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Guilt

Guilt has a number of related but distinguishable meanings. The word generally signifies having committed or being responsible for a wrongdoing, sin, or offence. This definition easily translates into the legal use of the word which means having committed a crime or tort as indicated by the offender's plea or the court's decision. A third usage of the word describes the feelings or emotion connected with recognition of having done wrong. Guilt, in other words, has a descriptive sense, a legal sense, and an affective sense.

1. Descriptive and Legal Meanings of Guilt

The Oxford English Dictionary traces the word guilt back to Old Teutonic words such as *geld*, meaning to pay, and Old English words (*gylt*, *gielt*, etc.) meaning delinquency, the fact of having committed an offence, being legally liable to a penalty, and a penalty for a crime. Modern definitions, such as are found in the seventh edition of the *Concise Oxford Dictionary*,

focus more simply on having 'committed a specific or implied offence.' Thus, in its broadest sense guilt simply signals that someone is responsible for an action or omission that is considered wrong. Implicit to this is the assumption that the guilty person was causally involved, though it has been argued that the person's intentions were not considered important in many times and places (Wierzbicka 1999).

As is evident from the origin and definitions of guilt, the concept is strongly linked to legal, especially criminal frameworks. Within a legal setting, the word guilty is used either by the defendant in pleading to a charge, or by the jury in convicting (a guilty verdict), to indicate responsibility for having committed a crime or tort (see Lely 1902). It often also indicates, as a consequence, liability for some penalty (Walker 1980).

To be guilty of a crime, one needs to commit the *actus reus* (the wrongful act) and to have *mens rea* (a guilty mind). Intention to commit the *actus reus* is the paradigm guilty mind. But over the centuries a variety of defences against a finding of *mens rea* have been refined in the common law: coercion, duress, mistake, self defence, provocation, insanity, necessity, accident and automatism being the main ones. The most sweeping defence against criminal responsibility is infancy, even though the *actus reus* has been committed with intent. Children under eight in most nations cannot be found guilty of a crime and there are generally qualifications on the capacity to hold older children criminally responsible. This is a major distinction between legal guilt and descriptive and affective guilt (which children can experience or at least are learning to experience).

In some contexts, recklessness—a weaker standard than intention but a stronger one than negligence—will be found to justify criminal guilt. In others the criminal law will countenance strict liability—guilt without *mens rea*. Generally this is reserved for contexts in which proving a guilty mind is difficult or when public policy regards the act itself to be sufficiently dangerous. Proving beyond reasonable doubt that the possessor of the illicit item had any criminal intent in relation to it is difficult, so the law resorts to the expedient of the *actus reus* of possession as sufficient for guilt. A second set of circumstances where the criminal law sometimes allows guilt without *mens rea* is where the *actus reus* involves a very great danger to the community and where the criminal actor has a capacity to take extraordinary steps to protect the community from that danger. Manufacturing pharmaceutical products or operating nuclear power plants are examples of where such strict liability crimes are countenanced in many nations.

Increasingly the world's legal systems accept the idea that a collectivity, such as a corporation, can be guilty of a crime. The reading of corporate criminal guilt initially became more expansive in the US; it then spread throughout the common-law world and in the final decades of the twentieth century took hold in the

civil-law world. Corporate criminal guilt can be based on a notion of corporate intention, or it can be determined that the corporation is vicariously responsible for the guilty intention of one of its members. Or corporate guilt can be based on a combination of a harmful corporate act that was enabled by irresponsible corporate policies or procedures (the corporate equivalent of the individual mental element of recklessness) (Bucy 1991, French 1984, May 1987, Fisse and Braithwaite 1993). In some ways the law imposes higher standards on corporations which are able to implement corporate compliance systems than it does on individuals. Arguably this spectrum of expectations is necessary for a 'risk society' (Beck 1992) where large corporations can cause aircraft to crash and nuclear power plants to melt down. At some point during the twentieth century in all industrialized societies, most litigants in the higher courts were corporations, rather than individuals.

Prior to the Middle Ages, when the distinction between tort and crime evolved, guilt was routinely used in civil law. Whether one burnt down the house of another intentionally (arson) or accidentally, one would be guilty of the act. In most legal systems guilt came to be used almost exclusively to refer to criminal guilt. However, when a civil wrong involved some element of fault, it remained appropriate to refer to the defendant as guilty of that civil wrong. While guilt was decreasingly so used when the fault element was only negligence, in US law it remained more common than in other systems to use the term guilt when exemplary damages were set in civil cases. When treble damages are imposed in a tort case, the existence of a punitive as well as a compensatory element in the court order means that it is appropriate to speak of the wrongdoer as guilty of that wrong. In equity and contract, if the conduct of a defendant is 'unconscionable' or shows bad faith, we can refer to the person as being guilty of unconscionable conduct. Finally, in US regulatory law there is the widespread phenomenon, less common in other nations, of civil penalties which can be imposed on evidence of guilt on the balance of probabilities, as opposed to the criminal test of beyond reasonable doubt. Americans speak of such defendants as being guilty of a breach of the law, even though there may not be criminal intent and defendants may not be able to avail themselves of excuses which would be available to them were criminal charges to be laid. Today, in a world where most of the things that can be done for good or ill in the world are done by organizations, most such civil penalty defendants are corporations. (See *Remedies and Damages: Legal Aspects*.)

At an even more macro level than the corporation, international law debates about crimes against humanity, such as genocide, resonate today with concern about 'impunity' as the world moves to establish an International Criminal Court. In this literature collective guilt is often supplanted by the concept of

collective shame as something nations might transcend through a process such as the South African Truth and Reconciliation Commission.

At both the macro level of national reconciliation and in the most micro context of juvenile justice and child protection, part of the impact of the growing social movement for restorative justice has been to shift the emphasis in debates around legal institutions from debates about guilt to debates about shame (Braithwaite 1999). We now turn to the affective foundations of this contest.

2. *Feelings of Guilt*

In addition to communicating both general and legal responsibility for wrongdoing, guilt has also come to be discussed as a feeling or emotion. At its core, a guilty feeling simply refers to the knowledge of one's guilt. However, the concept assumes not just awareness of wrongdoing but also discomfort with it. Thus, acceptance of having done wrong seems to be an important precondition of feeling guilty, although it is not when someone accepts or is assigned guilt in a descriptive or legal sense. The feeling of guilt is characterized by negative affect and may include behavioural changes. So, for example, it is sometimes said that someone is acting guilty or even that someone was consumed by guilt. Indeed, much classical literature, such as Shakespeare's *Macbeth* and Dostoevsky's *Crime and Punishment*, has followed the deterioration of characters haunted by past deeds. In such examples of guilt or guiltiness, the emotion is usually endured in secret, as the individual tries to hide his or her transgressions from the view of others. In fact, as will be seen, guilt is described by some theoretical traditions as a distinctively private emotion, especially in contrast to other related emotions such as shame.

Perhaps the most influential, or at least the most widely recognised, use of guilt in the social sciences has occurred within psychoanalytic theory. Freud (1949) argues that a primitive basis for guilt is the fear of losing another's love. In this primitive form feelings of guilt occur when one's transgression is discovered by an authority figure, or when the individual fears its discovery. This, according to psychoanalytic theory, is the only form of guilt young children can feel. However, individuals become able to feel what might be called true guilt with the formation of a super-ego or conscience, which internalizes the values that might have otherwise been enforced by an external authority. In this way individuals come to punish themselves through feeling bad (guilty) for transgressions or, because of the internal nature of the superego, even for offensive thoughts. Within this framework, conscious feelings of guilt, which Freud suggests should be called remorse, occur after committing a transgression. However, Freud also suggests that unconscious feelings of guilt play a much more malevolent role and are

the underlying cause of neuroticism. This is because the superego is characterized as taking on the aggressive and punishing characteristics of the external authority as well as the individual's own feelings of aggression towards the external authority. Ultimately the superego redirects this aggressiveness towards the ego, or conscious self. Ignoring the complexities raised by Freud's analysis of neuroticism and unconscious forms of guilt, what is most significant about this psychoanalytic perspective is that it describes guilt as an internally generated sanction based upon the individual's recognition of wrongdoing. For further detail on Freud's conception of guilt see his *Civilisation and its Discontents* (1949).

Guilt is also assigned an important role in the comparison of cultures by anthropologists such as Benedict (1946) and Mead (1937). In comparing the way societies maintain social control, a distinction is drawn between those that rely more heavily on internalized feelings of guilt and those that rely to a greater extent on social mechanisms of shame and shaming to maintain conformity. In Benedict's famous comparison, United States society is classified as a guilt culture, while Japanese society is classified as a shame culture. This distinction reflects Freud's conception of guilt as an internally generated sanction which develops as a result of socialization practices. However, it also highlights the alternative emotion of shame, which is described as a reaction to others' criticism and is similar to Freud's conception of 'primitive guilt.' This contrasting of shame and guilt as social versus internal control has been an influential one, with much of the recent research on guilt and shame examining the social vs. non-social dimension (Cheek and Hogan 1983, Gibbons 1990, Wallbott and Scherer 1995, Tangney et al. 1996). Indeed, as will be seen, a growing interest in shame has meant that research on both emotions has been dominated by an interest in distinguishing them.

While the social distinction between shame and guilt has been influential, it has also been questioned by a number of perspectives. Piers and Singer (1953) argue that there is much evidence from everyday life that individuals experience shame in private and without others' intervention. Building on the psychoanalytic framework they argue that shame and guilt are distinguishable because they result from different psychological tensions. Whereas guilt arises from tension between the ego and superego (conscience), shame is the product of tension between the ego and what they call the ego ideal. The ego ideal might be described as the individual's perception of their ideal self, those attributes and characteristics to which he or she aspires. This structure implies a new distinction: shame is about failure, it represents a shortcoming, whereas guilt is about transgression, it represents breaking a rule. Lewis (1971) argues that a second distinction implied by this psychoanalytic structure concerns the object of the two emotions. When feeling

guilt the individual's attention is focused upon the act or omission itself, but because shame is about failure to achieve an ideal, it is focused upon a global evaluation of the whole self. Thus, in addition to the emphasis upon transgression evident in the legal, Freudian and early anthropological perspectives, this later work has argued that guilt is felt about specific actions rather than the self.

The distinctions between guilt and shame have become a significant focus of recent empirical research. While empirical studies show that subjects' memories of feeling guilt involve less self-conscious feelings than their memories of shame (Wicker et al. 1983, Tangney et al. 1996), evidence that guilt is less focused upon evaluation of the whole self is equivocal. While at least one study (Niedenthal et al. 1994) has suggested that guilt is more specific in focus, a number of other studies (Tangney et al. 1996, Wicker et al. 1983) have found no significant difference between the emotions on this dimension. Indeed, a recent study (Harris 1999) which clustered subjects' reports of feelings using factor analysis did not distinguish between shame and guilt in either dimension. These results suggest that shame and guilt may often be empirically indistinguishable.

The discussion highlights the importance that has been placed in recent time on distinguishing feelings of guilt and shame. It is equally apparent that the issue has not been resolved and continues to be an important focus of research. This is particularly evident in recent research which explores guilt proneness and shame proneness as personality dispositions that are related to individual coping mechanisms and psychopathologies such as depression (Tangney 1991, Harder 1995, Ferguson et al. 1999). Despite disagreement over the dimensionality of guilt, research has highlighted a number of characteristics of guilt: that it is felt as a result of the acceptance that one has committed a wrongdoing; that it is focused upon one's actions or omissions; and that it often involves the perception of having hurt others in some way (Kugler and Jones 1992).

See also: Confessions: Psychological and Forensic Aspects; Crime: Knowledge about and Prevalence; Criminal Defenses; Criminal Law and Crime Policy; Honor and Shame; Law: Defense of Insanity; Personality and Crime; Responsibility: Philosophical Aspects; Shame and the Social Bond

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Gynecological Health: Psychosocial Aspects

Most women do not experience menstrually related changes that interfere with their lives to any appreciable extent. Where such changes are identifiable, they do not have a simple biological basis but are embedded in a complex social and cultural context.

1. Menstrually Related Distress

A comprehensive review (Klebanov and Ruble 1994) indicated no relationship between subjective distress and any hormonal measure; there is no consensus on its definition, symptoms, prevalence, effects, or indeed the component of the menstrual cycle (premenstrual, menstrual, or intermenstrual) with which the distress is associated.

Although mood, physical symptoms, and coping with life are claimed to demonstrate menstrually related cyclicality, the empirical evidence is mixed and inconclusive. Decades of research provide evidence for no cyclic variation in any aspect of cognitive functioning, memory, or motor performance (Richardson 1992). Women's reports of symptoms and mood swings are no different from those experienced by men (McFarlane and Williams 1994), and menstrually-related fluctuations in mood are considerably less than those associated with days of the week.

Prevalence estimates of menstrually related distress range from 95 to 5 percent, illustrating a complete lack of definitional consensus. The main standardized self-report survey, the Moos Menstrual Distress Questionnaire, obtains prevalence rates between 55 and 70 percent for physical discomfort, and between 23 and 70 percent for negative affect, with the majority of symptoms extremely mild and causing negligible distress (Logue and Moos 1986).

The American Psychiatric Association included a preliminary definition of premenstrual dysphoric disorder (PDD) in DSM-IV. PDD involves 'symptoms such as markedly depressed mood, marked anxiety, marked affective lability, and decreased interest in activity ... during the last week of the luteal phase in most menstrual cycles during the last year. The symptoms begin to remit within a few days of the onset of menses and are always absent in the week following menses.' PDD is diagnosed if the condition is com-