Human Rights and the Promise of Political Forgiveness

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"The extension of forgiveness, repentance, and reconciliation to whole nations is one of the great innovations in statecraft of our time."[i]

How should emerging democratic regimes reckon with the crimes and injustices of former governments? Should transitional regimes concentrate their limited political and economic resources on the consolidation of democratic institutions and the promotion of national reconciliation, or should they first seek strict justice and then attempt to promote political and economic development and national unity? If peace and reconciliation are viewed as legitimate regime goals, how should these objectives be pursued? Is the ethic of forgiveness applicable to politics? If so, can it contribute to the resolution of intractable political conflicts, the healing of collective injuries, and the restoration of communal solidarity? If political forgiveness is feasible, is such a practice consistent with human rights?

In the past two decades, emerging democratic regimes have pursued a variety of strategies in confronting the crimes and human rights abuses of former governments. These approaches have ranged from historical amnesia to intermediary strategies of amnesty and truth telling to limited purges (lustration) and trials.[ii] Democratic theorists generally agree that successor regimes are legally and morally bound to prosecute and punish persons guilty of criminal wrongdoing. According to Gary Bass, trials are a popular response to human rights abuses because they are perceived to be an effective way of carrying out justice and

restoring the peace.[iii] But trials may not always be feasible or even desirable. Since transitional regimes are concerned not only with retroactive justice but also with the consolidation of democratic processes and the promotion of national unity, legal retribution may not always provide the most effective way to satisfactorily address past regime wrongdoing. Thus, rather than pursuing retroactive justice through legal retribution, regimes may find it more helpful to place greater emphasis on forward-looking strategies that combine truth telling with initiatives to reform cultural and institutional norms in order to promote national reconciliation.

In this paper I explore the nature and role of political forgiveness as a means of reckoning with past political violence and a way of facilitating the healing of political society. The paper has three parts. First, I briefly describe the nature of the prevailing criminal justice systems that attempt to protect human rights through legal retribution. I show that despite its widespread popularity, the theory of retributive justice suffers from a number of limitations that can impede the healing of victims and perpetrators and the restoration of peace. Punishment, I argue, does not necessarily lead to the restoration of communal solidarity and the healing of nations.

In the second section I examine the nature of forgiveness and seek to show how this ethic, while contrary to strict justice, is nevertheless a feasible and appropriate norm for promoting the political reconstruction of fractured political societies. After identifying key elements of political forgiveness, I briefly explore the important role of Christianity in defining and propagating this ethic. While the Christian faith has frequently been used to justify liberation from oppression, I argue that the Christian faith also gives priority to communal solidarity and the healing of ruptured relationships. Although forgiveness can be

an instrument of political reconciliation, I stress that this ethic is not easily reconciled with political liberalism and its doctrine of human rights.

In the third and final section of the paper, I therefore present an alternative paradigm of justice that stresses individual rights in the context of communal solidarity. This alternative paradigm, restorative justice, focuses on the healing of interpersonal and communal relationships through accountability based upon truth telling and the acknowledgement of culpability. Unlike retributive justice, this approach assumes that the pursuit of social and political reconciliation is vital in promoting a political culture that is conducive to human dignity. Since human rights are possible only in the context of a stable, humane community, the promotion of reconciliation is often a necessary precondition for human rights.

Retributive Justice and Its Limits

Political liberalism, the foundation of modern democratic theory, is rooted in the claim that political society is constituted to secure and protect the fundamental rights of persons. According to liberal theory, the legitimacy of government is contingent on the willingness and capacity of public institutions to secure and sustain human rights. Historically, liberal theorists have claimed that the most effective way of protecting individual rights within political communities is through the establishment of limited, constitutional government based upon consent and the rule of law. According to political liberalism, the most effective way of protecting and enhancing human rights is through the uniform and impartial application of the law. Thus, when individuals or collectives commit human rights offenses, the state, as the institution responsible for justice, must seek to rectify wrongdoing by prosecuting and punishing culpable offenders.

The basis of most Western criminal justice systems, as well as the international human rights movement that has spearheaded the International Criminal Court, is the idea of retributive justice. According to this perspective, since human rights are secured through the rule of law, legal accountability is essential in promoting justice. When people violate the rights of others, legal justice requires that offenders pay a penalty for their offenses. Punishment is important, according to the retributive theory, because it helps restore the moral equality between offenders and victims and helps deter the repetition of wrongdoing. Failure to impose a penalty proportionate to guilt is itself considered an injustice. But while retribution is important in maintaining and sustaining the rule of law, the prosecution and punishment of wrongdoing does not necessarily lead to the healing of victims and the restoration of political community. This is especially the case in deeply fractured societies characterized by ethnic, religious, and political violence.

The retributive paradigm is a powerful theory that finds strong support on both utilitarian and principled grounds. From a consequentialist perspective, utilitarian philosophers like Jeremy Bentham justify retributivism as a way of ensuring compliance with the law. Since legal compliance is the foundation for the protection of human rights, consequentialists claim that the prosecution and punishment of crime is necessary if future wrongdoing is to be deterred. Legal accountability is therefore viewed as a necessary precondition for the protection of human rights.

From a deontological perspective, however, philosophers like Immanuel Kant argue that criminals must be prosecuted and punished not because of desired outcomes but because political morality demands it. Relying on a hybrid Kantian-teleological approach, Jean Hampton argues that retribution is necessary in order to reassert the worth of all persons.

Since wrongdoing is contrary to the human equality because it makes offenders superior to victims, perpetrators must therefore be punished to reaffirm the norm of human equality. Viewed from this perspective, punishment is not a means of moral education or a strategy to deter future crime but simply a moral response to prior wrongdoing—one that rectifies injustice. As Hampton sees it, the aim of punishment is not to avenge wrongdoing or to inflict pain and injury on the offender; rather, the goal of such "communicative" retributivism is "to annul the offender's claim of superiority."[iv]

Western legal systems also rely on retributive justice because of liberalism's skepticism about the deliberate pursuit of reconciliation. Since competitive, participatory government is predicated on freedom of thought, political competition, and open conflict, democratic theorists opposed the pursuit of national unity and political reconciliation. Rather, because they assume that reconciliation, like the creation of political community, is a natural byproduct of political participation, democratic politics will itself lead to the healing of relationships and the restoration of communal solidarity. David Crocker, for example, suggests that the overemphasis on social harmony and communal solidarity can result in compromising legitimate rights of individuals, such as the right to pursue legal accountability or to obtain reparations.[v] Amy Gutmann and Dennis Thompson similarly claim that a procedural democratic framework is far more conducive to human rights than the intentional pursuit of social and political harmony. They argue that the most effective way to restore a fractured, polarized society is through the practice of "deliberative democracy" in which citizens freely and openly confront conflicting interests and values.[vi] Noted historian Timothy Garton Ash has also cast doubt on the deliberate quest for political reconciliation. The pursuit of "reconciliation of all with all" is an "illiberal" practice, he claims, because a

liberal society is one that learns to live with unresolved conflicts among values and interests.[vii]

Moreover, to the extent that promoting national unity is important, democratic theorists argue that legal accountability for past regime offenses is necessary for restoring communal trust. For some liberal theorists retribution must precede the healing and restoration of political community. While in public life, former Secretary of State Madeleine Albright frequently stressed this "first justice, then peace" paradigm. During the Bosnian war, for example, she declared: "Justice is essential to strengthen the rule of law, soften the bitterness of victims' families, and remove an obstacle to cooperation among the parties."[viii] And in 1999, while visiting a Sierra Leone refugee camp, she repeated again her faith in the healing powers of retributivism, claiming that "the only way that reconciliation can come is if people have a sense that justice has been done and those who have perpetrated the terrible crimes are punished individually."[ix]

Some democratic theorists and political leaders have stressed the complementary role of legal retribution and reconciliation, believing that the strict justice and national reconstruction are mutually reinforcing practices. Rather than giving precedence to justice over reconciliation, this group assumes that states should pursue both legal accountability and national unity simultaneously. This strategy was followed in Argentina in the mid l980s when its government pursued both trials and truth-telling simultaneously in its effort to reckon with the regime atrocities perpetrated during the l970s "dirty war." While Raúl Alfonsín had been elected president in 1983 by promising trails, the government pursued accountability through an official truth commission as well as the prosecution of senior political and military leaders. But the pursuit of both truth and trials provided little justice

and no reconciliation. Indeed, rather than fostering political accommodation, the "truth and trials" strategy contributed to greater political polarization.[x]

Although the retributive justice approach provides a legitimate and effective way of addressing individual crimes in a robust constitutional environment, the model is not well equipped to address past collective violence or systemic injustice. Indeed, the model suffers from a number of limitations. First, retribution focuses almost exclusively on punishing offenders but neglects the rehabilitation of victims and the restoration of communal relationships. Since retributivism is a backward-looking perspective, it provides little encouragement for the healing of victims or the restoration of ruptured social and political relationships. Although truth telling and accountability are essential in individual and collective healing, the renewal and restoration of communal bonds will not necessarily result from trials. Experience suggests that the widely accepted claim that legal accountability automatically leads to peace and communal solidarity is unpersuasive. Indeed, if strict justice is viewed as a precondition for peace, then the quest for national unity and peace may be doomed to failure.

Second, since legal retribution focuses on the culpability of individuals, it tends to underestimate, or even neglect, the role of institutions and the context in which offenses are committed. This is especially the case when confronting society-wide crimes, such as those carried out by a brutal dictatorial government or as a result of civil war, an ethnic cleansing campaign, or genocide. The challenge of identifying culpability and prosecuting major offenders is illustrated by the difficulty of bringing to justice senior leaders responsible for regime crimes in countries such as Argentina, Cambodia, Chile, Liberia, Rwanda, Sierra Leone, and Yugoslavia. Indeed, because evidence of criminal wrongdoing is often more

easily secured for low-level officials, trials of regime crimes have often focused on state agents directly involved in the atrocities rather than on the political and military leaders who devised and authorized the criminal strategies. As a result, senior officials who authorized programs and policies that resulted in atrocities are ironically spared accountability while persons who committed crimes are prosecuted and punished.[xi]

Third, legal retribution uses scarce political resources to confront past crimes rather than focusing on the future needs of society. Since transitional regimes tend to be politically fragile, the emphasis upon rectifying past wrongs may diminish resources available to confront other pressing societal needs. Bruce Ackerman writes that transitional regimes should concentrate their resources on the institutionalization of a constitutional order rather than seeking to correct past injustices. In his view, moral capital is better spent in educating people about the limits of the law than in correcting injustices perpetrated over a generation or more. "A few crude, bureaucratically feasible reforms will do more justice, and prove less divisive," he writes, "than a quixotic quest after the mirage of corrective justice."[xii] Since countries overcoming dictatorial, authoritarian rule tend to be fragile and weak, the pursuit of trials may not only divert scarce resources but may in fact undermine existing institutions.

The limits of legal retribution in overcoming the legacy of regime crimes are well illustrated in Argentina. In the mid 1980s the democratic government sought to reckon with the widespread human rights abuses committed during the country's l975-79 "dirty war" by prosecuting and punishing senior state officials. Since the government focused exclusively on the culpability of military and police officials, Jaime Malamud-Goti, a senior legal advisor to President Alfonsín, has argued that the prosecutions tended to undermine the existing legal order, rather than strengthen the rule of law and emerging democratic institutions. In

Malamud-Goti's view, the government's strategy of "corrective justice" was flawed because it reinforced division and fragmentation by fostering a bipolar ("us versus them") perspective that encouraged the illusion that those not prosecuted or found guilty were innocent. According to Malamud-Goti, by defining responsibility solely in legal terms, trials reinforced the unwarranted belief that responsibility for the widespread human rights atrocities was limited to a small group of military and police officials.[xiii]

While stable, humane regimes require effective criminal justice systems, they also presuppose political stability and national unity. Since legal accountability can only be undertaken within a context of communal solidarity and public order, pursuing national reconciliation may be a precondition for trials. Although many democratic theorists assume that prosecution and punishment leads automatically and inevitably to reconciliation, this assumption is unwarranted, especially when addressing widespread human rights abuses. Indeed, because legal accountability is unlikely to also foster national reconciliation and the consolidation of a constitutional order, transitional regimes must pursue a prudential strategy that balances the claims of backward-looking justice with the forward-looking claims of political reconciliation. As Pope John Paul II has frequently noted, the restoration of the social and political order in deeply divided communities requires reconciliation, justice, and forgiveness. "My reasoned conviction, confirmed in turn by biblical revelation," observed the Pope, "is that the shattered order cannot be fully restored except by a response that combines justice with forgiveness." Thus, there can be "no peace without justice and no justice without forgiveness."[xiv]

Because the disclosure and acknowledgment of truth is essential to both justice and reconciliation, official truth commissions can play a crucial role in fostering national political

healing. Indeed, if one must choose between truth telling and trials, the public disclosure and acknowledgement of regime wrongdoing would appear to be the more important state task. Richard Goldstone, the distinguished South African judge who served as the first prosecutor for the International War Crimes Tribunal in The Hague, once observed that truth telling was more important than trials in pursuing the healing and restoration of political community. Speaking of the South African experience, judge Goldstone declared that "if I had to choose between criminal prosecution and the Truth and Reconciliation Commission, I would choose the TRC, which has done far more to heal than any criminal prosecution."[xv]

The Nature and Role of Forgiveness

In common usage, forgiveness is the lifting of debts. Objectively, forgiveness is the act of foregoing claims to retribution. Subjectively, it is the process by which victims give up anger and resentment towards offenders so that past wrongdoing ceases to control the present. Philosopher Avishai Margalit suggests that we know that forgiveness has occurred when an offense is no longer considered admissible evidence in the settling of a past injury.[xvi] Forgiveness is not denial. Rather, it involves giving up hope for a better past. Political forgiveness is not the neglect of memory but a means by which the legacy of past wrongdoing is redeemed, thus making possible the healing of personal and interpersonal injuries.

The goal of forgiveness is the healing of persons and the restoration of relationships. Fundamentally, human forgiveness is an interactive process between offenders and victims, where the former admit culpability and express regret and the latter express empathy towards perpetrators. When offenders acknowledge wrongdoing and victims stop demanding justice, reconciliation among antagonists becomes possible. This is so because victims and offenders

are freed from their captivity to the past: victims are released from anger and resentment while offenders are reunited with their communities.[xvii]

It is important to stress that forgiveness is a means of confronting moral wrongdoing, not a way to address strategic errors or unintended evil consequences. Forgiveness addresses serious wrongs by calling on transgressors to confront and acknowledge moral culpability and to repent through the implicit promise of not repeating the evil action again. For their part, victims refrain from vengeance and release debtors from some or all of the deserved punishment. By encouraging such actions, forgiveness fosters a context that encourages the moral renewal of persons and the transformation of enmity into communal solidarity.

Although forgiveness is not a uniquely religious ethic, it receives its most powerful human expression in Christianity—a faith that is rooted in God's forgiveness of human sin and the corollary obligation of human forgiveness. The centrality of forgiveness is repeatedly stressed in Scripture, especially in the teachings of Jesus. The Christian approach to forgiveness, which calls on people to forgive one another even as God in Christ has forgiven them, involves two distinct emphases—first, the priority of love in human relationships and second, the need to forgive offenders.

In the Parable of the Prodigal Son (Luke 15:11-32), Jesus tells the story of a father's unconditional love towards his two sons. The younger son leaves home and squanders his inheritance. He then comes to his senses and decides to return home. The prodigal's strategy is to confess to his father and to request work as one of his laborers. The father is overwhelmed with joy when the son returns and decides to have a feast for the son who "was lost but now is found" (v. 24). The older son resents the celebration being given the prodigal. In his view, justice demands that he—not the prodigal—be honored for faithful service on

the family estate. Although the younger son has squandered his inheritance and deprecated the family name, the father is so happy to be reunited with his younger son that he desires to celebrate his return. While rules and principles are important in any viable, harmonious community, the prodigal story suggests that the commitment to communal solidarity is even more fundamental than norms of justice.[xviii] Indeed, the central truth of Jesus' parable is that the foundation of reconciliation is love, not justice.

Christianity also stresses that reciprocal nature of forgiveness. As the plea in t he Lord's Prayer suggests ("forgive us our trespasses, as we forgive those who trespass against us"), people that receive the gift of forgiveness should also extend the gift to others. Jesus expresses this principle even more explicitly in the Parable of the Unforgiving Servant (Matt. 18:23-35). In this story a master forgives the debt of one of his servants, but when the forgiven servant fails to do the same to others, the master voids the original cancellation of the debt.[xix] The parable's principle is that forgiveness is a voluntary, compassionate act that demands reciprocity if it is to result in reconciliation and the healing of relationships.

A concept closely associated with forgiveness is "reconciliation." As commonly used, this term denotes the renewal of friendship or the reestablishment of community. From a religious, especially biblical, perspective, reconciliation implies the restoration of broken relationships—between God and persons and among humans themselves. Such a transaction is generally thought to depend upon the moral reconstruction of individuals and collectives through processes that may involve truth telling, the acknowledgement of guilt, repentance, mercy and compassion, and forgiveness. Forgiveness and reconciliation are therefore closely linked concepts, with the former frequently regarded as a necessary condition for full communal reconciliation.

Forgiveness in Politics

Forgiveness is generally regarded as an element of personal ethics, not a dimension of political ethics. As a result, the extension of forgiveness to the political realm involves a number of major substantive and methodological challenges. Some of these issues include: 1) which persons can offer forgiveness; 2) which collectives are entitled to moral agency; 3) determining which collectives are entitled to offer and receive forgiveness; and 4) whether vicarious or representative forgiveness is possible. Although it is beyond the scope of this paper to explore these challenges,[xx] it is important to stress for the purposes of our analysis that a robust ethic of forgiveness can incorporated into political life.

Historically, legal and political philosophers have ignored the political dimensions of forgiveness. They have done so in the belief that the major moral purpose of the state is justice, conceived in terms of the protection of individual rights. Moreover, political thinkers have also neglected forgiveness because they have viewed it as a private, spiritual ethic. For them forgiveness is an aspect of personal morality to be applied among individuals in their private relationships, but it is not part of political morality. Accordingly, although individual victims can forgive, institutions cannot. Their chief task is the pursuit of justice.

Hannah Arendt was one of the first theorists to explore the potential role of forgiveness in politics. She argued that forgiveness was essential to communal life because it provided a means "to undo the deeds of the past." Although she credited Jesus with the discovery of this ethic, she believed that forgiveness, despite its religious origins, should not be restricted to the spiritual realm.[xxi] More recently, Donald Shriver has argued that forgiveness—which he defines as an interactive process involving moral judgment of

wrongdoing, the avoidance of vengeance, empathy towards offenders, and the renewal of human relationship[xxii]—is a legitimate ethic in domestic and international politics.

Although Shriver's study has greatly encouraged the moral reassessment of the political role of forgiveness, his model has several limitations. First, Shriver fails to confront the inherent tension between justice and forgiveness, punishment and reconciliation. Second, because he presumes that justice and forgiveness are complementary processes, he neglects a distinctive feature of both popular and scholarly conceptions of forgiveness—namely, the cancellation of a deserved penalty.[xxiii] Of course, Shriver omits this dimension of forgiveness precisely because the abrogation of deserved penalties would contravene claims of justice. Accordingly, Shriver's model emphasizes the restoration of relationships through the avoidance of vengeance and the encouragement of empathy, not the mitigation or cancellation of debts.

P. E. Digeser offers another important model of political forgiveness.[xxiv] He conceives forgiveness as involving, among other things: 1) a relationship between two parties (transgressors and victims); 2) a moral or financial debt owed by one party to another; and 3) a party with the authority to relieve an offender of a deserved debt.[xxv] Like Shriver, Digeser does not make remorse or repentance a part of his model. He omits these and other subjective elements because he seeks to develop a theory of political forgiveness based on purposive actions, not human motivations or sentiments. Although forgiveness is commonly viewed as a means to heal victims' anger and resentment, Digeser views forgiveness solely as a purposive human act that leads to the release of debts. He argues that offenders should receive what is their due, but claims, contrary to the conventional wisdom, that retroactive justice is not the only, or even most important, value in public life. On some occasions other

values—such as the promotion of reconciliation and the establishment of domestic peace—may override the claims of corrective justice. As a result, forgiveness in political life may be morally justified under appropriate circumstances.

For Digeser, the major rationale for political forgiveness is that it may help promote peace and reconciliation. Even though forgiveness is not a necessary condition for political reconciliation, he claims that it can greatly contribute to the restoration of communal relationships. In particular, he suggests that political forgiveness can promote both the *process* and the *state* of reconciliation. It can contribute to the process of reconciliation by encouraging the restoration of relationships between transgressors and debtors and by fostering trust and understanding among antagonists. And it can promote reconciliation by creating a framework that, to use Digeser's formulation, "settles the past and opens possibilities for the future."[xxvi]

Since forgiveness qualifies retribution, it is often viewed as a form of cheap reconciliation. But authentic forgiveness is not a means of unilaterally absolving offenders of their culpability but a demanding ethic that makes major demands of both offenders and victims. Indeed, the scarcity of collective forgiveness is due not so much to absolution of offenders' guilt than to the difficulty in fulfilling the demanding preconditions of this political ethic. Using Shriver's sentiment-based model and Digeser's action-based approach, as well as other theological and philosophical resources, I conceive of political forgiveness as an interactive process in which the effects of collective wrongdoing are repaired through truth telling, remorse and repentance, the renunciation of vengeance , and the mitigation or cancellation of a deserved penalty. Below I briefly explore some of these major elements of political forgiveness.

Elements of Political Forgiveness

First, authentic forgiveness requires truth telling. José Zalaquette, a leading Chilean human rights scholar and member of Chile's truth commission, has observed that truth must be an "absolute value" in healing the past.[xxvii] This means that major collective offenses must be discovered, disclosed publicly, and acknowledged officially. The acknowledgement of wrongdoing is especially difficult because while antagonists might agree about the facts of the past, they are unlikely to agree about causes and context giving rise to the offenses. Truth commissions, which have been a major source of truth telling in the past two decades, are well equipped to uncover factual truth, such as the fate of missing victims. They have been much less effective, however, in generating narrative truth—that is, providing an authoritative account of the causes and responsibility for past collective wrongdoing. Since the acknowledgement of culpability is the foundation of forgiveness, genuine reconciliation is unlikely to occur without consensus about past crimes.

A second requirement for collective forgiveness is the expression of remorse. While forgiveness can be undertaken without offenders' apologies and repentance, contrition greatly facilitates the healing of relationships by fostering vulnerability and restoring mutual trust. Pope John Paul II illustrated the role of public confession powerfully in 2002, when he apologized for some of the major institutional sins of the church. Some of the offenses for which he repented included the Crusades, the Inquisition, forced evangelism, and the persecution of Jews. In a similar way the U.S. government expressed its regret to all living Japanese-Americans forcibly interned during World War II. This remorse was publicly announced and expressed through individual letters to each of the victims. Additionally, to authenticate the remorse each victim received financial reparations of roughly $10,000. It is

important to stress, however, that in public life, wrongdoing is seldom a one-sided affair. This is why Alexander Solzhenitzyn argues that mutual repentance is essential in politics, especially in overcoming intractable political conflict. In his view, mutual repentance is the chief way to open the path to the building of new relationships.[xxviii]

A third key element of forgiveness is mutual empathy. This means that enemies must treat each other with dignity and respect despite past offenses. It means that antagonists, but especially those who have suffered injustice, must follow St. Augustine's admonition to hate the sin and love the sinner. This is especially difficult since the natural inclination is to retaliate for past offenses. But vengeance does not lead to healing or to justice. On the contrary, it perpetuates enmity and distrust, creating a breeding ground for future violence. If the cycle of violence is to be halted, leaders must help create the public space where empathy can be nurtured. When he became president of Czechoslovakia, Václav Havel sought to nurture empathy by reminding his fellow citizens that everyone was morally responsible for the contaminated moral environment. While it may have been easy to blame Communist activists for the problems of Czech society, Hável reminded his audience that "none of us is just its victim; we are also its cocreators."[xxix]

A fourth requirement is the mitigation of a justified penalty or punishment. Although forgiveness does not demand the abrogation of all punishment, debt-reduction is generally a byproduct of the forgiveness process in which victims or their agents respond with compassion to offenders' admission of culpability and expressions of remorse. Since public order is maintained in most states through an established criminal justice system rooted in law, the lifting of debts presents one of the major challenges in applying forgiveness to political life. This is especially the case if one conceives of justice in retributive terms. But

if one applies a restorative justice paradigm –one that gives priority to the healing of relationships and communal bonds and de-emphasizes individual retribution—the lifting of debts need not be seen as a form of cheap reconciliation.

During the past several years, I have carried out a research project on political forgiveness, and have interviewed numerous victims and offenders in several countries. Regrettably, I have found little encouragement for political forgiveness among them. The victims that I have interviewed have seemed more interested in truth telling and legal accountability than in reconciliation. And because some people have benefited politically from victimhood, some of them have been reluctant to lose their status as victims. For their part, perpetrators, while acknowledging regret in using overt and covert violence in suppressing domestic political conflict, have remained convinced of the legitimacy of their actions. They, too, have remained interested in the past—in having others view their offenses as necessary, even if the methods were morally offensive. But it was precisely this finding that encouraged my investigation and reinforced my belief that legalism and denial were inadequate approaches for reckoning with past regime offenses. Indeed, I came to believe that if political restoration and the moral renewal of society is desired, then antagonists bust be prepared to forgive one another. I think Desmond Tutu, the chairman of South Africa's Truth and Reconciliation Commission, has captured the priority of this ethic when he suggests that, "there is no future without forgiveness."[xxx]

Christianity and Political Forgiveness

One of the first major efforts to extend Christian forgiveness to politics was carried out by Pope Benedict XV at the end of World War I. In his encyclical "On Peace and Christian Reconciliation," promulgated on May 23, 1920, Benedict called attention to the

need to transform the latent hostility and enmity among former enemies through Christian love and charity. In his message, the Pope exhorted Christians suffering from the evils and injustices of the war "to clear their hearts of bitterness and give place to mutual love and concord." Using Christ's love as a model, he challenged believers to forgive enemies, especially those who have "knowingly or unknowingly" heaped "every sort of vituperation" on people and their work.[xxxi] Most importantly, the Pope challenged the prevalent view of forgiveness and reconciliation as private virtues. Instead he called for their application in political affairs. Foreshadowing recent scholarship on forgiveness, Benedict boldly declared that that Gospel did not provide "one law of charity for individuals and another for States and nations." Rather, personal and political ethics are woven from the same moral fabric. In short, contrary to conventional wisdom, the Pope asserts that the Christian ethic of forgiveness is applicable both to persons and collectives.

More recently, Pope John Paul II has repeatedly stressed the imperative of interpersonal and political reconciliation. As he has frequently noted, forgiveness and reconciliation are not inimical to justice but rather are essential components of stable, peaceful, and just societies. This is especially the case in deeply divided societies where enmity continues to linger. This is why Pope John Paul II has claimed that forgiveness is essential in building stable, just societies. In his 2002 message on the World Day of Peace, the Pope stated that,

> "Society too is absolutely in need of forgiveness. Families, groups, societies, States and the international community itself need forgiveness in order to renew ties that have been sundered, go beyond sterile situations of mutual condemnation and overcome the

> temptation to discriminate against others without appeal. The ability to forgive lies at the very basis of the idea of a future society marked by justice and solidarity."[xxxii]

The Christian religion has frequently been used to champion human dignity and liberation from oppression. Although it is appropriate for believers to demand human rights and liberation from political oppression, it is also important to remember that Christianity is concerned with the restoration of interpersonal and communal relationships. Consequently, the Christian faith should not be used solely as an instrument to secure and protect individual rights but also as a call to the healing of social relationships and the restoration of political trust. Indeed, to the extent that interpersonal reconciliation is important for believers, it can be argued that Christianity is a religion that gives prominence to the pursuit of a just peace (*shalom*). Indeed, Theologian Miroslav Volf has argued persuasively that the healing of interpersonal and collective relationships presupposes a commitment to communal bonds—or what he terms "embrace."[xxxiii] When conflicts are defined in terms of "we" and "them," and when antagonists demand strict justice as a precondition for the reparation of social bonds, the healing of relationships can be impaired.

Pursuing Reconciliation Through Restorative Justice

Since retributivism demands legal accountability for past offenses, it is opposed to the mitigation of punishment that is associated with political forgiveness. How then should governments pursue justice and reconciliation, legal accountability and the political healing of relationships? Given the inherent limits of retribution in transitional societies, a growing number of scholars and public officials have emphasized an alternative approach known as <u>restorative justice</u>. Unlike legal retribution, which is concerned with punishment and the maintenance of a credible justice system, the aim of restorative justice is to repair broken

relationships and to heal the wounds of victims and offenders alike. Whereas retribution focuses primarily on objective wrongdoing, restorative justice emphasizes the transformation of subjective factors that impair community, such as anger, resentment, and the desire for vengeance. Moreover, while retribution emphasizes legal accountability through prosecution and punishment of crime, restorative justice is a forward-looking approach that focuses on the healing of victims and offenders and the restoration of communal relationships.

A distinctive feature of the restorative justice paradigm is its broad, communal understanding of victimhood. Instead of focusing solely on primary victims of wrongdoing, restorative justice focuses on a crime's communal impact. As a result the restorative approach regards crime and injustice against individual victims but also against society itself. Since politically-motivated crimes affect not only individual victims but also wound the soul of an entire community, suffering is individual and communal, involving victims of discrimination, torture, and violence but also the perpetrators themselves who suffer from guilt. Because atrocities and systemic violence are likely to involve wounds that are deep and multifaceted, healing will depend upon a variety of practices, including truth telling, public apologies, spiritual renewal, economic reparations, moral reformation, legal action, political reconciliation, and the like.

Since restorative justice is still being developed and refined, scholars and practitioners emphasize different dimensions of the paradigm. Tony Marshall, for example, defines the restorative approach as "a process whereby parties with a stake in a specific offense resolve collectively how to deal with the aftermath of the offence and its implications for the future."[xxxiv] Daniel Van Ness, by contrast, conceives of restorative justice in terms of three features: 1) crime is an offense to victims and their communities, 2) crime affects

interpersonal relationships and imposes financial obligations on offenders, and 3) the response to criminal offenses requires participation by all relevant actors.[xxxv] Political scientist Elizabeth Kiss, who assesses this paradigm from the perspective of regime accountability, conceives of restorative justice as characterized by four core principles. They are: 1) the restoration of human dignity to victims, 2) legal accountability for offenders so that they are aware of the harm resulting from their offense, 3) the promotion of institutional safeguards that assure the future protection of human rights, and 4) the promotion of reconciliation.[xxxvi] Finally, in a study prepared for the Law Commission of Canada, Dennis Cooley views restorative justice as a paradigm characterized by three norms: 1) crime is a violation of relationships among victims, offenders and the community, 2) the restoration of relationships must involve victims, offenders and community members, and 3) the quest for justice is best pursued through consensus rather than through a legal adversarial process, as is normally the case in Western criminal justice systems.[xxxvii]

In light of these different perspectives, the restorative paradigm can be conceived as an approach to justice that gives precedence to the healing of victims and offenders and the restoration of communal relationships. Whereas the retributive model seeks to redress wrongdoing through legal accountability and punishment, the restorative approach emphasizes the healing of individuals through the discovery, disclosure and acknowledgement of truth. If healing is to occur, offenders must acknowledge culpability and express remorse for the injuries that they have caused. For their part, offenders must develop the moral courage to oppose vengeance and seek healing through forgiveness. Only then are victims likely to be released from the anger and resentment, which is a natural byproduct of the suffering of injustice.

If reconciliation is to occur, both offenders and victims must be released from the captivity to the past, while acknowledging the humanity of each other. While truth telling may facilitate the restoration of political community, the discovery and disclosure about past offenses need not lead to reconciliation. If healing is to occur, offenders must acknowledge guilt and express remorse, while victims must be able to distinguish the evil deeds from the persons that committed such actions—that is, to separate the sin from the sinner. While the restorative model is potentially applicable to regime crimes, its application to former regimes is especially problematic when confronting widespread atrocities committed by a former regime.

It is important to stress that restorative justice is not a form of easy reconciliation. It takes both individual crime and the rupturing of relationships seriously. It confronts the past by demanding truth telling and accountability based upon the full disclosure of wrongdoing. But rather than redressing crimes through punishment, restorative justice focuses on the restoration of broken relationships as an integral element of social and political justice. The wisdom of pursuing a forward-looking strategy of reconstruction and renewal is powerfully illustrated by President Abraham Lincoln's approach to the healing and restoration of American society in the aftermath of Civil War. For Lincoln, the great challenge in confronting the legacy of slavery and the resulting enmity and distrust from the bitter and costly war was to pursue a forward-looking strategy that would heal the nation's wounds. Lincoln's aim was not to pursue legal justice but to overcome the enmity among antagonists.

Lincoln set forth elements of his strategy in both the Gettysburg Address in November 1863 and in his subsequent Proclamation of Amnesty and Reconstruction one

month later. In his address at the Gettysburg battlefield Lincoln called on the American people to rededicate themselves to the ongoing task of advancing a free and equal society. After paying tribute to those who had given their lives so that "the nation might live," Lincoln challenged citizens to dedicate themselves to the task of building a free society so that "these dead shall not have died in vain." And in his amnesty proclamation, Lincoln promised a conditional amnesty to those who had fought against the Union, provided they signed a loyalty oath, abided by the government's wartime policies, and accepted the government policies about slavery.

It is important to stress that political reconciliation is not about the heart or about motivations but about deeds. The point of politics is to make and sustain stable, productive, and humane societies. In promoting reconciliation through restorative justice, what is essential in political healing are deeds, not theories or paradigms. Several years ago I had a conversation with a former ANC guerrilla commander who had been implicated in major violence in the Pretoria/Johannesburg area. After the democratic transition he had been given a senior administrative post within the South African police force, overseeing a large department comprised of former enemies—ANC guerrilla operatives as well as state security agents. Although many of these anti-government operatives and military and police officers had formerly fought each other in a low-intensity war, they now worked together in providing law and order to the new multi-racial nation. When I asked how his personnel had overcome their enmity and alienation, he indicated that professional cooperation had contributed to reconciliation. "We don't talk about integration or discuss reconciliation; we simply do it," he said. "My people have an important mission to do, and in carrying out

shared tasks, past antagonisms are pushed aside since they have no bearing on our mission."[xxxviii]

Although I have stressed the desirability of an alternative paradigm of justice, the key in healing past collective wounds is to carry out the work of reconciliation. This task is movingly expressed by President Lincoln in his second inaugural in which he said: "With malice toward none, with charity for all, with firmness in the right as God gives us to see the right, let us strive on to finish the work we are in, to bind the nation's wounds, to care for him who shall have borne the battle and for his widow and his orphan, to do all which may achieve and cherish a just and lasting peace among ourselves and with all nations." Thus, in promoting human rights in deeply divided societies, it is not enough to seek legal retribution of past offenses. Rather, leaders must pursue the morally courageous task of binding the wounds of past conflicts.

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[i] Walter Wink, When the Powers Fall: Reconciliation in the Healing of Nations (Minneapolis: Fortress Press, 1998), p. 54.

[ii] The literature on transitional justice is extensive. The best general introduction to this topic is Neil J. Kritz, ed., Transitional Justice: How Emerging Democracies Reckon with Former Regimes (Washington, D.C.: U.S. Institute of Peace Press, 1995). Volume deals with general themes, while volumes II and II explore country studies and relevant laws, ruling and reports, respectively.

[iii] According to Bass, trials are regarded as the most effective response to collective crimes for several reasons, including: 1) a belief that legal accountability helps to purge regimes from leaders who might impair the consolidation of democratic government; 2) a belief that punishment will deter future criminal wrongdoing; 3) the idea that legal accountability can help rehabilitate states by restoring credibility to the rule of law; 4) the belief that the individualization of culpability is necessary for justice; and 5) the belief that knowledge of the truth about collective wrongdoing is conducive to the social and political health of political communities. While Bass argues that each of these claims is plausible, none, in his view, has been fully corroborated by twentieth century history. Indeed, he claims that only the fifth claim on truth telling is fully convincing. See Gary Jonathan Bass, Stay the Hand of Vengeance: The Politics of War Crimes Tribunals (Princeton: Princeton University Press, 2000), pp. 286-310.

[iv] Jean Hampton, "The Retributive Idea," in Forgiveness and Mercy, ed. Jeffrie G. Murphy and Jean Hampton (Cambridge: Cambridge University Press, 1988), p. 143.

[v] David A. Crocker, "Retribution and Reconciliation," Report from the Institute for Philosophy & Public Policy 20 (Winter/Spring 2000), p. 6.

[vi] Amy Gutmann and Dennis Thompson, "The Moral Foundations of Truth Commissions" in Robert I. Rotberg and Dennis Thompson, eds., Truth v. Justice: The Morality of Truth Commissions (Princeton: Princeton University Press, 2000), pp. 35-36.

[vii] Timothy Garton Ash, "True Confessions," The New York Review of Books, July 17, 1997, p. 37.

[viii] Quoted in Bass, Stay the Hand of Vengeance, p. 284.

[ix] Bass, Stay the Hand of Vengeance, p. 295.

[x] See Mark Amstutz, The Healing of Nations: The Promise and Limits of Political Forgiveness (Boulder: Rowman & Littlefied, 2004), chap. 5.

[xi] This anomalous situation was illustrated by the German government's prosecution of former public officials of East Germany (GDR). Not surprisingly, the first trials in the early 1990s were carried out against border guards, while failing to indict the vast majority of senior leaders of the GDR. In the end, a number of senior officials were prosecuted, including Egon Krenz, the state's last communist leader, who was sentenced for his part in the "shoot to kill" policy. And when the German government sought to prosecute Erich Mielke, the head of GDR's state security (Stasi), it did so for his alleged role in the 1931 murder of two policemen! See Tina Rosenberg, The Haunted Land: Facing Europe's Ghosts After Communism (New York: Vintage Books, 1995), pp. 333-335.

[xii] Bruce Ackerman, The Future of Liberal Revolution (New Haven: Yale University Press, 1992), p. 72.

[xiii] Jaime Malamud-Goti, Game Without End: State Terror and the Politics of Justice (Norman: University of Oklahoma Press, 1996), pp. 184-188.

[xiv] Pope John Paul II, "No Peace Without Justice, No Justice Without Forgiveness."

[xv] Quoted in Alex Boraine, A Country Unmasked: Inside South Africa's Truth and Reconciliation Commission (Oxford: Oxford University Press, 2000), p. 398.

[xvi] Avishai Margalit, The Ethics of Memory (Cambridge: Harvard University Press, 2003), p. 202.

[xvii] While reconciliation is the ultimate goal of forgiveness, partial forgiveness can take place without the restoration of communal relationships. Such forgiveness occurs when offenders' debts are released and victims' anger is healed without necessarily repairing the broken human relationships.

[xviii] For a development of this theme, see Miroslav Volf, Exclusion and Embrace: A Theological Exploration of Identity, Otherness, and Reconciliation (Nashville: Abingdon Press, 1996), p.159.

[xix] According to David Little, the parable has five distinct elements: 1) a transaction between two or more persons, 2) a shared acknowledgement between and offender and victim about a) the culpability for wrongdoing and b) the need for an appropriate punishment, 3) contrition and repentance by the offender, 4) a merciful response by the victim, including the annulment of 2b, and 5) the obligation of the forgiven offender to forgive others. See David Little, "A Different Kind of Justice: Dealing with Human Rights Violations in Transitional Societies," Ethics & International Affairs 13 (1999), p. 71.

[xx] For a discussion of some of these methodological challenges, see Amstutz, The Healing of Nations, pp. 79-86.

[xxi] Hannah Arendt, The Human Condition (Chicago: University of Chicago Press, 1958), pp. 236-243.

[xxii] Donald W. Shriver, Jr., An Ethic for Enemies: Forgiveness in Politics (New York: Oxford University Press, 1995), pp. 6-8 and 30-32.

[xxiii] Webster's Dictionary, for example, defines forgiveness as a) the giving up of resentment, b) the giving up of a claim to requital, and c) the granting of relief from payment.

[xxiv] P. E. Digeser, Political Forgiveness (Ithaca: Cornell University Press, 2001).

[xxv] Digeser, pp. 20 and 35. In addition to these three elements, Digeser's model of forgiveness includes four other features: forgiveness must be conveyed explicitly and directly to debtors by persons competent to offer it, motives and feelings must be disregarded in the act of forgiveness, moral reasons must be given for not pursuing punishment, and forgiveness may lead to the restoration of relationships among antagonists.

[xxvi] Digeser, pp. 20-21.

[xxvii] José Zalaquette, "Truth, Justice, and Reconciliation: Lessons for the International Community," in Cynthia J. Arnson, ed., Comparative Peace Processes in Latin America (Stanford: Stanford University Press, 1999), p. 348.

[xxviii] Alexander Solzhenitzyn, "Repentance and Self-Limitation in the Life of Nations," in Alexander Solzhenitzyn et al., ed., From Under the Rubble (Boston: Little, Brown, 1974), pp. 133-34.

[xxix] Václav Havel, The Art of the Impossible: Politics as Morality in Practice (New York: Fromm International, 1997), p. 4.

[xxx] Desmond Tutu, No Future Without Forgiveness (New York: Doubleday, 1999).

[xxxi] Pope Benedict XV, "On Peace and Christian Reconciliation," Encyclical promulgated on 23 May 1920.

[xxxii] Pope John Paul II, "No Peace Without Justice, No Justice Without Forgiveness," Message for the Celebration of the World Day of Peace, 1 January 2002.

[xxxiii] Volf, Exclusion and Embrace, chap. 3.

[xxxiv] Tony F. Marshall, "Restorative Justice: An Overview," Center for Restorative Justice & Peacemaking, University of Minnesota, January 2000, p. 1.

[xxxv] Daniel Van Ness, "Restorative Justice," Burt Galaway and Joe Hudson, eds., Criminal Justice, Restitution, and Reconciliation (Monsey, N.Y.: Criminal Justice Press, 1990), p. 10.

[xxxvi] Elizabeth Kiss, "Moral Ambition Within and Beyond Political Constraints; Reflections on Restorative Justice," in Robert I. Rotberg and Dennis Thompson, eds., Truth v. Justice: The Morality of Truth Commissions (Princeton: Princeton University Press, 2000), p. 44.

[xxxvii] Law Commission of Canada, "From Restorative Justice to Transformative Justice: Discussion Paper," 1999. See www.lcc.gc.ca/en/themes/sr/rj/2000/paper.html

[xxxviii] Interview with senior law enforcement officer in Pretoria, South Africa. May 2001.