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## Organizational Apologies: BP as a Case Study

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# Organizational Apologies: BP as a Case Study

*Erin O'Hara O'Connor\**

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## I. INTRODUCTION

On April 20, 2010, the Macondo oil well ruptured during the final phases of exploratory drilling.<sup>1</sup> Methane gas and other substances spewed from the well onto the *Deepwater Horizon* drilling platform causing an explosion and fire that killed eleven crewmen<sup>2</sup>

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\* Professor of Law, Vanderbilt University Law School. Special thanks to Byron Talmadge Infinger IV and Max Sills for valuable research assistance and to Mark Cohen, Andy Daughety, Jennifer Reinganum, and participants at the Rigs, Risk, and Responsibility: Conference on the BP Oil Spill at Vanderbilt University Law School for helpful comments and suggestions.

1. See Campbell Robertson, *Search Continues After Oil Rig Blast*, N.Y. TIMES, Apr. 21, 2010, <http://www.nytimes.com/2010/04/22/us/22rig.html?ref=gulfofmexico2010>.

2. See Ed Crooks & Andrew Edgecliffe-Johnson, *Cultural Failings Leave BP Engulfed*, FIN. TIMES, June 8, 2010, <http://www.ft.com/cms/s/0/dea66a94-7327-11df-ae73-00144feabdc0.html#axzz1RwGN4Dnd>; Noaki Schwartz & Harry R. Weber, *Methane Gas Bubble Triggered Deadly Oil Rig Explosion, Workers Say*, HERALD-TRIB. (Sarasota, Fla.), May 8, 2010, <http://www.heraldtribune.com/article/20100508/ARTICLE/5081048/2416>.

and ultimately sank the platform.<sup>3</sup> Over the next three months, the well, located approximately 250 miles southeast of Houston, Texas,<sup>4</sup> spilled as much as 184 million gallons of oil into the Gulf of Mexico.<sup>5</sup> In the aftermath, the U.S. government banned deepwater drilling for several months<sup>6</sup> while applicable regulations were toughened.<sup>7</sup>

The well's majority owner was BP PLC, formerly known as the British Petroleum Company.<sup>8</sup> Since the spill, BP has paid out as much as \$60 billion in cleanup costs and in reimbursements for the lost livelihoods of people and companies on the Gulf Coast.<sup>9</sup> In addition, BP's stock price plummeted to a fourteen-year low—slashing the company's pre-crisis market value by half.<sup>10</sup> Public opinion of BP<sup>11</sup> and employee morale also plummeted, the latter creating a risk that many

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3. See Jessica Resnick-Ault & Katarzyna Klimasinka, *Transocean Rig Sinks in Gulf of Mexico as Coast Guard Looks for Survivor*, BLOOMBERG.COM, Apr. 22, 2010, <http://www.bloomberg.com/news/2010-04-22/transocean-rig-sinks-in-gulf-of-mexico-following-blaze-coast-guard-says.html>.

4. See Rowena Mason, *BP's 35,000ft Well Could Produce 3bn Barrels of Oil*, TELEGRAPH (London), Sept. 2, 2009, <http://www.telegraph.co.uk/finance/newsbysector/energy/6128323/BPs-35000ft-well-could-produce-3bn-barrels-of-oil.html>.

5. See Vivienne Walt, *Can BP Ever Rebuild Its Reputation?*, TIME, July 19, 2010, <http://www.time.com/time/business/article/0,8599,2004701,00.html>.

6. See Press Release, Dep't of the Interior, Interior Issues Directive to Guide Safe, Six-Month Moratorium on Deepwater Drilling (May 30, 2010), available at <http://www.doi.gov/news/pressreleases/Interior-Issues-Directive-to-Guide-Safe-Six-Month-Moratorium-on-Deepwater-Drilling.cfm>.

7. See Nicholas Johnston & Hans Nichols, *New Offshore Oil Drilling Must Have Safeguards, Obama Says*, BLOOMBERG.COM, May 1, 2010, <http://www.bloomberg.com/news/2010-04-30/new-offshore-oil-drilling-must-have-safeguards-obama-says.html>. For example, oil companies now must prove their ability to contain oil spills occurring in deep water before being granted new drilling permits. Marian Wang, *First Deepwater Drilling Permit Since BP Spill Goes to . . . a Well Co-Owned by BP*, PROPUBLICA BLOG (Mar. 1, 2011, 3:51 PM), <http://www.propublica.org/blog/item/first-deepwater-drilling-permit-since-bp-spill-goes-to-a-well-co-owned-by-b>.

8. Marie Neptune & Jay Ruskin, *One-fourth Owner of Macondo Well 'Shocked' at BP's 'Gross Negligence or Willful Misconduct'*, UNITED FOR PEACE OF PIERCE COUNTY (June 19, 2010), available at <http://www.ufppc.org/us-a-world-news-mainmenu-35/9744-news-one-fourth-owner-of-macondo-well-shocked-at-bps-gross-negligence-or-willful-misconduct.html>.

9. See Walt, *supra* note 5; see also GULF COAST CLAIMS FACILITY, FREQUENTLY ASKED QUESTIONS 19, available at [http://www.restorethegulf.gov/sites/default/files/imported\\_pdfs/library/assets/gccf-faqs.pdf](http://www.restorethegulf.gov/sites/default/files/imported_pdfs/library/assets/gccf-faqs.pdf) (noting that the compensation fund, paid into by BP, will cover claims for lost earnings and lost profits).

10. See Ayesha Rascoe & Tom Doggett, *BP Shares Plunge as U.S. Threatens New Penalties*, REUTERS, June 9, 2010, available at <http://www.reuters.com/article/2010/06/09/us-oil-spill-idUSTRE6573FD20100609>.

11. Mark Murray, *Poll: Spill Drags the President's Ratings Down*, MSNBC.COM, June 23, 2010, <http://www.msnbc.msn.com/id/37881749> (providing results of June 2010 NBC News Journal poll, where respondents gave BP only a 6% favorable rating, compared historically to a 3% favorable rating given to Saddam Hussein and an 11% favorable rating for O.J. Simpson).

employees would seek jobs elsewhere.<sup>12</sup> In addition to the drilling ban, Congress appropriated several million dollars to increase federal inspection and monitoring of drilling operations.<sup>13</sup> In its most recent annual report, BP states that it may face additional U.S. regulations that would increase its costs of regulatory compliance and decrease its ability to pursue new exploration.<sup>14</sup> That report also identifies reputational damage making it more difficult for BP to secure investment opportunities from other governments.<sup>15</sup> Thus, as a result of this explosion, BP has incurred substantial liabilities, has diminished its human capital, and has increased its regulatory burdens.

This Article argues that BP could have prevented some portion of these losses through more effective public relations (“PR”). In particular, despite remarkable efforts to express regret and to take full responsibility for the damage caused by the rupture and spill, BP created the impression that its statements were insincere through a series of public images and comments that dampened and counteracted the effectiveness of its apologies. Recent experimental studies show that we ascribe more positive behaviors and motives to ingroup members than to outgroup members. This Article posits that BP harmed itself through its public appearances and statements by enhancing the degree to which members of the public viewed the company as outside their socioeconomic and national group (as well as the group of individuals and organizations that share their basic values). BP’s situation suggests that the effect of ingroup and outgroup triggers on apology, liability, and regulation warrants more study.

Part II identifies an evolutionary approach to apology.<sup>16</sup> Conciliatory efforts can be seen as a way to economize punishment

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12. See Graham Hales, *The BP Brand One Year Later: Branding Lessons From the Disaster*, INTERBRAND, [http://www.interbrand.com/Libraries/Articles/BP\\_One\\_Year\\_On\\_2.sflb.ashx](http://www.interbrand.com/Libraries/Articles/BP_One_Year_On_2.sflb.ashx) (last visited July 15, 2011); Eve Tahmincioglu, *Surviving Your Company’s Mistakes: Corporate Crises Such as BP, Toyota and elsewhere Impact Employees*, MSNBC.COM, May 17, 2010, [http://www.msnbc.msn.com/id/37108260/ns/business-personal\\_finance/t/surviving-your-companys-mistakes/](http://www.msnbc.msn.com/id/37108260/ns/business-personal_finance/t/surviving-your-companys-mistakes/); *BP Reviews*, GLASSDOOR.COM, <http://www.glassdoor.com/Reviews/BP-Reviews-E9011.htm> (anonymous employee post on August 31, 2011 stating that employee morale remains low after oil spill).

13. See Michael R. Bromwich, *Criticizing the Inspectors*, WHITE HOUSE BLOG (Nov. 3, 2010, 4:54 PM), <http://www.whitehouse.gov/blog/2010/11/03/criticizing-inspectors>.

14. BP P.L.C., ANNUAL REPORT AND FORM 20-F 2010, at 29 (Mar. 2, 2011), available at [http://www.bp.com/liveassets/bp\\_internet/globalbp/globalbp\\_uk\\_english/sustainability/how\\_we\\_operate/STAGING/local\\_assets/downloads\\_pdfs/AR\\_Form20F\\_Risks.pdf](http://www.bp.com/liveassets/bp_internet/globalbp/globalbp_uk_english/sustainability/how_we_operate/STAGING/local_assets/downloads_pdfs/AR_Form20F_Risks.pdf).

15. *Id.*

16. I’ve written on this topic before. See Erin Ann O’Hara, *Apology and Thick Trust: What Spouse Abusers and Negligent Doctors Might Have in Common*, 79 CHI.-KENT L. REV. 1055

costs in the face of defection. Viewing apology from an evolutionary perspective generates insight into many apology practices, including the very careful scrutiny of apologies, the similarities in audience reception between individual and organizational apologies, the consequent advantage that organizations can garner when proffering apologies, and the role that ingroup and outgroup biases can play in the success or failure of apologies.

Part III turns to BP's public relations statements and situates these communications in apology discourse, including the acceptance of responsibility, expression of remorse, and offer of repair. This Part then contrasts BP's executive conduct with Exxon's executive conduct following the *Exxon Valdez* oil-tanker spill to show that, although BP avoided some of the Exxon executives' PR mistakes, BP made other costly mistakes. In addition to providing PR lessons for the future, BP's mistakes suggest fruitful avenues for further research regarding apologies and their connection to liability and regulation. Part IV concludes.

## II. THE EVOLUTION OF APOLOGY

### A. *Punishing Cheaters, to a Point*

Humans are a social species. Throughout our history, we've banded together in groups to hunt, to repel predators, to raise families, and to brave inhospitable climates. Indeed, there is no evidence that humans ever lived in isolation.<sup>17</sup> Over time, small, mostly kin-based groups expanded into vast numbers of overlapping, sometimes large cooperative networks that include nonkin and even strangers. Often this cooperative behavior involves an individual conferring a benefit on another at some cost to herself with no expectation of an immediate return benefit. Evolutionary theorists refer to this phenomenon as reciprocal altruism.<sup>18</sup>

Because return cooperation comes later, a noncooperator can exploit a cooperative network by joining it for long enough to reap benefits but not actually providing return benefits to the group. John Maynard Smith and George Price illustrated this problem with their

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(2004); Erin Ann O'Hara & Douglas Yarn, *On Apology and Consilience*, 77 WASH. L. REV. 1121 (2002).

17. Group living is a feature common to most primates. William A. Mason & Sally P. Mendoza, *Primate Social Conflict: An Overview of Sources, Forms and Consequences*, in PRIMATE SOCIAL CONFLICT 1, 1 (William A. Mason & Sally P. Mendoza eds., 1993).

18. Robert Trivers is credited with coining the term in Robert Trivers, *The Evolution of Reciprocal Altruism*, 46 Q. REV. BIOLOGY 35, 35 (1971).

Hawk-Dove Game. In the game, individuals in a population are either Doves, who are passive cooperators, or Hawks, who are aggressive noncooperators. As the game plays out over time, Hawks exploit Doves and eventually drive them out of the population. The best strategy for a Dove is to act like a Dove when encountering other Doves but to act like a Hawk when encountering Hawks.<sup>19</sup>

Robert Axelrod's well-known computer tournament, which tested the relative success of strategies submitted by academics from a variety of disciplines for use in an iterated two-player Prisoner's Dilemma Game, bore out a similar lesson. The most successful strategy, submitted by a psychologist, was "tit-for-tat," defined as cooperating in the first round and then mirroring the other player's behavior in the previous round. Thus, if the other player cooperated in the previous round, the tit-for-tat strategy returned cooperation with cooperation. If instead the other player defected in the previous round, tit-for-tat returned defection with defection.<sup>20</sup> Axelrod attributed tit-for-tat's success to its robust combination of niceness, retaliation, forgiveness, and clarity: "Its niceness prevents it from getting into unnecessary trouble. Its retaliation discourages the other side from persisting whenever defection is tried. Its forgiveness helps restore mutual cooperation. And its clarity makes it intelligible to the other player, thereby eliciting long-term cooperation."<sup>21</sup>

Successful social interactions tend to mirror these basic features. In Prisoner's Dilemma situations, game theory often focuses on detecting and punishing defection by the other player. In their simplest form, optimal strategies set the punishment costs high enough to deter defections, factoring in the probability of actually detecting a defection. In real life, however, defections can occur regardless of the threatened sanctions. People fail to abide by cooperative norms for many reasons, including some combination of oversight, accident, misunderstanding, cruelty, laziness, selfishness, or indifference.<sup>22</sup> Maximal punishment is often not the best response to transgression; after all, it is costly to the punisher, it is not warranted in all situations where others fail to comply with cooperative norms, and it inevitably fails to deter some nonpurposeful transgressions. Threatened punishment, including social ostracism, reputational damage, and liability, best deters failure to comply with

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19. See J. Maynard Smith & G. R. Price, *The Logic of Animal Conflict*, 246 NATURE 15, 15 (1973) (describing a more detailed variant of the Hawk-Dove Game); see also J. Maynard Smith, *Optimization Theory in Evolution*, 9 ANN. REV. OF ECOLOGY & SYSTEMATICS 31, 48-52 (1978).

20. ROBERT AXELROD, *THE EVOLUTION OF COOPERATION* 30-31 (1984).

21. *Id.* at 54.

22. O'Hara & Yarn, *supra* note 16, at 1156.

cooperative norms. But in reality, punishment costs are conserved and future cooperation is enhanced by allowing a reduction or cessation of at least some punishment forms when the transgressor credibly pledges future compliance with the cooperative norms. The optimal strategy, like tit-for-tat, is retaliatory and yet discriminately forgiving.

*B. The Value of Apology (and Other Reparative Discourse)*

Humans often de-escalate conflicts with conciliatory gestures, and evidence indicates that other highly evolved social species also use conciliatory gestures.<sup>23</sup> For example, consider noted ethologist Frans de Waal's description of conflict resolution among chimpanzees:

I first realized that this subject can be studied in other species after witnessing a fight in the chimpanzee colony of the Arnhem Zoo in the Netherlands. It was the winter of 1975 and the colony was kept indoors. In the course of a charging display, the dominant male attacked a female, which caused screaming chaos as other chimpanzees came to her defense. When the group finally calmed down, an unusual silence followed, with nobody moving, as if the apes were waiting for something. Suddenly the entire colony burst out hooting, while one male worked the large metal drums in the corner of the hall. In the midst of the pandemonium I saw two chimpanzees kiss and embrace.

. . . [T]he embracing individuals had been the same male and female of the initial fight. When the word 'reconciliation' popped into my mind, it immediately illuminated the connection. From that day on I noticed that emotional reunions between aggressors and victims were quite common. The phenomenon became so obvious that it was hard to imagine that it had been overlooked for so long by me and by scores of other ethologists.<sup>24</sup>

There is no doubt that culture significantly shapes reconciliation behaviors,<sup>25</sup> but de Waal argues the phenomenon's roots go much deeper:

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23. See generally Frans de Waal, *Reconciliation Among Primates: A Review of Empirical Evidence and Theoretical Issues*, in PRIMATE SOCIAL CONFLICT, *supra* note 17, at 111 (arguing that increased contact and appeasing behavior in primates after conflict suggests social reconciliation); Frans B.M. de Waal & RenMei Ren, *Comparison of the Reconciliation Behavior of Stumptail and Rhesus Macaques*, 78 ETHOLOGY 129, 130-31 (1988) (describing reconciliation studies of several primate species); Frans B.M. de Waal & Angeline van Roosmalen, *Reconciliation and Consolation Among Chimpanzees*, 5 BEHAV. ECOLOGY & SOCIOBIOLOGY 55, 55 (1979) (discussing postconflict reconciliation behavior among chimpanzees); Frans B.M. de Waal & Deborah Yoshihara, *Reconciliation and Redirected Affection in Rhesus Monkeys*, 85 BEHAVIOUR 224, 239-40 (1983) (summarizing an empirical study of chimpanzee conciliatory behavior); Karolina Westlun et al., *Post-Conflict Affiliation in Common Marmosets*, 52 AM. J. PRIMATOLOGY 31, 44 (2000) (explaining reconciliation through postconflict affiliation in marmosets); Allison D. York & T.E. Rowell, *Reconciliation Following Aggression in Patas Monkeys*, *Erythrocebus Patas*, 36 ANIMAL BEHAV. 502, 507-08 (1988) (comparing reconciliation in patas monkeys with that of other primates).

24. FRANS DE WAAL, PEACEMAKING AMONG PRIMATES 5 (1989).

25. See, e.g., Letitia Hickson, *The Social Contexts of Apology in Dispute Settlement: A Cross-Cultural Study*, 25 ETHNOLOGY 283, 283 (1986) (conducting a cross cultural study of apology); Michael C. Luebbert, *The Survival Value of Forgiveness*, in EVOLUTION OF THE PSYCHE 169, 185

Forgiveness is not, as some people seem to believe, a mysterious and sublime idea that we owe to a few millennia of Judeo-Christianity. It did not originate in the minds of people . . . . The fact that monkeys, apes, and humans all engage in reconciliation behavior means that it is probably over thirty million years old. . . . [R]econciliation behavior must be seen as a shared heritage of the primate order. Our species has many conciliatory gestures and contact patterns in common with the apes (stretching out a hand, smiling, kissing, embracing, and so on). . . . Language and culture merely add a degree of subtlety and variation to human peacemaking strategies.<sup>26</sup>

Reconciliation among both humans and other primates often involves one party to the conflict placing itself in a position of clear powerlessness relative to the other<sup>27</sup> and performing an act that represents a plea for future conflict to subside.<sup>28</sup> Among humans, such gestures often take the form of apology.

When effective, apologies can almost instantaneously erode the anger and pain associated with transgressions. While there is disagreement among sociologists, psychologists, moral philosophers, and others regarding the elements of effective apologies (those likely to elicit reconciliation), four features seem to be either express or implied in most effective apologies: the identification of a wrongful act,<sup>29</sup> an expression of remorse,<sup>30</sup> a promise to forbear future transgressions,<sup>31</sup> and an offer to repair the damage in some way.<sup>32</sup>

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(David H. Rosen & Michael C. Luebbert eds., 1999) (arguing that the concept of forgiveness can have different meanings in shame and guilt-based cultures); Harry C. Triandis, *Individualism and Collectivism: Past, Present, and Future*, in HANDBOOK OF CULTURE AND PSYCHOLOGY 35, 39 (David Matsumoto ed., 2001) (arguing that apologies and the language of reconciliation differ depending on whether a culture is individualist or collectivist); Hiroshi Wagatsuma & Arthur Rosett, *The Implications of Apology: Law and Culture in Japan and the United States*, 20 LAW & SOC'Y REV. 461, 461 (1986) (comparing apology in Japan and the United States).

26. DE WAAL, *supra* note 24, at 270–71.

27. See NICHOLAS TAVUCHIS, MEA CULPA: A SOCIOLOGY OF APOLOGY AND RECONCILIATION 35 (1991) (discussing the power of the victim in the aftermath of apology in that “the victim alone holds the keys of redemption and reconciliation”); see also JEFFRIE G. MURPHY & JEAN HAMPTON, FORGIVENESS AND MERCY 28 (1988) (discussing the moral ritual of apology where a transgressor lowers himself to beg for forgiveness).

28. De Waal, for example, offers a drawing reproducing a scene where a transgressor gets too close to a mother’s infant, causing the mother to hit her. The transgressor initially retreats to safety but then returns to the mother and places her face very close to the mother while yelping. The mother could have attacked again but instead plants a kiss on the nose of the transgressor. Frans B.M. de Waal, *The First Kiss: Foundations of Conflict Resolution Research in Animals*, in NATURAL CONFLICT RESOLUTION 15, 18 fig.2.1 (Filippo Aureli & Frans B.M. de Waal eds., 2000).

29. See O’Hara & Yarn, *supra* note 16, at 1133–34 (discussing examples of unsuccessful apologies due to the transgressor’s reluctance to make clear the nature of his wrong).

30. See Jonathan R. Cohen, *Advising Clients to Apologize*, 72 S. CAL. L. REV. 1009, 1014–15 (1999) (expression of regret essential element of apology); Deborah Tannen, *I’m Sorry, I Won’t Apologize*, N.Y. TIMES MAG., July 21, 1996, at 34 (providing advice for effective apologies and stating that “the depth of remorse should be commensurate with the significance of the offense”).

31. Wagatsuma & Rosett, *supra* note 25, at 469.

32. *Id.* For a fuller discussion of these elements and the interdisciplinary literature on apology, see O’Hara & Yarn, *supra* note 16, at 1131–39.



These elements serve many functions; the first three elements together confirm the validity of a shared norm of cooperation.<sup>33</sup> Despite the transgression, everyone agrees that the offending behavior was unsatisfactory. The transgressor's offer of repair shows that the transgressor wishes to relieve the victim of at least some of the harm that the victim suffered.

Effective apologies can reopen the door to future mutually beneficial exchanges. They can also relieve the transgressor of some of the liability associated with the transgression. For example, victims who participate in victim-offender mediation ("VOM") often receive a heartfelt apology from their offenders,<sup>34</sup> and, as a result, many are better able to let go of hate and anger.<sup>35</sup> VOM is a growing substitute for the criminal justice system and is used primarily for low-level property crimes committed by first-time (often juvenile) offenders.<sup>36</sup> In VOM, victims and offenders meet in the presence of a mediator to discuss the crime and its impact on the victim, and, if the victim wishes, the charges can be dropped after the completion of VOM. About eighty to ninety percent of participants report high levels of satisfaction with VOM,<sup>37</sup> and the apology often proves more valuable to the victim than either punishment or compensation.<sup>38</sup>

In the context of civil law, apology can help to both settle the dispute and reduce the ultimate amount of liability. In a survey of members of the State Bar of Georgia conducted by Douglas Yarn, eighty-three percent of responding lawyers agreed that apology alone

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33. Cf. TAVUCHIS, *supra* note 27, at 14 (apologies "commemorate and reproduce ethical axioms").

34. See Erin Ann O'Hara & Maria May Robbins, *Using Criminal Punishment to Serve Both Victim and Social Needs*, 72 LAW & CONTEMP. PROBS. 199, 204-05 (2009) (noting that victims participate in VOM in part to receive an apology and offenders participate in part to proffer one).

35. MARK S. UMBREIT ET AL., CTR. FOR RESTORATIVE JUSTICE & PEACEMAKING, VICTIM-OFFENDER DIALOGUE IN CRIMES AND SEVERE VIOLENCE, A MULTI-SITE STUDY OF PROGRAMS IN TEXAS AND OHIO 13 (2002), available at [http://www.cehd.umn.edu/ssw/rjp/resources/rj\\_dialogue\\_resources/VSOD\\_Severe\\_Violence/Exec\\_Sum\\_TX\\_OH\\_VOD\\_CSV.pdf](http://www.cehd.umn.edu/ssw/rjp/resources/rj_dialogue_resources/VSOD_Severe_Violence/Exec_Sum_TX_OH_VOD_CSV.pdf).

36. O'Hara & Robbins, *supra* note 34, at 203 (citing studies).

37. Mark S. Umbreit et al., *The Impact of Victim-Offender Mediation: Two Decades of Research*, 65 FED. PROBATION 29, 30 (2001).

38. See O'Hara & Robbins, *supra* note 34, at 211 ("Victims often walk into mediation hoping to force the offender to accept a punishment. They very often also present demands for reparations. At the end of the VOM process, however, what victims really value is the apology, the expression of remorse, and the understanding that only the VOM process could have provided them."); see also Kimberly N. Grant, *Ten Dollars for Twenty-Four Years*, DISP. RESOL. MAG., Fall 2008, at 19, 21 ("Overall, victim-offender mediation holds promise to restore justice at a much deeper level than even the most generous compensation from the state.").

could settle many disputes.<sup>39</sup> In an experiment conducted by Russell Korobkin and Chris Guthrie, tenants were more likely to accept a settlement offer from their landlord when it was accompanied by an apology.<sup>40</sup> Jennifer Robbennolt also conducted experiments where she asked subjects to imagine that they had been hurt in an accident and then report on their willingness to accept a settlement offer that covered their out-of-pocket expenses but no more. She found that subjects were more willing to accept the settlement offer when they were told that the transgressor had apologized for causing the harm.<sup>41</sup> Additionally, several hospitals that have recently adopted policies in which they disclose medical errors and apologize to patients following such incidents report significantly reduced litigation and liability costs.<sup>42</sup>

Although apology can be a very useful tool for reducing hostilities, economizing on punishment costs, and promoting future cooperation, it can also be exploited by Hawk defectors who feign a commitment to Dove-like cooperation. As Ambrose Bierce once cynically quipped, apology can “lay the foundation for a future offense.”<sup>43</sup> For apology to serve as a valuable reconciliation device, then, victims need some ability to discriminate between sincere and insincere apologies.<sup>44</sup> In general, humans are surprisingly good at detecting cheating behavior in others.<sup>45</sup> In fact, studies indicate that

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39. See O'Hara & Yarn, *supra* note 16, at 1125 n.14 (citing Douglas Yarn, Survey of Lawyers' Attitudes Toward ADR, conducted on behalf of the Georgia Supreme Court's Commissions on Dispute Resolution and Professionalism (on file with author)).

40. Russell Korobkin & Chris Guthrie, *Psychological Barriers to Litigation Settlement: An Experimental Approach*, 93 MICH. L. REV. 107, 148 (1994).

41. Jennifer K. Robbennolt, *Apologies and Legal Settlement: An Empirical Examination*, 102 MICH. L. REV. 460, 482–89 (2003). Robbennolt also found that “partial” apologies (those in which the transgressor was guarded and failed to identify the wrongful act) sometimes reduced the subjects' willingness to settle relative to subjects who were given no apology information. *Id.* at 486.

42. See, e.g., Richard C. Boothman et al., *A Better Approach to Medical Malpractice Claims? The University of Michigan Experience*, J. HEALTH & LIFE SCI. L., Jan. 2009, at 125, 142–44 (University of Michigan Health System's litigation costs dropped by half after instating an open and honest response to patient complaints, which frequently included an apology); Jonathan R. Cohen, *Apology and Organizations: Exploring an Example from Medical Malpractice*, 27 FORDHAM URB. L.J. 1447, 1451–54, 1457 (2000) (a VA hospital in Kentucky experienced lower costs after instituting policy of following up with patients and apologizing after discovering an error).

43. TAVUCHIS, *supra* note 27, at 7 (quoting AMBROSE BIERCE, THE DEVIL'S DICTIONARY 12 (1958)).

44. See O'Hara & Yarn, *supra* note 16, at 1160 (“Generous forgivers who can discern sincere from insincere apologies have an advantage over both uniformly generous and stingy forgivers.”).

45. Leda Cosmides, *The Logic of Social Exchange: Has Natural Selection Shaped How Humans Reason? Studies with the Wason Selection Task*, 31 COGNITION 187, 196–97, 259–60 (1989).

lay people can detect deception at rates significantly higher than those attributable to chance.<sup>46</sup>

The absence of one or more of the elements of an effective apology often indicates such a lack of sincerity. Consider, for example, Senator Bob Packwood's apology made after several women accused him of sexual harassment during his time in office: "I'm apologizing for the conduct that it was alleged I did."<sup>47</sup> By failing to identify a specific wrongful act, Packwood failed to take ownership of any wrongful action, and his apology therefore seemed strategic.<sup>48</sup> Consider also Reverend Jerry Falwell's apology after receiving criticism for stating that the Antichrist was alive and was a Jewish man. Although he apologized for his lack of "tact" and "judgment," Falwell stated, "I apologize not for what I believe."<sup>49</sup> Falwell was sincere in his statements. Indeed, he might have believed he was acting out of integrity when he refused to suggest that he believed otherwise. But he did not appear to seek forgiveness for violating a shared sense of values or cooperative norms. Instead, Falwell seemed

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46. Bella DePaulo et al., *Humans as Lie Detectors*, J. COMM., Spring 1980, at 129, 130. See generally Linda Mealey et al., *Enhanced Memory for Faces of Cheaters*, 17 ETHOLOGY & SOCIOBIOLOGY 119 (1996) (experimental results showing greater attention to and memory storage for people's faces when accompanied by information that the people have a history of cheating); Miron Zuckerman et al., *Verbal and Nonverbal Communication of Deception*, in 14 ADVANCES IN EXPERIMENTAL SOCIAL PSYCHOLOGY 1 (Leonard Berkowitz ed., 1981) (arguing that evolution selects for lie detection and describing lie-detection behavior).

47. Aaron Lazare, *Go Ahead, Say You're Sorry*, 28 PSYCHOL. TODAY, Jan.-Feb. 1995, at 40, 76, 78.

48. *Id.* It is not entirely clear just how specific a transgressor needs to be, however, and the answer may turn on the context. As a contrast to the Packwood statements, consider those of then gubernatorial candidate Arnold Schwarzenegger in response to allegations that he had engaged in sexual harassment:

So I want to say to you, yes, that I have behaved badly sometimes. Yes, it is true that I was on rowdy movie sets and I have done things that were not right which I thought then was playful but now I recognize that I have offended people. And to those people that I have offended, I want to say to them I am deeply sorry about that and I apologize because this is not what I'm trying to do. When I'm governor, I want to prove to the women that I will be a champion for the women, a champion for the women. And I hope that you will give me the chance to prove that.

*Text of Arnold Schwarzenegger Apology*, USA TODAY, Oct. 2, 2003, [http://www.usatoday.com/news/politicselections/state/2003-10-02-arnold-text\\_x.htm](http://www.usatoday.com/news/politicselections/state/2003-10-02-arnold-text_x.htm). This apology does not identify a specific person or date or even specific acts, yet it did not stop Californians from electing Schwarzenegger. Although this apology is slightly more specific than Packwood's was, the difference might be that Packwood was accused of sexual harassment while serving in public office, whereas Schwarzenegger was accused of sexual harassment in Hollywood. Presumably, an effective public apology is more essential in cases where the wrongdoing occurred while serving in a job paid for with taxpayer dollars.

49. See *National News Briefs, Falwell Apologizes for Antichrist Comment*, N.Y. TIMES, Feb. 3, 1999, <http://www.nytimes.com/1999/02/03/us/national-news-briefs-falwell-apologizes-for-anti-christ-comment.html>.

to insist that the community respect his beliefs even though many people found them insulting. In this sense, Falwell appeared to seek forgiveness without expressing remorse for the offense. To the extent that Falwell sought to resurrect the respect of those offended by his beliefs, his apology failed due to its insincere or strategic nature.

In addition, sometimes apologies fail to express remorse effectively because they include argumentative language. When a spouse says, "I'm sorry that I didn't mow the lawn, but I wanted to watch the game," for example, it seems that the transgressor is not remorseful for failing to mow the lawn. Instead, it appears that the spouse is attempting to justify the course of conduct as reasonable. People rarely perceive the phrase "I'm sorry but . . ." as sincere.<sup>50</sup>

People also tend to scrutinize apologies for more subtle indicators of sincerity. Context is important when determining the requisite timing, form, elaborateness, and word choice for an effective apology as recipients of apologies often scrutinize these for appropriateness. Nonverbal cues are also scrutinized, including eye contact, breathing, body posture, facial complexion, facial expressions, tone of voice, and pace of speech.<sup>51</sup> Even small children focus on cues that indicate sincere remorse and are more likely to accept apologies when they think that the transgressor is remorseful.<sup>52</sup>

With our apologies, we may hope to resurrect our reputations and thereby avoid ostracism or other punishment. Apologies can risk producing the opposite result, though, revealing damning information about the transgressor and leading to further reputational loss and ostracism. Truly effective apologies appear to transcend these functional concerns, however, because their nuances (timing, word choice, complexion, body language, and the like) suggest that emotional forces (like guilt and an honest desire to fix the problem) compel them. In his well-known book, *Passions Within Reason*, Robert Frank discusses the importance of such cues for interpreting the

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50. See Deborah L. Levi, *The Role of Apology in Mediation*, 72 N.Y.U. L. REV. 1165, 1173 (1997) (discussing the use of explanation apologies); Amy J. Stephson, *Law Means Never Having To Say You're Sorry . . . Or Does It?*, KING COUNTY B. BULL. (July 2011), [http://www.amystephson.com/docs/KCBA\\_Jul2011\\_AmyStephson.pdf](http://www.amystephson.com/docs/KCBA_Jul2011_AmyStephson.pdf) (describing "I'm sorry, but I . . ." apologies as bad apologies).

51. O'Hara & Yarn, *supra* note 16, at 1139–40; see Robert N. Strassfield, *Robert McNamara and the Art and Law of Confession: "A Simple Desultory Philippic (or How I was Robert McNamara'd Into Submission)"*, 47 DUKE L.J. 491, 516 (1997) (noting that judges rely on defendant demeanor to assess sincerity of remorse in sentencing); cf. ROBERT H. FRANK, *PASSIONS WITHIN REASON: THE STRATEGIC ROLE OF THE EMOTIONS* 125–31 (1988) (discussing interpretational clues to sincerity of emotional expression).

52. Bruce W. Darby & Barry R. Schlenker, *Children's Reactions to Transgressions: Effects of the Actor's Apology, Reputation and Remorse*, 28 BRIT. J. SOC. PSYCHOL. 353, 353–55 (1989).

sincerity of conduct.<sup>53</sup> The idea is that we reap greater benefits by associating with people who do the right thing because of a strong emotional commitment to do good for its own sake than we do from associating with those who do the right thing only because it benefits them in some way. Frank forcefully argues that the nuances of behavior represent subconscious clues to an individual's emotional commitments;<sup>54</sup> in short, although imperfect, they help us sort Hawks from Doves. Those cues can be particularly important once a person has acted in a Hawkish manner.

Thus, a person who apologizes primarily out of emotional need is likely to fare better than a person who apologizes purely for strategic reasons. The key to that success, however, lies precisely in the fact that the former person is not acting in order to obtain the gain.

What about forgivers? Are people who forgive out of an emotional need or sense of religious or social obligation made better off than those who forgive purely as a consequence of rational calculation? Recall that Axelrod attributed the success of the tit-for-tat strategy to a combination of its retaliation and its generous forgiveness.<sup>55</sup> In the more nuanced environment of human interaction, the most successful forgiving strategy might be generous but discerning. If the cues indicate that an apology is sincere and the transgressor is committed to future cooperation, then the victim who is able to forgive generously might well reap more benefits from future interaction than one who forgives less generously. An emotional commitment to forgive in the face of a heartfelt apology might thus be beneficial. On the other hand, effective scrutiny of the apology might well require any number of rational calculations, including a calculation of the value of the relationship to each party. Moreover, strong contradictory emotions can be at play for victims contemplating postconflict resolution. The victim's anger can dissipate in the face of a heartfelt apology, seemingly out of her own control. But at times the results are not so cathartic; some victims dismiss apologies and hold onto grudges out of an emotional commitment to spite or revenge. Thus, emotional commitments toward generous forgiveness are less clearly valuable; nevertheless, many people respond emotionally to apologies that appear sincere, and where those emotions are at work, the individuals feel favorably disposed to reconcile conflict.

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53. FRANK, *supra* note 51, at 125-31.

54. *Id.* at 53-54.

55. *Supra* Part II.A.

*C. Ingroup vs. Outgroup Differences*

Although apology can play a powerful role in reconciling conflict, apologetic behaviors and their results are hardly uniform. Tendencies to apologize and to forgive likely are dependent on a number of factors, including personality,<sup>56</sup> culture,<sup>57</sup> and sex.<sup>58</sup> In addition, and more relevant to the present topic, reconciliation behaviors are also highly dependent on the nature of the relationship between the transgressor and the victim. Consider hierarchy, for example. De Waal indicates that in highly hierarchical primate groups, dominants initiate reconciliation efforts far less often than in more egalitarian primate species.<sup>59</sup> Subordinates might well have more need to restore a relationship. One might therefore expect that in human societies and organizations, subordinates will apologize to superiors more frequently than superiors will apologize to subordinates.<sup>60</sup> On the other hand, apology rituals appear to be more common in hierarchical settings than in egalitarian settings.<sup>61</sup> It may

56. See Deborah Levi, *Why Not Just Apologize? How To Say You're Sorry*, in ADR, 18 ALTERNATIVES TO THE HIGH COST OF LITIGATION 147, 165 (2000) (noting that involved individuals' personalities might be inconsistent with effective apology); see also Brent T. White, *Say You're Sorry: Court-Ordered Apologies as a Civil Rights Remedy*, 91 CORNELL L. REV. 1261, 1289 (2006) (noting that the effects of forced apology might depend on the personality of the transgressor).

57. Hickson, *supra* note 25, at 283. Some, for example, note a greater inclination on the part of the Japanese to apologize compared to the people of Western nations. Wagatsuma & Rosett, *supra* note 25, at 461; see also Ilhyung Lee, *The Law and Culture of the Apology in Korean Dispute Settlement (with Japan and the United States in Mind)*, 27 MICH. J. INT'L L. 1, 1–2 (2005). Others have drawn a distinction between “shame” and “guilt” cultures. Michael C. Luebbert, *The Survival Value of Forgiveness*, in EVOLUTION OF THE PSYCHE, *supra* note 25, at 169, 178–89. *But see* TAVUCHIS, *supra* note 27, at 37–44 (questioning validity of guilt/shame distinction for understanding apologies). Still others have noted probable differences in collectivist and individualist countries in their propensity to apologize for the transgressions of others. Triandis, *supra* note 25, at 35, 39.

58. Some studies find sex differences in willingness to apologize for small transgressions. See, e.g., Janet Holmes, *Sex Differences and Apologies: One Aspect of Communicative Competence*, 10 APPLIED LINGUISTICS 194, 197 (1989) (analyzing a New Zealand study showing differences between the apology rates of male and female students). Others have not found sex differences in willingness to apologize. Bruce Fraser, *On Apologizing*, in CONVERSATIONAL ROUTINE: EXPLORATIONS IN STANDARDIZED COMMUNICATION SITUATIONS AND PREPATTERNED SPEECH 259, 269 (Flourian Coulmas ed., 1981). Regarding small transgressions, one study found that men are more likely to apologize for intrusions on time while women are more likely to apologize for intrusions on space. Judith Mattson Bean & Barbara Johnstone, *Workplace Reasons for Saying You're Sorry: Discourse Task Management and Apology*, 17 DISCOURSE PROCESSES 59, 79 (Roy O. Freedle ed., 1994).

59. DE WAAL, *supra* note 24, at 44, 163–65, 220 (discussing practices among stumptail monkeys, chimpanzees, and bonobos).

60. O'Hara, *supra* note 16, at 1076.

61. Hickson, *supra* note 25, at 285–87.

be that apologies help to reinforce the hierarchy: subordinate apology could serve to restore the dominant's favor,<sup>62</sup> whereas dominants may proffer apology in lieu of tangible compensation.<sup>63</sup> These speculations need further exploration in the literature. Note, however, that the dynamics of hierarchy occur within the context of a given social group.

As implied by the discussion of subordinate apology, the importance of the relationship to each of the parties also appears to influence reconciliation behaviors.<sup>64</sup> We can all think of situations where we have felt a sense of relief when a loved one apologizes for poor behavior. The subjective costs of continuing these conflicts and losing the benefits of a close relationship are no doubt larger than in cases where conflict arises with casual acquaintances or strangers. Taken to its extreme, this inclination to reconcile can prove harmful to the victim. For example, there is some indication that victims of domestic violence often are overinclined to forgive their batterers because they frequently see themselves as having no viable options outside the relationship.<sup>65</sup> In these situations, the victim may be so desperate to continue the relationship that she ignores indications that the batterer's promise to forbear future transgressions is not credible. At the other end of the spectrum, we may be much more cynical about apologies offered as public gestures by individuals whom we do not personally know and whom we do not need for security, prosperity, or happiness.

Victim willingness to reconcile with a transgressor likely also depends on the extent to which the victim perceives the transgressor to be a member of the victim's ingroup. De Waal's primate reconciliation studies, for example, all involve conflicts within a primate group that lives together. All of his examples of reconciliation involve continuing relationships of mutual support, and studies of primates outside of a single captive colony are very rare. The ingroup hypothesis, however, has some support in the available literature. In a study of primate reconciliation within a single colony of long-tail

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62. Cf. Aviva Orenstein, *Apology Excepted: Incorporating a Feminist Analysis Into Evidence Policy Where You Would Least Expect It*, 28 SW. U. L. REV. 221, 252 (1999) ("Dominance feminism would recognize that apologies may be a style of coping for subordinate groups— weaker groups who are acculturated to apologize, to curry favor, to ensure safety, and to reinforce the hierarchy.").

63. O'Hara, *supra* note 16, at 1077.

64. See, e.g., Joan B. Silk, *The Form and Function of Reconciliation in Primates*, 31 ANN. REV. ANTHROPOLOGY 21, 37 (2002) (noting that in disputing adult humans, "relationships that have important economic, social or political utility are more likely to be resolved").

65. Cf. O'Hara, *supra* note 16, at 1073–74 & n.74 (noting that more than forty percent of women utilizing domestic violence shelters return to their batterers and citing studies indicating that victims are more likely to return when they do not perceive decent alternatives).

macaques, researchers found that reconciliation tendencies were higher between macaques that needed one another's cooperation to obtain a desirable food than they were between other macaques within the colony.<sup>66</sup>

Recently, a study of rhesus monkeys living on an uninhabited island southeast of Puerto Rico showed possible evidence that the monkeys had developed biases in favor of ingroup and against outgroup members.<sup>67</sup> Rhesus monkeys live in tight-knit social groups. Subjects were presented with pictures of other rhesus monkeys who were from either within or outside of the subject's group. The subject monkeys stared at pictures of outgroup members for a longer period of time than they stared at pictures of group members. This difference persisted even when the monkey was familiar with the outgroup monkey represented in the picture. In addition, when the researchers paired the group member's picture with pictures of either good (fruit) or bad (spiders) objects, subjects stared longer at the group member/bad object pairing. Conversely, when the subject was presented with an outgroup rhesus monkey picture paired with pictures of either good or bad objects, it stared longer at the outgroup member/good object pairings. Researchers believe that the subject's length of attention indicates its views on whether the pairing is natural or consistent; according to this theory, incongruent pairings result in greater attention paid by the subject. These results mirror studies of humans that attempt to ascertain implicit attitudes; there, too, researchers believe that longer response times indicate a subconscious determination that the pairings are incongruent.

Human societies are much more fluid and dynamic than those of other primates. We affiliate with large numbers of groups over the course of our lifetimes for different purposes, and we identify with others along a large number of dimensions, including nationality, ethnicity, religious affiliation, neighborhood of residence, place of employment, shared professional training, hobbies, and personality traits. As a matter of practical reality, then, the notion of ingroup and outgroup is neither as dichotomous nor as fixed a concept for humans as it may be for other primates. Nevertheless, it seems reasonable that a person's sense of another as a member of an ingroup or outgroup can be stronger or weaker depending on a number of factors that contribute to this sense of strength. Perhaps the strength of

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66. Marina Cords & Sylvie Thurnheer, *Reconciling with Valuable Partners by Long-tailed Macaques*, 93 *ETHOLOGY* 315, 315 (1993).

67. Neha Mahajan et al., *The Evolution of Intergroup Bias: Perceptions and Attitudes in Rhesus Macaques*, 100 *J. PERSONALITY & SOC. PSYCHOL.* 387, 387 (2011).



ingroup/outgroup attitudes could serve as a rough proxy for the subjective value of a relationship. If so, then all else being equal, the more clearly the transgressor appears to be a member of the outgroup in the eyes of the victim, the less likely it is that the victim will be willing to reconcile when confronted with the same conciliatory gestures. Conversely, the stronger the victim's perception that the transgressor is a member of the ingroup, the more likely it is that the victim would be willing to reconcile.

Even if group attitudes are more variable for humans, the phenomenon of categorizing others as members of an ingroup or outgroup is apparently every bit as automatic and as dichotomous for humans as it is for other primates. Very subtle experimental measures can trigger the categorization of others as part of an ingroup or an outgroup. For example, the simple use of inclusive pronouns, such as we, us, and our, versus exclusive pronouns, such as they, them, and their, causes subjects to place others in the categories suggested by the pronouns used.<sup>68</sup> Indeed, when the word "we" was paired with nonsense syllables (e.g., "xeh"), subjects rated the nonsense syllables significantly more positively than subjects who viewed the nonsense syllable paired with an unrelated control word.<sup>69</sup> The fact that biases associated with ingroups appeared in this study, where no social connections are present, illustrates both their strength and their innateness. Furthermore, in the context of implicit attitude testing, subjects who were presented with ingroup pronouns responded more quickly to positive traits, which were later presented on a computer screen, than subjects who were not presented with the ingroup pronouns.<sup>70</sup>

In another experiment, subjects were told that they would be working with two other individuals to complete a task; they were then asked to read a script into the microphone to help give directions to the others about the task. Some subjects were given a script that used the words "we" and "our" (e.g., "we have been asked to . . .," "our task is to . . ."), while others were given scripts that did not use these ingroup pronouns. After reading the script, the subjects were asked to rate both their expectations about the other two individuals and their expectations about whether the subject expected the group to work as one team or as separate individuals. Subjects who were presented with the ingroup pronouns rated the other group members more

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68. SAMUEL L. GAERTNER & JOHN F. DOVIDIO, REDUCING INTERGROUP BIAS: THE COMMON INGROUP IDENTITY MODEL 104 (2000).

69. *Id.* at 106.

70. *Id.* at 107-08.

highly and were more likely to express a belief that the group would work together as a single team.<sup>71</sup> In all of these experiments, subjects indicated a significant bias toward members of their perceived ingroup, and researchers could easily prime these perceptions.

Negative biases and hostile attitudes toward members of outgroups also are well documented. Many species of animals will behave violently to the introduction of a new member of the species. After describing multiple studies, for example, one scholar observed that “[p]rimate social units appear, in general, to be intolerant of close proximity to extra-group [members of the same species].”<sup>72</sup> Even within a social unit, it is common for group members to target, attack, or at least ostracize other members of the unit who appear to be deviant due to illness, incapacity, or other external differences.<sup>73</sup> Some scholars suggest that this casting of the deviant into the outgroup category occurs because the ingroup perceives the deviant as a threat to group norms, beliefs, and behaviors.<sup>74</sup>

Researchers observed this phenomenon in a number of species, including humans.<sup>75</sup> For humans, outgroup biases often take the form of a generalized distrust of strangers. More generally, studies indicate that humans ascribe more positive attributes to ingroup members and more negative attributes to outgroup members. Basically, we are more inclined to interpret the behavior and motives of ingroup members favorably than we are to grant the same benefit of the doubt to outgroup members. We are also more likely to anticipate cooperation from ingroup members than from outgroup members.<sup>76</sup> And, when in a competitive environment, the negative stereotyping of outgroup members becomes much more prevalent.<sup>77</sup>

These negative biases are “open to considerable cultural manipulation”<sup>78</sup> though, allowing negative reactions toward outgroup members to be mitigated in a number of ways. In general, mechanisms that cause individuals to focus on similarities and

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71. *Id.* at 111–12.

72. Johan M.G. van der Dennen, *Ethnocentrism and In-Group/Out-Group Differentiation. A Review and Interpretation of the Literature*, in *THE SOCIOBIOLOGY OF ETHNOCENTRISM: EVOLUTIONARY DIMENSIONS OF XENOPHOBIA, DISCRIMINATION, RACISM AND NATIONALISM* 1, 21 (Vernon Reynolds et al. eds., 1987).

73. *Id.* at 23–24.

74. *Id.* at 28.

75. *See id.* at 21–28.

76. DONALD E. BROWN, *HUMAN UNIVERSALS* 139 (1991).

77. Jay W. Jackson, *Realistic Group Conflict Theory: A Review and Evaluation of the Theoretical and Empirical Literature*, 43 *PSYCHOL. REC.* 395 (1993).

78. Robin I.M. Dunbar, *Sociobiological Explanations and the Evolution of Ethnocentrism*, in *THE SOCIOBIOLOGY OF ETHNOCENTRISM*, *supra* note 72, at 56.

compatibilities rather than on differences can influence ingroup/outgroup perceptions. In addition, outgroup perceptions can be mitigated by placing the two groups into a superordinate group in which members of the subgroup carry a positive affiliation (i.e., despite our differences, we are all Americans, Christians, etc.).<sup>79</sup> And outgroup biases can be mitigated by placing individuals in a cooperative rather than a competitive environment.<sup>80</sup> These strategies likely help to increase the perception that the outgroup member(s) share similar norms, beliefs, and behaviors with ingroup members.

The dispute resolution literature has begun to incorporate some very basic insights from the ingroup/outgroup literature. For example, Jennifer Gerarda Brown notes that people with different backgrounds and cultures will communicate with different styles and emphases and that these differences can work to create unfair biases in VOM participation.<sup>81</sup> International relations and conflict resolution scholars have noted the special challenges that outgroup biases create for attempting to reconcile ethnic and other intergroup conflicts.<sup>82</sup> To date, however, the effects of ingroup/outgroup association on the efficacy of reconciliation have not received sustained discussion. As will become more apparent in Part III, one of the lessons from the PR following the BP oil spill is that the topic deserves more serious attention.

In the meantime, here are some hypotheses about how ingroup/outgroup biases influence reconciliation efforts through apology. The presence of ingroup/outgroup biases suggests that reconciliation efforts will be more difficult when the victim perceives the transgressor to be a member of an outgroup. By definition, outgroup members provide smaller relational benefits than ingroup members, so there is less benefit to reconciling with them, all else equal. Moreover, the ingroup/outgroup literature suggests that a victim is less likely to ascribe a positive motivation to an apology from an outgroup transgressor, and she is less likely to forecast that the transgressor will engage in cooperative behaviors in the future. In some cases, the very fact of the transgression is likely to cause a victim to place the transgressor into the outgroup category reserved

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79. See GAERTNER & DOVIDIO, *supra* note 68, at 83, 124.

80. See *id.* at 120.

81. Jennifer Gerarda Brown, *The Use of Mediation to Resolve Criminal Cases: A Procedural Critique*, 43 EMORY L.J. 1247, 1286 (1994).

82. See, e.g., Douglas H. Yarn & Gregory Todd Jones, *A Biological Approach to Understanding Resistance to Apology, Forgiveness and Reconciliation in Group Conflict*, 72 LAW & CONTEMP. PROBS. 63 (2009). See generally MICHAEL IGNATIEFF, BLOOD AND BELONGINGS: JOURNEYS INTO THE NEW NATIONALISM (1993).

for deviants. If the transgressor belongs to a different class or national or racial group, then these additional “otherness” features can further hinder productive reconciliation.

#### *D. Organizational Apology*

Although organizations are nonhuman, their activities can harm and offend others. Through their agents and employees, corporations and other organizations can cause accidents, design and distribute harmful products and services, engage in scandalous or illegal behavior, and violate norms of social responsibility.<sup>83</sup> When third parties are harmed by these activities, apologies can help victims heal while reducing the potential liabilities of the organization. Apologies can also help redeem the organization’s reputation.

There is ample evidence that organizations can use apologies to produce some of the same benefits that individual transgressors produce when they apologize. Consider, for example, the disclosure and apology policies recently adopted by some U.S. hospitals. During the 1990s, the Veterans’ Affairs (“VA”) hospital in Lexington, Kentucky, embarked upon a novel experiment.<sup>84</sup> It adopted a policy to disclose any known medical error to the patient harmed by that error, to offer corrective medical treatment or compensation to the patient, and to deliver an apology to the patient.<sup>85</sup> During the first seven-year period after implementation of this new policy, the hospital experienced a larger number of patient claims but significantly reduced liability costs.<sup>86</sup> Some people were reasonably skeptical of the generalizability of these results because VA hospitals are unlikely to face the same potential liabilities as other hospitals. For example, VA hospitals are different from private hospitals in several ways: they are not subject to punitive damages, their public-sector nature reduces their exposure to liability, and their patients, as veterans, have additional sources of compensation.<sup>87</sup> Because of these factors, VA hospital patients have less to lose by settling with an apology and modest compensation than civilian patients who suffer from medical

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83. See KEITH MICHAEL HEARIT, *CRISIS MANAGEMENT BY APOLOGY: CORPORATE RESPONSES TO ALLEGATIONS OF WRONGDOING* 122–23 (2006).

84. See Cohen, *supra* note 42, at 1451.

85. *Id.* at 1451 n.9.

86. E. Haavi Morreim, *Medical Errors: Pinning the Blame Versus Blaming the System*, in *ACCOUNTABILITY: PATIENT SAFETY AND POLICY REFORM* 213, 217 (Virginia A. Sharpe ed., 2004); see also Cohen, *supra* note 42, at 1457.

87. Jennifer K. Robbennolt, *What We Know and Don’t Know About the Role of Apologies in Resolving Health Care Disputes*, 21 GA. ST. U. L. REV. 1009, 1023 (2005).

errors in other hospitals. More recently, however, the results have been replicated in non-VA hospitals. For example, a similar policy implemented by the University of Michigan Health System produced a cut in medical malpractice suits by more than fifty percent.<sup>88</sup> Other hospitals have recently implemented similar policies.<sup>89</sup> The results suggest that patients respond favorably to apologies offered on behalf of institutions.

There is also some evidence that apology works to resurrect an organization in the eyes of third-party observers. Reputation influences the welfare of an organization as much as it influences individuals.<sup>90</sup> An organization's ability to recruit active members, employees, customers, and other business opportunities will be furthered by a positive reputation and hampered by a negative one.<sup>91</sup> Studies also indicate that organizations can bolster their reputations with effective apologies. For example, in a study involving 264 university students, subjects were given a vignette describing a property management company that both refused to return renter deposits to college-student tenants and refused to provide receipts for claimed repairs. Some subjects were told that the owner of the company had accepted full responsibility for its acts. Some were told that the owner regretted the company's actions. Some were told both. And some were given no information regarding the owner's responsibility or regret. Both the company's regret and recognition of responsibility positively affected subjects' reputation scores for the company. Additionally, the presence of these factors reduced the reported anger that subjects felt toward the company. On the other hand, apology statements that didn't contain these elements failed to resurrect the company in subjects' ratings.<sup>92</sup>

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88. Boothman et al., *supra* note 42, at 147.

89. See Carol Bayley, *Medical Mistakes and Institutional Culture*, in ACCOUNTABILITY, *supra* note 86, at 99, 102–05 (discussing similar disclosure policy adopted by Catholic Healthcare West system).

90. William M. Sage stated:

[R]eputation not only accrues to better-performing companies, but also enables their performance. A good reputation attracts corporate partners, sponsors and employees in addition to customers, and reassures government regulators. In repeated transactions, reputation serves to enforce contracts without recourse to law. The premium paid by acquirers for goodwill also provides incentive for each successive owner to invest money and effort to preserve a firm's established reputation.

William M. Sage, *Reputation, Malpractice Liability, and Medical Error*, in ACCOUNTABILITY, *supra* note 86, at 159, 180 (citations omitted) (internal quotation marks omitted).

91. See *id.*

92. Kristin M. Pace et al., *The Acceptance of Responsibility and Expressions of Regret in Organizational Apologies After a Transgression*, 15 CORP. COMM. INT'L J. 410, 420–22 (2010).

Given that basic rules of apology apply to organizations when they commit wrongdoing, companies should focus on the delivery of effective apology when appropriate. But organizations, especially corporations and other for-profit entities, may be disadvantaged relative to individuals in their ability to reconcile through apology. Although the above studies indicate that victims and third parties respond in similar ways to apologies proffered by organizations, we do not know whether organizational apologies are as effective as individual apologies. And there is some reason to surmise that, all else being equal, the organizational apology will be less effective than an apology from an individual transgressor. First, apologies work for individuals in part because the strong emotional attachment that we have to our personal relationships causes us to value reconciliation; by contrast, the organization does not itself have emotions and is therefore not part of the very close personal relationships that we enjoy. Thus, we can expect the victim and others to have relatively less emotional dependence on the organization, and this lower dependence could make individuals less receptive to an organization's apology.<sup>93</sup> Second, for-profit organizations exist to generate profits, which enhances the likelihood that people scrutinizing their behaviors will attribute those behaviors to rational calculations. Also, because the main purpose of those organizations is to generate profits, victims and third parties are likely more inclined to think that they should remedy their wrongs through the payment of money. Thus, the reduced liabilities from apologies, although present, may be smaller for for-profit organizations.

However, organizations have one powerful advantage over individuals in the delivery of apology. Because organizations consist of multiple individuals, individuals within the organization who contribute to a transgression need not be the same individuals who specialize in the delivery of apologies. When a doctor screws up in the operating room, he has only his own personality, haughty or genuine, with which to attempt to convey a transgressor's apology. Of course, the doctor can hire a PR person, but then he looks like he is hiding behind another, and the apology is less likely to be effective.<sup>94</sup> In contrast, people view an organization as a single entity even though multiple individuals conduct its activities. When the hospital makes an error, it doesn't matter if it is run by one hundred Hawks who

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93. Given the lack of emotional dependence on them, it might be easier for people to cast organizations into the outgroup category.

94. Cf. TAVUCHIS, *supra* note 27, at 23 ("There is, quite simply, nothing as effective and unsettling as having to address in person someone we have wronged.").

control the organization's policies; so long as it keeps a few (perhaps even one) sweetheart Dove(s) around to manage the PR, it can reap all the available benefits of apology.<sup>95</sup> When the spokesperson of an organization speaks on behalf of the organization, she is the organization for purposes of public perception. All of the attitudes and attributes that the spokesperson elicits can affect others' perceptions of the organization itself. If the hypotheses presented above about ingroup and outgroup effects on apology are correct, then a large organization can house several Doves, each of whom can elicit ingroup attitudes in some targeted portion of the population. Put differently, it is possible for organizations to exploit our human propensity to forgive following a heartfelt apology. On the other hand, if the company spokesperson commits a PR blunder or evokes outgroup hostilities, then the whole organization can feel the negative effects.

### III. CORPORATE APOLOGY: LESSONS FROM THE BP OIL SPILL

When businesses are accused of causing harms or committing wrongs, sometimes the best possible PR strategy is for corporate leaders to admit fault, apologize for any harm caused, and offer to do what they can to fix or at least ameliorate the damage. But corporate leaders are not always so wise. Sometimes they lack clear evidence of fault or wish to avoid having to accept blame. At other times, they accept blame but their expressions of remorse fall flat. It seems that corporate apology has evolved through a series of blunders made by corporate leaders providing lessons for future leaders to absorb. This part describes both the lessons that BP learned from Exxon's handling of the *Exxon Valdez* oil spill and the lessons that future corporate leaders can learn from BP's mishandling of PR after the Macondo oil spill.

#### *A. Exxon After the Exxon Valdez Accident*

In 1989, the *Exxon Valdez* oil tanker ran aground in Prince William Sound in Alaska and spilled more than eleven million gallons of crude oil into the sea.<sup>96</sup> Damage from the spill represented the worst

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95. For some wrongs, a high-level management person, such as the CEO, Chairman of the Board, Regional President, or the like, will need to handle the initial PR. That person will do better with Dove-like tendencies, but the point is the organization may be able to call on a number of managers and then turn over the PR task to an even more skilled individual with lesser authority within the organization.

96. For the Environmental Protection Agency's description of the event and remediation efforts by the U.S. government, see *Exxon Valdez*, EPA.GOV, <http://www.epa.gov/oem/content/learning/exxon.htm> (last visited June 15, 2011).

environmental disaster in U.S. history to that point,<sup>97</sup> including the pollution of more than a thousand miles of shoreline, the death of tens of thousands of animals, and the temporary destruction of the livelihoods of thousands of fishermen.<sup>98</sup> According to some accounts, the captain of the ship was a heavy drinker who consumed alcohol before boarding the ship and went to sleep after turning over the ship's navigation to an uncertified third party.<sup>99</sup> For six days after the spill, the company remained silent until the media-shy CEO Lawrence Rawl finally emerged to comment—but not to apologize—on behalf of the company.<sup>100</sup> Ten days after the accident, Exxon finally ran full-page ads in 166 newspapers apologizing for the spill.<sup>101</sup> Rawl waited nearly three weeks to visit the area of the spill.<sup>102</sup> In defending his own inaction sometime later, Rawl stated that he was busy running the company from New York.<sup>103</sup> When it was suggested that Exxon—rather than taxpayers—pay for all of the cleanup costs, one Exxon executive said that if the company was forced to do so then it would raise gas prices to cover the costs.<sup>104</sup> Despite its printed apology and the fact that Exxon ultimately took significant responsibility for cleanup costs, the company's reputation suffered for many years.<sup>105</sup> Many consumers refused to purchase from Exxon<sup>106</sup> and a jury imposed a \$5 billion punitive damages fine on the company for “reckless” behavior (the U.S. Supreme Court subsequently reduced this award to approximately \$500 million).<sup>107</sup>

There was no doubt that Exxon would suffer some of these financial losses in any event simply because one of its ships caused

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97. *See id.*

98. Jennifer Bayot, *Lawrence Rawl, 76, Exxon's Chief in Valdez Spill, Dies*, N.Y. TIMES, Feb. 16, 2005, at B9, available at <http://www.nytimes.com/2005/02/16/obituaries/16rawl.html>.

99. *See The Exxon Valdez Oil Spill Disaster*, EXPLORE NORTH, <http://explorenorth.com/library/weekly/aa032499.htm> (last visited June 15, 2011) (reporting that a jury subsequently acquitted the captain of charges that he had operated the tanker while intoxicated).

100. *See* Jennifer Hogue, *The Exxon Valdez Oil Spill*, AVOIDING DISASTER: THE IMPORTANCE OF HAVING A CRISIS PLAN, <http://iml.jou.ufl.edu/projects/spring01/hogue/exxon.html> (last visited Sept. 22, 2011).

101. Stuart Elliott, *Exxon's Image Soiled; Public Angry at Slow Action on Oil Spill*, USA TODAY, Apr. 21, 1989, at 1B.

102. *Id.*

103. *See* Richard Behar, *Interview with Lawrence Rawl: Exxon Strikes Back*, TIME, Mar. 26, 1990, at 62–63, available at <http://www.time.com/time/magazine/article/0,9171,969673,00.html>.

104. *Id.*

105. *Cf.* Anne C. Mulkern, *BP's PR Blunders Mirror Exxon's, Appear Destined for Record Book*, N.Y. TIMES, June 10, 2010, <http://www.nytimes.com/gwire/2010/06/10/10greenwire-bps-pr-blunders-mirror-exxons-appear-destined-98819.html> (stating that although Exxon survived and is profitable, “its reputation and its image will be forever linked to the Valdez oil spill”).

106. Hogue, *supra* note 100.

107. *Exxon Shipping Co. v. Baker*, 554 U.S. 471, 481, 515 (2008).



injury to the environment and to the Alaskan fishing and tourist industries. But a botched PR response surely cost it much more than necessary in company profits. These losses could have been avoided with a more careful handling of the situation. The public doubted the sincerity of the company's apology, which in turn caused doubts about the extent to which Exxon would forgo short-term profits in order to promote safety and environmentally sound practices.

Exxon's face-saving gestures appeared insincere in several ways. First, the delay in providing an initial public statement suggested that the company was avoiding acceptance of responsibility, failing to take the severity of the harm caused by the accident seriously, or both. Second, the company delivered its first apology more than ten days after the accident and used the passive medium of a print advertisement. Written apologies are often less effective than oral apologies because they are more difficult to scrutinize for sincerity. Additionally, written apologies can create the impression that the transgressor is avoiding full ownership of the wrong. And advertisements, as venues for earning profits, are probably particularly suspect vehicles through which to express responsibility and remorse. Third, the statement that the company will raise gas prices to pay for the cleanup costs, even if an accurate depiction of economic realities, suggests that the company will continue to wield its power over its victims even when remediating its wrongs.

Rawl never really appreciated the company's errors. A year after the *Exxon Valdez* oil spill, he participated in an interview with *Time* magazine in which he both emphasized how harrowing the aftermath of the spill had been for him and expressed bitterness at the refusal of the American public to accept the company's apologies.<sup>108</sup> Rawl believed that environmental groups used the company as a scapegoat to further their broader regulatory agendas.<sup>109</sup> Moreover, he minimized the fact that thousands of consumers had cut up their Exxon credit cards by arguing that those customers did not purchase much from the company anyway.<sup>110</sup>

### *B. BP After the Macondo Well Rupture*

BP's public statements after the Macondo oil spill suggest that company executives learned from Exxon's behavior. BP's CEO, Tony Hayward, responded immediately and spoke regularly with the

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108. Behar, *supra* note 103, at 62–63.

109. *Id.*

110. *Id.*

media,<sup>111</sup> personally flew over the affected area to view the oil leakage,<sup>112</sup> visited the oil-stained beaches once the oil washed ashore,<sup>113</sup> and stated many times publicly that the company would pay the full costs of the cleanup.<sup>114</sup> The company offered a \$20 billion fund to help pay for the damage caused to local industries.<sup>115</sup> Moreover, both Hayward<sup>116</sup> and President Obama<sup>117</sup> made public statements that the company was financially strong and could absorb these costs. Their statements suggested both that the company's promise to pay was credible and that BP might successfully avoid raising prices or cutting safety corners in the future to recover from these liabilities. Hayward delivered his apologies in person, allowing his features to indicate a sense of deep remorse: his eyes turned glassy and red, his soft facial expressions signaled regret, and his skin tone grew flush.<sup>118</sup> A viewer scrutinizing Hayward's apology might well conclude that his (and therefore BP's) sense of regret was both sincere and significant and that the company was genuinely trying hard to cap the well.

The apology alone was not sufficient to remove all sense of resentment toward BP. Initial estimates that a thousand barrels of

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111. See Clifford Krauss, *For BP, a Battle to Contain Leaks and an Image Fight, Too*, N.Y. TIMES, May 7, 2010, <http://www.nytimes.com/2010/05/07/science/07container.html> (noting that Hayward was "getting in front of the camera as much as possible in an effort to put the best light on his giant oil company").

112. *Id.*

113. Kevin McGill, *BP CEO Inspects Oil-Stained Beaches*, HOUMATODAY.COM (May 24, 2010), <http://www.houmatoday.com/article/20100524/ARTICLES/100529667>.

114. See Erwin Seba, Ros Krasny & Jeffrey Jones, *Factbox: Chronology of Gulf of Mexico Oil Spill*, REUTERS, May 13, 2010, <http://uk.reuters.com/article/2010/05/13/us-oil-rig-leak-factbox-idUKTRE64A6PT20100513> ("BP Chairman Tony Hayward says the company takes full responsibility and will pay all legitimate claims and the cost of the cleanup.").

115. See Mimi Hall, *Apologetic BP Pledges \$20B; Obama: No Cap on Spill Compensation*, USA TODAY, June 17, 2010, at 1A, available at [http://www.usatoday.com/news/washington/2010-06-16-obama-bp-oil\\_N.htm](http://www.usatoday.com/news/washington/2010-06-16-obama-bp-oil_N.htm).

116. See Matthew Scott, *BP Delays a Decision About Canceling Its Dividend*, DAILY FIN. (June 4, 2010, 12:05 PM), <http://www.dailyfinance.com/2010/06/04/bp-delays-a-decision-about-canceling-its-dividend/> (reporting Hayward's statements that BP was performing well and that its asset base and balance sheet remain among the "very best").

117. See Alister Bull, *White House: BP Big Enough to Survive Oil Spill Damage*, REUTERS, June 1, 2010, available at <http://www.reuters.com/article/2010/06/01/oil-spill-whitehouse-bp-idUSWEN53482>

0100601 (reporting statements by White House Press Secretary Robert Gibbs that BP could absorb the expense associated with the spill).

118. Consider, for example, the apology that Hayward delivered as part of his Congressional testimony on June 17, 2010. In addition to the features mentioned in the text, Hayward had dark circles under his eyes, indicating that perhaps he was losing sleep trying to fix the problem. See generally Associated Press, *BP's Hayward at Hearing: 'Deeply Sorry'*, YOUTUBE (June 17, 2010), <http://www.youtube.com/watch?v=X8p4s7EE6FY>.

crude oil gushed into the ocean per day<sup>119</sup> were woefully inaccurate, and by August the Environmental Protection Agency estimated that sixty times more oil than that was actually gushing from the well.<sup>120</sup> The damage to the ocean and coastal environments seemed likely to be massive,<sup>121</sup> especially because the company seemed incapable of finding a way to cap the spill. But given this dismal situation, Hayward's apology and repeated pledge to pay for the cleanup and damage was able to at least convey BP's incompetence rather than indifference or malevolence. Some called for a government takeover of the cleanup.<sup>122</sup> Some questioned whether BP's drilling operations should be subject to more stringent regulatory oversight.<sup>123</sup> But the company's initial PR efforts probably worked to insulate the company from the worst consequences of reputation-harming conduct, such as future customer boycotts and potential punitive damages liability.<sup>124</sup>

BP did not fully internalize the lessons from Exxon's botched *Exxon Valdez* response, however. Efforts to stop the oil from gushing continued to fail, and, despite some evidence that the leaking oil was at least partly the fault of Transocean, which owned and operated the drilling rig,<sup>125</sup> public blame remained focused on BP. Moreover, the

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119. See Peter J. Brennan & Jordan Burke, *BP's Gulf Oil Well Leak May Take Months to Shut After Drilling Rig Sinks*, BLOOMBERG.COM, Apr. 25, 2010, <http://www.bloomberg.com/news/2010-04-24/bp-says-1-000-barrels-of-oil-leaking-daily-from-sunken-gulf-of-mexico-rig.html>.

120. Ben Geman, *Oil Spill Panel: Botched Oil Flow Estimates Hindered Multiple Phases of BP's Response*, THE HILL (Nov. 22, 2010, 3:17 PM), <http://thehill.com/blogs/e2-wire/677-e2-wire/130373-oil-spill-panel-botched-oil-flow-estimates-hindered-multiple-phases-of-bps-response>.

121. See Gaelin Rosenwaks, *Oil Spill's Environmental Costs*, TORONTO SUN, June 5, 2010, <http://www.torontosun.com/news/world/2010/06/05/14277081.html> (outlining the various environmental effects of the spill, including those caused by the cleanup rather than by the spill itself).

122. *Environmentalists Want Fed Control of Oil Cleanup*, SEATTLE TIMES, May 19, 2010, [http://seattletimes.nwsourc.com/html/nationworld/2011902316\\_apusgulfoilspillmonitoring.html?syndication=rss](http://seattletimes.nwsourc.com/html/nationworld/2011902316_apusgulfoilspillmonitoring.html?syndication=rss).

123. See Juliet Eilperin, *U.S. Exempted BP's Gulf of Mexico Drilling from Environmental Impact Study*, WASH. POST, May 5, 2010, <http://www.washingtonpost.com/wp-dyn/content/article/2010/05/04/AR2010050404118.html> (reporting on the concerns of lawmakers that BP's operations had previously been rubber-stamped); see also Julie Schmit, *Deep-Water Drilling Hits Still Waters*, USA TODAY, May 28, 2010, at 3B, available at [http://www.usatoday.com/MONEY/usaedition/2010-05-28-offshoredrill28\\_ST\\_U.htm](http://www.usatoday.com/MONEY/usaedition/2010-05-28-offshoredrill28_ST_U.htm) (stating that the Obama administration took steps to pause the offshore drilling industry's "march to drill in even deeper waters").

124. See Associated Press, *Punitive Damages Ruled Possible in Gulf Oil Spill*, N.Y. TIMES, Aug. 26, 2011, [http://www.nytimes.com/2011/08/27/business/punitive-damages-ruled-possible-in-gulf-oil-spill.html?\\_r=1&ref=gulfofmexico2010](http://www.nytimes.com/2011/08/27/business/punitive-damages-ruled-possible-in-gulf-oil-spill.html?_r=1&ref=gulfofmexico2010) (reporting that federal district court has concluded that plaintiffs may seek punitive damages on some of their claims against BP).

125. See *Gulf of Mexico Oil Spill (2010)*, NYTIMES.COM, [http://topics.nytimes.com/top/reference/timestopics/subjects/o/oil\\_spills/gulf\\_of\\_mexico\\_2010/index.html](http://topics.nytimes.com/top/reference/timestopics/subjects/o/oil_spills/gulf_of_mexico_2010/index.html) (last visited Sept. 22, 2011) (reporting that presidential panel concluded that Transocean was among the firms that "took a series of hazardous and time-saving steps without adequate consideration of the risks

continued gushing of oil coupled with the repeated rise in spill estimates created a situation where the sense of transgression was continually renewed. As a result, the company could not simply deliver a few heartfelt apologies and then get to work cleaning up the mess. Instead, the situation demanded that BP's apology discourse continue over time. And it required BP to view the situation as a growing crisis that demanded the full attention of company leaders.

Over time, however, Hayward appeared to grow weary of handling the crisis. On May 30, 2010, nearly seven weeks after the explosion, Hayward delivered a statement of apology to a reporter that exuded his fatigue and frustration. In the process, he committed Rawl's blunder of suggesting that other matters might be more important than managing the crisis. Hayward stated: "We're sorry. We're sorry for the massive disruption it's caused to their lives. And there's no one who wants this thing over more than I do. I'd like my life back."<sup>126</sup> Hayward apparently made these statements in an effort to prove that he would not let the company dither in its efforts to cap the spewing oil and clean up the beaches. He might well have thought that these statements would bolster a belief that the crisis was his number one priority. Unfortunately, the public perceived his words very differently. Part of the problem was that when Hayward said that he wanted his life back, the tone in his voice oozed frustration and irritation. His nonverbalized cues suggested that his personal priorities placed other activities over fixing the problem in the Gulf. In that moment, Hayward appeared to be disassociating himself from BP. He was an employee beleaguered by the actions that had caused harm and was tired of having to put so much effort into helping fix a problem for which he did not consider himself personally responsible. In the eyes of the public, however, Hayward was not separate from BP; rather, he was BP. And the public heard his statements of personal weariness as company statements about poor priorities in the aftermath of disastrous harm.

The discussion of apology in Part II suggested that effective apologies only work when the transgressor places himself in a morally inferior position relative to the victim, expresses a willingness to do whatever it takes to resurrect himself, and bestows upon the victim the power to determine whether forgiveness will be forthcoming. It is

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involved"); *Transocean Seeks to Limit Liability for Oil Rig Blast*, NAT'L PUB. RADIO (May, 13, 2010), <http://www.npr.org/s.php?sId=126798122&m=1> (stating that despite two failed tests on the well, workers decided to continue work).

126. See *BP CEO Tony Hayward: 'I'd Like My Life Back'*, YOUTUBE (May 31, 2010), <http://www.youtube.com/watch?v=MTdKa9eWNFw&feature=related> (clip of statement made on *The Today Show* (NBC television broadcast May 30, 2010) by BP CEO Tony Hayward).

typically counterproductive for a transgressor to say, "I am sorry but I'm tired of trying to convince you of that." Although unintended, this is precisely the message that Hayward conveyed.

The public interpretation of Hayward's comments were made worse by the fact that Hayward, as representative of BP, displayed a public persona that caused the viewing public to place BP further along the outgroup portion of the ingroup/outgroup spectrum. Hayward's statements and conduct evoked images of a transgressor from a different social class and national/ethnic group than both the American public and the direct victims of the spill. Regarding class, Hayward's arrival on the beach in expensive business attire while expressing frustration over the time commitment associated with managing the spill suggested that he was an elite who had much better things to do than work for the welfare of the victims of his spill.<sup>127</sup> Hayward confirmed that sense anew when, three weeks later, the public media published photographs showing him with his son at a yacht race on the Isle of Wight.

Hayward's thick British accent probably exacerbated the negative connotations of his resentful statements because it pegged him and the company as foreign—non-Americans who might not care much about the U.S. coastline. In his late-night television show, David Letterman joked about Hayward's statement that he wanted his life back. Letterman commented, "[W]ell, that was a smug, ugly, arrogant thing to say. And . . . that British accent makes it sound worse."<sup>128</sup> The joke resonated with the audience.<sup>129</sup> With their laughter, the audience showed that they found Hayward's comment to be arrogant. When he attempted to place himself into a superior rather than an inferior position while apologizing in his British accent, it is possible that Hayward reminded Americans of their former colonization and awakened the long-held belief that the British view themselves as socially superior.

As mentioned earlier, ingroups and outgroups can form along many dimensions and researchers can easily manipulate our tendency

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127. See Elizabeth Shogren, *BP: A Textbook Example of How Not to Handle PR*, NAT'L PUB. RADIO, Apr. 21, 2011, <http://www.npr.org/2011/04/21/135575238/bp-a-textbook-example-of-how-not-to-handle-pr> (stating that one PR blunder was that outside consultants and rookies "let him walk the beach in a starched white shirt"); see also Anne C. Mulkern, *BP's PR Blunders Mirror Exxon's, Appear Destined for Record Book*, N.Y. TIMES, June 10, 2010, <http://www.nytimes.com/gwire/2010/06/10/10greenwire-bps-pr-blunders-mirror-exxons-appear-destined-98819.html?pagewanted=all> (highlighting various PR blunders made by Hayward).

128. *Late Show with David Letterman* (CBS television broadcast June 16, 2010) (transcript available at LIVE DASH, [http://www.livedash.com/transcript/late\\_show\\_with\\_david\\_letterman/510/KPIX/Wednesday\\_June\\_16\\_2010/337094/](http://www.livedash.com/transcript/late_show_with_david_letterman/510/KPIX/Wednesday_June_16_2010/337094/) (last visited Sept. 1, 2011)).

129. See *id.*

to dichotomize social situations in this way in experimental settings. That said, categorizations based on race, ethnicity, and nationality seem to form even more readily than others, which is part of why ethnic and international conflicts can be so difficult to resolve effectively.<sup>130</sup> To some extent, it can be rational for citizens of one nation to worry about the handling of a major crisis by a person or team of people from another nation. Cultural differences can significantly influence organizational management, which in turn can influence the management of problems. For example, workers in different nations vary dramatically in their tendency to avoid uncertainty, the degree to which working styles can be characterized as “masculine” or “feminine,” the extent to which viewpoints tend to be individualist or collective, the relative acceptance of power and status differences, and short-term versus long-term decisional perspectives.<sup>131</sup> Interestingly, however, studies of these differing dimensions place the United States and the United Kingdom fairly close to one another along each of these dimensions.<sup>132</sup> Therefore, any outgroup bias resulting from Hayward’s British accent was likely relatively minimal and might have been overcome under other circumstances. Nevertheless, it was exacerbated by public statements (including those by President Obama) referring to BP as “British Petroleum”<sup>133</sup> despite the fact that BP dropped that name in favor of plain “BP” several years earlier.<sup>134</sup> The public perception of BP as a British company was likely furthered by the fact that BP’s PR firm was British rather than American.<sup>135</sup> It is possible the British PR firm failed to appreciate fully the subtle nuances that would have been necessary to minimize the strength with which Americans categorized the firm as “outgroup.” And the perception of BP as outgroup led the American public to question its commitment to expend the resources necessary to fix the problem.

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130. Both sides of the Atlantic apparently evoked nationalism because British public opinion harshly criticized President Obama’s actions as targeting British pensioners (who own BP stock). See Louise Armistead & Myra Butterworth, *Barack Obama’s Attacks on BP Hurting British Pensioners*, TELEGRAPH (London), June 9, 2010, <http://www.telegraph.co.uk/news/worldnews/barackobama/7815713/Barack-Obamas-attacks-on-BP-hurting-British-pensioners.html>.

131. See JOHN A. WAGNER & JOHN R. HOLLENBECK, ORGANIZATIONAL BEHAVIOR: SECURING COMPETITIVE ADVANTAGE 314–16 (2010).

132. See *id.* at 315.

133. See Anushka Asthana, Toby Helm & Julia Kollewe, *Gulf Oil Spill: Barack Obama and David Cameron Move to End Rift Over BP*, THE GUARDIAN, June 13, 2010, <http://www.guardian.co.uk/environment/2010/jun/13/gulf-oil-spill>.

134. *Id.*

135. See Tom Bergin, *BP PR Blunders Carry High Political Cost*, REUTERS UK ONLINE, June 29, 2010, <http://uk.reuters.com/article/2010/06/29/uk-oil-spill-bp-pr-idUKTRE65S3IT20100629>.

Company spokesman blunders were not limited to Hayward, however. On June 16, 2010, BP company officials met with President Obama at the White House where BP agreed to set up the \$20 billion compensation fund to help ameliorate the ecological and economic losses along the Gulf Coast.<sup>136</sup> Although Hayward was present at this meeting, he took a back seat to BP's chairman of the board, Carl-Henric Svanberg,<sup>137</sup> perhaps as a result of his PR troubles. President Obama held a press conference announcing the fund, and he spoke about the need to help the small business owners, fishermen, and shrimpers who had been affected by the spill.<sup>138</sup> Thereafter, Svanberg stepped up to a microphone outside of the White House to deliver his own statements to the press. In addition to setting up the fund, the company decided to suspend its quarterly dividend payments to make sure that there were sufficient corporate funds to pay for the harm caused by the oil spill. The two announcements should have made for a very successful PR day for BP, but instead Svanberg's press statements caused further trouble. Svanberg attempted to assure the American people that the company appreciated and would respond to the plight of those whose livelihood had been harmed, and he attempted to express an appreciation for President Obama's concern for the people along the Gulf Coast who had been put out of work. He failed. With his thick Swedish accent, Svanberg said, "We care about the small people. I hear comments sometimes that large oil companies are greedy or don't care. But that is not the case at BP. We care about the small people."<sup>139</sup>

The American public misunderstood Svanberg's comments. Svanberg later attempted to apologize, emphasizing the fact that English was not his native language and that his good intentions were lost in translation,<sup>140</sup> but the damage was already done. Like Hayward, Svanberg made statements that the public heard as separating out BP and its representatives from its victims along

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136. See Hall, *supra* note 115.

137. See Alice Gomstyn, *Embattled BP Chief Hayward Taking Back Seat in Gulf Response*, ABC NEWS, June 18, 2010, <http://abcnews.go.com/Business/embattled-bp-chief-hayward-taking-back-seat-gulf/story?id=10954568>.

138. See Tim Webb & Tim Hill, *BP to Pay Out \$20bn Over Oil Spill After Obama Meeting*, THE GUARDIAN, June 16, 2010, <http://www.guardian.co.uk/environment/2010/jun/16/bp-20bn-trust-oil-spill>.

139. For a video clip of these statements, see Associated Press, *BP Chief: "We Care About the Small People,"* YOUTUBE (June 16, 2010), <http://www.youtube.com/watch?v=th3LtLx0IEM>.

140. See Associated Press, *BP's Carl-Henric Svanberg: I Care About Small People*, TELEGRAPH.COM.AU (June 17, 2010, 9:26 AM), <http://www.dailytelegraph.com.au/news/breaking-news/bps-carl-henric-svanberg-i-care-about-small-people/story-e6freuyi-1225880758839> (BP spokesman Tony Odone labeled Svanberg's remarks a "slip in translation").

socioeconomic-class lines.<sup>141</sup> His accent further reminded the American public that BP was a *foreign* company. BP's public announcement of the compensation fund and the suspension of dividend payments worked to raise the trading price of the company's stock shares,<sup>142</sup> but it is possible that the demands of those injured along the coast grew as a result of these comments.

It seems that BP eventually recognized that it needed a public face with whom Americans could identify. On June 16, 2010, nearly two months after the Macondo well explosion, BP announced that Managing Director Robert Dudley, an American, would take over the company's response to the crisis.<sup>143</sup> BP also ran several television ads with company spokespeople who stated that they grew up along the Gulf Coast and considered the affected waters and beaches to be their home.<sup>144</sup> Each gave their pledge that BP would not rest until it undid the harm. Hayward gave the same pledges months earlier, but somehow these casually dressed, down-to-earth, local American citizens were able to deliver that message much more credibly.<sup>145</sup>

#### IV. CONCLUSION

As of December 31, 2010, BP was conducting operations in 29 countries, marketing its products in more than 70 countries, and employing 79,700 workers.<sup>146</sup> With those numbers, it could surely target employees to deliver effective apologies and to handle the company's PR. What BP missed was an understanding about how those speaking for them can give off subtle messages that solidify (or break down) the sense that the company belongs in the outgroup for victims and the public generally. Perhaps BP missed the fact that, although it is a global corporation that has successfully broken through national barriers, deep in our human brains lies a capability

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141. See Clarence Page, *Big Oil, 'Small People,'* CHI. TRIB., June 20, 2010, at 21, available at [http://articles.chicagotribune.com/2010-06-20/news/ct-oped-0620page-20100620\\_1-big-oil-gulf-of-mexico-oil-small-people](http://articles.chicagotribune.com/2010-06-20/news/ct-oped-0620page-20100620_1-big-oil-gulf-of-mexico-oil-small-people).

142. See Jill Schlesinger, *Pre-Market Glimpse: BP Takes Center Stage*, CBS NEWS, June 17, 2010, [http://www.cbsnews.com/8301-503983\\_162-20008002-503983.html?tag=contentMain;contentBody](http://www.cbsnews.com/8301-503983_162-20008002-503983.html?tag=contentMain;contentBody).

143. See Gomstyn, *supra* note 137.

144. See, for example, *BP Oil Spill—Official BP Response Video for Oil Spill Claims*, YOUTUBE (June 14, 2010), <http://www.youtube.com/watch?v=7w8Aw5Byis8>, for a video of one such commercial.

145. The fact that the U.S. Coast Guard played such an active role likely helped to allay concerns that the leak would not be stopped and remedied, but it likely did little to restore public attitudes toward BP itself.

146. *Key Facts and Figures*, BP.COM, <http://www.bp.com/extendedsectiongenericarticle.do?categoryId=9021229&contentId=7039276> (last visited Sept. 22, 2011).



for national pride that, if triggered, can generate hostility toward those perceived to be from other nations. A highly profitable company finds itself on the hook whenever its actions cause damage, regardless of fault. Add to this situation a perception of fault and the cost to the company grows, both in terms of liability costs and future regulatory burdens. But add in botched PR that increase the sense that the company belongs to an outgroup relative to those who sit in judgment of it, and the liability and future regulatory hurdles likely rise even further.<sup>147</sup>

With the very rapid rise of international commerce, many companies operate across several national borders.<sup>148</sup> Moreover, in the last few decades the income disparity between corporate executives and ordinary citizens has increased.<sup>149</sup> When a company is doing well, the public loses sight of these differences in favor of superordinate goals like prosperity and technological improvements. But when disaster strikes, or difficult times place companies and their executives in a position of conflict or competition with a nation's citizenry, then the public judges the company's conduct more severely. That severe judgment can cost a company more than necessary in terms of liabilities, human capital, and future regulatory burdens. The latter can affect all the other companies in the industry because new regulations applicable to an entire industry often follow public outrage stemming from one company's disaster. In order to dampen public outrage, there may be an industry-wide interest in effective corporate apologies.

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147. A desire to punish does not typically motivate regulatory burdens per se, but the public push for the government to intervene with enhanced regulations is likely stronger with greater public outrage, and how the company handles the PR surrounding the disaster can significantly affect the degree and duration of public outrage.

148. See generally Klaus E. Meyer, Ram Mudambi & Rajneesh Narula, *Multinational Enterprises and Local Contexts: The Opportunities and Challenges of Multiple Embeddedness*, 48 J. MGMT. STUD. 235 (2011).

149. See *As Income Gap Balloons, Is It Holding Back Growth*, NAT'L PUB. RADIO (July 10, 2011), <http://www.npr.org/2011/07/10/137744694/as-income-gap-balloons-is-it-holding-back-growth?ps=cprs>.

We need to know more about how outgroup biases influence receptions to apologies. Remorse is likely a universally expressed phenomenon, but what are the subtle differences in how members of different groups display cues to sincerity? How do those differences affect the likely success of apologetic gestures? Even if there are no systematic differences in expressions of remorse, are victims and other audience members simply more skeptical of the sincerity and import of such gestures? And, if so, can exaggerated or otherwise altered apology efforts mollify those concerns? BP's handling of the Macondo oil spill suggests that these are important questions deserving of further exploration.