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**PUNISHMENT, GUILT, AND SHAME IN  
BIBLICAL THOUGHT**

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The centrality of guilt in the criminal law provides puzzling perspective in the perennial debate on the nature and purpose of punishment. Why is it that all legal systems use this highly charged moral term to refer to an essential component of liability to punishment? This question is not easily answered. The reliance on the concept of guilt in the criminal law is suffused with paradox and mystery.

First, we do not really require guilt in order to punish; we insist only that the defendant be found guilty—that is, in common law systems, that the jury return a verdict of “guilty.” The defendant need not feel anything, least of all actual guilt for having committed the crime. Significantly, where we do probe the defendant’s sentiments, namely in sentencing, the relevant question is not guilt but remorse or regret. A Virginia jury recently imposed the death penalty on one of the Washington snipers, John Allen Muhammad, and some of the jurors explained their verdict to the press on the grounds that he did not express remorse for the killings.<sup>1</sup> It probably would not have helped him much to say that he recognized his guilt or that he felt guilty for what he had done. The jurors wanted to hear something more than that which they had already assumed.

We use the language of guilt and blame in the criminal law without actually demanding that anyone feel guilty or that anyone blame anyone else. The defendant must be blameworthy for a wrongful act in order to be found guilty. If the act is committed under conditions of insanity or duress, the actor is not blameworthy. But to say that the actor is blameworthy is not to imply that the judge or jury actually tenders a certain sentiment, a pos-

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1. James Dao, *Sniper Mastermind Sentenced to Death*, INT’L HERALD TRIB., Nov. 26, 2003, at 5.

ture of blaming, toward the defendant in the dock. In the same way that the defendant need not feel actual guilt, those condemning him need not tender a feeling of blame. On that particular day, the official actors in the legal system might feel nothing at all. Still they are required, in their roles, to act as though they actually blamed an offender who has no justification or excuse for committing a crime. Obviously, the evidence—not the transient sentiments of the officials—should determine liability to punishment.

Thus, we use the language of guilt and blame in the criminal law without expecting that anyone actually feels guilty or feels the need to blame. It is as though we are watching a production of Hamlet and know that Hamlet is supposed to feel ambivalence about acting, but we do not know whether the particular actor playing Hamlet feels anything of the sort.

Alasdair MacIntyre's notable comment about contemporary moral theory could apply as well to the language of guilt and punishment: "What we possess . . . are the fragments of a conceptual scheme, parts which now lack those contexts from which their significance derived."<sup>2</sup> In the field of criminal justice we seem to be living in the afterlife of some other conceptual scheme that was once rich with meaning. My task in this paper is to engage and pursue that hypothetical Eden of meaning by engaging in an archeological study of the concept of guilt. I will examine the concept in one of its primary sources, the Bible—in particular, the Hebrew Bible and the book of Genesis. These texts are not the only sources of our concept of guilt and punishment, but surely they must be among the formative texts of Western culture.

## I. GUILT AS POLLUTION AND SACRIFICE

When we go back to the Hebrew Bible, we have some difficulty pinpointing the exact emergence of the concept of guilt in the narrative of creation and the patriarchs.<sup>3</sup> A good deal depends on the translation of the word "guilt" into Hebrew. Modern Hebrew relies upon the word "*ashma*" to capture the idea of guilt in the criminal law. Variations on the root aleph-shin-mem for *ashma* figure prominently in the biblical text but there is no reason to assume that this is the only way to render the concept of "guilt" in ancient Hebrew. For example, there is

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2. ALASDAIR MACINTYRE, *AFTER VIRTUE* 2 (2d ed. 1984).

3. This article represents a revision of my thoughts as presented in the Storrs Lectures. Cf. George P. Fletcher, *The Storrs Lectures: Liberals and Romantics at War: The Problem of Collective Guilt*, 111 *YALE L.J.* 1499 (2002).

considerable dispute about the proper reading of the colloquy between Cain and God after Cain slays his brother Abel and God sentences him to become a solitary wanderer of the earth—a fitting punishment for someone who has slain his brother. Cain intervenes, “My *avon* is more than I can bear.” The problem is finding the right translation of *avon* into English or into any other modern Western language.

The King James translation of the Bible popularized Cain’s lament as, “My punishment is greater than I can bear.”<sup>4</sup> This way of rendering the text demeans Cain into someone who has committed fratricide and is unable to own up to the deed and accept punishment for what he has done. Interpreting Cain’s *avon* as punishment fits well with the first murderer’s initial response to God: “Am I my brother’s keeper?”<sup>5</sup> But there are many clues that this translation is incorrect. For one thing, in the modern Hebrew, the word *avon* refers to a misdemeanor, a kind of crime, and not to the punishment for the crime. It would be proper, therefore, to render Cain’s statement as: “My sin [crime, iniquity] is greater than I can bear.” This would be, in effect, a confession of guilt. For reasons I do not comprehend, translators still gravitate today toward reading *avon* as punishment rather than as crime or sin.

In my view, Luther got it right when he translated the verse as: “Meine Sünde ist größer, denn daß sie mir vergeben werden möge.”<sup>6</sup> (“My sin is greater than can be forgiven me.”) In the current on-line version of the translation, the editor has rewritten Luther’s original to conform to the sense of the King James translation. It reads: “Meine Strafe ist zu schwer, als daß ich sie tragen könnte.”<sup>7</sup> (“My punishment is greater than I can bear.”) The same bias is evident in the scholarship of James Kugel, who concedes that early readers of the text read *avon* as “sin” or “iniquity” but that this reading was, in his view, incorrect. His taking a stand on this delicate issue requires a reasoned argument, which he fails to provide.<sup>8</sup>

The common translation of “guilt” into Hebrew as *asham* or *ashma* makes its first appearance in the biblical narrative in the last of the three tellings of the story of a patriarch entering a foreign land and fearing that the “barbarians” will kill him in

4. *Genesis* 4:13.

5. *Genesis* 4:9.

6. DIE HEILIGE SCHRIFT 1 Mose 4:13 (1967) (Gideon version).

7. Menighetsfakultetet, *Das Erste Buch Mose (Genesis)*, at <http://www.menfak.no/bibelprog/mb?1MO+4,1-5,6&bi=Luther> (last visited March 19, 2004) (on file with the Notre Dame Journal of Law, Ethics & Public Policy).

8. See JAMES L. KUGEL, *THE BIBLE AS IT WAS* 96 (1997).

order to gain the sexual favors of his wife. The pattern is always the same: Abraham (twice) and then Isaac relive the same deception—each tells the foreign potentate (first Pharaoh and then a king named Abimelech in the land of Gerar) that his wife is in fact his sister. In all three cases something happens to inform the potentate that either he or a man of his court is about to commit adultery.

In the first version, after Abraham passes Sarah off as his sister, Pharaoh takes her into court. Plagues then descend upon “Pharaoh and his household” as a sign that a sexual sin has occurred or is about to occur.<sup>9</sup> Pharaoh quickly realizes that something is wrong in the natural order and confronts Abraham with his lie. In the second retelling of the same basic story, the truth of sexual sin is realized not by a plague but by God coming to Abimelech in a dream and saying, “You are but a dead man because of the woman that you have taken, for she is a man’s wife.”<sup>10</sup> In the third telling, when Isaac passes off Rebecca as his sister, a king also named Abimelech discovers the lie when he sees them engaging in affectionate behavior that would be incest if they were actually brother and sister.<sup>11</sup>

Assuming that they are not an incestuous couple, Abimelech confronts Isaac, establishes the lie, and then says: “What have you done to us? One of the people might have lain with your wife, and you would have brought guilt upon us.”<sup>12</sup> The one who is responsible for the situation, the one who lied, is paradoxically not affected by the guilt. Guilt is objective and it affects the entire land where the sin occurs.

An analogy with Oedipus is compelling.<sup>13</sup> As Oedipus brought a plague on Thebes by killing his father and marrying

9. *Genesis* 12:17 (New International Version).

10. *Genesis* 20:3. All translations of the Bible are my own, unless otherwise indicated.

11. *Genesis* 26:8. The assumption that they are engaged in sexual behavior derives from use of the verb *Ltsachech* to describe their activity. The verb is often translated as “sporting”—a term that also carries a sexual connotation in English. But no one is quite sure what the Hebrew word means. It also used a key term describing Ishmael’s offense against Isaac, an offense so egregious that Sarah felt compelled to expel him from the household. *Genesis* 21:9. In that context it is often translated as “mocking.” But why should mocking be regarded as so serious? It is more plausible to think of Ishmael as engaged in some kind of sexual abuse of his younger brother Isaac. In any event, some account is required to explain the use of the same verb to describe what was done to Isaac and later to capture what Isaac and Rebecca were doing in front of Abimelech.

12. *Genesis* 26:10.

13. SOPHOCLES, *OEDIPUS REX* (R.D. Dawe ed., Cambridge Univ. Press 1982) (c. 429 B.C.).

his mother, Isaac brings guilt on the land of Abimelech. The existence of the stain invites reflection about its cause, and the investigation into the cause, of course, provides the structure of Sophocles' play *Oedipus Rex*. The striking difference between the Greek and the Hebrew story, however, lies in the personal reaction to the incident that brings or threatens to bring the stain on the land. Oedipus puts out his eyes with his wife Jocasta's brooch and goes into voluntary exile. The text tells us nothing about Isaac's feeling for having brought about this situation of potential stain and pollution.

In the second telling of this story, when it is Abraham rather than Isaac who engages in the lie, Abimelech says something similar to Abraham after the deception is revealed to the potentate in a dream: "What hast thou done unto us? And what have I offended thee, that thou hast brought on me and on my kingdom a great sin?"<sup>14</sup> Here the key word is not *asham* but *chataah*, which is conventionally translated as sin.

As between these two references to a stain brought upon the land, there is a good reason for taking *asham*<sup>15</sup> and not *chataah*<sup>16</sup> as the first reference to "guilt." We find the same pattern in the use of the word *asham* as we have already noted in the use of *avon*, namely, a strong conceptual link between the ideas of guilt (or sin or iniquity) and of punishment. Like *avon*, *asham* refers ambiguously both to the deed and the effort to cleanse the world of its stain.

The term *asham* comes into prominence in chapter five of Leviticus, where we encounter the various forms of sacrifice necessary to cleanse the world of its various forms of pollution.<sup>17</sup> *Asham* is the word used in this context to describe a whole range of sacrifices. The prescription is to bring a "guilt sacrifice" to atone for specific sins, and burnt offerings for others. The conceptual merging of the deed and the remedy validates the general biblical pattern. The easy interchange of the negative and the positive, the contamination and the decontamination, reveals a way of thinking totally different from the modern conception of guilt.

Walter Burkert, a distinguished historian of Greek religion and culture, has a different take on this easy association of guilt and punishment in the ancient world. He suggests that those

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14. *Genesis* 20:9 (King James Version).

15. *Genesis* 26:10.

16. *Genesis* 20:9.

17. *Leviticus* 5:6 ("And he shall bring his guilt offering to the Lord for the sin that he has sinned.").

who committed the offense requiring a sacrificial response actually tendered personal feelings of guilt and projected these subjective feelings onto the sacrifice.<sup>18</sup> Though I was once skeptical of this thesis as it applied to the book of Exodus, I now think the matter is more complex than I once thought.<sup>19</sup>

The book of Genesis is ambivalent about whether guilt is appropriately accompanied by feelings of guilt or whether there might be feelings of guilt without any external pollution. Adam and Eve might feel shame after they eat of the forbidden fruit and discover their nakedness but there is no sign that they feel guilt for having disobeyed God. Yet when Joseph's brothers learn that the sibling they tried to kill is alive, well, and prospering, they cry in guilt for having ignored his pleas for help.<sup>20</sup> This tension within the book of Genesis reflects a dichotomy that is generally assumed to juxtapose an ancient with a modern understanding of guilt.

## II. FEELING GUILTY FOR WRONGDOING

In the modern approach to guilt, the focus is not on pollution but on the feelings of those who are guilty. The shift has been from its external impact of guilt on the world to the inner, human experience. The disengagement of the inner feeling from reality has led to the supposedly modern phenomenon of free-floating guilt, as exemplified in Kafka's novel, *The Trial*.<sup>21</sup> Joseph K. expects to be tried for something, but he does not know what. In another form of disengagement—this time both from the impact of the action and from the actor's sentiment—we now acknowledge that a suspect might be guilty even if he does not feel anything and resolutely protests his innocence.

A careful reading of the Joseph story reveals that this way of thinking is not uniquely modern. It is found in the book of Genesis as well. To grasp the alternative model of *asham* or guilt presented in the Joseph story, we should review the first part of the tale in *Genesis*.<sup>22</sup>

The saga begins with a built-in conflict between Joseph and his ten elder brothers. Jacob, their father, loves Joseph more than the others and the ten are jealous. When some receive

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18. Walter Burkert, *Greek Tragedy and Sacrificial Ritual*, 7 GREEK ROMAN & BYZANTINE STUD. 87, 112 (1966) (noting that "the community is knit together in the common experience of shock and guilt" at the time of sacrifices).

19. For my earlier views, see Fletcher, *supra* note 3.

20. *Genesis* 42:21.

21. FRANZ KAFKA, *THE TRIAL* (Breon Mitchell trans., Schocken Books 1998) (1925).

22. *Genesis* 37, 39–42.

more love than others, as Abel was favored by God, we can expect enmity between brothers. The conflict among the sons of Jacob becomes more acute when Joseph relates two dreams, which his brothers interpret as a fantasy of domination over them. As the astute German commentator Claus Westermann points out, this was a startling new political idea—namely, that one brother could acquire a superior political status to his siblings.<sup>23</sup> The brothers throw him into a pit and conspire to kill him, but Reuben, the eldest, protests the plan to kill Joseph and suggests that they merely leave him to die. This they do, and then sit down to break bread, as though they were celebrating Joseph's demise. At that point Judah sees a caravan of Ishmaelites approaching and realizes that it might be better to sell Joseph to the voyagers rather than kill him and conceal their act. Apparently, it does not occur to him that selling their brother into slavery is also a wrong that they would have to conceal from Jacob and others. Before the brothers can realize Judah's plan, a band of Midianites pass by. And some group (the text is ambiguous on this point) lifts Joseph out of the pit and sells him to one of the passing caravans headed for Egypt.

Reuben discovers that Joseph has been taken and tears his clothes in distress. To cover up their crime, the brothers then dip Joseph's coat—Jacob's gift of love—in the blood of a slaughtered goat and take it to Jacob as proof of Joseph's death. The traveling merchants sell Joseph into the service of Potiphar, an Egyptian official.

This is the end of the passage recounting the tale of crime and betrayal. It is worth noting that no one in this story acts as an individual. Only a collective acts in throwing Joseph into the pit, and later, in lifting him out. The brothers function as a unit. Even when Reuben protests, he speaks in the first person plural. The next segment of the saga traces Joseph's rise to political power in Egypt. When he meets his brothers again, at least a decade later, he is the "governor over the land."<sup>24</sup> With a famine in Canaan, Jacob sends ten of the brothers, excluding the youngest Benjamin, to find food in Egypt. When they encounter Joseph, the ten bow down to him without recognizing him, but Joseph recognizes them and recalls the dream.<sup>25</sup>

There follows a conversation in Genesis that leads to the brothers recognizing their guilt for the way they committed a

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23. CLAUS WESTERMANN, *DIE JOSEPH-ERZÄHLUNG: ELF BIBELARBEITEN ZU GENESIS 37–50*, at 24 (1990).

24. *Genesis* 42:6 (King James Version).

25. *Genesis* 42:8–9.



crime toward Joseph.<sup>26</sup> The word used for guilt in this context is the same as used in the story of Abimelech and Isaac. The process by which they come to confess their guilt is one of the most remarkable interactions in the corpus of biblical literature. Joseph stages both a conversation and a physical environment that leads his brothers to understand the moral dimension of the way they had treated Joseph.

The first step in the interaction is Joseph's accusing the brothers of being spies. It is hard to know whether Joseph himself believes the charge to be true or whether he is testing his brothers. With his usual political insight, Westermann points out that spying is a characteristic feature of nations, not of families.<sup>27</sup> Joseph himself is acting as the officer of a state; his accusation of spying is designed to find out whether the brothers are also acting on behalf of a state or whether they identify themselves as a family rather than a nation. The brothers defend themselves against the charge by claiming that they are "the sons of one man in Canaan."<sup>28</sup> The Westermann thesis explains this response but it seems strained nonetheless—individuals and informal groups do, in fact, sometimes spy on each other.

A totally different approach to the accusation begins with the motive that Joseph attributes to the spying, namely, "to see the nakedness of the land."<sup>29</sup> The sexual overtones of the word "nakedness" suggest an analogy with the earlier intervention of the brothers, the "sons of Jacob," to reclaim their sister Dinah from the house of Schechem. Whether that rescue was deceitful and improper or not, the brothers thereby demonstrated their loyalty to members of the clan. By suggesting sexual overtones to the mission of his ten brothers, Joseph might be revealing his own yearning that they have to come to take him as they had schemed and fought to hold onto Dinah in Chapter 34 of *Genesis*.<sup>30</sup>

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26. *Genesis* 42:9–21.

27. WESTERMANN, *supra* note 23, at 73. In the first translation of the Bible into German, Martin Luther opted for a different term altogether. He translates the Hebrew term as "*Kundschafter*," which means something like "investigator." See DIE HEILIGE SCHRIFT, *supra* note 6, at 1 Mose 42:9 (1967).

28. *Genesis* 42:13.

29. The French Jewish translator André Chouraqui captures the sexual dimensions nicely in his translation: *Vous êtes venus pour voir le sexe de la terre*. See LA BIBLE, *Entête* 42:12 (André Chouraqui trans., 1989). The sexual association is missing in Luther's translation, where the passage is rendered as the "investigators" coming to see "where the land is open." DIE HEILIGE SCHRIFT, *supra* note 6, at 1 Mose 42:12.

30. I am indebted to Rabbi David Silber for this interpretation.

The problematic aspect of the brothers' response to the spying charge is the seemingly gratuitous addition to their claims to be all the sons of one father: "[T]he youngest is now with his father, and one is absent."<sup>31</sup> This admission gives Joseph the opportunity to stage a dramatic recreation of one brother's being absent. First, he suggests that the brothers send one of their group to fetch their brother Benjamin. And then he immediately makes it impossible for them to act on this suggestion by locking them up for three days. He plants the idea that they deprive themselves of another one of their number by sending him on a mission to Canaan and then he reminds them of what they did to Joseph by throwing them all into confinement.

Then Joseph appears to them and makes a remarkable appeal to moral conscience. He is about to change the proposal but introduces his shift by saying "I fear God."<sup>32</sup> The equivalent one would use today would be, "I am a moral person." Or: "I answer to a higher power." For example, when the midwives in Egypt refused to obey Pharaoh's command to kill all the male children born to Jewish women, they are described as "fearing God."<sup>33</sup> Joseph implicitly appeals to his brothers to bring to bear their own moral conscience.

As a "moral person," Joseph tell his brothers that they should take grain back to Canaan and fetch Benjamin but that they should leave one brother with him as a surety. At this point the brothers are moved to confess: "And they said to one another: But we are guilty [*asham* in the plural form] concerning our brother."<sup>34</sup> They experience an awakening of conscience. Though they thought they knew what they had done, they appreciate its meaning for the first time.

Moral transformations rarely arise from a finite set of factors. In this case we can point at most to a set that separately or in combination might have generated the brothers' realization that they had committed a great wrong. They are: (1) their spending three days in confinement, which somehow brought home to them the experience of Joseph in the pit, (2) Joseph's invoking the idea of "fearing God," (3) Joseph's playing on their incompleteness as a set of brothers, first by insisting that they bring Benjamin down to Egypt, then suggesting that they send home to fetch him, and finally requiring that one be left behind while the others seek to complete their numbers, and (4) finally,

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31. *Genesis* 42:31.

32. *Genesis* 42:18 (King James Version).

33. *Exodus* 1:17.

34. *Genesis* 42:21.

and speculatively, the possibility that Joseph himself planted the seed by expressing a longing to be rescued as Dinah had been. The beauty of the text is enabling us to understand that this human breakthrough could have happened without understanding the process of moral change.

What they do feel guilty about? Reuben suggests that they should feel guilty about having killed Joseph. He says that his "blood must be redeemed," which is a classic biblical formula for punishing homicide.<sup>35</sup> That is what Reuben originally believed and perhaps what the other brothers also believed from the very beginning.<sup>36</sup>

Significantly, however, the other brothers interpret their guilt at a more abstract level. It is not about either throwing him into the pit with the intention of either killing him or of letting him die in the pit. Their guilt attaches to having nominally heard but ignored his cries of anguish: "[T]hat we saw the anguish of his soul and we not hear."<sup>37</sup>

This subtle relocation of the guilt could either be trivial or profound. The trivial version derives from the way the brothers use their declaration of guilt to explain their current misery: Because we ignored his pleas, "our anguish has come over us."<sup>38</sup> Thus, they rationalize their anguish as a response to their ignoring someone else's anguish. This converts their confession of guilt into a tactical mistake about controlling their personal fate.

The more profound interpretation of locating the brothers' guilt in not hearing Joseph brings to bear a refined view of freedom of the will, a view generally associated in contemporary philosophy with Harry Frankfurt.<sup>39</sup> By analogy to the idea of second-order volitions as the mechanism for regulating and resisting first-order impulses, we should think of guilt as a second-order failure to resist our baser impulses. It is understandable that the brothers would want to kill one of their own who sought to rule over them, but they have resisted their base homicidal impulses. Their second-order volition should have been to heed Joseph's appeal for compassion. It does not matter much

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35. See *Genesis* 9:6 ("Whoever spills the blood of a human being, by a human being will his blood be spilled."). On the magical significance of releasing the blood of the decedent, see DAVID DAUBE, *STUDIES IN BIBLICAL LAW* 122-23 (1947).

36. This assumption would contradict the widely held view that the brothers sold Joseph into slavery. See *Acts* 7:9.

37. *Genesis* 42:21.

38. *Id.*

39. See generally HARRY G. FRANKFURT, *THE IMPORTANCE OF WHAT WE CARE ABOUT* (1988).

whether that appeal is implicit in Joseph's humanity or whether it is articulated as cries for help. The point is that the brothers did not hear it.

The metaphor of hearing fits the situation perfectly. We "hear the voice" of conscience rather than read an image of conscience in our mind and thus it makes sense for the brothers to associate hearing with understanding the moral dimension of their actions. Further, Jewish theology emphasizes hearing over sight in the relationship with God. This is evident in Moses' confrontation with God on Mount Sinai and in the liturgical demand on Israel to "hear" and understand that God is one. By contrast, Christianity emphasizes the sense of sight and the role of images, particularly of Jesus on the cross, in sustaining faith.

### III. THE CONFLICTING PARADIGMS OF GUILT

In these portions of Genesis, we encounter radically opposed conceptions of guilt. The first view is that guilt is associated with pollution in the objective sphere; the second, with feelings in the subjective realm. Along with this contrast go several others. Guilt-as-pollution is a fixed quantity, the same for everyone; guilt-as-feeling is a matter of degree, different in each person. Although both of these ideas are present in Genesis, only the subjective view has survived in our conscious thinking about criminal liability.

The assumption of modern criminal law is that some people are more guilty than others. Their relative degrees of guilt depend on two factors: first, how much they contribute or how close they come to causing physical harm, and second, their internal knowledge of the action and its risks. The principal who controls the actions leading to harm is more guilty than the accessory who merely aids in execution of the plan. Those who take risks intentionally are worse than those who do so inadvertently. These assumptions about relative guilt are built into the modern way of thinking about crime and punishment.

These shifts from the external to the internal, and from the categorical to the scalar, account for another conceptual reorientation. Guilt-as-pollution was connected with a particular kind of response—the sacrifice of animals in a religious ritual. In the modern, secular understanding of guilt, the linkage is not with sacrifice in the Temple but with punishment prescribed in court. As sacrifice functions as means of cleansing the world of pollution, punishment has the symbolic effect of canceling out

the crime. As Michel Foucault put it, punishment reenacts the crime and thus rids the world of the pollution it represents.<sup>40</sup>

This way of thinking about punishment carries forward and transmutes the conception of guilt-as-pollution. It follows that precisely as stains need to be eradicated, the guilty need to be punished. As Oedipus and Abimelech are paradigmatic figures for the theory of guilt-as-pollution, Raskolnikov is the exemplar of the modern man who knows precisely what he has done but fails initially to grasp the moral qualities of his actions.<sup>41</sup> He captures the existential situation of all terrorists and ideological killers who know precisely what they have done but who have yet to discover their guilt for having put their hand to evil. The process of discovery carries with it the sudden explosion of truth. Repression caves in, and truth overwhelms. The reaction can often be violent, as in the case of Oedipus. Or it can be therapeutic and lead to a reconciliation with the victims or with one's self.

The Joseph story is arguably an example of the therapeutic response, a precursor to the Truth and Reconciliation Commission as an alternative to punishment in the transition to democracy. Though Reuben thinks that Joseph's blood must be redeemed by punishment,<sup>42</sup> in fact no blood was spilled and no irreversible harm occurred to Joseph. The narrative leads not to punishment but to reconciliation. Though the brothers are united in the end, those who have wronged Joseph still fear him.<sup>43</sup> Their guilt is never fully expunged.

#### IV. SHAME IN GENESIS

In the modern approach to guilt, we are more likely to begin with our feelings than follow the pattern of the ancients and infer guilt for a plague or from a vision of God in a dream. As we know from the tale of Joseph, however, it is difficult to rely on feelings of guilt to generate an inference of guilt in fact—the feelings thrive on psychological sources other than actions that might occasion guilt for sins and crimes actually committed.

The centrality of the self in modern thought has led to a general tendency to think about shame in place of guilt. If sin and pollution are the favored foci of the ancients, shame has

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40. MICHEL FOUCAULT, *DISCIPLINE AND PUNISH: THE BIRTH OF THE PRISON* 45 (Alan Sheridan trans., Vintage Books 1979) (1975).

41. See FYODOR DOSTOEVSKY, *CRIME AND PUNISHMENT* (David McDuff trans., Penguin Books 1991) (1866).

42. *Genesis* 42:24.

43. *Genesis* 50:15.

become the pet theme not only of contemporary psychiatry but of philosophers and social critics attempting to come to grips with crimes of the past.

Some rather simple distinctions hold between shame and guilt. People feel shame for who and what they are, and guilt for what they have done. Shame is felt in the eyes of others, real or imagined, and for that reason is associated with seeing and being seen (recall Oedipus putting out his eyes). Guilt is experienced as the voice of conscience and therefore associated with the hearing. Shame can often be irrational. For example, a hunchback might feel ashamed for the contortions of his body, though there is no suggestion of personal responsibility. You can feel shame about the behavior of other people over which you have no control at all. Guilt, by contrast, has some connection to morality, to right and wrong, to sources of conscience based on rational criteria.

The sense of shame in the biblical context hardly differs from the contemporary understanding. The leading pair of passages frame the eating of the forbidden fruit by Adam and Eve. Before they eat of the fruit, we encounter a negative reference to shame: "And they were both naked, the man and his wife, and were not ashamed."<sup>44</sup> After they eat of the fruit, the reaction seems to be the opposite: "And the eyes of them both were opened, and they knew that they were naked; and they sewed fig leaves together, and made themselves aprons."<sup>45</sup> The text does not tell that they felt ashamed after eating the fruit, but this is seemingly always inferred from their covering their genitals immediately upon becoming aware of their nakedness. The strong connection between the eyes and the sense of shame also supports the reading of shame into the text after the eating of the fruit.

The sentiment that you would expect Adam and Eve to have is not shame but guilt. After all, they had just engaged in radical disobedience of God's command. In the Christian theory they are responsible for the "Fall" of humankind. They corrupt the species and bring death into the world.<sup>46</sup> This is an occasion for guilt, if anything is. And yet we read exclusively about a reaction of shame.

The core experience of shame is feeling exposed, subject to the gaze of another. There is no suggestion in the text that either Adam or Eve judged each other harshly, blamed each

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44. *Genesis* 2:25 (King James Version).

45. *Genesis* 3:7 (King James Version).

46. *Romans* 5:12.

other, felt guilt for anything in particular, but they were aware of each other's eyes. And the first reaction to each other's eyes was to sense the nakedness of that part of the body associated with shame. The response to shame, as to nakedness, is to avoid the gaze. This requires one to cover oneself up, as suggested by the metaphor of clothing oneself in fig leaves.

Shame in individuals, we can conclude, has a sound grounding both in our experience and in our mythology. The feature that makes it different from responsibility and guilt, however, is its nonrational quality. There is nothing logical about feeling shame for one's genitals. And indeed in nudist colonies people can easily overcome their habit of genital shame. Nor is there anything well-reasoned about minorities feeling ashamed of the way they are, with the resulting desire to conceal their origins and stay "in the closet." On the whole, it seems that the practice of coming out liberates people from the strictures of shame. Yet at the same time, a strong sense of shame provides people with sound moral restraints. Feeling ashamed for, say, cheating or committing adultery is a healthy reaction that strengthens our ties with others.

It is not surprising that guilt has played a much greater part in the evolution of legal thinking than is the case with shame. The impulse to pay reparations or to suffer punishment—all of these responses are responses to guilt rather than shame. And though the impulse will arise only if there are feelings or at least a recognition of guilt, the operative feature of guilt in these contexts is not subjectivity but the objective aspect of pollution that we have observed in biblical practices. Reparations and punishment both serve symbolically to cleanse the stains of the past. But these symbolic gestures hardly make sense unless they are read against a biblical history rich in magical events of pollution and cleansing.