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The Uses and Abuses of Official Apology In Transitional Justice

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ABSTRACT
This article assesses the uses and abuses of official apologies in transitional justice processes. It presents contextual definition of apologies and the application of official apology in addressing various social, corporate, and political violations. It examines the application of the image repair theory in dealing with historical human rights violations and scrutinizes how those in positions of political power have used and or abused official apologies as a conspiracy of evading responsibility and entrenching impunity in the face of elaborate and successful transitional justice frameworks. The article underscores the argument that contrary to some popular assertions, political apologies represent cleansing ritual and not responsibility for harms perpetrated on victims. The article therefore contends that to sustainably demonstrate a genuine act of contrition; official apology must guarantee non repetition of the harm perpetrated on victims by demonstrating visible change of behavior from those in positions of authority.

Keywords: *Official Apologies, Transitional Justice, Image Repair, Political Responsibility.*

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INTRODUCTION

Official apologies have been used to address legacies of historical atrocities as well as in many other non-atrocious wrongdoings – in the corporate sector, religious, and government circles. Many scholars who have analyzed demands for apologies by victims and other stakeholders in post-conflict societies associate them with the goal of reconstructing damaged relations and creating a morally sound foundation for societal reconciliation and sustainable peace [1, 2]. Even though official apologies have gained significant popularity in the past several decades even necesitating the correlation of our time as the "age of apologies" [3], their effectiveness in contributing to societal reconciliation and peace in transitional societies remain contentious. In particular, the expectations of the recipients of official apologies and the interest of the apologisers come into focus leading to the need to analize the function apologies are meant to perform in various contexts.

To contextualize the arguments in this article, it's important to underscore what constitutes an apology. Verdeja [2] defines an apology as a speech act that expresses sorrowfulness and disappointment for past action – conveyed to the affected party or to a relevant public audience. In the context of institutional or state apologies, inaction that results in violations of rights and freedoms can also be argued to require apology. This was the case for instance, with the apology issued for the UN's inaction towards stopping the 1994 genocide in Rwanda [4]. Former president of the U.N. Security Council, Mr. Colin Keating, gave an apology at the Security Council meeting during the 20th anniversary of the Rwandan genocide in 2014 where he admitted that the UN's inaction, especially buoyed by the opposition by veto wielding powers like the United States and France made it impossible to stop the senseless massacre of about a million civilians in Rwanda [4]. While investigating the normative aspects of official apologies, Verdeja [2] argues that apologies can have both political and moral roles depending on the foundational base of an apology, whether formal or informal; secretive or open; local or international – the principles remain the same. Key among the many principles, is how the apology is offered, the narrative that the apology employs and the affirmation of the commitment to non-repetition of the crimes in question.

Marrus [5] describes official apologies as public pronouncements of regret that are made by leaders or people with authority on behalf of their institutions for violations committed in the past. Apologies made by corporate chief executive officers, religious leaders, heads of States and governments, political leaders among other formal groups fall within the classification of official apologies. Coicaud [6] on the other hand, defines an apology as a documented or verbal countenance of shame and guilt for having committed an act that maltreated someone. This suggests that the perpetrator and the victim have some form of a relationship and that the maltreatment that necessitates the apology affected the relationship, thus creating the need for a resolution and restoration of the relationship. Just as in the definition by Verdeja [2] above, this definition also omits the context of inaction which indeed remains a key basis for many apologies. Coicaud, however, stresses the need for an apology to be conceived as remorseful and sincere, manifesting aspects of serious emotional "guilt" for the wrongs committed. The question is how this serious emotional guilt would be determined and how its genuineness would be evaluated.

Erving Goff man describes an apology as a corrective measure employed to restore an already damaged relationship [7]. Just as Coicaud [6] referred to the affected relationship between the perpetrator and the victim, Goffman stated that, corrective measures are undertaken when someone recognises that their actions have affected others negatively. They therefore undertake corective actions inorder to redeem their image in the eyes of the affected [8]. As is demonstrated by the above definitions of the concept apology, it is a difficult task singling out a particular definition because there is no specific template by which to apologise [9]. Thus, it is the recognition of wrongs committed, the context in which an apology is given and expectations from those involved that make the difference. For instance, in most transitional justice mechanisms, official apologies emerge as offshoots of formal negotiations or judicial platforms either as recommendations from commission reports or because of demands from victims or human rights activists; religious or civil society groups [10]. This implies that official apologies emerge as agencies through which societies strive to achieve the desired attributes of communal relations. An apology can, therefore, be seen as a means to the achievement of the desired object but not the object itself. Besides affirming the admission of guilt or as an act of responsibility from either the perpetrator or the authority offering it, official apologies also make it necessary for societies to consider and undertake essential reforms to offer firm assurances that transgressions of the past are being taken seriously and that measures are being taken to forestall any possible recurrence [2]. For instance, political apologies for historical attrocities have become hugely contraversial in many cases because of the way they are conceives and delivered by the those in power and how the same are received by the victims [11]. On one side, victims see apologies as necessary in helping them find closure for their suffering and also as a show of responsibility from the perpetrators and or the authorities, while on the other hand some political leaders in particular have been accused of using apologies as a way to put the past behind quickly and move on [2]. In analyzing the uses and abuses of apology in transitional justice processes, an exploration of William Benoit's Image repair theory portrays how politicians and those in power have used official apologies as a means of evading responsibility and entrenching impunity in the face of elaborate and successful transitional justice frameworks.

Image repair theory

A communications scholar, William Benoit applied the "work on apologia" and other related researches from sociology and psychology to project image management in corporations and other institutions as a goal related activity. Image restoration discourse, he argued, can be applied by – corporations, governments, non profit organizations as well as individuals – pratitioners to help craft appropriate messages for addressing crisis situations [12]. He therefore asserted that the primary function of an apology is to repair the image and restore real or perceived damaged relations in the eyes of the public or clients [13]. The key forcus of the best image repair strategy is to examnine the attack or complain that made a response necessary in the first place. Benoit [12] argues that there are two elements of a complaint or negative impression created against an individual or an institution. The first is that the accused is believed to be responsible for the act. Indeed this has a lot to do with perception than it has to do with reality because sometimes, accusations begin flying before any investigations or confirmations are made. Futher more, responsibility can be implied based on many pretexts; for example, a state can be blamed for acts it ordered, encouraged, facilitated, or ignored like in the case of actions of private state militias in conflict situations. The point is not whether the state (in this context) is guilty or not, but whether the state is thought or believed to be responsible by the public or a section of the citizenry. So, as Benoit emphasizes, "as long as the audience believe a State, firm or organization is at fault, the image is at risk" [12]. The second element of a complain is that the act is considered unpleasant and in need of condemnation. Just as was observed with the issue of responsibility, the issue is not whether or not the act in question was unpleasant. The issue is whether the act is believed to be unpleasant or heinous by the relevant audience or stakeholders [13]. It is upto the crisis communicator to identify the needs of the audience and how to meet them based on the effects their accusations or condemnations are having on the affected institution or individual. The focus of the Image repair theory is the dynamics involved in managing the damaged relationship – whether or not the repair succeeds –and the analysis of the outcome.

Categories of image restoration strategies

In dealing with delicate political or non political image restoration efforts, Benoit [12] came up with five image repair stratergies which can be employed to respond to an image crisis situation. The first one is **denial** which is one of the image repair options available to any indiviual or institution facing accusation or condemnation. The accused can present a message that the act in question did not happen or that s/he is not to blame for the offensive act [14]. However when denial is used, the next issue to worry about is how to communicate justification to absolve the accused from blame. Burke [15] talked about "victimage" or what is commonly refered to as shifting blame. As one of the measures of denial, shifting of blame has been the hallmark of unaddressed historical poltical injustices. Coupled with state power and the ability to invoke 'investigations' or inquiries whose findings are never made public, many poltical and state officials have used this stratergy to get over crisis situations and claim to put the issues bahind [15]. Indeed it is a very problematic stratergy, but denial that the accused did not commit the offence, shifting of blame to another person or entity (known or unknown) pacifies the victims, audience or the public depending on who the accused feels he should target with his image management stratergies [15, 14].

The second image repair strategy is **evasion of responsibility.** In cases where the evidence is too apparent and the accused is cornered, evasion or reduction of responsibility is undertaken by the accused to reduce the gravity of the offence or to create excuses to justify why the offence was committed [14]. In this case, several measures can be employed to implement the strategy. The first one is provocation, which implies the act occurred, but in response to some previous wrongdoing or as a retaliatory act. The other measure refers to feigning ignorance for the act or of the measures to underateke to "control events which caused the offense" [13]. Just like in provocation, the accused accepts responsibility but again blames other factors including his or her ignorance of the actual offence and or the inability to be able to stop the offense from being committed. The third tactic is to attribute an act to an accidental occurance. In this apporach the accused admits that the offense occurred or was commited but stresses the point that it was not intentional but rather an accident [14]. The last measure is where the accused presents the argument that the act committed was for good reasons eventhough it led to the offence [13]. Undeniably, just as in a court of law, intent is key to the determination of culpability, and thus if this line of argument is well articulated, it can help the accused in his image repair mission.

The third image repair strategy is **reducing offensiveness.** This is where the accused can pursue the route of repackaging the narative in order to give an impression that the offense is not as bad as potrayed. For this stratergy to succeed, the accused repackages him/herself based on previous achievements to give a positive impression of himself to the audience [14]. The accused can also place the offensive act in a broad and more positive context in comparison to the public conception of the offence [14].The foruth strategy is **corrective action.** Corrective action is cosidered one of the most popular image repair strategies employed by State officials and political leaders while trying to address effects of past crimes. In this stratergy, the accused commits to fix the problem which is believed to have made the offense possible. Some of the steps that can be taken to implement this includes regime change, legal and judicial reforms among other measures that assure the audience that the changes would prevent the recurrence of the undesirable acts [16, 14].

The final strategy is **mortification,** where the accused admits s/he committed the offense, asks for forgiveness, and apologizes [15, 13]. Benoit [15] suggests that this strategy may work best to improve the image of the accused if it is combined with the corrective action strategy in order to assure non-recurrence. Even though mortification implies the use of apology as an image repair strategy, Benoit further warns that there is no "universal conception of apology" which explicitly stipulates what a good apology should include. Accordingly, an apology can include an "acceptance of responsibility, expression of remorse, or a request for forgiveness" [14]. However, an accused who accepts responsibility makes himself more vulnerable to further damage of his image since an apology does not attract a guarantee for forgiveness. Such complexities have led many apologizers to "exploit the ambiguities in language" to succeed in their image repair exploits while escaping responsibility for the offenses they committed [13, 14].

Official apology and the subject of taking responsibility

Some of the main characteristics of official apologies are that; they are formal events, they are public and public participation or audience is made possible, people in positions of authority perform them and that they are results of some consultative processes [17, 18]. From the basis of these characteristics, official apologies in this context are not supposed to be isolated events, they are results of some consultative processes and they are supposed to be part of some process trying to address past injusticess. In both the Kenyan and the South African apologies, they were products of elaborate transitional justice processes and emerged as recommendations of truth commissions implemented in those countries [11, 19]. As Thaler [20] explicitly stated, national level apologies for historical attrocities must give an unequivocal commitment to re-establishment of the rule of law and delivery of justice to vistims [21]. That is only possible if there is an elaborate system and goodwill from those in power to redeem the past and lay a foundation for a stable future. But one of the problems with intergroup or official apologies is that they are fluid and based on promises which are not immediate and therefore guaranteeing the delivery of their promise remain a challenge. Since an apology is premised on "face restoration" and improved self esteem of both the apologiser and the victim [18], the effects of having to deal with failed delivery of the promises made by the apologiser can not be underestimated. Thaler [20] described such a scenario by arguing that politicians who offer apologies with an intention of putting the past behind them should be condemned and criticised by all. A politician who fails to follow through on the robust commitments to reestablish the rule of law and initiate necessary social, economic and political reforms are hypocrites and their deception with 'fake' apologies are deeply unjust because they hoodwink the public with "an image of moral self-righteousness" with no intention of addressing historical injustices [20]. Such apologies are a drawback to the principles and efforts of transitional justice and serve to cultivate more mistrust between the victims and the political leadership and can reignite violent conflict.

Political Apologies: Cleansing Ritual, not Responsibility

The least one can expect from an official apology given in response to the recommendations of an elaborate transitional justice process – like those implemented in the Kenya and South Africa – is that they would address not only the image repair needs of the apologizer but also the ills of the past by laying a foundation for a stable society. Recent events in Kenya

and South Africa depict a picture of total disregard for lessons learned from the events and actions, which led to historical injustices making the efforts of the transitional justice processes and their recommendations meaningless. In fact, some of the activities recommended by the truth commissions in these two countries especially the need for official apologies and reparations become a mare public relations exercise and a mockery to the victims. In Kenya, soon after the conclusion of the TJRC and subsequent submission of the final report to the president, things were seen to be settling back to 'normal' and key steps towards reforming the system in order to deal with the legacies of past atrocities are consistently being frustrated. Gill [1] in an article titled the moral functions of an apology, states that an apology in general includes a variety of "interrelated beliefs, attitudes, emotions and intentions." According to her, an apology must include the following five elements; first, an acknowledgment that the incident for which an apology is given occurred, second is the acknowledgement that the incident was inappropriate, third is the acknowledgement that the apologizer takes responsibility, the fourth is the expression of regret or feeling of remorse, fifth is the expression of an intention to refrain from acts with similar effects in the future [1]. In this categorization, any speech act or expression made without such attributes lacks the basis for an apology.

The need to explore the context of responsibility especially in the case of apologies offered on behalf of a group – like by a head of State is very significant. When the Kenyan President apologized to Kenyans in general for the historical atrocities suffered by different groups, ethnicities, and individuals, he said that he was apologizing on behalf of his government and other past governments [22]. He was employing the viewpoint that; the State takes responsibility for its role – both for the commission and omission – in the atrocities. In his case for example, the TJRC report clearly indicted the State and its operatives as well as individual perpetrators who were involved in one way or the other in Kenya's historical atrocities as potential apologizers [23]. So in particular, the State through the President was accepting to take responsibility for the atrocities committed by State agencies like the security personell and other State and government authorities, as well as for its inability to protect the citenzens from violent atrocities committed by criminals. Clearly the President was employing mortification as an image repair approach with the view that Kenyans would accept his apology as sincere and give him a benefit of doubt as he began his tenure in office. The same can be argued about the apology given by the former South African president, F. W. de'Klerk during a press conference on April 29th 1993, just a year before a historic election that brought in a majority black government led by Nelson Mandela. De'Klerk said in his apology that, the apartheid regime was not meant to deprive people of their rights and create despair and suffering among the citizenry, even though he acknowledged that the regime led just to that. "In sof far as that occurred, we deeply regret it," he said in what was regarded as an "unequivocal apology" by many South Africans at the time [24]. Observers argued that De'Klerk was trying to create a favourable image of his party – the National party – aheard of the historic democratic elections. He was, not only involved in mortification, but was also in essence assuring corective actions which included reforms to bring in a more democratic regime in South Africa.

In so far as the expression of the intent to refrain from acts which led to attrocious past are concerned, and as a central factor in validating an apology and by extension sustaining the image repai efforts by the accused, both the South African and the Kenyan apologies fail the "post apology test of sincerity" [1]. First, in Kenya, it is even clearer now that not only was the President and his government insincere in their official apology, but that the government was in a scheme to frustrate the final phase of the transitional justice process [19]. The government successfully frustrated the formal tabling of the TJRC report in parliament todate, thus, making it imposible for the implementation committee of the TJRC to be insituted to facilitate the actual delivery of the fruits of the transitional justice system to the victims in particular and the citizentry in general [11]. Through a petition to the National Assembly, the National Victims and Survivours Network (NVSN) called for the immediate adoption of the TJRC recommendations and the comencement of the implementation process saying that the lack of a clear framework for actualizing the recommendations of the TJRC continues to undermine the ability of the victims and victims' relatives to obtain closure and also affects the posibility of fostering societal reconciliation. In other words, the victims network was questioning the commitment of the government even though an apology was already given by the President. Furthermore, the TJRC report had recommended a raft of reforms in key sectors of the government including; Judicial, electoral, land and security sectors [23].

So the big question is what the intention and meaning of the Presidents apology was. Clearly, the President either purposed to hoodwink Kenyans with an apology in the hope that the country would quickly move on and forget about past attrocities, or he experienced a change of heart, abandoned the lessons learned from past atrocities and the recommendations of the TJRC by embarking on the retrogressive tactics of his predessesors inorder to consoloidate his hold on power. His apology can very well be associated with a clensing ritual wich is a purification process for past perpetrators whose intention is to create a new and positive self image without the need to consider the opinions and or interests of the victims. Like Kampf and Lowenheim [25] stated in their article; Rituals of apology in the global arena, the objective of a clensing ritual is to construct a moral facade and the image of a honorable agent with noble intentions. However, a noteworthy characteristic of such rituals, is the fact that they are unilateral in nature. The apologiser offers an apology when its convinient to do so since the victims' opinion or response are not part of the ritual. Such ritualist arrangements simultaneously looked at with post apology behaviour of the apologiser are seen as acts of evading

responsibility as opposed to the public moralist image shown to the masses. They can thus reinforce feelings of bitterness and need for revenge among victims and can lead to fresh conflicts and violence. Whether or not the image repair project can be regarded as a success or failure depending on the stage of analysis, there is clear indication that the image restoration processes in President Kenyatta and President De'Klerk were imoral, falacious and counter productive to the transitional justice processes [24, 22, 19].

The best apology is a changed behavior

An apology, however remorseful or sincere remains merely a speech act. As I have demonstrated, other elements of an apology like reparations are equally important in furthering the sincerity and commitment of the apologizer. But to sustainably demonstrate a genuine act of contrition, an apology must guarantee non repetition of the harm inflicted on the victim by demonstrating visible change of behavior [26]. Change of behavior in a post apology setting is the best proof that the apologizer was committed to addressing the harm experienced by the victims, and the damaging of societal relationships. In a transitional justice context, there are several challenges, which can affect the ability of a State or State actors to ensure change of behavior. Additionally, in a transitional justice environment, change of behavior may only be a task in progress. But if the same acts which led to past atrocities and for which an apology was issued are carelessly repeated by those in positions of power, then there is reason to conclude that the apology was not sincere and that it might have been used as a tool for achieving some immoral goals [1].The success or failure of an apology in a transitional justice setting, especially the quest for societal reconciliation and sustainable peace depends on the goodwill or lack of it from all the players involved. The promise of a successful official apology should at least strive to observe the UN principles, which form the foundation for the international transitional justice norm [27]. The responsibility of the State or those in authority to safeguard the gains of a transitional justice process only remain a commitment for which stakeholders can only hope would be realized [28]. However, the actions and or inactions of those with political power in recent post-conflict States like in Kenya and South Africa [19], show that official apologies are not equated to taking responsibility to reform their societies and to guarantee a break from the ills of the past, but instead such apologies demonstrate a growing intent of those in power to evade responsibility for past wrongs.

Image repair 'schemes', especially those employed in relation to official apologies for historical injustices, should be evaluated based on their morality and promise. Just as John Hope Franklin argued while looking at the aptness of an apology for slavery in his 1997 article, just a show of remorse alone cannot make some victims feel better especially if it contributes to improved living condition [29]. Admittedly, the stark reality in situations which require or necessitate apology is that nothing can be done to change the reality of past wrongs [30]. The past cannot be altered, and the damage cannot be undone. But in conflict situations with volatilities and potential retaliations, the least the apologizers and or those in authority can do to ensure sustainable stability is a demonstration of change of behavior and the promise that it can never be business as usual [26]. Nevertheless, since apologies by those in positions of authority in transitional states rarely correspond with the post apology behavior, official apologies issued in such societies remain controversial and cannot be seen as acts of responsibility by the victims.

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