ROUTLEDGE HANDBOOKS

The Routledge Handbook of Philosophy of Responsibility

Edited by Maximilian Kiener

THE ROUTLEDGE HANDBOOK OF PHILOSOPHY OF RESPONSIBILITY

Edited by Maximilian Kiener

Routledge
Taylor & Francis Group
LONDON AND NEW YORK

Cover image: © Getty Images

First published 2024
by Routledge
4 Park Square, Milton Park, Abingdon, Oxon OX14 4RN

and by Routledge
605 Third Avenue, New York, NY 10158

Routledge is an imprint of the Taylor & Francis Group, an informa business

British Library Cataloguing-in-Publication Data
A catalogue record for this book is available from the British Library

Library of Congress Cataloging-in-Publication Data
Names: Kiener, Maximilian, editor.
Title: The Routledge handbook of philosophy of responsibility / edited by Maximilian Kiener.
Description: Abingdon, Oxon : Routledge, 2024. | Includes bibliographical references and index.
Identifiers: LCCN 2023023356 (print) | LCCN 2023023357 (ebook) | ISBN 9781032252391 (hardback) | ISBN 9781032252438 (paperback) | ISBN 9781003282242 (ebook)
Subjects: LCSH: Responsibility—Philosophy.
Classification: LCC BJ1451 .R68 2024 (print) | LCC BJ1451 (ebook) | DDC 170—dc23/eng/20230828
LC record available at https://lccn.loc.gov/2023023356
LC ebook record available at https://lccn.loc.gov/2023023357

ISBN: 978-1-032-25239-1 (hbk)
ISBN: 978-1-032-25243-8 (pbk)
ISBN: 978-1-003-28224-2 (ebk)

DOI: 10.4324/9781003282242

Typeset in Sabon
by Apex CoVantage, LLC

30

HOLDING RESPONSIBLE IN THE AFRICAN TRADITION

Reconciliation applied to punishment, compensation, and trials

Thaddeus Metz

1 Introducing African approaches to holding responsible

This chapter draws on ideas salient in the African philosophical tradition to articulate principles about how to hold people responsible properly for wrongdoing, principles that would be found prima facie attractive by many ethicists, philosophers of law, and jurists not merely within that tradition, but also beyond it. In the works of African philosophers and related thinkers who have addressed the question of how to respond to wrongdoing, reconciliation (sometimes spoken of in terms of "repairing relationships" or "restoring harmony") is often posited as the principal, if not sole, final aim. This chapter expounds a philosophical interpretation of reconciliation that is meant to have broad appeal, after which it is applied to punitive (criminal) justice, compensatory (civil) justice, and the kinds of trials that would be apt for both. In all three contexts, the chapter provides reason to take the African approaches seriously that will be found plausible (even if not convincing) by those from Western or otherwise non-African backgrounds, supporting the idea that reconciliation is at least one proper final aim when holding people responsible for wrongdoing.

It was South Africa's Truth and Reconciliation Commission (TRC), operating in the mid 1990s, that put reconciliation on the map for a global audience regarding how to hold people responsible for serious human rights violations (Truth and Reconciliation Commission 1998). Famously for the TRC, reconciliation consequent to apartheid-era political crimes meant that, in exchange for disclosing the full truth about them in a public forum, offenders would be free from any criminal and civil liability and expected to contribute to a new, democratic society. However, reconciliatory projects of various kinds had taken place previously in Zimbabwe in the early 1980s and have also taken place after the TRC in countries that include Rwanda and Sierra Leone, both largely in the early 2000s (for overviews, see Huyse & Salter 2008). The broad aim of seeking to repair broken relationships, whether for human rights violations or less severe wrongs, grows mainly out of an ethic widely shared by peoples indigenous to the African continent that prizes harmonious or communal relationships (and not really Christianity, on which see Tutu 1999; Krog 2008). Although a reconciliatory orientation naturally follows from such a relational ethic, this chapter submits that one need not hold such an ethic in order to find attractive a certain

DOI: 10.4324/9781003282242-41

conception of reconciliation and its implications for how to hold people responsible for wrongdoing.

The next section spells out an interpretation of reconciliation that is intended to avoid problems with the TRC's approach to it, viz., of having failed both to hold offenders accountable adequately and compensate victims decently (section 2). Roughly according to the favored account of reconciliation, there is a "backward-looking" element of disavowing past wrongdoing by offenders undergoing burdens and "forward-looking" elements of offenders compensating those they have wrongfully harmed, reforming their bad character, and thereby making it reasonable for society to accept them back into the fold.

After having spelled out and motivated this account of reconciliation, this chapter applies it to three different questions about how to hold people responsible for wrongdoing. The first question is how to punish people for crimes in a just manner (section 3). Although reconciliation has often been pitched as an alternative to punishment, particularly by friends of the TRC, this essay contends that the concept of reconciliatory sentencing (or restorative sanctions) is a coherent and promising alternative to the penal values of desert and deterrence that are so prominent in Western legal theory.

Then the essay considers the question of how victims of wrongful harm should be compensated for it (section 4). Repairing relationships with victims, according to the interpretation advanced here, normally involves offenders doing what would improve their victims' quality of life, ideally in some kind of consultation with them. In seeking to make victims' lives go better, the chapter argues that reconciliatory compensation would differ, and in a plausible way, from an approach salient in Western philosophy of law, which is instead to aim to return a stolen item or more generally to realize a state of affairs that would have occurred in the absence of injustice.

Finally, the chapter invokes the favored account of reconciliation to address the question of precisely whom should be held responsible for wrongdoing in a criminal or civil trial (section 5). Obviously, a party guilty of having done a wrongful act should be, but a typically African approach would not limit liability to him. For many from sub-Saharan cultures, an offender's family is sometimes thought to be rightly held responsible for the offense to some degree, even if not as much as the direct offender. In potentially holding some family members responsible for an offender's crime, reconciliatory trials would apportion liability in less individualized ways than is typical in the West.[1] Beyond noting this contrast, this chapter provides some grounds for taking the more inclusive, characteristically African approach seriously.

2 An interpretation of reconciliation

The word "reconciliation" is sensibly defined as people reuniting after conflict. If two friends have had a fight, and immediately after it decide just to forgive, forget, and resume friendly relations, that would count as reconciliation. However, it would arguably not be a truly desirable kind of reconciliation, where a better form would include at least the two parties hashing things out and the one(s) who did wrong expressing remorse, supposing of course that a wrong had been done. This section articulates a conception of reconciliation that is meant to be attractive for a variety of settings, including between friends, but particularly at the social level when injustice has been done to a stranger (initially advanced in Metz 2015, 2022a).[2] The rest of the chapter applies it to various proper ways to hold people responsible for wrongdoing.

The conception of reconciliation consequent to wrongdoing advanced here has two distinguishable facets, a "backward-looking" condition of acknowledging the wrong and a "forward-looking" condition of constructive interaction between those party to the conflict. Specifically, in this chapter reconciliation is construed as a morally desirable state in which: (a) those who have been substantially affected by conflict interact on a largely voluntary, transparent, and trustworthy basis for the sake of compossible ends that are expected to be good for one another (b) and any culpable wrongdoing has been disavowed, in the first instance by the wrongdoers.

The (a) condition (or something like it) is essential for anything plausibly to fall under the heading of "reconciliation." Reconciliation is more than just two parties removing themselves from each other's sphere of influence and also more than mere peaceful coexistence between them. Instead, reconciliation involves some kind of cohesion consequent to conflict, construed here as basically cooperation and aid.

Notice that mention of "trustworthy" interaction is meant to include the idea that the victim has some good reason to think that the wrongdoer will not reoffend. In the ideal case, that would be because the offender has had a change of heart or otherwise reformed his character, making it less likely that he would do the same wrong again. This element is one thing missing from the instance of reconciliation between friends mentioned previously; even if the victim succeeds in having "moved on," he has no good reason to trust that the other party will not repeat the behavior.

While something could logically be a kind of reconciliation without the (b) condition, it (or also something like it) is probably essential for a sort that is attractive. Disavowal of wrongdoing includes several elements that are also missing from the previous instance of reconciliation between friends. For one, since, in order to disavow wrongdoing, one must be aware of it, there is an implicit truth requirement. A desirable reconciliation includes an awareness of what happened between the parties, and hence ideally a willingness on the part of the wrongdoer to hear out how his behavior affected the victim.

Second, moral language (or at least conceptualization) is used to appraise the conflict that took place. Instead of using neutral terms, what transpired is evaluated by the parties from a moral point of view.

Third, where something is accurately labelled "wrong" or the like, it is disapproved of and in the best case by the wrongdoer himself. The optimal form of reconciliation is surely one in which the person who did wrong accepts responsibility for having done it, apologizes for it, and undergoes certain "productive burdens" as a way to express his remorse. Such burdens would typically include feeling guilty, compensating his victim, and doing the work of changing his character so that he will not do wrong again. Where the offender refuses to acknowledge his criminality, then a third party should step in to express disapproval for his behavior, in part by imposing such burdens on him.

All these backward-looking elements are missing from the account of reconciliation between friends sketched previously, while some of them are also missing from the form of reconciliation that South Africa's TRC adopted. The Commission did use moral language to appraise the violations of human rights, and it, as well as the broader public, did listen to many victims recount how they had been mistreated (see, e.g., Truth and Reconciliation Commission 1998). However, those who had violated people's human rights did not systematically hear out their victims. In addition, there was no expectation that those who disclosed their human rights violations would express any contrition, let alone apologize directly to their victims. Still more, the TRC legislation (Republic of South Africa 1995),

upheld by the Constitutional Court of South Africa (1996), forbade the imposition of any punitive or compensatory burdens on offenders who had fully disclosed their crimes.

Friends of the TRC argue that it was only by forgoing the imposition of burdens on apartheid enforcers that they would have been willing to relinquish power and allow the transition to democracy (Constitutional Court of South Africa 1996: para 65; Burton 2000: 79; Lenta 2007: 158–159). That might well be true. The point, though, is that the TRC was then, as a result, poor in terms of the sort of reconciliation it effected. One need not appeal to another moral category such as retributive justice to criticize the "kid gloves" that the TRC used on wrongdoers, requiring them merely to confess in public. Reconciliation itself provides grounds to think that offenders should have been held accountable by, say, having labored in ways that would have improved their victims' quality of life. The TRC did make recommendations to the government about how to compensate individual victims of human rights violations and about how to effect reparations more broadly to black South Africans. However, it was not offenders who were to do the hard work of effecting redress for victims, and, furthermore, subsequent governments have by and large failed to live up to the TRC's prescriptions (on which see, e.g., Pather 2018).

3 Reconciliatory criminal justice

During the heyday of the TRC, many South African public agents advanced reconciliation as an alternative to punishment. Parliament adopted a new Constitution that said in its postamble that "there is a need for understanding but not for vengeance, a need for reparation but not for retaliation. . . . In order to advance such reconciliation and reconstruction, amnesty shall be granted" (Republic of South Africa 1993: chap. 15). The Constitutional Court of South Africa likewise 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" (2006: para. 114). The Chair of the TRC, Desmond Tutu, expressed a similar approach: "[T]he central concern is not retribution or punishment, but . . . the healing of breaches, the redressing of imbalances, the restoration of broken relationships" (1999: 51). In the light of the conception of reconciliation advanced in the previous section, this chapter argues in effect that the TRC's non-punitive approach to it was lacking. The idea of reconciliatory sentencing (or restorative sanctions) is not merely coherent, but also philosophically attractive and merits consideration as a rival to the desert and deterrence conceptions of punishment's point that have been characteristic of Western legal thought for hundreds of years.

I now argue that the conception of reconciliation advanced in the previous section grounds *pro tanto* reason to punish those guilty of serious crimes, principally because of its backward-looking condition requiring the disavowal of wrongdoing. A wrongdoer who did not feel guilt, go out of his way to compensate his victim, and make strenuous efforts not to commit the wrong again would be failing to reconcile in the appropriate way. In contrast, for a guilty party to place such burdens on himself expresses remorse; it shows that he now distances himself from crime committed in the past. One additional sort of burden those who have committed weighty offenses should normally undergo includes submitting to penalties prescribed by an impartial third-party representing the public as a way for it, in turn, to express disapproval of their misdeeds.[3] Supposing that what has been criminalized is behavior that is particularly wrong, expressing disapproval merely by saying certain

words or wagging a finger would not be sufficient. For serious offenses, a fitting disapproval of an offender's misdeeds must take the form of frustrating his ends or reducing his quality of life. The worse the crime, the greater the offender's remorse and the public's disapproval should be, and hence the more severe the punishment should be. Commensurability of some kind between offense and penalty, which need not be a strict, cardinal proportionality between them (see Metz 2019: 125–126), is hence prescribed by the logic of reconciliation.

This rationale for punishment is an expressive one, according to which showing disapproval of offenses with hard treatment is part of what it means to stand up for victims, to object to the flouting of just laws, and to treat offenders as agents responsible for their serious misbehavior. From this perspective, to fail to punish is disrespectful, at least to some degree, of victims, moral norms, and even offenders, a broad view that has had adherents in recent Anglo-American philosophy of punishment (e.g., Feinberg 1965; Hampton 1988; Duff 2001).

However, the forward-looking condition of the conception of reconciliation normally prescribes "productive" penalties of certain kinds that are more unfamiliar to a Western audience and alien to a retributive standpoint. Consider what two philosophers of law have said of the ways that the Yoruba people, indigenous to what is now Nigeria, have often penalized offenders. According to one,

> the reconciliatory factor is lacking in Western theories of law and penology where the offender is punished without making restitutions; and emerging from prison, he is reconciled neither to himself, his victim, nor to society. . . . [W]hen a culprit is punished, such is done with the view to fine-tuning the character of the said offender in line with the communalistic ethos of the Yoruba culture.
>
> (Balogun 2018: 246, 311)

According to the other, those who had committed crimes that did not pose an existential threat to the community were often punished by the Yoruba by "being forced to labor on community projects or those of their victims in reparation/restitution for the loss caused" (Bewaji 2016: 164). Given the logic of reconciliation, being punished should ideally not take the form of being killed, maimed, or incarcerated, and instead, at least when feasible, should consist of laboring in ways that would reform the characters of the guilty or compensate their victims, particularly the direct ones, but also potentially indirect ones such as the victims' relatives or the broader community.

Those kinds of penalties would improve relationships, and are characteristically what reconciliation would prescribe, as opposed to inflicting "unproductive" harm on an offender merely because he deserves it in retributive fashion. Furthermore, notice how the focus on making restitution to direct victims, and in ways that are burdensome to the offender, contrasts with both punitive community service (which need not benefit direct victims) and a civil suit (which need not be burdensome to offenders or even express disapproval) in the Western tradition.

Such reconciliatory sentencing (or restorative sanctioning) is arguably suitable for any context of wrongdoing in which penalties are just. A student who has plagiarized an essay should not be suspended, but instead should be required to take an extra course on why plagiarism is wrong and then instruct first-year students on the topic (Metz 2022a: 272). Someone who has cheated on his taxes should, instead of paying a fine, be made to perform dull tasks for the state revenue service (Metz 2022b: 130). A doctor who used his medical

knowledge to harm black people during apartheid should not simply rot in jail, but now put it to good use in healthcare clinics servicing black neighborhoods (Metz cited in Malan & Green 2013). A drunk driver might, in contrast to merely losing his driver's license, be sentenced to work in a morgue (BBC 2016).

Reconciliatory sentencing would focus on penalties that in effect make offenders *clean up their own mess*, whether that is the harm they have done to their victims or the poor state of their characters. In that regard, this approach to punishment differs from both retributivism and general deterrence theory and in attractive ways. From a retributive standpoint, punishment need not do good at all in the future to be morally justified; instead, the right penalty is whichever harm or submission fits the crime that was committed in the past. Punishment does not have to clean up anything. From a general deterrence approach, punishment should do some good, and so in a sense do some cleaning, but the offender would be penalized to prevent others from making a mess. Imposing commensurate penalties likely to compensate victims or reform offenders is prima facie appealing by comparison, although this chapter lacks the space to motivate the approach any more than this (cf. Metz 2019, 2022b).

4 Reconciliatory civil justice

Strictly speaking, if the reconciliatory approach to criminal justice articulated in the previous section were adopted, it might be that no separate system of civil justice would be needed. After all, the point of a punishment would be to impose burdens on those who have done culpable wrongs that not only express commensurate disapproval on the part of the state, but also are productive for having offenders compensate their direct victims. It might be, however, that sometimes it is appropriate to make one party compensate another party who has been harmed even though the former is not culpable for the harm (say, because it is much easier for the former to bear the cost), in which case civil trials could still be apt. Setting aside the question of whether something other than a criminal trial would be needed in a reconciliatory system, this section focuses on the question of precisely how those culpable for wrongful harm should he held responsible to compensate for it in a just manner. By a reconciliatory approach, the right reparation is one that would improve the victim's quality of life consequent to some kind of consultation with her, which differs from one prominent approach in the West, which is focused on the restoration of an original state, explained shortly.

The forward-looking element of reconciliation involves guilty parties relating to victims in ways that support ends of theirs, specifically ones that would advance their good; that is the sort of relationship that is meant to be restored, or indeed established in the first place if it had never been present. That means compensating so as to make victims better off and in a manner they accept. For example, black people forced off land during the apartheid era in South Africa so that white-owned mining companies could secure minerals might, some 60 years later, be given cash if that is what they choose. Someone who stole a radio from someone might provide a television, if that is what the victim prefers. If a person negligently or recklessly broke another's arm, then, in addition to paying for the hospital bills, he might perform tasks that the wounded person cannot undertake, even if he would not have undertaken them had his arm not been injured.

Notice how these approaches to compensatory justice differ from an approach that is common in the Western tradition. As a first approximation, the thought is that one must

return an object that one stole. If a thief took land or a radio, he must give back the land or the radio, and in the condition it would have been in had it not been taken.

However, this sort of compensation is an instance of a broader counterfactual principle, namely, that civil, compensatory, or rectificatory justice means "restoring the victim to the position she would have been in had the wrongful behavior not occurred," as per the *Stanford Encyclopedia of Philosophy* entry on justice (Miller 2017: sec. 2.2), "returning victims to a condition they would have been in in the absence of the wrong" (Oyowe 2017: 239), or putting in place "the conditions that people were relying upon when framing their plans, and so allow them to carry on with their plans with minimal interruption" (Goodin 1991: 152; see also Goodin 1989). In Robert Nozick's influential terms,

> The principle of rectification presumably will make use of its best estimate of subjunctive information about what would have occurred (or a probability distribution over what might have occurred, using the expected value) if the injustice had not taken place.
>
> (1974: 152–153)

The over-arching theme here is that there is a specific path a person's life would have taken without a wrongful taking or interference, where the right compensation would put her back on that path as much as possible.

Some reason to prefer the reconciliatory approach of this chapter over this counterfactual one can be seen by reflecting on two kinds of situations. In one case, note that sometimes wrongdoing, for instance theft, turns out to provide a substantial net benefit to the victim. Suppose you have stolen a Ferrari from a person, and it so happens that, had you not done so, its owner would have died, say, from a collision or because she would have caught a plane that crashed. In that case, the logic of "restoring the victim to the position she would have been in had the wrongful behavior not occurred" entails that no compensation is owed at all (or perhaps only a compensation of a kind that would result in the victim's death)! However, you, the thief, intuitively still owe compensation and indeed one that would make the victim's life go well, as opposed to precisely however – potentially poorly! – it would have gone absent the theft.

Less hypothetically, and without appealing to a statistical anomaly to make the point, consider that one encounters the claim made by some apartheid apologists or opponents of affirmative action in South Africa that no compensation is owed to black people, since, in the absence of apartheid, which brought industrialization to a degree noticeably greater than elsewhere in Africa, their economic livelihoods on average would have been worse than they were with apartheid. If the proper aim of compensatory justice were to give victims the lives they would have had in the absence of wrongdoing, then (granting the contestable claim that most black people's economic lives would have been worse without apartheid) there would not be a justification for large-scale reparation programmes in South Africa. However, since large-scale reparation programmes in response to South African apartheid are indeed intuitively justified, the aim of compensatory justice is not to give victims the lives they would have had in the absence of wrongdoing.

In reply, one might suggest that, when interpreting the idea that compensatory justice should give victims the lives they would have had in the absence of wrongdoing, we are to consider only harm the wrong did immediately and not any further, longer-term consequences of the wrong. In respect to the apartheid case, then, perhaps we are to compensate

only for, say, the loss of a house upon being forced to relocate outside a city, and not any further results of that segregationist practice, whether good or bad.

However, it is common to include longer-term consequences of a wrong when determining the right compensation for it. As Bernard Boxill, who composed the entry titled "Compensatory Justice" for the *International Encyclopedia of Ethics*, suggests, full compensation requires making up, not merely for the harm immediately caused by a wrong done to a victim, but also further harm that the wrong brought in its wake:

> Compensating him for his disability . . . requires making him no worse off than he would have been had he not been disabled; doing that requires counterfactual reasoning. We must consider for example whether he would have been a sure bet to win an Olympic gold medal if he had not been disabled. And if he was we must do what we can to make his condition reasonably close to what it would have been had he won that medal.
>
> (2013: 955)

Now, by the same logic, if the consequences of a wrong did not bring about net costs to a victim, but instead produced net benefits to her, then the principle of seeking to "change the present so that it looks more like the present that would have obtained in the absence of the injustice" (mentioned, but not accepted, by Waldron 1992: 8) would prescribe no change (or perhaps even change that reduces the victim's quality of life). If all the harm done in the wake of a wrong is in need of compensation to return a victim to the state that would have taken place, as per Boxill, then, by parity of reasoning, one should take all the benefit done in the wake of a wrong into consideration when calculating what is owed. However, that principle has counterintuitive implications about when and how much compensation is owed.

A second telling situation is one in which returning a stolen object would harm the victim or is not something that she would in hindsight choose to have (from Metz 2020). Returning to the hypothetical case, suppose that, while the Ferrari was in your wrongful possession, the state adopted a heavy wealth tax specifically on those who own Ferraris but not Maseratis. Imagine, too, that you have a Maserati, one that is actually yours. The right form of compensation would surely be for you to offer the Maserati to the victim, even though returning the Ferrari would mean "restoring the victim to the position she would have been in had the wrongful behavior not occurred" or "making them no worse off than they would have been but for the misfortune."

What the two kinds of cases suggest is that one ultimate rationale for compensation is to mend a relationship between a guilty party and his victim. Instead of merely returning the victim to some original state that would have transpired without wrongdoing, a major point of civil justice is to hold those guilty of wrongful harm responsible in a way that expresses a suitable apology and shows respect for the victim as a person with a will and a good. That means that the guilty party should provide to the victim what she agrees would make her life go better, or so this chapter submits merits consideration by the field.

An interesting implication of the reconciliatory approach is that negotiation is plausibly part of the right compensatory process, as it traditionally has been in indigenous sub-Saharan societies (see Masitera 2018: 114–116). It is not enough merely for the guilty party to improve the victim's quality of life, but ideally he should also do so in a way that the victim accepts. That principle does not entail that the guilty party must provide whatever a victim

wants, regardless of how little or how much good it would do her. What it does mean that the guilty should seek to ascertain how a victim would like her life to be improved, and that the amount of improvement should be roughly proportionate to the wrong and harm done, as a way to express remorse fittingly.

5 Reconciliatory trials

The previous sections discussed what a certain conception of reconciliation entails for how to hold responsible when it comes to punishing offenders and compensating victims. However, it has not addressed the question of exactly who counts as an offender or, closely related, whether it is only offenders that the state should hold liable for punishment and compensation. This section addresses the question of exactly who must undergo burdens that would compensate victims and reform offenders. Basically, whom should be put on trial? This section advances a more collectivist answer than is common to encounter in the West.

It might seem obvious whom should be punished and who should make compensation – surely, all and only the ones who (have been fairly judged to) have culpably offended or wrongfully caused harm. However, this answer belies complexity. Suppose that another party X had encouraged a person Y to commit the offense against, or wrongfully cause the harm to, Z. Then, at least depending on the sort of encouragement, it would be natural to hold X somewhat responsible for the crime and harm (even if not as much as the immediate or direct wrongdoer Y). X would either himself count as an offender or should be held responsible even if he does not count as that. As per the previous two sections, both X and Y should, specifically, be made to undergo burdens that compensate Z by improving Z's quality of life in a way she accepts (although normally Y's burdens should be greater than X's).

So, here is one compelling exception to the idea that only those directly responsible for a crime or wrongful harm should be held liable for it. Reflection on the African tradition provides strong reason to consider more exceptions than this one. Reconciliatory processes salient among indigenous sub-Saharan peoples have often involved, not merely the direct offender and the direct victim, but also the families of both (Murithi 2009: 228; Elechi et al. 2010; Mangena 2015: 6, 7) as well as many members of the broader community (Elechi et al. 2010: 82; Mangena 2015: 3; Masitera 2018: 114–115). African societies often consider families of victims and even the society as a whole to be secondary victims who are owed at least an apology from the offender (Murithi 2009: 227–228; Elechi et al. 2010: 78, 81; Mangena 2015: 11). In addition, and of particular relevance to the present discussion, the families of offenders can be held liable to apologize and make compensation to victims, especially when the direct offenders lack the means to compensate fully on their own (Elechi et al. 2010: 77–79). Still more, the families of offenders can be tasked with helping to reform the offenders' character, say, by remonstrating with or educating them (Elechi et al. 2010: 74, 78–79).

Why might it be reasonable to hold offenders' family members liable to undergo the burdens of compensating offenders' victims and reforming offenders' character? Given the above principle that punishment ought to be deployed so as to make people clean up their own mess, why think the mess partly belongs to the family or at least some, presumably older, members of it?

Traditionally, one answer from sub-Saharan cultures has been that simply sharing the blood of the offender renders one liable to some degree for his misdeeds (Mangena 2015: 7). However, there are three other answers available that will appeal more strongly to a multicultural, contemporary audience of moral philosophers and ethicists.

One argument is that it is reasonable to hold a family responsible for the wrongdoing of one of its members insofar as the family has benefited from the wrong, even if it did not encourage it. Perhaps if some family members genuinely could not have known they were receiving, say, stolen goods, it would be wrong to hold them responsible for the theft. However, if they did know, or if they did not know but should have known, then there is *prima facie* reason to enlist their help in effecting compensation and reform.

The next two rationales have a broader scope, in that, if sound, they entail that it can be right to hold a family responsible for the actions of one of its members even when neither it nor any of its members benefited from the wrongdoer's crime. Consider the idea that none of us has libertarian free will that would render us solely responsible for our choices; we are open to the causal influence of others such that there is a "shared responsibility" for crime (Mangena 2015: 6). Furthermore, it is plausible to think, with much of the African tradition, that we have weighty obligations to help one another, especially our family members and in respect of their moral character. Where older family members have failed in this obligation, say, to a teenager or young adult, they owe something to the one who has gone astray and of course to those harmed by that. From this perspective, we are indeed our "brother's keeper" (Mangena 2015: 10) and liable to some burdens of punishment and compensation when our brother has done wrong.

There will of course be cases where a family did all it could in respect of a member's moral education, but he ultimately decided of his own volition to engage in criminal behavior. Even so, perhaps it could make sense for a trial judge to hold the family responsible for helping to reform his character, if it is now in a better position to do so. The family retains a strong obligation to care for its members, including care for their character, and, so, even if the family did not fail a given member in the past, it might sensibly be required to help him in the present.

The last major rationale for deeming family to be liable to help compensate and reform is illustrated by a recent event in southern Africa, where it appears that Lesotho adult male citizens living illegally in South Africa committed a horrific mass gang rape there. After the facts looked well established, the Lesotho prime minister apologized to the president of South Africa, asked for forgiveness from him, offered to pay for the costs of the trial, and promised to try to prevent more illegal intrusions (Sibanda 2022). Here, the Lesotho government had not benefited from the actions of its citizens in South Africa. In addition, it had presumably done what it could have to educate them morally when they were young, and in any event had little reach given their residence outside the country. Even so, the prime minister deemed it appropriate to hold his country responsible for the wrongs of its citizens done in another country.

Many readers will find the prime minister's reactions to have been appropriate, if not morally required. The best explanation of why that approach to holding responsible is reasonable is probably that Lesotho has long identified with these citizens and they have done so with it. The operative principle is something like this: the more one has shared a sense of togetherness and engaged in joint projects with people, and the more they have done so with one, the more one should feel guilt and shame when they behave wrongly and the more one is obligated to act in accordance with these emotions. Being closely affiliated

with a guilty party is sufficient to be stained, such that it is not merely family, but also an offender's "well-wishers" (Elechi et al. 2010: 74, 82), who in principle can be liable in a reconciliatory trial. When others share a sense of self with someone who has done wrong, perhaps there is a legitimate sense in which it is partially *their* mess despite not having done it.

This chapter has not provided a systematic defense of the claim that it is right to take such a "wide," "inclusive," or "collectivist" approach to holding people responsible for wrongdoing, but it has articulated three different rationales for doing so that merit serious consideration, at least jointly and perhaps individually, too. It is yet another important approach to holding responsible that comes from the African context, but is arguably fitting not just for it.[4]

Notes

1 Cf. Jenny Steele's "Responsibility for Others" and David Wong's "Responsibility in Confucian Thought," elsewhere in this *Handbook*.
2 For other accounts of reconciliation in the African context, see Villa-Vicencio and Verwoerd (2000); du Bois and du Bois-Pedain (2008); Huyse and Salter (2008); Villa-Vicencio (2009).
3 Exceptions are to be expected, say, in cases of double jeopardy or where punishing an offender for a relatively minor crime would foreseeably cause serious harm to innocent parties such as his young children.
4 I am grateful to Max Kiener for written comments on a prior draft and to Max Kiener, Matt King, Elinor Mason, Leo Menges, David Owens, Daniel Telech, and Andrea Westlund for oral comments on a talk that I gave based on this material at a mini-workshop on the *Routledge Handbook of Responsibility* organised by Max Kiener at the University of Oxford.

Further reading

South Africa's Truth and Reconciliation Commission (TRC) is responsible for having brought some African ideas about reconciliation to an international audience. Tutu, D. (1999). *No Future Without Forgiveness*. New York: Random House, by the former Chair of the TRC, addresses its ethical and historical background, as does Murithi, T. (2009). "An African Perspective on Peace Education: *Ubuntu* Lessons in Reconciliation," *International Review of Education*, 55, 221–233. Villa-Vicencio, C., & Verwoerd, W. (eds.). (2000). *Looking Back, Reaching Forward: Reflections on the Truth and Reconciliation Commission of South Africa*. Cape Town: University of Cape Town Press as well as Swart, M., & van Marle, K. (eds.). (2017). *The Limits of Transition: The South African Truth and Reconciliation Commission Twenty Years On*. Leiden: Brill are collections of critical discussions about the TRC's rationale, functioning, and influence. Mangena, F. (2015). "Restorative Justice's Deep Roots in Africa," *South African Journal of Philosophy*, 34, 1–12 draws on examples from four countries to sympathetically illustrate how reconciliation has been salient in the African context, while Villa-Vicencio, C. (2009). *Walk with Us and Listen: Political Reconciliation in Africa*. Cape Town: University of Cape Town Press defends a certain reconciliatory approach to conflict informed by a variety of practices and ideals indigenous to Africa. The foreward to this book, written by Tutu, D., supports a forgiveness-based approach to reconciliation, as does Krog, A. (2008). "'This Thing Called Reconciliation . . . . ': Forgiveness as Part of an Interconnectedness-towards-Wholeness," *South African Journal of Philosophy*, 27, 353–366 by sophisticated appeal to characteristically African values. In contrast, works that advance forms of punitive reconciliation include Bewaji, J. A. I. (2016). *The Rule of Law and Governance in Indigenous Yoruba Society*. Lanham, MD: Lexington Books, which draws on traditional practices common among a major Nigerian people, as well as Wringe, B. "Political Apologies, Punishment, and Reconciliation Without Forgiveness" and Metz, T. (2022). "Why Reconciliation Requires Punishment but Not Forgiveness," which both appear in Satne, P. & Scheiter, K. (eds.), *Conflict and Resolution*. Cham: Springer and are less hermeneutic and more analytic in respect to method.

References

Balogun, O. A. (2018). *African Philosophy: Reflections on Yoruba Metaphysics and Jurisprudence*. Lagos: Xcel Publishers.

BBC News. (2016). "Thailand Drunk Drivers Face Morgue Work as Punishment," April 12. www.bbc.com/news/world-asia-36025937.

Bewaji, J. A. I. (2016). *The Rule of Law and Governance in Indigenous Yoruba Society: A Study in African Philosophy of Law*. Lanham, MD: Lexington Books.

Boxill, B. (2013). "Compensatory Justice," in H. LaFollette (ed.), *The International Encyclopedia of Ethics* (pp. 953–959). Malden, MA: Blackwell Publishing Ltd.

Burton, M. (2000). "Making Moral Judgements," in C. Villa-Vicencio & W. Verwoerd (eds.), *Looking Back, Reaching Forward: Reflections on the Truth and Reconciliation Commission of South Africa* (pp. 77–85). Cape Town: University of Cape Town Press.

Constitutional Court of South Africa. (1996). *Azanian Peoples Organization (AZAPO) and Others v President of the Republic of South Africa and Others*, (CCT17/96) [1996] ZACC 16. www.saflii.org/za/cases/ZACC/1996/16.html.

———. (2006). *Dikoko v Mokhatla*, 2006 ZACC 10. www.saflii.org/za/cases/ZACC/2006/10.html.

du Bois, F., & du Bois-Pedain, A. (eds.). (2008). *Justice and Reconciliation in Post-Apartheid South Africa*. Cambridge: Cambridge University Press.

Duff, R. A. (2001). *Punishment, Communication, and Community*. New York: Oxford University Press.

Elechi, O. O., Morris, S., & Schauer, E. (2010). "Restoring Justice (Ubuntu): An African Perspective," *International Criminal Justice Review*, 20, 73–85.

Feinberg, J. (1965). "The Expressive Function of Punishment," *The Monist*, 49, 397–423.

Goodin, R. (1989). "Theories of Compensation," *Oxford Journal of Legal Studies*, 9, 56–75.

———. (1991). "Compensation and Redistribution," in J. Chapman (ed.), *Compensatory Justice*; *Nomos*, vol. 33 (pp. 143–177). New York: New York University Press.

Hampton, J. (1988). "The Retributive Idea," in J. G. Murphy & J. Hampton (eds.), *Forgiveness and Mercy* (pp. 111–161). New York: Cambridge University Press.

Huyse, L., & Salter, M. (eds.). (2008). *Traditional Justice and Reconciliation After Violent Conflict: Learning from African Experiences*. Stockholm: International Institute for Democracy and Electoral Assistance.

Krog, A. (2008). " 'This Thing Called Reconciliation . . . . ': Forgiveness as Part of an Interconnectedness-towards-Wholeness," *South African Journal of Philosophy*, 27, 353–366.

Lenta, P. (2007). "In Defence of AZAPO and Restorative Justice," in W. le Roux & K. van Marle (eds.), *Law, Memory and the Legacy of Apartheid: Ten Years After AZAPO v President of South Africa* (pp. 149–182). Pretoria: Pretoria University Law Press.

Malan, M., & Green, A. (2013). "Basson's Lawyer: There Are No Victims," *Mail & Guardian*, April 19. https://mg.co.za/article/2013-04-19-00-bassons-lawyer-there-are-no-victims/.

Mangena, F. (2015). "Restorative Justice's Deep Roots in Africa," *South African Journal of Philosophy*, 34, 1–12.

Masitera, E. (2018). "Ubuntu Justice and the Power to Transform the Modern Zimbabwean Rehabilitation Justice System," in E. Masitera & F. Sibanda (eds.), *Power in Contemporary Zimbabwe* (pp. 109–120). Abingdon: Routledge.

Metz, T. (2015). "A Theory of National Reconciliation: Some Insights from Africa," in C. Corradetti, N. Eisikovits, & J. Rotondi (eds.), *Theorizing Transitional Justice* (pp. 119–135). Surrey: Ashgate.

———. (2019). "Reconciliation as the Aim of a Criminal Trial: *Ubuntu*'s Implications for Sentencing," *Constitutional Court Review*, 9, 113–134.

———. (2020). "Must Land Reform Benefit the Victims of Colonialism?" in E. Masitera (ed.), *Philosophical Perspectives on Land Reform in Southern Africa* (pp. 145–160). Cham: Palgrave Macmillan.

———. (2022a). "Why Reconciliation Requires Punishment but Not Forgiveness," in K. Scheiter & P. Satne (eds.), *Conflict and Resolution: The Ethics of Forgiveness, Revenge, and Punishment* (pp. 265–281). Cham: Springer.

———. (2022b). "A Reconciliation Theory of State Punishment: An Alternative to Protection and Retribution," *Royal Institute of Philosophy Supplement*, 91, 119–139.

Miller, D. (2017). "Justice," in E. Zalta (ed.), *Stanford Encyclopedia of Philosophy*. https://plato.stanford.edu/entries/justice/#CorrVersDistJust.

Murithi, T. (2009). "An African Perspective on Peace Education: *Ubuntu* Lessons in Reconciliation," *International Review of Education*, 55, 221–233.

Nozick, R. (1974). *Anarchy, State, and Utopia*. New York: Basic Books.

Oyowe, O. A. (2017). "*Ubuntu*, Rectification and the Land Question," in D. Bilchitz, T. Metz, & O. Oyowe (eds.), *Jurisprudence in an African Context* (pp. 234–239). Cape Town: Oxford University Press.

Pather, R. (2018). "Ramaphosa Under Pressure to Support Reparations for Apartheid Victims," *Mail & Guardian*, December 17. https://mg.co.za/article/2018-12-17-ramaphosa-under-pressure-to-support-reparations-for-apartheid-victims.

Republic of South Africa. (1993). "Constitution of the Republic of South Africa Act No. 200." www.gov.za/documents/constitution/constitution-republic-south-africa-act-200-1993.

———. (1995). "Promotion of National Unity and Reconciliation Amendment Act No. 87." www.saflii.org/za/legis/num_act/ponuaraa1995557/.

Sibanda, A. (2022). "Prime Minister Apologises for Basotho Crimes in SA," *Sunday World*, August 4. https://sundayworld.co.za/news/prime-minister-apologises-for-basotho-crimes-in-sa/.

Truth and Reconciliation Commission of South Africa. (1998). "Truth and Reconciliation Commission of South Africa Report." www.justice.gov.za/trc/report/.

Tutu, D. (1999). *No Future Without Forgiveness*. New York: Random House.

Villa-Vicencio, C. (2009). *Walk with Us and Listen: Political Reconciliation in Africa*. Cape Town: University of Cape Town Press.

Villa-Vicencio, C., & Verwoerd, W. (eds.). (2000). *Looking Back Reaching Forward: Reflections on the Truth and Reconciliation Commission of South Africa*. Cape Town: University of Cape Town Press.

Waldron, J. (1992). "Superseding Historic Injustice," *Ethics*, 103, 4–28.