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Krisanna M. Scheiter *Editors*

Conflict and Resolution: The Ethics of Forgiveness, Revenge, and Punishment


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Chapter 14

Why Reconciliation Requires Punishment but Not Forgiveness



Thaddeus Metz

Abstract Adherents to reconciliation, restorative justice, and related approaches to dealing with social conflict are well known for seeking to minimize punishment, in favor of offenders hearing out victims, making an apology, and effecting compensation for wrongful harm as well as victims forgiving offenders and accepting their reintegration into society. In contrast, I maintain that social reconciliation and similar concepts in fact characteristically require punishment but do not require forgiveness. I argue that a reconciliatory response to crime that includes punitive disavowal but not necessarily forgiveness is supported by an analogy with resolving two-person conflict and by relational facets of human dignity. I also specify a novel account of the type of penalty that is justified by reconciliation, namely, burdensome labor that is likely to foster moral reform on the part of wrongdoers and to compensate their victims, which would serve neither retributive nor deterrent functions. I illustrate this under-considered conception of punishment in contexts that include having cheated on an exam at a university, engaged in criminal behavior such as robbery, and committed atrocities during large-scale social conflict.

14.1 Introducing Reconciliation

I seek to answer the question of how best to understand a response to wrongdoing that is reconciliatory, the concept prominent in the African tradition, or is a matter of restorative justice, the one common in the western tradition. Reconciliation has been a major way that sub-Saharan governments have responded to large-scale crimes against humanity such as genocide and that indigenous peoples in that region have responded to everyday conflicts, while restorative justice in the West has usually been employed in the contexts of non-violent offences or those committed by juveniles. Setting aside these and other differences, both approaches have in

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common the idea that the political community should respond to crime and related infractions primarily in ways that are likely to foster peace, reveal the truth about conflicts, do right by victims, and repair broken relationships.

In this chapter I articulate a conception of reconciliation or restorative justice—now used equivalently to capture what is common to both practices—that differs from salient moral-philosophical understandings of it, and I argue that it is preferable to them. These common understandings of reconciliation not merely abjure retributive punishment, but also tend to downplay the idea that offenders should be punished at all. Indeed, they are characteristically associated with forgiveness on the part of victims, perhaps consequent to an apology and restitution made on the part of offenders. These construals of reconciliation are the reasons why the central objection to it has been that it forsakes (criminal) justice, with some maintaining that such a trade-off is all things considered morally justified and others maintaining that it is not.

In contrast, I argue that reconciliation, properly understood, normally requires punishment and does not require forgiveness.¹ I show that reconciliation includes a certain kind of justice within it, and by this I do not mean the banality that it is a form of what is called “restorative justice”; instead, my claim is that reconciliation of a desirable sort includes offenders being held accountable in punitive ways.

Specifically, I maintain that reconciliatory penalties would serve neither retributive nor deterrent functions and instead would consist of *burdensome labor* that is likely to foster moral reform on the part of wrongdoers and to compensate their victims. The core idea is that offenders should submit to hard treatment that is expected to improve their relationships—a novel and *prima facie* appealing conception of punishment relative to inflicting penalties for the sake of paying back those who have offended or instilling fear in would-be offenders. I apply such an approach to a variety of crimes and similar wrongs that have a clear public dimension, ranging from having cheated on an exam at a university to having engaged in criminal behavior such as robbery to having committed atrocities during revolutionary upheaval. Insofar as these are all forms of disrespectful behavior ways of relating to others, negative responses to them that are similar in degree, while getting offenders to ‘clean up their own mess’, are appropriate.

I defend in two major ways the ideas that reconciliation does not require forgiveness and instead requires punishment that is supportive of relationship. Beyond any intuitive appeal it might have for readers, I show that it is supported by an analogy with resolving two-person conflict and that it follows from an ethic of respect for dignity grounded (at least in part) on our relational nature, a view with an African pedigree. Although this ethic is “from” Africa, it is not meant to be only “for”

¹After composing this essay I encountered Bill Wringer’s (2016) piece in which he aims to show that reconciliation can include punishment. One major difference between us is that he does not advance the view that penalties, even when part of a reconciliation, should be productive in the sense of fostering compensation of victims and moral reform of offenders. Another is that he eschews analogies between individuals and institutions of the sort I draw below in support of some central claims.

Africa; it should be of *prima facie* interest to a broad audience, making its implications for reconciliation of relevance to them, too.

In the following section I spell out reconciliation, punishment, and forgiveness with more care than I have done so far, making good on the suggestion that common construals of reconciliation and related practices have them prescribing forgiveness or at least not requiring punishment (Sect. 14.2). Then, I spell out a conception of reconciliation according to which crime must be disavowed in certain punitive but productive ways (Sect. 14.3), after which I argue in support of it (Sect. 14.4). I conclude by discussing how to understand situations, such as South Africa in the 1990s, where trade-offs have to be made in the ways the state responds to crime with a reconciliatory aim (Sect. 14.5).

14.2 Commons Views of Reconciliation, Punishment, and Forgiveness

In this section I spell out dominant, or at the very least widely held, conceptions of reconciliation, with the aim being to show how they exclude punishment and include forgiveness. It is only in the following section that I criticize them for that, advancing a different approach to reconciliation that prescribes certain kinds of punitive responses.

South Africa's Truth and Reconciliation Commission (TRC) is what made thought about reconciliation globally prominent (Truth and Reconciliation Commission of South Africa 1998), despite some other African countries, most notably Zimbabwe (see, e.g., Mugabe 1980; Fisher 2010), previously having had their own (albeit less systematic) reconciliation processes. As is well known, South Africa's TRC offered amnesty from criminal and civil prosecution to those who had committed political crimes during the apartheid era, conditional on full disclosure of their misdeeds. In addition, the TRC took thousands of victim statements, enabling a percentage of them to make their stories public, and composed a lengthy report about the nature of apartheid and its effects on South Africa's people. Furthermore, the TRC made recommendations to the government about how to compensate individual victims of human rights violations and about how to effect reparations more broadly to South Africans.

Responding to the criticism that justice was forsaken by TRC's focus on the revelation of the truth by victims and offenders and on compensation of victims by the government, Desmond Tutu, the Chairperson of the TRC, remarks,

I contend that there is another kind of justice, restorative justice, which was characteristic of traditional African jurisprudence. Here the central concern is not retribution or punishment, but, in the spirit of *ubuntu*, the healing of breaches, the redressing of imbalances, the restoration of broken relationships. This kind of justice seeks to rehabilitate both the victim and the perpetrator, who should be given the opportunity to be reintegrated into the community he or she has injured (1999: 51).

With the word “*ubuntu*,” which literally means humanness in the Nguni languages of southern Africa, Tutu is appealing to a characteristically African approach to morality that prizes harmonious relationships, and he interprets it in a way that eschews punishment (in contrast to what I do below).

The word “punishment” is usefully understood to mean the attempt to burden or deprive someone in response to a legal transgression or injustice having been committed (or represented as such) (Bedau and Kelly 2015), where the relevant burdens/deprivations typically take the forms of suppressing a person’s will or reducing his quality of life. So defined, punishment clearly differs from compensation, defensive force, and quarantine, which do not necessarily include aiming to suppress or harm someone because of a crime.

Another welcome implication of this definition is that a number of different justifications of punishment are conceivable. Retribution, imposing a penalty proportionate to the crime an offender committed in the past because doing so is deserved or fair, is one rationale, while deterrence, penalizing so as to instill fear in would-be offenders in the future, is another.

Tutu’s and the TRC’s approach to reconciliation/restorative justice as excluding punishment in the mid 1990s was consistent with the famous postamble of South Africa’s interim Constitution, which spoke of granting amnesty in order to advance reconciliation (1993: chap. 15). After the TRC hearings, many South African sources continued to voice this perspective. For instance, the Constitutional Court construed reconciliation as an alternative to punishment when it said that “the key elements of restorative justice have been identified as encounter, reparation, reintegration and participation,” where “(r)eparation focuses on repairing the harm that has been done rather than on doling out punishment” (Constitutional Court of South Africa 2006: para. 114).² A number of Christian intellectuals from South Africa naturally advance conceptions of reconciliation constituted by the presence of forgiveness and absence (or at least peripherality) of punishment (e.g., de Gruchy 2002: 170, 178–179, 199–205; de Klerk 2010). And then it has been common for South African secular thinkers also to construe reconciliation in non-punitive terms, with the following statement from a former TRC commissioner being representative: “The only acceptable reason to choose the path of amnesty, instead of trials, was in order to promote peace and reconciliation” (Burton 2000: 79), the thought being that, had there been the threat of punishment hanging over the heads of white elites upon relinquishing their grip on political power, they would not have done so. Consider, too, the remark from South Africa’s leading psychologist of reconciliation: “Some may dismiss the strategic use of restorative justice as a fashionable trend that allows perpetrators to go unpunished...(Yet) justice that seeks punishment does not hold the key to peace in communities emerging from conflict” (Gobodo-Madikizela 2010: 134).

²On another occasion South Africa’s Constitutional Court articulated reconciliation in terms of establishing the “proper rule of law” and “strengthening peace, democracy and justice” (Constitutional Court of South Africa 2009: para. 21).

Beyond South Africa, the clear trend among philosophers and related thinkers has also been to advance conceptions of reconciliation/restorative justice that do not characteristically involve punishment. Typical is the suggestion, “Unlike punishment....restorative justice seeks to repair the injustice, to make up for it, and to effect corrective changes” (Minow 1998: 91; see also 26). For myriad similar accounts of reconciliation/restorative justice, consider how it has been construed centrally in terms of: creating a community of mutual recognition (Volf 2001: 45); restoring trust and empathy between former adversaries at a maximum, or peaceful coexistence and democratic solidarity at a minimum (Lenta 2007: 172); people reconstituting themselves as citizens of a more just society (du Bois and du Bois-Pedain 2008: 292); building trust between alienated groups (Govier 2009: 49; see also Govier 2006: 16, 134–151); advancing sustainable peace (Villa-Vicencio 2009: 172); realizing fair coexistence and sympathy between former enemies (Eisikovits 2010); and mutually pursuing agency (Mookherjee 2015). None of these conceptions of reconciliation makes essential reference to intentionally burdening offenders. Often the language used is that reconciliation is about building a positive future, not imposing penalties because of the past.

Some of the few who think of punishment as having a positive bearing on reconciliation have posited an instrumental relationship between them. They have contended that depriving wrongdoers because of their wrongs, and particularly doing so in order to give them the harm they deserve, would have the long-term expected effect of fostering reconciliation, understood in terms of establishing the rule of law, building trust, and the like (e.g., Hamber et al. 2000: 30–32, 37–39; Hamber and Wilson 2002: 48; Murphy 2010: 180–186). The idea is that victims will most easily accept a new order after seeing that their perpetrators are punished. However, that is a contingent connection between the two conditions; sometimes, as has been suggested of the South African case, punishing offenders would in fact inhibit establishing the rule of law or building trust. Below I maintain that a desirable form of reconciliation is partially constituted by punishment, not caused by it.

The closest that the literature comes to my view, I believe, is the occasional position that a desirable form of reconciliation could allow for punishment. Two commentators suggest that reconciliation involves “dealing with the past,” with “justice” being one option among many (e.g., Hamber and Kelly 2009: 292; see also Villa-Vicencio 2000: 72–73). However, the view I advance in the next section is that a proper reconciliation in the wake of crime necessarily includes punishment, so that a response to crime without punishment would invariably be missing something reconciliatory.³

Turning to forgiveness, I presume that it centrally consists of letting go of negative emotions about someone insofar as she is perceived to have done you (or your associates) wrong, particularly those in which you wish her ill-will (e.g., Allais 2008).⁴ Resentment is often mentioned here, but there could be additional negative

³Although it will not follow that, where there is no punishment, there is no reconciliation whatsoever, on which see the concluding section.

⁴I avoid systematic reflection on how to understand the nature of forgiveness, working with what is probably the most common—even if contested—approach.

emotions that are relevant, such as contempt (McNaughton and Garrard 2017). When forgiving, one characteristically abandons emotions such as resentment and contempt, neither because one has forgotten the wrong done, nor because one views the wrongdoer as lacking culpability for the wrong. Instead, one retains the critical belief that the other has done a culpable wrong, while giving up the negative feelings that tend to accompany such.

There is debate about whether forgiveness, so (or closely) construed, is compatible with punishment (e.g., Murphy 2003; Russell 2016; Satne 2018), but that is not the focus of this essay. Instead, my present interest is in pointing out that many thinkers maintain that reconciliation is possible only with forgiveness, because they deem the latter either to be a necessary means to the former or to be constitutive of it. Such a view is naturally held by many Christian intellectuals who have addressed reconciliation, with the title of Tutu's influential book, *No Future without Forgiveness*, being salient (Tutu 1999; see also Volf 2001; de Gruchy 2002: 170, 178–179; Tutu 2009; de Klerk 2010). In addition, there are more than a few who do not explicitly draw on the Christian tradition but who likewise believe that reconciliation cannot be realized without forgiveness. Here is just one example: “Reconciliation means coming to accept one another and developing mutual trust. This requires forgiving” (Staub and Pearlman 2001: 207; see also Yandell 1998; Worthington 2001: 176; Krog 2008; Philpott 2009; May 2011: 589–590; Emerick 2017).⁵

In this section, my aims have been to analyze the concepts of reconciliation (restorative justice), punishment, and forgiveness and to demonstrate that salient, if not dominant, views in the literature indicate that reconciliation normally forbids (or at least does not require) punishment, while instead requiring forgiveness. In the rest of this essay, I provide reason to think roughly the opposite, viz., that reconciliation characteristically does not require forgiveness and instead does require punishment.

14.3 A Different Conception of Reconciliation

I do not deny that something sensibly called “reconciliation” (or “restorative justice”) would include forgiveness and exclude punishment. Instead, my claim is that this form of reconciliation is not particularly desirable relative to one with a certain type of punishment. Here I spell out what a punitive approach to reconciliation (or, equivalently, a reconciliatory approach to punishment) would look like, saving arguments for it in the following section.

My conception of reconciliation includes both forward-looking and backward-looking elements (borrowing from Metz 2011, 2015, 2019), as follows:

⁵It is hard for me to pin Radzik (2009) down. She clearly denies that the concept of reconciliation analytically includes forgiveness, but seems to hold that a desirable kind of the former would normally include the latter.

a condition consequent to injustice (a) in which those directly affected by it interact on a largely voluntary, transparent, and trustworthy basis for the sake of compossible ends largely oriented towards doing what is expected to be good for one another and (b) in which those associated with victims disavow culpable wrongdoing that had been part of the conflict.

The (a) clause is a familiar forward-looking aspect of reconciliation. It is more than just separation (divorce for a married couple) and also more than just peaceful coexistence (living under the same roof without hostility). Instead, that there is some kind of integration is widely accepted to be essential to reconciliation. Specifically, people are roughly to cooperate in ways that are in one another's interests, an idea that echoes views discussed above, although excluding thick attitudes such as empathy or sympathy. The (b) clause is backward-looking, directing certain people to distance themselves from, and express disapproval of, ways in which victims were mistreated. Specifically, those who should so disavow are "associated" with victims, meaning friends/family/colleagues, those who had wronged the victims, and the political community that represents the public, too.

When it comes to offenders, they should feel emotions such as remorse and guilt and should atone by expressing these sentiments, and then the political community should express condemnation of what offenders did.⁶ It is this expressive dimension of a proper reconciliation that invariably brings hard treatment in its wake. "Actions speak louder than words." "Put your money where your mouth is." "Talk is cheap." I maintain that, in cases of crime and related infractions, reconciliation prescribes *burdensome compensation and burdensome rehabilitation as ways of expressing disapproval on the part of the political community, and also, in the best case, remorse on the part of the offender.*⁷ For an offender merely to apologize or for a court merely to wag a disapproving finger at him would be inadequate forms of disavowal; in a word, there must also be some hardship for the disavowal of a serious crime to be meaningfully expressed, whether by the offender or the court.⁸

The degree of hardship imposed should *track* the degree of wrongdoing, in the sense that the worse the wrong, the greater the hardship, although retributive *proportionality* is not required. For example, to express disavowal of torture adequately, a court must impose a weighty burden indeed on the torturer, but it need not, in retributive fashion, sentence him to be tortured or to a fate strictly proportionate to the wrongful harm of that crime.⁹ Similarly, although a torturer ought to be racked with guilt, it need not rise to the level of what he did to his victim in order to atone.

⁶The next few paragraphs borrow from Metz (2019: 125–126).

⁷In the following, I assume that the degree to which an offender should express remorse and the degree to which a political community should express disapproval align, although I recognize that this assumption may be questioned and might deserve an extended defence elsewhere.

⁸As expressivists about punishment have argued for a long while, including, for just one influential example, Hampton (1988). See also Radzik's (2009) revealing analysis of atonement.

⁹And not necessarily restore her to a position she would have been in had the offence not occurred.

Although compensation, understood here as what would improve the victim's quality of life,¹⁰ that is undertaken merely for the sake of moving forward together need not involve hard treatment of an offender, compensation in order to disavow a crime plausibly must. If an offender were truly sorry and wanted to demonstrate his guilt, he would be willing to place hardship on himself as a way to display those emotions (cf. Radzik 2009: 101–103), where the greater his wrongdoing and the stronger his apt emotional reactions to it, the heavier the hardship. Hence, if the offender were rich, he would do more than just cut a check to the victim. And if a court were truly disapproving of a crime, it would compel the offender to make restitution that would make the victim better off in a way that involved the offender undergoing real labor or some other burden. Where making financial compensation would mean a change in lifestyle for an offender, it could well be a sentence that adequately disavows the offence. There are, however, ways that compensation could place a weighty burden on an offender that are not financial, e.g., perhaps someone who cheats on his taxes should be made to perform some dull tasks for the state revenue service.

Beyond disavowing wrongful discord by ordering compensatory labor from offenders, a court would also do so by ordering labor from offenders likely to foster moral reform. If offenders are genuinely remorseful, then they of their own accord would not merely take steps, but also climb stairs, to show that they would not perform the relevant acts again. In addition, courts would express disapproval of the wrongful behavior by making them do so, where that could well include detaining offenders for certain purposes, but not merely locking them up as per many current forms of incarceration. For example, such penalties would often mean mandatory therapy to get to the root of what prompted the mistreatment of others, something that would be time-consuming and psychologically difficult. Consider, too, penalties meant to instill empathy and an awareness of the consequences of actions, such as a judge sentencing drunk drivers to work in a morgue (BBC News 2016). Finally, there are the points that the hardship of punishment can sometimes itself be a way for offenders to appreciate how they have mistreated their victims, as well as that the guilt consequent to prescribed moral reform would also be a foreseeable burden that offenders should undergo.

Here are three additional examples of how a reconciliation involving punitive forms of compensation and rehabilitation might be effected. First, consider a student who has cheated on a university exam. Instead of merely warning the student or expelling her, my approach to reconciliation would have a disciplinary committee direct her to perform some labor expected both to benefit the university and to reform her character, and would have her reintegrated into the university community contingent on her willingness to do so. So, for instance, she might be made responsible for teaching first-year students about why they should not cheat on exams. For a second illustration, think about someone who has burgled a household

¹⁰There is therefore a resolutely “objective” dimension to reconciliatory sentencing, where there are presumed to be facts of the matter about how bad a crime was, how severe a penalty is, and which penalties would track a given crime. Ultimately, the proponent of reconciliatory sentencing must provide accounts of them, but some headway can be made for now without them.

when the victims were not home. Instead of merely returning the stolen items and apologizing or spending time in jail doing nothing, a burglar who truly wants to atone would offer to do something for his victims, and a state that wants to foster a genuine reconciliation would require him to do so. Perhaps, then, the burglar should wear a uniform and serve as a neighborhood-watch guard for a time. To be sure, there would be natural concerns of merely giving the burglar an opportunity to detect when people are away from home and so vulnerable to further theft. However, I am inclined to “double-down” on the case: the burglar could wear an ankle monitor, and list the labor on his c.v., improving his chances of getting a job as a security guard and reducing his need to engage in further crime.

The third, and most challenging, sort of case involves the most serious sort of wrongs, such as rape, torture, and murder. One might doubt that reconciliation is a proper end sought in response to such wrongs, but that issue lies beyond the scope of this essay, which is instead to argue that, *if* one is drawn toward a reconciliatory response to crimes, including horrific ones, then one may reject forgiveness on the part of victims and should favor certain punitive forms of accountability imposed by the state.¹¹ To spell these out, consider the example of a man who has committed rape as part of an ethnic cleansing campaign. Reconciliation without a backward-looking dimension, or at least not an essentially punitive one, would have him apologize and pay restitution, regardless of whether he would find doing so onerous or not, and then move on to get a job that would be expected to benefit the community or to play a part in its democratic politics. In contrast, my favored reconciliation would see him made to undertake truly burdensome reparations for his victim and to undergo difficult procedures likely to change his inclination to reoffend. Both could be ways of expressing remorse on his part, but at least would be vehicles by which to express disapproval on the part of the political community.

Concretely, what would this approach involve?¹² First off, of course the rapist should humble himself by apologizing to his victim, a way of showing that she matters. If he were disinclined to apologize, then, supposing his guilt had been established beyond a reasonable doubt, a court should rightly press him to apologize. Even if he did not *feel* sorry, and so were not expressing *his* mental state of contrition (cf. Gricean speaker meaning), apologizing would still express contrition of some kind (sentence meaning), and a court expecting him to apologize would also express its disapproval of his behavior.

In addition, he should be given a way to earn money that could be directed to her, or otherwise afforded a way to labor in ways that would benefit her. For example, perhaps because of the crime she has been unable to work, and so has found it difficult to afford school fees for her children; the rapist could be required to pay for them. For another example, the court should order him to pay a clinic that would offer her therapy. (If the victim did not want these forms of reparation, she could ask

¹¹ Though I naturally intend reconciliatory sentencing to appear *prima facie* attractive to friends of punishment. For some defense of it relative to standard forms of retributivism and deterrence theory, see Metz (2019: 128–133).

¹² Some of the following borrows from Metz (2019: 131–132).

the court to direct his resources toward some other cause.) It would ideally be the case, not merely that the offender would not receive the proceeds of his labor, but also that the labor process would be painful, unpleasant, and the like; consider the work of a miner.

Furthermore, the rapist should be required to undergo counselling of an intense sort. With respect to his beliefs, he should be forced to reconsider his views of the standing of women, or those who are members of a particular ethnic group. Perhaps he considers them to be his property or second-class citizens, and hence as something to be used as a mere means to his ends. His emotions, too, should be explored and probably adjusted. Did he commit the rape because he feels shame and needed a sense of power? Does he hate women or these particular women because of how he was reared? One hopes that, in time, his character would develop, so that he would feel the appropriate sort of guilt and be haunted by what he has done. And then he also should do what would change his desires. Perhaps he lacks a second-order desire to avoid desiring to rape and to inflict pain, or, if he has such a second-order desire, it might be ineffective at changing his first-order ones. Supposing that such court-ordered self-exploration were effective, he should be required to mentor others less reformed than he. Detainment of the offender for the sake of producing these kinds of good outcomes would be warranted by a reconciliatory approach, although merely imprisoning probably would not, as doing so would be unlikely to prompt reform, let alone enable compensation.

Those who reject a reconciliatory perspective and are instead, say, retributivists will not find these penalties to be severe enough. However, my aim in this essay is not to change the mind of retributivists or deterrence theorists, and is instead to advance a conception of reconciliation different from what is salient in the field. The hope is that those sympathetic to a reconciliatory approach have found *prima facie* appealing the sort I have just spelled out, relative to the more common conceptions that do not essentially include an attempt to burden offenders in productive ways. Before turning to arguments in support of this approach, I point out that it does not require forgiveness on the part of victims.

Where forgiveness is a matter of letting go of negative reactive attitudes toward wrongdoers (while not forgetting their culpable wrongdoing), the present account of reconciliation does not expect that of victims. Students or instructors at a university might have lingering resentment toward someone who has cheated, but, supposing that the cheater were allowed to continue her studies consequent to her penalty, a reconciliation would be present. Similarly, those who were burgled might still be contemptuous of the thief and to experience feelings of hatred upon seeing him in his role of guard down the street, and, yet, so long as they had accepted his apology and allowed him to continue in that role, they could be said to have "reconciled."

It might be that forgiveness would, on some occasions, be necessary for particular victims to reconcile; perhaps it would be the only way that some could avoid inflicting vengeance on their offenders. However, that point is quite different from the common view that reconciliation as a matter of course requires forgiveness.

One might at this stage contend that, although my account is indeed a conception of reconciliation even if it does not demand that all victims forgive their offenders,

it is a poor account for that reason. A proper reconciliation, one might suggest, invariably includes enemies forgiving one another for their respective trespasses. In the following section, I argue that, while that might be a kind of ideal, it is too much to expect from the concept of reconciliation as applied to a wide array of relationships.

14.4 Arguments for a Punitive Reconciliation Without Forgiveness

Having spelled out a conception of reconciliation that includes punishment as a way to disavow wrongdoing, it is time to argue for it. While I hope that the conception intuitively appealed to readers as I expounded it, in this section I do more to defend it. First, I advance an analogy between a two-person conflict, on the one hand, and the institutional or large-scale cases explored so far regarding violating a university's rule, breaking a government's law, and engaging in a crime against humanity, on the other. Second, I provide a theoretical, and specifically dignity-based, justification for thinking that a proper reconciliation requires punishment but does not require forgiveness.

What does an attractive sort of reconciliation look like at the interpersonal level, say, between two spouses, partners, friends, or colleagues? It does not involve punishment, but it does involve analogous burdens being placed on the one(s) who did wrong. Suppose, for instance, that a woman in a committed romantic relationship with a man has developed an overly close emotional bond with her boss, to the point of expressing feelings for him and holding hands. Upon getting caught out, what should happen, supposing that reconciliation of some kind is an apt aim for the couple?

I take it that a desirable reconciliation would not involve merely taking a "forgetting pill," where both no longer can remember what took place and continue on as if nothing happened. Some of the reason for remembering is of course to avoid a recurrence of the affair, but there is a backward-looking reason, too; a genuine reconciliation includes an awareness of important historical events in a couple's life together, especially ways in which they have (mis)treated each other. Such mutual awareness is itself a kind of sharing or cohesion, apart from what good it might do in the future.

In addition, I presume that it would not be enough for the couple to remember what happened but not to reflect on it, instead keeping the eye strictly on the future in order to enjoy a life together. Although a desirable reconciliation of course would include doing things together and going out of their way to help each other, an even better one would include discussion about what happened, why it did, and what its effects were.

Still more, I gather the reader will agree that when the couple discusses the affair, it would not be enough to do so in purely non-moral terms, without any concepts

pertaining to wrongness or vice. When one has failed to live up to an obligation to another or evinced bad character, it would be apt for the other party to point that out, and ideal for the morally tainted party to admit it in the first place. One must take responsibility for one's moral mistakes, and, at least if one is resistant to doing so, the other should point them out.

Finally, when they grapple with their past together, it would not be sufficient for the woman just to hear out the way her man has been affected, accept his criticism, and apologize to him—surely, a better sort of reconciliation would also involve her feeling guilt or shame upon reflecting on her misdeeds. It would also involve her taking steps to avoid working with her boss in isolation, say, on business trips, even if that would mean delaying her promotion for a while. The point is not that she should be crushed with guilt, unable to function, or that she must sacrifice her entire career to avoid any awkwardness. However, there would not be a sufficiently attractive reconciliation if she did not feel bad for what she had done and did not undergo burdens to minimize the chances of the affair rekindling and to make her man feel secure.

Just as the woman must disavow the affair in burdensome ways to effect an appropriate reconciliation, so must those who commit crimes. They must atone. Presumably actions that are sensibly criminalized are more serious or at least more enforceable than affairs, warranting disavowal from an institution such as a university, a state, or a tribunal. Criminals should feel guilt for the way they mistreated their victims and then be made to labor to compensate them and work to ensure they do not reoffend.

One might suggest that the two-person case is disanalogous to the institutional ones in that forgiveness is essential for reconciliation in the former, where I am trying to argue it is inessential for reconciliation in the latter. The couple plausibly does not properly reconcile unless forgiveness comes.

However, much depends on when one expects the forgiveness to come. I have been most keen to argue against the idea that reconciliation requires forgiveness *up front*, i.e., *in lieu of punishment*, and the case of the couple indeed tells against it. There would be nothing improper about the reconciliation between them if burdens were first placed on the wife and only after were there forgiveness on the part of the husband.

Furthermore, perhaps the reader will be open to the possibility that, although forgiveness would be desirable for the couple's relationship, it is not required for them to have reconciled in a real way. I have argued elsewhere that this can be the case when it comes to colleagues (Metz 2015: 126–128). Consider two members of an academic department who have had a spat. Imagine they have talked openly with each other about what happened, with one having taken responsibility for his contribution to the conflict and made a public apology for having wronged the other. Suppose that they are now engaging in joint projects and doing what they expect will help one another in their lecturer roles. Even if there continued to be lingering psychological distance, e.g., some resentment and contempt, they could reasonably be said to have reconciled if they are indeed going about their business in ways that

are cooperative and involve mutual aid. It might be that similar remarks go for a romantic couple.¹³

Although the analogy might provide evidence *that* a desirable kind of reconciliation includes offenders undergoing certain kinds of burdens at least without immediate forgiveness, it does not quite explain *why* it does. For that, it would be useful to invoke an ethical perspective that best justifies responding to wrongdoing with reconciliatory penalties. Note that it would be difficult for any purely forward-looking ethic, such as utilitarianism, to make sense of the backward-looking demand to disavow wrongdoing. Similar remarks go for the ethic of care; although it could justify actions likely to compensate victims, it is harder for it to explain why they must involve placing burdens on offenders and more generally why reconciliation should serve expressive functions such as remorse and disapproval as befitting past misdeeds, for these reactions do not involve essentially meeting anyone's needs.

A dignity-based morality is the natural way to account for the idea that reconciliation should include disavowal of offenders for their offenses. Such a morality posits that certain beings, typically human persons, have a superlative final value that merits being treated as such or with respect. One salient way to fail to treat a human person in this way includes treating her merely as a means to an end, not as an end in herself, an extreme case of which would be by raping her and then killing her in order to avoid getting caught. Another way to fail to respect a person is to treat her as having some final value but not the highest to be found on the planet, e.g., egregiously by electing to retrieve a vinyl record collection from a fire instead of saving the life of a child. A third way to fail to treat a person with respect is by denigrating her in symbolic ways, e.g., with racial or ethnic slurs. All these actions are plausibly wrong insofar as they express the attitude that a human person is unimportant relative to one's pleasure, music, or desire to make someone else feel inferior.

Failing to disavow crime would be another way of expressing the attitude that a human person, namely, the victim, is unimportant, or at least would be a way of failing to express the judgment that she is important. Consider how you would feel if you were the victim of a crime and the relevant institution refused to consider punishing your offender, who was neither excused for, nor justified in, what he had done. Or think about how you would react if your spouse who had cheated on you (we presume unjustifiably) did not feel bad about it and then express that.

Some dignity-based ethic or other seems to account well for a moral requirement to disavow crime and related behavior. The most globally influential versions of this ethic, however, do not do as well as another one, salient in the African tradition. A Kantian approach to dignity maintains that we have it in virtue of our capacity for rationality or autonomy, whereas a more Christian approach contends that we do in virtue of our being alive or having a soul. However, what calls for disavowal often

¹³If the reader continues to think that a genuine reconciliation between two romantic partners requires forgiveness (even if consequent to burdensome accountability), then it is indeed one limitation of the analogy—albeit one that is readily explained: the restoration of a relationship between intimates in which there had been good feelings may well differ from that of a relationship between strangers in which there was not.

enough is not merely the interference with a person's free choice or impairment of her vitality. The unjustified reduction of a person's quality of life is also often part of what is wrong with crime—consider rape—and what merits disavowal. Such an understanding of disrespect is well captured by the view that what confers dignity on us is the relational capacity to (among other things) help others and be helped by them, an approach grounded on characteristically sub-Saharan ideals of cohesion, communion, and harmony (explored in Metz 2012a, b).

In addition, the sort of disavowal that should be undertaken, by the present account, is not best justified by appeal to the superlative inherent value of either autonomy (rationality) or life (soul). Requiring a kind of disavowal that involves burdensome ways for offenders to improve the quality of victims' lives makes particular sense if what is special about victims is, in part, their ability to be party to a relationship of aiding and being aided. Kantianism can of course justify compensation to victims, but the sort would likely be one that puts them in the position they would have chosen had they not be interfered with, a concept independent of whether their quality of life is improved. In addition, Kantianism is standardly understood to justify punishment that is either retributive (*viz.*, deserved or fair) or serves the function of deterring rights violations, not one that fosters well-being and virtue by compensating victims and reforming offenders, respectively.

Finally, this analysis means there is reason to doubt that reconciliation of a desirable kind requires forgiveness. It is tempting to suggest that the most desirable form of reconciliation would include forgiveness, but that is not true insofar as forgiveness is understood to mean letting go of punitive sentiments. If forgiveness is construed as forgoing resentment and related attitudes that characteristically motivate punishment, and if I am correct that a desirable reconciliation includes a certain kind of punishment, then reconciliation does not require forgiveness instead of punishment. Indeed, it follows that reconciliation can forbid forgiveness when it would prevent punishment.

That said, it is consistent with the view advocated here to maintain that forgiveness consequent to punishment would be welcome. I believe it would be difficult to obtain, so much so that it is probably not worth an institution's efforts to realize it. And I submit that a desirable form of reconciliation, one in which, after the punishment of offenders, former enemies engage in cooperative and beneficial projects, need not ever include forgiveness, as victims might have lingering resentment. Reconciliation as construed here is something worth striving for between those who had been in conflict, but it is not an ideal, a matter of neither emotional love nor perfect harmony.

14.5 Conclusion

I conclude by noting that the discussion so far has presumed that it is possible to have both the forward-looking and backward-looking facets of reconciliation and by discussing the point that this is not always the case. Returning to South Africa's

TRC, most historical commentators maintain that the relatively peaceful transition from white political domination to democracy could not have been made had the state not given amnesty to those guilty of apartheid-era political crimes (Lenta 2007: 158–159). How is one to understand such a scenario in terms of reconciliation?

The dominant approach has been to say that, in the case of South Africa, (criminal or, specifically, retributive) justice was sacrificed for the sake of reconciliation, with people disagreeing about whether the trade-off was indeed necessary and, if so, justified. In contrast, according to the understanding of reconciliation defended in this chapter, the problem was an inability to promote a fully desirable form of reconciliation.

On the one hand, there is the forward-looking facet of reconciliation, consisting roughly of cooperative mutual aid, while, on the other, there is the backward-looking facet, which is a matter of offenders expressing remorse for their offenses and the political community expressing disapproval of them, both taking the form of offenders submitting to burdensome ways of effecting compensation and rehabilitation. In the South African situation, if the historians are correct, then it would be apt to describe it as one in which the forward-looking dimension of reconciliation, or a large portion of it in the forms of peace and cooperation (even if not trust), had to come at the expense of the backward-looking one. There was an incomplete, one-sided form of reconciliation, not a full one. Ideally South Africa would have had the architects of apartheid undergo heavy burdens that served the function of improving the livelihoods of black people, rather than get off scot free with their time and booty. The moral cost of the TRC was arguably not a lack of retribution, but a lack of proper reconciliation.¹⁴

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