness* (Baltimore, MD: The Johns Hopkins University Press, 2005).
- 48 While these examples are hypothetical, they are also exemplary of recent concerns over the pharmaceutical industry's self-policing in Canada, as well as documented misconduct by pharmaceutical companies, and the government's failure to act on the data it collects. Indeed, these concerns have motivated recently proposed reforms to federal drug policy law. See David Bruser, 'ADHD drugs suspected of hurting Canadian kids,' *The Toronto Star* 26 September (2012) online at http://www.thestar.com/news/canada/2012/09/26/adhd_drugs_suspected_of_hurting_canadian_kids.html; Diana Ziomislis, 'Federal drug reform law approved for further review,' *The Toronto Star* 30 May (2014) online at http://www.thestar.com/news/gta/2014/05/30/federal_drug_reform_law_approved_for_further_review.html#; Jesse McLean, 'Feeble health Canada can't block dodgy drug imports,' *The Toronto Star* 19 September (2014) online at http://www.thestar.com/news/canada/2014/09/19/feeble_health_canada_cant_block_dodgy_drug_imports.html#.
- 49 Walker 2006 op. cit.; Margaret Walker, 'Truth telling as reparations,' *Metaphilosophy* 41,4 (2010): 525–45; Colleen Murphy, *A Moral Theory of Political Reconciliation* (Cambridge: Cambridge University Press, 2010).
- 50 C. Card, *The Atrocity Paradigm: A Theory of Evil* (Oxford: Oxford University Press, 2002), 167–168.
- 51 Card op. cit., p. 168.
- 52 It is worth noting that should they apologise to me, her apology is a fiduciary apology, but is not an official, public apology. If the head partner of their firm also offers me an apology on behalf of the firm, then that apology is official but not public. If this lawyer is such a bad driver that they have developed a chronic habit of hitting clients with a car, the firm might feel compelled to issue a public, official apology to their clients, *qua* clients, on the lawyer's behalf. Of course, they might also feel compelled to rethink this lawyer's employment.
- 53 Williams raises this idea in a critique of impartialist moral theories. At the end of 'Persons, Character and Morality' he describes a man who must choose between rescuing a stranger or his wife from drowning, and concludes that even to invoke a moral principle that can 'justify' his preference for saving his wife 'provides the agent with one thought too many; it might have been hoped by some (for instance, by his wife) that his motivating thought, fully spelled out, would be the thought that it was his wife, not that it was his wife and that in situations of this kind it is permissible to save one's wife.' See Bernard Williams, 'Persons, character and morality' in his *Moral Luck: Philosophical Papers 1973-1980* (Cambridge: Cambridge University Press, 1981), p. 18.
- 54 It also raises a possible scenario I do not discuss here: unwarranted apologies issued *only* because the fiduciary has determined it is in the best interest of her principal that she apologise. My instinct is to say these

are unlikely to qualify as apologies, even on the minimal account I provided, since the apologiser is not really motivated by the belief that what she did was wrongful and harmful (and thus, that it warrants apology).

55 Jean Harvey, *Civilized Oppression* (Lanham, MD: Rowman & Littlefield, 1999), p. 123.

56 I analyse this resistance further in “‘Trust Me, I’m Sorry’” op. cit.

57 This may become an increasingly less likely scenario. While the legal status attached to official apology (and its relationship to liability) varies from context to context, as far as public opinion goes, received wisdom is – increasingly – in favour of public, official apology. See, for example, Wilson op. cit.

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