Decent Termination: A Moral Case for Severance Pay

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ABSTRACT: People are often involuntarily laid off from their jobs through no fault of their own. Employees who are dismissed in this manner cannot always legitimately hold employers accountable for these miserable situations because the decision to implement layoffs is often the best possible outcome given the context—that is, layoffs in and of themselves may be "necessary evils." Yet, even in circumstances in which layoffs qualify as "necessary evils," morality demands that employers respect the dignity of those whose employment is involuntarily terminated. In this paper I argue that to preserve the dignity of employees who are involuntarily terminated, in most cases employers have a substantial reason to offer a special kind of unemployment benefit, "severance pay." To support my claim I draw and expand upon Bernard Williams's analysis of "agent-regret," which I believe greatly helps to address and articulate employers' obligations in the context of involuntary termination.

KEY WORDS: severance pay, layoff, agent-regret, necessary evils, humiliation, expressive theory

1. INTRODUCTION

THE PURPOSE OF THIS PAPER is to explore ethical issues in layoffs.[1] In particular, I discuss an important ethical role that severance pay can play in respecting the dignity of departing employees. Throughout modern American history, employees have been involuntarily displaced from their jobs through mass layoffs (Garraty, 1978, Schlozman & Verba, 1979; Noer, 2009). Unfortunately, employees can neither control nor effectively prevent the events that cause layoffs. They are often helpless in the face of company bankruptcy, lack of work, or government intervention. Yet, employees who are dismissed in this manner cannot always legitimately hold employers accountable for these miserable situations, because the decision to implement layoffs is, at times, the best possible outcome given the context—that is, in some cases layoffs in and of themselves may be "necessary evils" (Molinsky & Margolis, 2005).[2] Under these circumstances, then, employees become unemployed through no one's fault. In this paper, I explore what morality says about these circumstances.[3]

It is plausible to say that even in circumstances in which layoffs qualify as "necessary evils" (Molinsky & Margolis, 2005), morality demands that employers respect the dignity of those whose employment is involuntarily terminated (Margolis,

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Grant, & Molinsky, 2007).[4] Then, important practical questions abound. How, if ever, should employers respect and maintain the dignity of these employees? What moral obligation, if any, do employers have towards dismissed workers who now face an uncertain future? The primary task of this paper is to offer an answer to these questions. In particular, I argue that to preserve the dignity of employees who are involuntarily terminated through no one's fault, employers should offer them a special kind of unemployment benefit, "severance pay" (Holzmann & Vodopivec, 2012).

In section 2, I briefly introduce what severance pay means. In section 3, I maintain that if employers, even those who faultlessly cause employees to experience losses through layoffs, do not act in ways that appropriately express the special commitment required by social norms of concern—that is, "agent-regret" (Williams, 1981)—to the employees, then they unavoidably insult, offend, or humiliate the harmed party. Such an attitude fails to respect the employees' dignity (Margalit, 1998). In other words, I maintain that we all are generally obligated to uphold a negative duty not to insult, offend, humiliate, or uncivilly or disrespectfully treat others—which I shall explain through the broader concept of a "duty of decency"—and in order not to violate a duty of decency, particularly in the circumstances of involuntary unemployment, employers who even faultlessly lay off are under an obligation to express agent-regret through some appropriate reparative gesture to terminated employees. In section 3, I argue that although severance pay is not the only logically or conceptually possible form of reparative gesture to express agent-regret, given the circumstances of our society, in most cases it uniquely well expresses the special commitment in the context of involuntary termination. In section 4, I consider and address major objections to this claim. In section 5, I end with concluding remarks.

2. SEVERANCE PAY

Severance pay, compensation or package, can be generally defined as "the payment of a specific sum, in addition to any back wages or salary, made by an employer to an employee for permanently terminating the employment relationship primarily for reasons beyond the control of the employee" (Hawkins, 1940: 5–6). Severance pay is typically offered when employees are laid off, as opposed to when they are fired due to faults of their own. The typical amount of severance pay is one week of pay per year of service, or less, and it is generally linked to the employee's last salary amount (Holzmann & Vodopivec, 2012). For instance, a plant worker with fifteen years of service whose most recent annual salary was $45,000 will receive about $13,000 or less for severance pay.[5] The term severance pay is sometimes interchangeably used with other terms such as redundancy compensation, leaving allowances, termination benefits, indemnities, or dismissal compensation. For clarity's sake, I shall use the word severance pay exclusively.

Severance pay or package should not be confused with other unemployment benefits such as pensions or unemployment insurance. By definition, severance pay is the payment given in addition to pensions or unemployment insurance. Many forms of pensions are deferred wages or salary prepared for unemployment. Severance pay, on the other hand, is not a wage or salary. Unemployment insurance is part of

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a larger social security scheme that was developed and is executed by the government or other authorized bodies. Severance pay is neither a form of insurance nor centrally controlled by the government or a federal/state agency. In the U.S, as a legal matter, severance pay is entirely a matter of contractual agreement between an employer and an employee (or the employee's representative), and there is no requirement in the Fair Labor Standards Act (FLSA) for severance pay. Unlike the U.S., many other developed and developing countries legally mandate severance pay (Holzmann & Vodopivec, 2012).

3. AGENT-REGRET AND SEVERANCE PAY

3.1. The Issue

Let me begin the discussion by exploring one of the earliest cases of severance pay in the U.S., which I shall take as paradigmatic:[6] the case of the Golden Gate and Bay Bridges (Holzmann, Pouget, Vodopivec, & Weber, 2012). When the Golden Gate and Bay Bridges debuted in San Francisco in the 1930s, much of the city was exhilarated for the bright future the bridges would bring, but not everyone welcomed the change. The demand for ferryboats—the only route across the San Francisco Bay before the bridges—vanished overnight, and almost four thousand ferry workers suddenly found themselves out of a job (Nolte, 2007). Consider the following excerpt from an interview with the arbitrator, Sam Kagel, who was deeply involved in the case:

Case 1: The Golden Gate and Bay Bridges

> "Before the bridges, everybody went by ferryboat . . . There were about 4,000 of them [ferry workers] . . . They wanted severance pay, but in 1932 nobody had ever heard of severance pay. The average length of service was 15 years, and we wanted one month's pay for every year of service. To make a long story short, we went to the president of the Southern Pacific railroad, which ran most of the ferries, and told him we wanted severance pay. . . . "Or what?" he said. "Or we'll go on strike," I said. Well, there was no way to get across the bay except by ferryboat. So he said, "I'll have some figures here for one offer only," and he turned them over, like cards. He said, "I'll give one month's pay for every year of service, and that's it." Well, Jesus Christ, that was exactly what we were demanding!" (Nolte, 2007).[7]

Upon the ferry workers' request and threat to strike, the president of the Southern Pacific railroad offered severance pay to the departing workers. One might say that the president must have been worried about his business and perhaps also about the convenience and welfare of locals. We shall not, however, investigate whether the president's rationale—or the ferry union's threat—was justified. The main question we explore in this paper is whether a sound moral reason exists for the president to offer severance pay to the departing workers regardless of the union's behavior—even if there were no request or threat. I maintain that he has a substantial reason to do it, i.e., that it is *prima facie* obligatory, in the sense that he is doing something wrong unless the reason is outweighed or nullified. In this section, I attempt to show, drawing and expanding upon Williams's (1981) analysis of agent-regret, that the president should take responsibility for adequately expressing agent-regret to

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the workers (3.2. and 3.3) and that severance pay uniquely well manifests the two constitutive thoughts of agent-regret that Williams analyzes (3.4.).

To avoid confusion, I note that in Case 1 above, the president could financially afford paying severance to the workers, and my argument is subject to the principle that ought-implies-can (OIC; Goodpaster, 2010; Schreck, van Aaken, & Donaldson, 2013). Therefore, in cases where employers cannot financially afford it, the duty of severance pay, which I will defend, will be accordingly qualified. The cases to be followed throughout the paper will share the same assumption.[8]

3.2. Agent-Regret

Let us begin with Williams's (1981) famous lorry-driver scenario, bearing in mind that we are searching for structural parallels between the contexts of the lorry-driver and the president of the Southern Pacific railroad in Case 1, hoping to draw analogous insights from Case 2 for Case 1. Consider this:

Case 2: The Lorry-Driver

> A lorry-driver is taking the wheel on a commercial road. As an experienced driver, he has a reasonable understanding that a commercial road is a place where children typically do not play. He is keeping within the speed limit and carefully watching his surroundings. Suddenly, a child playing behind a parked car emerges onto the street. The lorry-driver sees her coming towards the street and hits the brakes, but it is too late. He runs over the child and she is seriously injured.[9]

What response is appropriate for the lorry-driver to give to the injured child and her parents? It is already widely noted that Williams's (1981) answer to this question is the sentiment of agent-regret (see, e.g., Baron, 1988; Tannenbaum, 2007). Yet, it is less widely known that Williams (1981) also thought that the appropriate response should not be limited to the realm of moral psychology, but should include acting in ways that "constitute or at least symbolize some kind of recompense or restitution" (Williams, 1981: 28), which he believes "will be an expression of his [the lorry-driver's] agent-regret" (Williams, 1981: 28). The lack of scholarly attention to Williams's insight about the expressive commitment is understandable, given two facts. First, his analysis of agent-regret is focused mainly on its moral psychology but is only sketchy about its expressive nature. Second, it seems clear to us that the lorry-driver is not responsible for recompense because he is not blameworthy. In what follows (3.2. and 3.3.), I advance Williams's seminal idea about the expressive commitment of agent-regret, by providing an argument that makes sense of what he could mean by acting in ways that "constitute or at least symbolize some kind of recompense." As I shall discuss, once we understand Williams's term "recompense or restitution" as a *reparative gesture* rather than (full) recompense or restitution, then we will begin to see how his insight can be coherently developed to support severance pay.

For that purpose, I begin with Williams's discussion about the moral psychology of agent-regret, just as a pianist who wants to express sadness through his playing might find it helpful to first understand the sentiment itself. Then what sentiment

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or attitude is most appropriate for the lorry-driver toward the injured girl and her parents? The lorry-driver will undoubtedly feel some kind of painful emotion, unless he has a serious emotional disorder. Furthermore, he will have an associated belief, thought, or stance about what happened. It would be inappropriate for him to selfishly exhibit irritation about the injured girl or distress about his own inconvenience. In addition, as Marcia Baron points out in her analysis of the lorry-driver case (Baron, 1988), typical moral emotions such as guilt or remorse do not fit in this scenario, because as indicated above, guilt or remorse are appropriate emotions only for those who have done something blameworthy. Note that the lorry-driver scenario, like Case 1: the Golden Gate and Bay Bridges, is meant to illustrate a case in which an individual neither intentionally nor negligently inflicts harm on another—that is, the driving accident occurs through no fault of the lorry-driver (Williams, 1981; Baron, 1988).

If typical moral emotions such as guilt or remorse are not appropriate for the lorry-driver to adopt, then what moral emotion is apt? Williams (1981), in his analysis of the lorry-driver's moral psychology, first grants that the lorry-driver's constitutive thoughts are most appropriately captured by the notion of regret. Next, he supplements this assertion by claiming that a particular form of regret accurately reflects the lorry-driver's state of mind. This is what he famously dubs "agent-regret," a kind of regret that a person can feel only when remembering his or her own past actions. Williams writes:

> The lorry-driver will feel differently from any spectator, even a spectator next to him in the cab, except perhaps to the extent that the spectator takes on the thought that he himself might have prevented it, an agent's thought. Doubtless, and rightly, people will try, in comforting him, to move the driver from this state of feeling, move him indeed from where he is to something more like the place of a spectator, but it is important that this is seen as something that should need to be done, and indeed some doubt would be felt about a driver who too blandly or readily moved to that position. We feel sorry for the driver, but that sentiment co-exists with, indeed presupposes, that there is something special about his relation to his happening, something which cannot merely be eliminated by the consideration that it was not his fault. (Williams, 1981: 28)

Agent-regret is a unique form of regret, because it is agential or self-referential (Enoch, 2012; Raz, 2012). As Williams says, anyone who witnesses events similar to those in the lorry-driver's accident in Case 2 is, in principle, capable of regretting the circumstances. Spectators, for instance, can feel a general sense of regret, perhaps from empathy or compassion, which they express by wishing "*it* had been otherwise." In this general form of regret, people lament states of affairs—what happened rather than who did it. In the case of agent-regret, however, the focus of regret is primarily on the agent himself and largely comprises "*first personal* conceptions of how *one* might have acted otherwise" (Williams, 1981: 27; italics mine). Imagine that the lorry-driver's boss, who is a bystander and has a loving and generous character, kindly insists on feeling agent-regret on behalf of the lorry-driver. This strikes me as totally absurd. The boss can surely feel regret, based on his impartial love and universal empathy, about what has happened to the girl. But

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his impartial love cannot replace the unique value and stance of the lorry-driver's feeling of agent-regret to the child, because the driver himself, who is causally connected to the harm as the harm-doer, is uniquely positioned to feel anguish about it and wish he had not injured the child. Given this feature of agent-regret, no one but the lorry-driver —whether a close friend or even Mother Teresa—is capable of experiencing agent-regret for the child he harmed.

One might think that the lorry-driver's feeling of agent-regret is simply irrational, since it is irrational to feel painful emotions about something for which one is not blameworthy. I disagree. At a minimum, it would be difficult to find a ground to deny that, between two possible cases, one where the lorry-driver feels agent-regret and the other where he does not, the former is better than the latter. I suppose most of us admit that the former is better because most of us accept that feeling agent-regret in such a context is appropriate, fitting, and apt. If it is appropriate and apt, then it is easy to see that there is "no ground for condemning it [agent-regret] as irrational" (Williams, 1981: 22).

Now, let us turn to the implications of Williams's analysis of agent-regret in the context of involuntary termination. We may observe structural parallels between Case 1: The Golden Gate and Bay Bridges and Case 2: The Lorry-Driver. In Case 1, the decision to lay off four thousand workers is not to be blamed on the employer. The local community's collective interest in the city's development sparked the construction of the bridges that would inevitably bury the ferryboat trade. Given the powerful influence of the industrial age, the president in Case 1 may not be legitimately blameworthy for the ferry workers' misfortune,[10] and such is also the case for the lorry-driver in Case 2. Yet in Case 2, we further observe that the lorry-driver had a sound moral reason to feel agent-regret towards the child. Given the parallel circumstances, I maintain that it is morally appropriate for the president of the Southern Pacific railroad in Case 1 to feel the same sort of regret—agent-regret—in relation to the departing workers.[11]

The reader might balk at this claim, insisting that the causal and agential experience of loss is not a sufficient condition for agent-regret. Take the case of gambling games such as roulette or slot machines. It would be odd to say that it is appropriate for the business owners of slot machines to feel agent-regret to those who lost money. I need to address what makes the case of gambling different from Case 2 (the case of the lorry-driver). Williams (1981: 123) seems to anticipate this when he writes, "There can be cases directed towards one's own past action which are not cases of agent-regret, because the past action is regarded *purely externally*, as one might regard anyone's else's action" (my italics). He does not say anything other than this, however.

I find Joseph Raz's (2012) recent work on agent-regret useful. Raz proposes that the additional element could be addressed with an "understanding of our engagement with the world that (a) distinguishes between (1) the ways we gamble, deliberately taking risks, and (2) the ways our actions, while depending on matters over which we have little influence, are not gambles, and (b) makes plain the roles of these different forms of engagement in the constitution of ourselves" (Raz 2012: 145; I added (1) and (2)). His account is complex,[12] but the gist of it is that we feel

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agent-regret only about unintended harms caused by our failed intended acts, and we do so with some expected sense of who we are: beings who are able to intend, expect, or attempt outcomes to be (reasonably) based on our competence. In the domain of gambling (1), we do not have the kinds of expected senses of ourselves, because it does not make sense for us to intend any outcome in a gamble and we do not expect the outcome to depend on our competence, so there is nothing to provoke agent-regret. Activities such as starting a degree-program or employment can be categorized in the second domain (2), in which unintended harms are typically linked to the frameworks where we operate with competence and intention. So, I maintain that it is appropriate for the president in Case 2 to feel agent-regret regarding the departing workers.[13]

The astute reader might also press me to further specify what it means to argue that agent-regret is appropriate in this context—namely, whether the president's agent-regret in Case 1 and the lorry-driver's agent-regret in Case 2 are morally good/supererogatory things to do or right and mandatory/obligatory things to do? Unlike consequentialists, perfectionists, or some virtue theorists, I do realize that these two moral categories, although conflated, can be distinct in some manner. Primarily, if an act is a morally good thing to do in the sense that it is supererogatory, then it is not always mandatory, so it is often permissible not to do it, although that does not mean that it can be treated as a trivial matter. If an act is the right thing to do, then refraining from the act constitutes a wrong; thus, performing the act is almost always required, unless it is overridden or nullified by other considerations. I believe that Williams's account of agent-regret in the realm of moral psychology, which we have explored so far, is primarily virtue/goodness-based in form, and I believe that such an interpretation—it is virtuous for the lorry-driver in Case 2 and the president in Case 1 to feel agent-regret to the relevant parties—would not be controversial.[14]

Then, the reader might want to point out that the fact that it is good for the president to feel agent-regret does not directly entail or even imply that it is right for him to offer severance pay to the workers, the specific conclusion I aim to draw in this paper. I agree that there are two problems. First, a sentimental commitment does not necessarily entail any substantial demand for action.[15] Second, a goodness/virtue-based account of agent-regret does not always entail or imply a duty or obligation. However, in the next sub-section, I will show that at the expressive/act level, the president's expression of agent-regret to the terminated workers is not simply a good thing but a right thing.

3.3. The Expression of Agent-Regret

Recall that the question Williams and we asked about the lorry-driver example was what *response* is appropriate? Williams (1981: 27) says, "agent-regret requires not merely a first-personal subject-matter, nor yet merely a particular kind of psychological content, but also *a particular kind of expression*" (italics mine). I agree. Yet, I have provided nothing more than William's intuition, and the reader might have a different intuition. The reader might reasonably ask for a positive argument independent of Williams's intuition. There are two ways to support the intuition. One

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is to show that other leading philosophers[16] also accept the intuition that Williams has about the lorry-driver's case. This approach, however, would not successfully persuade the reader, without meta-criteria to show whose intuition is better. The other response, as possibly envisioned by the reader, is to defend the intuition by providing an argument to address, explain, and justify Williams's intuition. In the following, I will expand upon Williams's intuition about the expressive obligation of agent-regret, by arguing that whether or not the president in Case 1 has a duty to inwardly *feel* agent-regret, he should *express* agent-regret to the departing workers. The summary of the argument to be made in this sub-section is as follows:

The Argument

Premise 1) In the domain of life within which we intend to perform with competence,[17] if individuals, even those who faultlessly cause someone to experience losses, do not act in ways that appropriately express agent-regret to the harmed party, then they unavoidably insult, offend, humiliate, or uncivilly or disrespectfully treat the harmed party.

Premise 2) The president in Case 1 faultlessly causes the departing workers to experience losses through involuntary termination.

Premise 3) One ought not disrespectfully treat others in ways that insult, offend, or humiliate them (a general duty[18] of decency).

Conclusion) Therefore, the president ought not fail to express agent-regret to the workers.

To elucidate the expression of agent-regret and its obligatory nature, I suggest the following case, which is relevant to the previous cases:

Case 3: The Office Corridor

Your boss, who walks along the office corridor of the building, sees you, an employee, and tries to shake hands with you, but then accidentally bumps into you because another employee behind him slightly bumps into him when passing by, and you fall down. Your boss sincerely feels sorry about the pain he caused and wishes he had been more careful. (He is feeling agent-regret toward you, to use Williams's concept.) Now he wonders what morality demands him to do next. He has two options. One is to do nothing more. The other is to express his agent-regret through some sort of remedial gesture, such as saying "I'm sorry about this. Are you okay?" The boss chooses the first option. So, he just looks at your face for a second, does nothing, and leaves as if nothing happened. You feel demeaned, slighted, offended, insulted, and perhaps even humiliated because, in fact, he did do something to you.

The gravity of the harm done here is much less serious than the bodily injury in Case 2: The Lorry-Driver or the loss from the layoff in Case 1: The Golden Gate and Bay Bridge, but it is still clear that your boss faultlessly caused harm to you and thus the parallel is upheld. Like the lorry-driver case, Case 3 seems to challenge our common-sense morality, because it seems clear to us that the boss is not blameworthy and so he is not responsible for any recompense, but at the same time, it seems also correct that he failed to do what he was supposed to do—express a form of

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agent-regret to the harmed party. And, more specifically, it was obligatory for the boss to attempt to make some reparative gestures (saying, "I'm sorry") to express agent-regret to you; otherwise, he would insult, offend, humiliate, or disrespectfully treat you. What can address and explain the boss's moral failure, given that he is neither blameworthy nor responsible for recompense?

David Enoch (2012) suggests adding a new locution, "taking responsibility," to address the kind of moral requirement to which the boss and the lorry-driver (and also the president) are subject. In our conventional view of morality, we are responsible for x if and only if x is morally wrong or bad and we are blameworthy for x. Yet, Enoch (2012) emphasizes that Williams's lorry-driver case, which he calls a case of "penumbral agency," illuminates another sense of responsibility that can be taken seriously *without* blame attribution. He convincingly maintains that the kind of moral failure that the boss and the lorry-driver would commit is not constituted by his failure to be responsible for the harm (because he is not responsible), but rather it lies in his violation of a moral duty to *take* responsibility for making some reparative gesture of agent-regret to the harmed parties. In Enoch's account, two things are noteworthy. First, this way of understanding allows us to address the boss's moral failure through our existing view of morality, because it does not hold the harm-doers blameworthy. Second, and related, the duty that requires them to take responsibility does not require them to recompense the harms. In Case 3, the boss is not duty-bound to remedy the entire amount of harm, including helping you stand up and financially paying for any physical and psychological damage, if any. Rather, his responsibility is to make some reparative gesture, saying, for instance, "I'm sorry. Are you okay?" to communicate his agent-regret. In fact, as we shall see, in the cases of the lorry-driver in Case 2 and the president in Case 1, required reparative gestures would be significantly less than the entire amount of harms.[19]

The question, then, arises: why do they have a responsibility to make reparative gestures? Enoch touches upon this issue, mentioning, "sometimes, by uttering the truth [I am not responsible], you will be conveying your unwillingness to take responsibility . . . Hence the wrongness" (Enoch 2012: 113). But this does not yet tell us why the unwillingness is wrong. Below, I suggest an answer: the unwillingness amounts to humiliation and insult.

It is quite plausible to assume that each of us generally has a negative duty not to gratuitously insult, offend, or humiliate others (Feinberg, 1985). Let us call this moral expectation a "duty of decency." The reaction the boss chooses in Case 3 is not consistent with this duty and thus constitutes a wrong. In order not to constitute the wrong, he should have taken responsibility for making reparative gestures to you. As the case illustrates, attempting to make the reparative gesture is not simply a good thing to do; it is, rather, the right thing to do. Disrespectfully treating others in ways that insult, offend, or humiliate them is a wrong thing to do. Of course, the boss is not blameworthy for the accidental harm itself, just as the lorry-driver in Case 2 and the president in Case 1 were not blameworthy for the harms (bodily injury and layoffs). It is noteworthy that the harm done in the past is not the origin of insult, humiliation, or disrespect in Case 3. The past harm is a result of the accident, for which no one is responsible; refraining from taking responsibility for express-

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ing agent-regret through reparative gestures is the origin of insult, humiliation, and disrespect. In other words, the nature of the general duty of decency is not itself restorative. Rather, it is *preventive* of indecency. But in the circumstance of Case 3, interestingly, the preventive duty requires restorative gestures as the apt form of preventive action. Namely, your boss should not humiliate you, and in order not to humiliate you, in the given circumstance, the boss is required to take responsibility for expressing agent-regret through remedial gestures.

One might ask how the boss can be obliged to *express* agent-regret if he is not obliged to *feel* it. I maintain that this is possible because the boss's expressive obligation is an independent obligation, which means that it exists regardless of whether he really feels agent-regret or not. What he should do is express to you a form of agent-regret he would express if he were a characteristically non-deficient or virtuous moral agent and truly felt agent-regret in the given context. Regardless of whether the boss in Case 3 felt agent-regret or not, if he did not express it, he would demean, insult, and humiliate you. How can he express agent-regret without deeply feeling it? He can do so by acting consistently with social norms of concern, which conventionally determine what actions are expressively appropriate in certain contexts (Anderson & Pildes, 2000). One might argue that an authentic expression of agent-regret is not possible without a feeling of agent-regret. No doubt, expressing agent-regret while sincerely feeling it would make a sufficient, authentic, and perfect moral case. And I believe that if the boss felt no agent-regret toward you, then his moral character would be deficient. But even if he does not *feel* agent-regret, it is still necessary in the realm of act or conduct that he *express* agent-regret to you in order not to humiliate you.

Case 3 illustrates that the boss has an independent duty to express agent-regret to you, and that it is a right thing to do, but then why? I attempt a deeper analysis of how a duty not to insult, offend, or humiliate others or a "duty of decency," is linked particularly to the boss's (and the driver's and the president's) duty to express agent-regret to the harmed parties. I begin with Avishai Margalit's book, *The Decent Society* (1998), which contains a detailed analysis of what he conceptualizes as "humiliation." Margalit uses the term "humiliation" expansively, including insult, offense, incivility,[20] embarrassment, disrespectfulness, etc., and defines it as "any sort of behavior or condition that constitutes a sound reason for a person to consider his or her *self-respect* injured" (Margalit, 1998: 9). Furthermore, he explains that one's self-respect importantly consists in the condition of "belonging to a group which does not require anything other than being in the group" (Margalit, 1998: 47). The group to which Margalit refers is that of humanity, and, therefore, for Margalit, humiliation represents "rejection from humanity" (Margalit, 1998: 135). Therefore, if you were treated as though you deserved to be rejected from humanity in Case 3 by your boss's action, then he in fact undermined the condition on which your self-respect importantly relies, which is an objective reason for you to feel humiliated.

The relevant question now becomes, "Did your boss act as though you deserved to be rejected from humanity in Case 3: The Office Corridor?" I believe the answer is yes. We, as human beings, are each expected to maintain a set of appropriate attitudes and behaviors towards one another, and those who violate this expectation

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are blameworthy (Scanlon, 2008). One important set of actions or attitudes we are each expected to convey to others is that of social rituals (Kim & Strudler, 2012). As Cora Diamond writes in her insightful article, "Eating Meat and Eating People" (Diamond, 1978), countless social rituals in our lives play a great part in constituting our conception of humanity. For instance, one phenomenon she observes is that we refuse to eat our pets, regardless of whether or not they have a right to life, when we interact with them through social rituals (e.g., giving them names, apologizing when we hurt them). By engaging in social rituals with our pets, we treat animals as if they were humans. If Diamond is correct, then one who does not treat others consistently according to norms of social ritual denies that others deserve human treatment—that is, one acts as though they deserve to be rejected from humanity.

What's specifically important for our purpose is that, as Case 3 shows, an expression of agent-regret is often the apt form of social ritual required to avoid violating the general duty of decency. In Case 3, saying, "I'm sorry about this. Are you okay?" is the most appropriate social ritual in that context, manifesting the attitude of agent-regret the boss would feel if he were a characteristically non-deficient or virtuous agent. It follows that expressing agent-regret, as an appropriate engagement of social ritual, may function as a fundamental recognition that its recipient is treated as a fellow human being—an important condition to maintain if you do not want to flout the duty of decency. Your boss in Case 3 did not treat you according to the norms of social ritual, constitutive of our conception of humanity. By failing to act appropriately, he treated you as if you did not belong to the group of humanity. This is why you have a sound reason to feel humiliated by your boss. This is not a trivial matter. As illustrated above, humiliation is an experience that strips its victim of dignity. In this manner, Margalit boldly says, "if there is no concept of human dignity, then there is no concept of humiliation either" (1998: 149). Consequently, it can be said that although the accidental harm your boss inflicted on you is not his fault, the boss's refraining from expressing agent-regret is an insult to your human dignity.[21]

Let us compare Case 3: The Office Corridor to Case 2: The Lorry-Driver. To explain and justify Williams's intuition, I have introduced a relevantly similar scenario (Case 3), invoked an intuition (the boss is obligated to express a remedial gesture, "I am sorry"), and explained and justified it relying on a duty of decency or negative duty not to insult, offend, or humiliate. Therefore, we can infer, retrospectively, that in the lorry-driver case the driver is under a duty to express agent-regret through a remedial gesture in order for him not to insult, offend, or humiliate the injured child and her family.[22] Similar to your boss in Case 3, who failed to meet his duty to take responsibility for expressing agent-regret to you, if the lorry-driver does not take responsibility for appropriately expressing his agent-regret to the injured child, then he treats her as though she deserves to be rejected from humanity by ignoring the ritualistic requirement and thus humiliates her by degrading her dignity. Now, compare Case 2 and Case 3 to Case 1: The Golden Gate and Bay Bridges. Likewise, in Case 1, if the president does not take responsibility for appropriately expressing agent-regret to the departing ferry workers, then he does not do what he owes to them as humans and so humiliates them—an injury to their dignity. Therefore, if it is important—as we have assumed from the beginning—to respect and preserve the

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dignity of those whose employment is terminated without fault of their own (or of their employer), then employers have a substantial reason to express agent-regret to these workers.

3.4. Agent-Regret and Severance Pay

Thus far I have argued that the president in Case 1 has a duty to take responsibility for expressing agent-regret towards the departing workers. Yet, something more is needed to arrive at the specific conclusion we desire—that is, that the president has an obligatory reason to offer them "severance pay." To make the linkage, we need a premise that, in Case 1, severance pay, in typical cases, uniquely well functions as the president's expression of agent-regret to the departing workers. I dedicate the remainder of this section to developing this premise.

Imagine that the lorry-driver in Case 2 simply mentioned some words of regret or sympathy to the injured child and the family and then left. Given the gravity of the harm he inflicted on the child, it is likely that the words would ring hollow, insincere, and lame. Terse speech can be enough to remedy a miscellaneous accident, but more considerable efforts are required in contexts that are more serious. Expressions of gratitude or regret take a variety of forms, from mentioning simple words (e.g., "thank you") to more substantive measures. Such is also the case for expressions of agent-regret. In situations similar to that in Case 1, I claim that a specific form of unemployment benefit, severance pay, most naturally satisfies an employer's duty to take responsibility for expressing agent-regret to departing workers. To support this assertion, I draw upon Elizabeth Anderson and Richard Pildes's expressive theory of action (2000).

"Expression," Anderson and Pildes (2000: 1506) write, "refers to the ways that an action or a statement (or any other vehicle of expression) manifests a state of mind." For instance, burning a draft card during the Vietnam War expressed the belief that the United States' participation in the war was wrong. As a more general example, a shrug can express indifference. Yet, an expression is not necessarily caused by mental states the expresser possesses, as Anderson and Pildes explain:

> Not everything that expresses a state of mind is caused by that state of mind. Musicians can play music that expresses sadness without feeling sad themselves. The music they play need not express their (or anyone's) sadness: the sadness is in the music itself. Similarly, lawmakers could pass a law that expresses contempt for blacks by denying them the right to vote, even if none of the lawmakers personally feels contempt for blacks and all are merely pandering to their white constituents.(Anderson and Pildes, 2000: 1508)

Similarly, the president in Case 1, without *feeling* agent-regret, can *express* an appropriate form of agent-regret he would express if he were a characteristically virtuous moral agent and sincerely felt it, if he can find a feasible way to embody and manifest the mental state he would ideally feel, so that it can be recognizable as agent-regret.

Anderson and Pildes (2000: 1507) add that expressions are normative in nature—that is, "expressive vehicles can do a better or worse job of expressing mental

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states." Suppose, for example, that your boss in Case 3: The Office Corridor knocked you down and then said, "You're clumsy, aren't you?" instead of "I'm sorry about that. Are you okay?" The expressive vehicle he chose was poor, no doubt, whether or not he inwardly experienced agent-regret. His expression to you, which should have been caring, sympathetic, and sincere, ended up as joking and offensive. In other words, the reason his expression to you was poor is that his expression was incongruent with the mental state he would ideally have.

What vehicle, then, is most appropriate for conveying the president's expressive demand in Case 1? Before I provide an answer, let us first investigate what would appropriately express the mental state of the president's agent-regret toward the departing workers, whether he actually felt it or not. Williams's (1981) analysis of the lorry-driver's moral psychology illustrates two important elements constitutive of the appropriate state of agent-regret. The first constitutive thought of the lorry-driver's agent-regret is his desire to help the child return to the original states of affairs where she had not been injured. How much help is apt? As indicated above, since the lorry-driver is not responsible for recompense, he is not responsible for fully remedying the damage. Nonetheless, it seems reasonable to believe that he is required to express some reparative gesture to help the injured child recover her losses, and the chosen gesture must be appropriate enough to prevent him from humiliating the child and her family. Let's say that the damage, if monetarily calculated, is $ 0.5 million, including the hospital bills and future support for the disabled body and life. In this case, if the lorry-driver were responsible for recompense, then he would be responsible for paying $ 0.5 million. Neither Williams nor I argue this. I argue that the lorry-driver is under a duty to take responsibility for expressing agent-regret through some appropriate reparative gesture.

Now let us return to Case 1: The Golden Gate and Bay Bridges. The president is the person who inflicts, albeit faultlessly, losses on the departing workers. As argued above, the president must appropriately express the agent-regret he would express if he were a characteristically non-deficient moral agent and sincerely felt agent-regret towards the workers. In this case, the original state of affairs to which the president desires to help the workers return would be the state in which they have stable employment as they had prior to the decision of termination. In such a state they would maintain the values of their firm-specific investments such as technical skills or social capital like loyalty, workplace friendship, networks, etc. Therefore, the president should offer the workers some form of remedial gesture suitably designed to help them recover such losses. Again, the president is not responsible for recompense, but some remedial gesture would be required to sincerely express his agent-regret to them. Suppose that a man has worked for a company for twenty years and his age is 45. His last annual salary was $ 45,000. Then, his severance pay would be about $17,300, according to the typically-used formula of one week of pay per year of service. Although this amount is far less than the whole damage,[23] I suggest that it would be a useful sum for the employer to appropriately express his agent-regret to the departing employees.

One may ask how much compensation is *exactly* appropriate for severance pay in Case 1. Determining the level of compensation that constitutes a legitimate amount

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of severance pay is an interesting and important question, but a detailed answer is beyond the ambition of this paper, as many factors (cultural, social, and economic) are involved in determining appropriate ways of expressing agent-regret, and so in determining the appropriate level of severance pay. One might retort that the argument in this paper is not complete without providing an answer to this question. By analogy, however, one may reasonably argue that retributive punishment must be proportionately determined by the gravity of wrongdoing, but abstain from offering a practical guideline for sentencing. Just because the argument does not offer a systematic formula for determining proportionate punishment does not by itself discredit the cogency of the argument. The nature of the argument for severance pay developed in this article is similar. Analogously, we have a jury system (and judicial sentencing guidelines) in which we infuse various cultural, social, and economic considerations into the deliberative process for determining the appropriate gravity of punishment. As the meaning of an action largely depends on various cultural, social, and economic contexts, adequate processes for determining the level of severance pay would likely involve some form of deliberative processes similar to that of the jury system. Perhaps the current schemes for calculating severance pay—for instance, one week of pay per year of service or less (Holzmann & Vodopivec, 2012)—represent the historical results of such deliberative processes.

Yet, just because some form of remedial efforts must be offered to the departing workers, it does not necessarily follow that the president is obligated to offer the workers the compensation. Indeed, other ways of dealing with termination, such as pensions or unemployment insurance, can accomplish that goal too. Something more, then, is needed, which brings us to the second constitutive element of agent-regret. Another important element of the lorry-driver's agent-regret is, as Williams (1981) emphasizes, that it was the driver himself who inflicted loss on the child, and so only the driver himself can have and express agent-regret. Neither spectators nor charitable people can express it. Therefore, only the driver himself can take responsibility for expressing agent-regret. Williams puts forth an interesting thought experiment in which the child's injuries in Case 2 are fully covered by an insurance premium that is already paid by someone else, and asks whether her injury is "the sort of loss that can be compensated at all by insurance" (29). Williams believes that only the lorry-driver is in a position to express "some reparative significance other than compensation" (29). Similarly, in Case 1, only the president should be able to meet the expressive obligation to offer some form of remedial gesture to the departing workers. Any form of remedial effort provided by other parties, including pensions or unemployment insurance, does not—and cannot—adequately express the president's agent-regret to the workers. Just as insurance coverage does not serve as an appropriate vehicle for the lorry-driver to express his agent-regret to the injured child in Case 2, unemployment insurance—part of a larger social security program controlled by the government—would by no means serve as an appropriate vehicle for the president to express his agent-regret to the ferry workers in Case 1. For the president to offer pensions to the workers would be a worse choice. A pension is basically deferred salary prepared for unemployment, so its meaning, if the pension were used as the expressive vehicle to the departing workers, would approximately

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translate as, "You can use your own money." This message not only limits the president's reparative effort, but also adds insult to injury. Thus, it follows that the president should offer some suitable form of remedial gesture, besides pensions or unemployment insurance, to the departing workers.

One might still point out that the president's remedial gesture need not necessarily be severance pay, because such efforts need not be monetary in form, by suggesting examples like the following:

Case 4: Reemployment

> The president in Case 1 manages to find replacement jobs for the departing workers. Some go to Bay Bridge companies and others to various workplaces of emerging industries in California. The new jobs pay more and have better working conditions. The departing workers are happy, even though they did not receive any financial form of severance pay.

There seem to be two assumptions underlying Case 4. First, severance pay is exclusively monetary in form. Second, non-monetary remedial efforts can fulfill the president's moral obligation to express agent-regret to the workers. I find the first assumption misplaced and the second questionable, at least for standard cases in which employers can afford to offer severance pay to departing workers. What counts as severance pay is not exclusively monetary, although the word "pay" is used and in fact the financial form is most common. Admittedly, severance pay often includes non-monetary aids as well as financial remedies, such as skills-based reemployment education that would give the departing employees a competitive advantage on the job market or the promise of a glowing letter of recommendation and career counseling to ease the employees into finding new jobs. Given the reality of what is typically considered as severance pay in our society, I believe that the employer's remedial gesture of finding reemployment in Case 4 qualifies as an expression of agent-regret, and, as it happens, is another form that can partly constitute severance pay.

Then, one might reasonably ask, what's the point of using the term severance "pay"?[24] I believe that there is a sound reason, which is relevant to my suspicion of the second assumption for typical cases. It is noteworthy that the nature of the losses inflicted upon the departing workers is twofold. It is forward-looking and also backward-looking. In Case 4, the forward-looking aspect of the loss, which is that the workers will not earn salaries for a period of time in the future, is addressed by the remedial gesture of helping them find other jobs. Yet, the backward-looking aspect has not yet been adequately addressed. Hence, the president in Case 4 expresses his agent-regret, but only partly. It seems likely that some kinds of firm-specific investments, such as skills specialized to the departing workplace (skills for ferries) or social capital like loyalty, workplace friendship, or human networks, etc., are lost by sudden involuntary employment, and that severance pay plays an important role in expressing employers' agent-regret by helping workers remedy such backward-looking harms. In fact, one main criterion for determining the amount of severance pay is typically how many years or months one has worked rather than how many more years or months one would expect to work. This might be a mere historical contingency, but it is an instructive one. Since many firm-specific investments, by

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definition, cannot be remedied simply by being reemployed in other workplaces—for example, skills regarding ferries would not be as valuable in bridge companies as in ferry companies—and since, in our society, pecuniary compensation most naturally expresses efforts to remediate something that cannot be restored by substitution, the financial form of a remedial gesture is the most natural way to express employers' agent-regret.

Nonethless, my discussion above never claims that pecuniary compensation is always essential to severance pay or package, regardless of the situation. First, as noted early, I surely accept that when employers cannot utilize financial compensation for severance, their duty to severance pay is accordingly qualified. In such cases, I do not disagree at all with the possibility and legitimacy of offering severance pay (in this case "severance package" is a better term) that does not involve cash-payment but does involve alternative methods that employers can afford. Second, my argument has primarily aimed at defending the existing practice of severance pay or package in typical cases that include cash-payment. But we may certainly be open to innovative approaches to severance pay or severance packages. The existing practice does involve mainly financial payment, but this does not necessarily mean that other forms cannot be good forms of severance pay or package in non-standard cases. I argued for the financial form of remedial gestures, mainly because cash-payment is, in typical commercial situations (layoffs, e.g.), a uniquely appropriate and natural way to compensate something that cannot be restored by substitution. If there are other socially acceptable forms of remedial efforts to compensate firm-specific investments that cannot be restored by reemployment, then we must be open to revising the contents of severance pay or package. And, of course, employers must not unilaterally determine the revision, as they like. Even good-willed employers throwing a ticker tape parade for terminated workers would not be adequate.[25] As Elizabeth Anderson (1993: 3) argues, "people interpret and justify their valuations by exchanging reasons for them with the aim of reaching a common point of view from which others can achieve and reflectively endorse one another's valuations."

4. OBJECTIONS AND REPLIES

I will now attempt to defend the thesis of this article by responding to possible objections.

Objection 4.1. Contractual Decisions to Abandon Severance Pay

Historically, the social contract perspective has been a major proponent of severance pay. In the nineteenth century, employment contracts implied that employees would hold their jobs as long as they performed well. If the employer did not respect the notice period before dismissing employees, then severance pay served as a liquidated damages clause, which compensated for the breach of the contract (Weber, 1982). Contemporary courts no longer interpret labor contracts in this way. Still, severance pay in the U.S. is entirely a matter of employment contracts. From the contractual perspective, therefore, one might argue that workers who are not contractually entitled to severance pay agreed to forego it. For instance, prospective

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workers who are aware of a company's contract excluding severance pay have other opportunities for work but choose to work at the company, which can be interpreted as autonomously waiving their entitlement to severance pay.

Reply 4.1

In most cases, agreements expressing such waivers to severance pay would be presumptively unconscionable. Consider this:

Case 5: The Contract to Abandon Severance

> You recently got an offer from a technology start-up company in Palo Alto. Since it is a start-up and the industry is competitive, the company suggests that you waive your right to severance pay, so that the company can invest it to minimize the chances for unemployment. You accept the offer and waive severance pay for the company and for you.

I find the factual assumptions of this case problematic. How much severance pay you receive would be determined at the time when it is decided that you will leave. Let us say that $X of severance is calculated and you waive it. $X is (in effect) invested in the company, but after you leave. This agreement is grossly unfair, because it exclusively benefits the company, so it is an unconscionable contract (Shiffrin, 2000). One might imagine a different scenario, in which the company always maintains a certain amount of financial resources, expecting cases for severance pay. By making agreements to waive severance pay with workers, the company can invest the financial resources for the company and the workers. Then, such agreements can avoid the unconscionability problem. But then an accurate description of this circumstance is that workers opt to exercise their entitlement to severance pay for the company rather than to reject it. Suppose that a professor pledges to donate X percent of his annual salary to the university. He does not abandon his right to it. Rather, he actively exercises his entitlement to it by specifying how it is to be used, and perhaps for what.

But I concede that in cases of unreasonably risky start-ups where our competence is severely limited as it is in gambling games, taking employment may not presuppose the sense or expectation that the outcome depends upon our competence. In such unreasonably risky circumstances, as I discussed above with Raz's (2012) idea,[26] feeling agent-regret would not be appropriate; hence, the demand to pay severance would also be limited. I accept this possibility. A critic might then want to say that the argument is seriously weakened, because most start-ups and even most businesses are similar in nature to unreasonably risky start-ups. But this seems doubtful. It is difficult to believe that employers and employees in most businesses or start-ups treat operations and employment with a sense that they are gambling, and it is also hard to believe that the many MBA students who seek start-ups are similar to gamblers.

Objection 4.2. Economics and Utilitarianism

Another major stream of severance pay research stems from labor economics. Many labor economists claim that severance pay is to be "held responsible . . . [for]

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poor labor market performance in poor and rich countries alike and [is] therefore tackled as part of a reform agenda to improve the competitiveness of the national economy" (Holzmann, 2005: 251). In particular, Edward Lazear's work (1990), using cross-country analyses from member countries in the Organisation for Economic Co-operation and Development (OECD), found that severance pay negatively contributes to national economic welfare by reducing employment—that is, employers become reluctant to hire new workers if they have to offer them severance pay. For example, some firms will avoid locating in Tel Aviv because for some employment categories, the costs of letting an employee go are too steep.

Reply 4.2

Given the descriptive nature of economics (Donaldson, 2012) and the truth of the descriptive/normative distinction (Donaldson, 1994), it may seem at first glance that Lazear's research is unrelated to the normative question explored in this paper. Yet, inherent in labor economics may be a form of welfare consequentialism (Hausman & McPherson, 2006). For the consequentialist, actions are right when their consequences have greater social utility (to interpret the term utility expansively) than other alternatives. Therefore, if our society will experience enhanced economic welfare when employers do not offer severance pay compared to when they do, it follows that, all other things equal, offering severance pay is not the right thing to do—it must be rejected. Yet the consequentialist faces two problems: 1) the empirical observations relating to the labor market impact of severance pay have been largely inconclusive, and 2) even if the data were conclusive, consequentialism seems to be inadequate for our purpose.

In theory, severance pay can potentially result in utility gains. As the typical amount of severance pay is determined based on the number of years of service, employees are incentivized to continue working for the same employer. Since long-term employment within a company is encouraged, employees' skills, productivity, and future employability are enhanced. Additionally, longer-lasting employment relationships can foster trust, cooperation, and loyalty between the employer and employees and bolster team spirit among workers, all of which can also increase productivity (Weber, 1982; Holzmann & Vodopivec, 2012). Therefore, even in Tel Aviv, severance pay can result in utility gains. In fact, many empirical observations on the impact of severance pay in labor markets contradict Lazear's findings (see Holzmann, 2005, for reviews). Of particular interest, researchers observed that severance pay increases firing costs, thereby reducing the probability of exit from employment to unemployment. But it is simultaneously true that severance pay imposes costs for job recruitment, thus hindering job creation. At best, the predicted effects of severance pay on unemployment are ambiguous (Blanchard, 2000). Thus, the empirical data both for and against severance pay is inconclusive.

To make matters worse, the real risk in the consequentialist approach to issues of severance pay is not that the current data is inconclusive; it is, rather, that the moral attitude expressed by agent-regret in our contexts might elude the consequentialist. Thus far, we have accepted such a possibility, which eschews empirical specula-

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tion about the social consequences of severance pay and instead aims to address the rightness of severance pay in terms of the inherent character it expresses. If the main argument advanced in section 3 of this paper is correct, then failing to express agent-regret to the harmed party when it is due constitutes a sound reason for the harmed party to feel humiliated, and humiliation is a serious injury to dignity. The empirical possibility that the total amount of welfare in our society can increase if we insult, offend, or humiliate others does not grant us the right to insult, offend, or humiliate them. Indeed, most consequentialists would rather try to explain how consequentialism coincides with our strong conviction against insult and humiliation. Insult or humiliation is wrong whether or not it creates more utility; one is obligated to express agent-regret when it is due, whether or not it adds extra utility.

Objection 4.3. Conflicting Duties

Implied in the economic analysis of severance pay's impact on the labor market is, interestingly, a recalcitrant non-consequentialist objection. Consider this:

Case 6: The Vehicle Manufacturer

> The manager of a motor assembly plant in Montgomery, Alabama looks exhausted, as if he had a millstone about his neck. He faces a drastic economic recession, and the best choice he can make, all things considered, is unfortunately to lay off twenty of his experienced employees. He, albeit painfully, is already decided in this choice. Yet, given the limited financial resources of the plant, his real concern is that he cannot choose between giving severance pay to the twenty departing workers and hiring a young employer to work for the next five years.[27]

As labor economists opposed to severance pay have observed, employment might be discouraged by the existence of severance pay in Case 6. Yet, the total amount of utility from each option is not our concern here, as we have already addressed consequentialism. Our true concern is that the young man's desire to work should not be easily dismissed by the twenty experienced workers' desires for severance pay. From this deontological intuition, one might claim that the plant manager does not have an obligation to offer severance pay to the departing workers.

Reply 4.3

I concur with this deontological intuition; however, this by no means indicates that the manager is exempted from his obligation to express agent-regret to the departing employees. All that the deontological concern tells us is that both parties provide two conflicting *prima facie* reasons for recognition. Then the practical question we face in Case 6 is whether or not the manager can find an appropriate way to express his agent-regret without disproportionately dismissing one party's desire. Perhaps a reasonable and acceptable solution does exist. For instance, the manager could explain the financial condition of the plant to both parties so that each party may understand the precarious situation. He could then consult each party for its opinion on this issue. Perhaps by suggesting that it would be best to split the hardship fairly amongst the parties, the manager could offer half the amount of the normal severance

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pay to the departing workers and two and a half (vs. five) years of employment to the young worker. Of course, it would be fanciful to believe that both parties would, without any hesitation or complaint, accept such an offer readily or happily. This solution might not fully satisfy any party's human avarice, but at least the manger would not be legitimately blameworthy if such an outcome were the most feasibly appropriate vehicle, considering the context of Case 6, for expressing the manager's obligatory state of agent-regret to the departing workers and recognizing the young worker's equal standing.[28]

Objection 4.4. Termination When the Employer is At Fault

Finally, one might bring out questions about the scope of the argument. In this paper, I have concentrated on a subset of involuntary terminations: cases where employees are laid off *through no one's fault*. The critic might ask whether the argument implies that severance pay is not required in cases where the CEO, for instance, makes stupid decisions and the company goes under.

Reply 4.4

My argument does not say anything substantial about such cases, and with good reason. The attitude of agent-regret does not allow one to acknowledge one's fault. Suppose that the CEO of a company makes a series of stupid decisions that result in the termination of your job. Now the CEO wants to express his agent-regret to you through paying severance. Something important is amiss here. He does not acknowledge his fault. Agent-regret is a sentiment that one is expected to express in cases where one harms others *faultlessly*.

5. CONCLUDING REMARKS

In this article, I have argued that employers—in the context of layoffs that qualify as necessary evils—should fulfill the moral requirement for decent termination. Departing employees whose employment is involuntarily terminated have their dignity at stake, and this must be appropriately respected as much as possible; thus, employers need to offer severance pay, if they can afford it. To support my claim, I argued, drawing upon Williams's concept of agent-regret (1981), that if employers who faultlessly causes losses for departing workers do not act in ways that appropriately express to the workers the special commitment required by social norms of concern—"agent-regret"—then they humiliate and insult the dignity of those workers. I have also argued that severance pay, in typical cases, uniquely well functions for employers who terminate employees through no one's fault to express agent-regret toward the departing employees.

Some may be skeptical about this argument because they believe that, at the end of the day, it is an oxymoron to discuss the topic of decent termination—that it does not make sense to discuss the dignity of people when said dignity has already been disrespected by involuntary termination. Perhaps they are right. Work is in many ways a vital condition for human dignity, in terms of both welfare and meaningful

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life (Ciulla, 2000), and one's capability to choose one's own plan is an indispensable ingredient of human dignity. Involuntary unemployment then, through no fault of the employees' own, would necessarily and radically diminish a person's dignity. The skeptic's thought, however, may be too radical. There are ways to minimize indignity to the departing workers. What we have explored in this article is one way to do this.

NOTES

1. I am grateful for comments from John Hooker, Nien-hê Hsieh, Jooho Lee, Rosemarie Monge-West, Amy Sepinwall, and Alan Strudler. Anonymous reviewers provided excellent comments and guidance. Especially, I wish to acknowledge a great debt to *Business Ethics Quarterly* Associate Editor Kenneth Goodpaster.

2. For a more detailed definition of the term "necessary evil," see Molinsky and Margolis (2005: 245), in which the term refers to the "work related tasks in which an individual must, as part of his or her job, perform an act that causes emotional or physical harm to another human being in the service of achieving some perceived greater good or purpose." Obviously, not all layoff decisions are the best possible choices, so layoff decisions that are not necessary evils are blameworthy. For an analysis of illegitimate cases of layoff and mergers and acquisitions, see, for instance, McMahon 2013: chaps. 4 and 5.

3. In this paper, I concentrate on a subset of employment terminations. The argument to be made in this paper would not directly apply to situations in which someone, for instance, the CEO, is at fault for the termination. Then, one might reasonably ask whether my argument implies that severance pay is not required in cases where the CEO makes stupid decisions and the company goes under. My argument does not entail or imply that. I provide a more detailed response to this issue at section 4. 4.

4. One might say that I need more than a reference here; I need to offer an argument—Margolis et al.'s or mine—about why employers must respect the dignity of those whom they lay off. Margolis et al. (2007)'s work mainly focuses on social scientific aspects. Nonetheless, I believe that their work could be based on a widely acceptable normative foundation that a denial of an individual's dignity is always disrespectful, although a normative defense of their thesis is beyond the scope of this paper.

5. This is certainly an example. There are varied ways of calculating severance pay.

6. This article does not simply aim to analyze a single historical event, but rather attempts to draw more generally applicable moral insights from the historical analysis.

7. For clarity's sake, it must be added that the president at this point had already decided to lay off the workers and announced the decision to them.

8. An important question, then, arises: when exactly is it *not* fiscally impossible or imprudent to pay severance? I leave this question to other opportunities, for three reasons. First, to answer this question requires a much deeper and detailed analysis of OIC, but different versions of OIC are competing, so this task is beyond the capacity of this paper. Second, to answer the question requires empirically investigating under what circumstances employers can pay severance to workers in the chosen sense of "can" in the chosen version of OIC. Answering this question is not easy. For instance, in some cases of bankruptcy, employers decide to and can pay severance to workers (even by surpassing creditors' rights to recover), but it does not always seem feasible to pay severance in bankruptcy (McFadden, 2011). Third, as noted above, this article primarily discusses cases like the case of the Golden Gate and Bay Bridges, where employers could surely afford to offer severance pay.

9. This scenario is a reconstructed version of Williams's lorry-driver case, to clarify and fix factual assumptions.

10. One might disagree with the parallel argument, by saying, for instance, that while the lorry-driver has run over a child, the employer has not put anyone in the hospital. I contest this. First, layoffs, too, can often be serious life-changing events to employees and their families. Second, one assumption of this objection is that agent-regret is appropriate to only life-changing events like the lorry-driver's. It is noteworthy that those who work on agent-regret do consider minor cases (e.g., Joseph Raz's [2012] missing Dustin Hoffman in town and saying something uncomplimentary to a friend).

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11. The reader might retort that in Case 2, the lorry-driver accidently ran over the child and the action was quite out of his control, whereas in Case 1 the president's decision was deliberate. The underlying refutation, if articulated, is that one cannot coherently experience agent-regret when one non-accidentally inflicts losses on someone; thus, it is not coherent for the president in Case 1, unlike the lorry-driver in Case 2, to feel agent-regret. This might be true in some contexts, but it seems perfectly plausible to me to believe that, in typical circumstances of mass layoffs, those in charge of deciding who leaves and who stays can feel agent-regret even though the decisions are deliberate and non-accidental. See, for more detailed analysis of this issue in general, Rorty (1980).

12. Raz (2012) in his paper develops a different account to arrive at a conclusion similar to mine. He suggests what he calls "the Rational Functioning Principle," according to which we are responsible for unintentional conduct when it results from our failed intentional acts that fall within our domain of competence. To use one of his examples, imagine that you intentionally pick up a vase in your coworker's house and the vase accidently slips out of your hands and falls to the ground. Raz thinks it is a mundane but appropriate case of agent-regret and you are responsible for the damage. But I disagree with him in two respects. First, in this article I do not argue that you are responsible for the damage. I argue that you are obligated to take responsibility for making some reparative gesture. Second, while Raz seems to believe that you are somewhat blameworthy, my view is different.

13. As we shall see later, Raz's account will be helpful to address why in some unreasonably risky start-ups, agent-regret (so severance pay) would not be fully required. See, section 4.1.

14. I realize that it might be controversial to say that the driver and the president have a mandatory duty to feel the emotion of agent-regret. There seem to be two main reasons for this controversy. One reason stems from the so-called command-ability of emotion. Although the lorry-driver's state of agent-regret is at base a belief or an attitude, it also involves sentiment or emotion, which one cannot will to experience. It is questionable whether one ought to do something if one cannot do so. Therefore, although we may be right to say that once an agent feels the emotion in question then that would be good, it may be absurd to claim that one has an obligation to feel a certain emotion (for a different view, see Liao 2006, 2012; Liao and Wasserman, 2012).

15. A virtue theorist might think differently. A virtuous person does not just feel agent-regret when he knocks somebody over. He picks up the person. Since, for the virtue theorist, the right thing to do is simply what a virtuous agent would characteristically do (Hursthouse, 2003), the rightness of an action derives from its virtue. I believe that this argument could be made, but in this article, I take a more deontic path, believing that such an approach is more compelling than the virtue-based approach.

16. Joseph Raz (2012), David Enoch (2012), Susan Wolf (2004), etc.

17. See my discussion at section 3.4. A representative example of activities within which we operate without competence is gambling.

18. For present purposes, I shall use the terms "duty" and "obligation" as synonymous.

19. See my discussion on pp. 208–209.

20. In fact, important empirical research about workplace incivility notes that victims of incivility often feel humiliated (see, Lim and Cortina, 2005; Lim, Cortina, & Magley, 2008; Smith, Phillips, & King, 2010: chap. 4).

21. One might ask me to further explain the nature of a duty of decency with respect to an obligation to express agent-regret. Specifically, one might ask whether a duty of decency implies that other parties have a right to decent treatment or a right not to be humiliated. Just because you have a duty to something it does not follow that others have a right to it. Or just because you are doing something wrong, it does not follow that you are violating a right. I think talk of rights here is harmless, probably because it makes sense to me that in Case 3 you can address the wrong that your boss committed by saying that he violated a right not to be humiliated, to which you were entitled. But I am not sure about this. One reason it troubles me is that the general duty of decency requires us to treat others by expressing agent-regret through observing relevant social rituals, and it seems a bit inappropriate to say that you in Case 3 have a "right" to the expression of agent-regret, "I'm sorry." I suspect that this inappropriateness might come from our shared understanding that the concept of individual rights is an adversarial concept, while as Claude Levi-Strauss (1966: 31) once said, "[ritual] conjoins for it brings about a union." Since without solving this problem, it can be said, simply based on the existence of a general duty of decency, that the boss in Case 3 has an obligation to express agent-regret, I leave a further analysis of the question to another occasion.

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22. To be sure, my duty/value-based argument also begins with an invoked intuition for the case of the Office Corridor. But this is a normal process of typical moral reasoning, sometimes referred to as "Reflective Equilibrium" or "Inference to the Best Explanation" (Walton, 2003)—beginning with an intuition that we have in the case of the Office Corridor and justifying it with a good normative explanation among competing alternatives (or objections), that best makes sense of the moral experience.

23. It's difficult to calculate the monetary value of backward-looking losses including firm-specific investments, but only considering the forward-looking losses would suffice to make the point (see below my discussion about this distinction). Suppose that he could work ten more years up to 55 years old and the projected salary is $50,000. Then, his severance pay is less than 1 percent of the forward-looking damage.

24. Severance pay is sometimes called a "severance package," too, but "severance pay" is the most widely used term.

25. Jean Hampton (1992) persuasively explained why a ticker-tape parade for the injured is not adequate for addressing injuries and argued that in typical cases punishment uniquely well responds to wrongdoing. But she accepted that on a non-standard occasion (e.g., Haman's story in Esther 6:1–14), a ticker-tape parade could be a socially acceptable way to right wrongs. Similarly, I also accept that on a non-standard occasion, a severance packages that do not include cash payments could circumstantially be an acceptable way to express agent-regret.

26. See section 3.2 (pp. 208–09) where I discuss Raz's account of agent-regret.

27. Let us say the average amount of the departing workers' weekly salary is about $1,000, assuming that the annual salary is about $50,000. Also, assume that the average year of service of the departing workers is ten years. According to the typical standard—one week of pay per year of service or less, each employee should be offered $10,000. As twenty workers are laid off, the total amount of severance pay is $200,000. Assuming that the new hire's salary is $40,000, it follows that with the severance pay budget for twenty employees, the new hire could work for five years.

28. To use philosophical language, my account provides a presumptive deontological reason to offer severance pay—a reason that can be defeated only by other deontological obligations with which it conflicts, and even where defeated, a residue remains.

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