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## No Future Without (Personal) Forgiveness: Reexamining the Role of Forgiveness in Transitional Justice

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*No Future without (Personal) Forgiveness:  
Re-examining the Role of Forgiveness in Transitional Justice*

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**John D. Inazu**

Stories of personal forgiveness are powerful. They are also startling and uncomfortable. You asked a court for mercy on behalf of the terrorist who killed your child?<sup>1</sup> You started a foundation to help the young men who murdered your daughter?<sup>2</sup> You share meals with the person who hacked to death your husband and children?<sup>3</sup> Many of us are incredulous about such acts. Some of us are even roused to moral indignation on behalf of the silenced victim or perhaps rattled by the loss of an abstract “justice” that seems sacrificed by this kind of forgiveness. Yet these acts happen and can inspire other such acts within a community. When they do, they have the potential to implicate, challenge, and move the politics of the community.

This article is about the political possibilities of personal forgiveness and specifically, its role in transitional justice. There are, of course, some who reject the political utility of forgiveness, and still others who find immoral the very notion of forgiving a wrongdoer of grievous injustice (Wiesenthal 1997). However, stories of personal forgiveness in the well-known South African Truth and Reconciliation Commission (TRC) contest these critical views and ought to leave us conceptually open to “the capacity of forgiveness to realize hopes that transcend the expectations of the most optimistic political realist” (Torrance 2006, 45).

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<sup>1</sup>Bud Welch’s twenty-three year old daughter died in the bombing of the Murrah Federal Building in Oklahoma City in April 1995. Motivated by a desire to forgive and rid himself of his own hate and bitterness, Welch lobbied publicly against the execution of Timothy McVeigh and even traveled to meet McVeigh’s father and sister. Welch’s personal reflections on the meeting reveal the depth of his compassion for the McVeigh family and his forgiveness of McVeigh. Bud Welch’s story is one of many compiled through The Forgiveness Project.

<sup>2</sup>Angry South African youth stoned and stabbed to death Fulbright scholar Amy Biehl in August 1993. Peter and Linda Biehl attended the amnesty hearings for Amy’s killers and supported the process of reconciliation. They established the Amy Biehl Foundation to help young people in the township where their daughter was murdered (Tutu 1999).

<sup>3</sup>Fourteen years after Jean-Bosco Bizimana participated in a Hutu militia that hacked and clubbed to death Iphigenia Mukantabana’s husband and five of her children during the Rwandan genocide, Mukantabana now shares meals with Bizimana and his wife (Amanpour 2008).

In contrast to others who have written on the subject of forgiveness in transitional justice, I focus on personal forgiveness. Personal forgiveness is extended by a single victim who has been harmed by a wrongdoer. The victim forgives only that harm which has been done to him or her. Personal forgiveness is distinguishable from three other forms of forgiveness: group forgiveness, legal forgiveness and political forgiveness. Group forgiveness is offered by a group or its designated representative for a wrong that the group has suffered. A group might be a formally designated entity like a corporation or a state, or it might be a less structured aggregation of people with shared attributes like race, gender or ethnicity. Group forgiveness corresponds only to harm suffered by the group itself. For reasons that I will later explain, gestures of forgiveness ostensibly extended by a group or its designated representative on behalf of individual members are unhelpful to the practical workings of forgiveness in transitional justice. Legal forgiveness is a special case of group forgiveness that can only be extended by the state (the state might also be capable of extending non-legal forms of group forgiveness). Legal forgiveness is the state's *cancellation* of an outstanding debt that it is owed. It is closely related to legal justice (which is the *satisfaction* of a debt owed to the state). One of the most familiar forms of legal justice is criminal justice which, when it is successfully enforced against a wrongdoer, satisfies the wrongdoer's "debt to society" for his or her breach of its laws. The state's decision to forgo criminal justice is a form of legal forgiveness, but as will become evident later, this kind of forgiveness is seldom relevant to situations of transitional justice. Political forgiveness is a rare phenomenon that happens when multiple acts of personal forgiveness occurring within the same community are aggregated under a shared narrative. On this definition, political forgiveness is always constituted by individual acts of personal forgiveness. I argue that broader notions of political forgiveness elsewhere in the literature that

link political forgiveness to group forgiveness or legal forgiveness obscure the role of personal forgiveness in transitional justice.

In the context of transitional justice, it is my contention that: (1) Personal forgiveness is a necessary but not sufficient condition for political forgiveness. (2) Group forgiveness, while not without a normative function, cannot effectuate either personal or political forgiveness, and (3) political forgiveness requires a shared narrative framework. These assertions lead to two further observations. First, because the state has a normative role in its (limited) capacity to forgive on its own behalf and a practical role in its ability to spread and to transmit a shared narrative framework, the state is an important actor in political forgiveness. Second, because the best known example of political forgiveness in transitional justice unfolded within the explicitly Christian theological framework of the South African TRC, it may be that this shared narrative needs to be religious or even Christian in nature. I now turn to an exploration of personal forgiveness which serves as the foundation upon which each of my three primary claims is built. Later, I proceed to considerations of group forgiveness (including the special case of legal forgiveness) and political forgiveness. I conclude by exploring the role of a shared narrative in political forgiveness and the ways in which the state and (possibly) Christian theology underlie and contribute to that narrative.

### **Personal Forgiveness**

Modern reflection on the role of personal forgiveness in politics owes much to Arendt's brief but important discussion in *The Human Condition*. Arendt pointed to the "faculty of forgiving" as the exclusive remedy against the "predicament of irreversibility" of action (1998, 237). Forgiveness in some ways makes politics possible because "[w]ithout being forgiven,

released from the consequences of what we have done, our capacity to act would, as it were, be confined to one single deed from which we could never recover; we would remain the victims of its consequences forever” (1998, 237). Arendt’s conception of forgiveness is implicitly one of personal forgiveness. There is every indication that “the one who forgives” and “the one who is forgiven” in the “human condition” are individual human beings (1998, 241). Following Arendt, I emphasize the ways in which the political is rooted in the personal. I suggest that the political possibilities of personal forgiveness emerge from its nonviolent, infinite and communal characteristics.

#### *Personal Forgiveness is a Nonviolent Act*

When a victim forgives a wrongdoer, the violence wrought by the wrongful deed is not reciprocated, and in this way, forgiveness is an essentially nonviolent act. The same is not true of legal justice which, though it improves upon individual retribution or “vigilante” justice, fails to act non-violently and thus perpetuates the cycle of violence begun by the initial wrongful act.<sup>4</sup> In legal justice, criminal trials enact violence against defendants and witnesses who are coerced to testify.<sup>5</sup> In cases of innocent defendants and witnesses, trials not only perpetuate the cycle of violence but also extend it outward by creating new forms of violence and new victims (manifested most grossly when due process is violated or when innocent defendants are wrongfully convicted and punished). Even punishment of guilty defendants enacts more violence.<sup>6</sup>

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<sup>4</sup>On the inherent violence of the law, see Cover (1986).

<sup>5</sup>The trial process exacts “time and agony” and renders “a kind of punishment” for defendants (Minow 1998, 26).

<sup>6</sup>In addition to the violence that lies behind a coercive sanction, there is another sense in which conviction and punishment of the guilty may not end the cycle of violence. Judges exercise power through contingent political arrangements. If those arrangements are one day overturned, then wrongdoers exonerated under a new regime might repay the vengeance exacted under the old with their own retribution on those who had passed judgment in their trial.

Forgiveness breaks the cycle of violence by avoiding the collateral acts of violence inevitably caused by the administration of legal justice. A wrongdoer who receives personal forgiveness from his victims and legal forgiveness from the state begins with a “clean slate.” In a sense, this comes at the cost of “justice.” As theologian Miroslav Volf notes:

Forgiveness is more than just the overcoming of anger and resentment. It always entails forgoing a rightful claim against someone who has in some way harmed or offended us. Such forgoing of a rightful claim makes forgiveness unjust and precisely thereby prevents forgiveness from falling outside the concern for justice (2001, 38).

Yet the unjustness to which Volf refers is not confined to forgiveness. In fact, no response to wrongdoing can ever be fully just because the harm caused by a wrongful act is not “the mere absence or negation of justice” (Yack 1999, 1104). No punishment fully restores justice to a relationship harmed by a wrongful act. If punishment truly restored justice, then the moral onus would shift to the victim to forgive. Forgiveness as a gift would become forgiveness as a moral duty. The victim who failed to forgive following the administration of justice would be morally culpable.

The restoration of justice is also beyond reach because restitution, at best, only approximates that which has been lost. This is readily apparent in compensation offered for injury or death, but it is also true of restitution in cases involving less obvious forms of violence. If A steals B’s widget, the law’s enforcement of A’s return of the widget to B leaves unaddressed any emotional or psychological harm that B experienced by A having stolen the widget. Even if B were unaware of the theft until after the widget had been returned, A’s action violated the trust

between A and B.<sup>7</sup> Restitution can compensate for material loss but cannot restore damaged relationships.<sup>8</sup> Only forgiveness can release the relational debt incurred by the wrongdoer.

### *Personal Forgiveness is an Infinite Act*

Because the harm caused by the wrongdoer cannot be undone, every act of forgiveness erases an otherwise unpayable debt and in this sense is of infinite value. This claim modifies Derrida's aphorism that "forgiveness forgives only the unforgivable" (Derrida 2001, 32). Summarizing Derrida, Verdeja writes that "[c]ontrary to more quotidian transgressions, crimes against humanity and other similarly radical evils strain not only the juridical concepts of responsibility and punishment but also the moral faculties of forgiveness and redemption" (2004, 25). But what about any act of violence is quotidian? The "predicament of irreversibility" that Arendt identified is present in *every* culpable act of violence.<sup>9</sup> Indeed, from the perspective of victims who may be asked to forgive a wrongdoer for serious injury or the death of a loved one, even negligent acts remain abhorrent, irreparable and "unforgivable" in the sense that Derrida suggests.

This is not to discount the magnitude of mass atrocities whose evil exceeds our capacity to comprehend, but behind the shocking statistics that make these acts so inconceivable lie the stories of individual victims. For surviving victims, the cost of forgiving wrongdoers rests in an individualized loss and violation. On this personal level, there is little gained by weighing the gravity of harm from one situation to another. Violence has been done and cannot be undone; it

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<sup>7</sup>The violation of trust would be least relevant if A and B were strangers and never saw each other again, but the harm to B may still be evident if B's subsequent view of others who share similarities (*e.g.*, race, gender, age, income level or vocation) with A changes as a result of the theft.

<sup>8</sup>Tort remedies for pain and suffering or emotional harm are at best symbolic approximations for the measure of those harms.

<sup>9</sup>Violent acts include acts resulting in emotional rather than physical harm. Emotional harm can be caused to friends and to relatives of victims of physical violence as well as through direct acts (*e.g.*, threatening to kill a relative during an interrogation).



can only be forgiven, and precisely because there is no way to quantify what cannot be undone, every act of forgiveness that releases a wrongdoer from culpability *vis-à-vis* the person extending forgiveness takes on an infinite characteristic. In this sense, the power of personal forgiveness may be the most God-like power we possess.

### *Personal Forgiveness is a Communal Act*

Personal forgiveness, particularly in the context of transitional justice, is usually neither *private* nor *individual*. Although it is possible for a person to forgive without speaking about the act to anyone else, personal forgiveness is usually shared with others. In cases of transitional justice, personal forgiveness can be made public when it is expressed within an official setting (as when individuals shared their willingness to forgive during testimony to the South African TRC) or when publicized by the media. These public expressions reinforce the idea that personal forgiveness and the wrongdoing that precipitated it rarely occur within a single human interaction. The communitarian critique of liberal atomism that insists on the interconnectedness of people is a helpful reminder of the inseparable relatedness of suffered wrongs (Sandel 1996). This relatedness suggests that more than one human interaction is affected by a wrongful act which means that more than one person has the possibility of extending forgiveness.

Characterizing personal forgiveness as nonviolent, infinite and communal points towards its political possibilities. Other responses to wrongdoing may be either ontologically or practically constrained in ways that personal forgiveness is not. I have suggested above that this is the case with legal justice. It is also true of a form of forgiveness commonly invoked in the literature on transitional justice, namely group forgiveness.

## Group Forgiveness

Practitioners and commentators who refer to the role of group forgiveness in the process of transitional justice usually have in mind the idea of one side of a conflict or divide forgiving the other side. In my view, this concept of group forgiveness lacks both coherence and political efficacy. In this section, I explain my critique by examining some of the explanations of group forgiveness set forth in the literature. I then turn to a specific kind of group forgiveness, legal forgiveness, and suggest why it also is of limited utility in transitional justice.

### *The Limits of Group Forgiveness*

An initial question to examine in considering the possibility of group forgiveness is the nature of what the group is asked to forgive. Most reflections about forgiveness deny the possibility that one person or entity can forgive on behalf of another. Minow, for example, contends that “[e]ven an individual survivor who chooses to forgive cannot, properly, forgive in the name of other victims” (Minow 1998, 17). Wiesenthal argues that “forgiveness is an act of volition, and only the sufferer is qualified to make the decision” to forgive (Wiesenthal 1997, 98). According to Jewish theology, not even God can forgive on behalf of victims.<sup>10</sup> Christian theology, in contrast, asserts that the death of Jesus forgives wrongdoing on behalf of others.<sup>11</sup> Christianity, however, still leaves room for (and in some sense requires) victims to forgive, and it does not convey to anyone but Jesus the authority to forgive on behalf of victims.<sup>12</sup> Accordingly, each of these philosophical and theological perspectives denies the possibility of one person or entity extending forgiveness on behalf of another (with the exception in the Christian tradition of

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<sup>10</sup>See Levinas (1990) and Heschel’s response in Wiesenthal (1990).

<sup>11</sup>Christianity locates the breaking of the cycle of violence in the sacrifice of Jesus, not in individual human acts, see Volf (2001).

<sup>12</sup>The command to forgive is repeated throughout the New Testament. See Matthew 6:14-15, Mark 11:35 and Ephesians 4:32.

Jesus). If this is the case, then a group cannot grant forgiveness unless it, as an entity ontologically distinct from the members that comprise it, has suffered harm. This limitation is more constraining than is often acknowledged.

Govier explores the standing necessary for a group to forgive based on its capacity to be harmed. She argues (2002, 95) that “[a] group may be morally entitled to forgive in virtue of the harms done to secondary and tertiary victims” especially in cases in which primary victims have all been killed. Govier defines primary victims as persons against whom violence is directly enacted, secondary victims as the friends and relatives of primary victims and tertiary victims as the members of a group or nation when a political, religious or intellectual leader is killed. Yet the fact that secondary or tertiary victims have been harmed in a way distinct from primary victims is no reason to impute their harm to a group or bestow upon the group the moral authority to forgive. Groups can set a normative agenda and embrace a “spirit of forgiveness,” but they can only encourage, not effectuate, personal forgiveness.

It is also important to distinguish between group forgiveness and group repentance. Shriver confuses these concepts when he refers to the “representative role of politicians in the enactment of a political form of forgiveness” (1995, 113). He suggests that:

Whether leaders accuse an enemy of crime, confess to crimes of their own people, or hold out hopes for a future reconciliation, they do all of this on behalf of one collective in addressing another. To deny this representative, symbolic role to politicians is to impoverish their service to a society’s dealing with its past wrongs and its present corrective responsibility to the future (1995, 113).

The “representative, symbolic role” that Shriver imputes to politicians on behalf of groups is confined entirely to repentance. Repentance, on behalf of a group, is not novel, and I have no

objection to its possibility.<sup>13</sup> However, the capacity to forgive typically only exists on a personal level.<sup>14</sup>

There is a limited sense in which a group can forgive. Govier briefly alludes to this when she refers to forgiveness of a “collective harm” that occurs when “collective resources such as land, buildings and cultural artefacts are damaged or destroyed” (2002, 89). We might call this form of group forgiveness *official* forgiveness. It may also extend to harm caused to people in a group because people, no less than objects, can be seen as being part of the collective resources of a community. When a member of a community is killed or incapacitated, the community is left without the skills, contributions and personality of that member and in this sense is bereft of a collective resource. Yet it is possible and perhaps likely that individual members of the group will also have suffered harm from the same action that harmed the group. This individualized harm cannot be resolved by group forgiveness. An individual will continue to feel wronged by the action unless and until she decides to forgive or becomes convinced that a wrongdoer has satisfied an appropriate level of justice.

### **Legal Forgiveness**

One sense in which the collective resources of a group may be harmed is when a wrongdoer violates a group’s established norms and thus threatens the group’s order and stability. Because the group itself has been harmed, it may have the capacity to forgive the violation of its norms. When the group in question is a state whose authority is backed through the coercive enforcement of law, it can extend legal forgiveness.

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<sup>13</sup>For example, the Hebrew Scriptures record a number of examples of individuals repenting on behalf of the Israelites (e.g., Exodus 32:31-32, Nehemiah 1: 6-7 and Daniel 9: 4-19).

<sup>14</sup>For a contrary view, see Amstutz (2005, 225).

Legal forgiveness is the state's cancelation of a debt that it is owed. Its purest forms are a pardon which exempts from punishment a criminal act without exonerating the wrongdoer of a crime and debt forgiveness which releases an outstanding financial obligation. The related concepts of immunity and amnesty are not pure forms of legal forgiveness because they do not involve an official recognition by the state that a debt is owed. Instead, the state decides not to prosecute a wrongdoer based on other interests. In this sense, the release from potential punishment is more akin to a mutually beneficial agreement than a unilateral act of forgiveness, as when the state grants immunity to a criminal defendant in order to solicit testimony from that person against another defendant. However because the state usually presumes an act of wrongdoing in both immunity and amnesty, I treat both as forms of legal forgiveness.<sup>15</sup>

Legal forgiveness differs from other forms of forgiveness because the status that it restores to a wrongdoer is enforceable by the state's coercive power. Among other things, this means that the state may grant legal forgiveness without the consent of a victim.<sup>16</sup> In so doing, the state reconfigures the moral calculus by negating any enforceable retributive claims by the victim against the wrongdoer.<sup>17</sup> Yet this aspect of legal forgiveness differs only in degree and not in kind from the moral constraints already imposed by legal justice.<sup>18</sup>

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<sup>15</sup>The amnesty scheme established in South Africa comes close to a pure form of legal forgiveness because it required an admission of guilt as a condition for amnesty.

<sup>16</sup>The conceptual distinction between forgiveness (facilitated by victim testimony) and amnesty is evident in the South African legislation which established separate commissions for testimony and amnesty.

<sup>17</sup>I have in mind primarily criminal claims which would still leave wrongdoers open to civil damages, but the South African legislation shows that amnesty can also negate the right of victims to pursue civil damages.

<sup>18</sup>The shift from vigilante justice to coercively enforced legal justice reduces the retributive claim of the victim from one of infinite and immeasurable redress to a penalty bounded by the maximum punishment the state is willing to impose on the wrongdoer. This is apparent in the case of wrongdoing involving multiple victims. For example, the legal fiction of "consecutive life sentences without the possibility of parole" is of course bounded by the natural life of the wrongdoer.

Legal forgiveness satisfies legal justice. It does not and cannot erase the personal debt between the wrongdoer and the victim. Wolterstorff confuses this distinction when he writes that:

A deeply lamentable feature of how punishment is currently thought about and practiced in the United States is that the obligation of the wronged party to eliminate feelings of anger and resentment once the full punishment has been exacted is completely ignored. Citizens feel entirely within their rights in harboring negative feelings toward the wrongdoer even after full time has been served (2006, 99-100).

Contrary to Wolterstorff's view, the fulfillment of either legal justice or legal forgiveness creates no obligation for the victim "to eliminate feelings of anger and resentment." This is a matter of personal forgiveness. Legal justice may facilitate personal forgiveness if the punishment administered is seen as fair or just by victims, and it may establish a normative perspective of how the state views the wrongdoer. However, nothing about either legal justice or legal forgiveness compels personal forgiveness.

The connection of legal forgiveness to legal justice creates an important but often overlooked constraint in the role of legal forgiveness in transitional justice. In cases of criminal wrongdoing, the state is justified in imposing legal justice on the theory that a wrongdoer has caused a "public injury" by violating the state's domestic criminal code. However, in some instances of transitional justice (like that which occurred in South Africa), wrongdoers have not violated the domestic criminal code of the regime under which legal justice is sought.

Digester illustrates the widely accepted premise that legal justice depends on injury to the state when he argues that:

If the justness of a government depends, in part, on its ability to protect and enable its members, then a criminal action against a specific individual sets back this fundamental interest. Crime is an act against the government's fundamental interest in protecting its members. If crime is seen in this way, the decision to prosecute is not left to the victim, his family, or his friends. In addition, if the

political association also suffers the wrong, then a guilty verdict means the perpetrator owes a debt to that association. Although payment of this debt may be unsatisfactory to the individual victim, it can satisfy the political association (2001, 120).

While Digeser limits his subsequent discussion of legal forgiveness to criminal pardons, others extend his reasoning explicitly to the context of transitional justice. Amstutz reasons that:

Since crimes create a debt to the political community, the government may act to forgive the debt by pardoning offenders. Such action, as Digeser notes, does not necessarily erase the debt owed to a particular individual, but it does erase the public debt, thereby creating the possibility of restoring the relationship between the offender and the political community (2005, 164).

Wolterstorff contends similarly that in transitional justice, states have both the agency to forgive and a vested right of retribution necessary for forgiveness because:

The whole system of criminal justice in our sort of rule-of-law society takes for granted that the state can be the victim of an act of wrongdoing and that it acquires retributive rights on account of being the victim. Likewise it is taken for granted by the system that the state has whatever powers of agency may be required for convicting and punishing wrongdoers and for foregoing those (2006, 104).

The most obvious problem with these arguments in the context of transitional justice is that it is not clear that the political community to which the offender is ostensibly restored through the state's legal forgiveness is the same political community against which the debt was incurred.

Digeser hints at this concern in discussing what he calls "the puzzle of previous governments" (2001, 135). He suggests a certain instrumental value to group forgiveness, particularly when former officials of an overthrown regime "retain significant power and support" in the new regime, and "[a] well-timed offer of a pardon could provide enough tranquility for the new government to take root" (2001, 135). As previously noted, it is questionable whether this kind of legal forgiveness absent aggregated acts of personal forgiveness could provide "enough tranquility" for successful transitional justice, but as Digeser

notes, this pragmatic objection is preceded by a philosophical one: “[S]olely basing this pardoning decision on future effects ignores the question of whether the successor government has any standing to pardon (or prosecute) these former officials” (2001, 135). Because as Digester notes, legal forgiveness is a form of group forgiveness extended by the state and “the authority to forgive wrongs is tightly linked to the victim” (2001, 135), the successor government must have itself been wronged. This means that the successor government must have been wronged before it came into existence. Digester thinks that this is possible, and he quotes Feinberg’s example of individuals being harmed by an act that occurred before they existed:

Imagine if you can a criminal so wicked that he wishes to blow up a schoolhouse to kill or mutilate pupils. He conceals a powerful bomb in a closet of the kindergarten room and sets a timing device to go off in six years’ time. Six years later the bomb explodes, killing or mutilating dozens of five-year-old children. The children obviously have been harmed by the explosion and equally obviously (it seems to me) it was the evil action of the wicked criminal six years earlier, *before they were even conceived*, that harmed them (Feinberg 1984, 97).

Feinberg’s view that the criminal is morally culpable for the harm suffered by the children despite the fact that his evil act preceded their existence does not readily answer the question of whether a *government* can be harmed by acts that precede its existence.

Digester suggests that the analogous situation in transitional justice is that “[t]he previous regime has set back the interests of its victims” and “[t]he new government comes on the scene with a number of its citizens living in a harmed condition” (2001, 137). He argues that a successor government can suffer wrong prior to its coming into existence because “[a] state may be ‘born’ with a segment of its population severely disadvantaged or permanently disabled through the actions of others” which means that “the core right of a government to protect and enable its citizens’ interests has also been set back by those actions” (2001, 138). In this way, “[t]he harm done to its citizens before its founding becomes a harm to the government after its



founding” and “the wrongs done in the previous regime can be understood as public wrongs” against the successor government (2001, 137-38). Digeser’s reasoning presents at best a tenuous argument for the moral authority of a successor government to forgive. When a government is reconstituted in a regime change (as when a new constitution is enacted), it begins anew, taking the people who would be its citizens as it finds them. The government begins with the political and the material resources within its borders and only after it is constituted, can it be harmed in a collective sense.<sup>19</sup>

To see why Digeser’s reasoning is difficult to sustain, let us modify Feinberg’s example in two ways. First, suppose that instead of killing children, the evildoer wanted to destroy the public electrical plant that provided power to the local community.<sup>20</sup> Second, suppose that in the intervening years between the initial act of planting the bomb and the destruction of the plant, the political control of the community changed from Regime A to Regime B, a government authorized by a constitution democratically enacted after Regime A collapsed.

Unless Regime B fails to restrict the enactment of *ex post facto* criminal laws (which would be out of line with the practices of modern constitutional democracies), it cannot be the case that the evil act is a violation of Regime B’s criminal law because the act preceded the enactment of the law.<sup>21</sup> These limitations would exist even if the evil act had also been a violation of Regime A’s criminal law. There is no sense in which a violation of one sovereign’s

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<sup>19</sup>At least in cases of successor democratic regimes, the theory of representative government imputes to the people the capacity to accept the terms of the new government or relocate to a different jurisdiction. Of course, the capacity of citizens to relocate if they disagree with the new regime is not possible in all circumstances.

<sup>20</sup>I make this adjustment to make clear that the object of the harm is an indisputably public good (although there are ways in which the death of children in a community would also be construed as the public harm).

<sup>21</sup>This would also be the case if there had been no delay between the evil act and resulting harm and that instead, as Regime A is collapsing, the evildoer destroys the plant (perhaps even with the intention of foiling the success of Regime B). Once again, the evil act would have occurred prior to the enactment of Regime B and is thus completely outside the domain of Regime B’s criminal law. Regime B may still claim the moral authority to punish the evildoer but that authority does not come from a wrong suffered by Regime B.

criminal law is *ipso facto* punishable by another sovereign.<sup>22</sup> It may be the case that the wrongdoer violates Regime B's criminal law if, after Regime B comes into existence, the wrongdoer fails to alert others about the bomb before it detonates. The criminal "act" in this case would be the wrongdoer's failure to warn, but because it transpired after the establishment of Regime B, it would not fall within the realm of transitional justice.

Regime B may nonetheless assert jurisdiction to punish the evildoer. As Posner and Vermeule observe:

Rather than adopt a principled and thoroughgoing account that either discards substantive justice in favor of a "thick line" between past and present or discards procedural legality in favor of retroactive justice, leaders and institutions of the new regime, including the new regime's judges, typically follow a middle course that allows some punishment of old offenders but that adheres, at least nominally, to the norms of procedural legality (2004, 792-93).

Among other things, this pragmatic middle ground accounts for the idea that "retroactive justice fulfills the standard channeling function of legal punishment, which substitutes public and official process for vigilantism" (Posner and Vermeule 2004, 792). These arguments provide an explanation of the practical mechanisms of legal justice in the new regime, but they do not identify the wrong suffered by the new regime as a violation of its rule of law. For this reason, the application of retroactive justice cannot establish the possibility of legal forgiveness.

### **Political Forgiveness**

I have suggested above that group forgiveness, including the special case of legal forgiveness, is a more limited concept than some have assumed. To this extent, group forgiveness is relatively ineffectual in settings of transitional justice. However as the South African TRC demonstrates, forgiveness can shape transitional justice when multiple instances of

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<sup>22</sup>This assertion raises theoretical concerns similar to those involved in the moral foundation of international law or the *ex post facto* application of "crimes against humanity" at Nuremburg.

personal forgiveness are enacted within a shared narrative. This phenomenon yields what I have called political forgiveness which in the context of transitional justice is eminently practical because it can forestall private acts of retribution and when matched with repentance, can lead to reconciliation. It is not a comprehensive forgiveness in any philosophical or theological sense. Rather, it is aspirational until realized, limited without repentance and limited to living victims.

### *Political Forgiveness is Aspirational*

Political forgiveness can never be a mandate; it can only be hoped for and encouraged, and its outcome is always uncertain. Thus as Villa-Vicencio notes, the legislation establishing the South African TRC was entitled the “*Promotion of National Unity and Reconciliation Act*” rather than the “achievement” or “mandate” (2006, 5). The possibility of attaining the goals of forgiveness inevitably remains precarious and contingent. There is no guarantee that individual victims will forgive or that enough acts of personal forgiveness will lead to a political forgiveness capable of sustaining a collective agreement to forego legal and extra-legal punishment of a wrongdoer.

### *Political Forgiveness is Limited Absent Repentance*

The restorative possibility of forgiveness is limited when it is unaccompanied by repentance. It is only when forgiveness and repentance come together that reconciliation is possible. This is not to say that political forgiveness requires either repentance or reconciliation. Shriver fails to recognize this distinction when he asserts that “forgiveness is interdependent with repentance” and that “[a]bsent the latter, the former remains incomplete, conditional, in a posture of waiting” (1995, 210). This cannot be the case; if it were, then it would be impossible to

forgive a wrongdoer who has died. To the contrary, the victim who is able to extend forgiveness to all known wrongdoers for the harms that have been caused can unilaterally forgive even if the offer of forgiveness is not accepted.

This does not mean that unreciprocated forgiveness is the ideal. The coexistence of forgiveness accepted by the wrongdoer and repentance accepted by the victim makes possible the higher goal of reconciliation. Because forgiveness is not the same as reconciliation, its political efficacy is limited. The failure of widespread repentance among South African whites to match widespread forgiveness among South African blacks constrained political possibilities. Aggregated acts of personal forgiveness across a political community may bring a measure of stability that prevents widespread violence (as was the case in South Africa). Forgiveness and repentance leading to reconciliation not only avoid violence but also propel a community toward healing and restoration.

### *Political Forgiveness is for the Living*

The final limitation of political forgiveness is that it is confined to the living. Here, it is critical to distinguish a political conception of forgiveness from a philosophical or theological concept. One of the most haunting and perplexing philosophical and theological questions about forgiveness is whether it can be given on behalf of the dead. This is a special application of the question of whether one person or entity can forgive on behalf of another. As I highlighted earlier, most views reject that possibility. If a wrongdoer cannot be forgiven for acts committed against a victim who has died (irrespective of whether the person died at the hands of the wrongdoer or due to unrelated causes), then the possibility of a certain kind of reconciliation may be limited. Moreover because almost every violent act has at least primary and secondary

victims, it will often be the case that one or more of these victims will have died before a wrongdoer has an opportunity to seek forgiveness or even identify all of them. While this might be an important conceptual limitation, it has little effect on the political utility of forgiveness in transitional justice. It is the living, not the dead, who prevent violence between each other and endeavor to cooperate toward peace.

### **The Shared Narrative of Political Forgiveness**

I consider political forgiveness in transitional justice as the rare occasion when multiple acts of personal forgiveness within a community enable the peaceful and stable transition from one regime to another. For individual acts of personal forgiveness to become more than isolated occurrences, the power and meaning of these acts (to the wrongdoer, to the victim and to the community) must be captured by a common narrative. The capacity for multiple acts of personal forgiveness to be aggregated in a coherent and politically effective manner depends on a common language to explain the meaning of these highly personal acts.

As Griswold suggests in his description of personal forgiveness, the narratives of wrongdoer and victim “are both backward looking and forward looking—they involve a commitment to make certain changes such that one’s life story will unfold in the ways desired” (2007, 184-85). This requires a “basic shift from an ‘internal’ perspective on one’s wrongdoing or injury to an increasingly external perspective—one as from the standpoint of the moral community” (2007, 189). Personal forgiveness is transformed into a public expression. The foundational act remains within the power of the individual, but its benefit extends to the entire community. We might modify Tutu’s famous phrase to assert that there is “no (shared) future without (personal) forgiveness.”

The possibility of political forgiveness is contingent on enough aggregated acts of personal forgiveness sustaining a community ethos of hope and cooperation. Political forgiveness cannot be predicted by a model or guaranteed by the right conditions or institutions. Its efficacy, particularly in the initial stages of transitional justice, is precarious, open-ended and vulnerable to collapse. We only know after the fact if political forgiveness succeeds—if enough acts of vigilante justice and indiscriminate violence are prevented, if enough broken relationships are restored to a modicum of functionality and if enough of a common vision is sustained by wounded and grieving people who hope together for a better future.

There are nonetheless ways in which the spread of political forgiveness can be encouraged and facilitated. Villa-Vicencio suggests that any viable TRC requires “convincing evidence that the majority of citizens endorse the TRC as a mechanism of transitional justice” (2006, 4). Related to this process “the repertoire of any person’s responses will be powerfully shaped by the rhetorics and institutions available in the larger society” (Minow 1998, 135). These observations raise two additional points. First, because the state provides institutions and rhetoric common to its citizens, it contributes in important ways to the transmission of the shared normative framework. Second, because the frequently cited “successes” of the South African TRC unfolded within an explicitly Christian theological framework, it may be that the shared narrative framework needs to be religious or even Christian in nature.<sup>23</sup>

### *The Role of the State in the Shared Narrative*

Because the state constitutes the relevant community in which forgiveness is expressed in most situations of transitional justice, it has a clear role in shaping the narrative that transforms

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<sup>23</sup>The South African process was indisputably successful in avoiding widespread violence and unrest during regime change, but the country has fallen short of a number of its most important goals, including the prosecution of those not granted amnesty, reparations for victims, and national reconciliation (Villa-Vicencio 2006).

individual acts of personal forgiveness into political forgiveness. There are a number of ways that this can be achieved: (1) Extending non-legal group forgiveness when appropriate, (2) extending (and enforcing) legal forgiveness, (3) having high-profile representatives model instances of personal forgiveness, (4) creating institutional structures in which acts of personal forgiveness can be offered, (5) publicizing acts of personal forgiveness to the wider population, (6) helping to identify wrongdoers (including complicity within its own institutional practices) and (7) helping to restore victims (through financial, medical and psychological assistance). These functions, especially when undertaken in conjunction with one another, can help transform personal forgiveness into political forgiveness. The first two possibilities involve the state extending its own forgiveness to wrongdoers while the last five envision the state facilitating acts of personal forgiveness. It is important to reiterate that the first two possibilities alone cannot generate political forgiveness—their main value is the normative tone that they set for encouraging acts of personal forgiveness.

The state has an extremely practical role in facilitating and in broadcasting acts of personal forgiveness. It can devote financial, political and other resources to TRCs and publicize acts of personal forgiveness by high profile citizens or officials. Tutu notes the importance of publicizing the South African TRC through pamphlets, posters and especially radio which reached illiterate members of the population (Tutu 1999). This institutional support helps shape “social memory” and record a common narrative of past events (Gross 2004). The state also helps to facilitate forgiveness by revealing the layers of complicity and deceit that often have to be uncovered through painstaking investigation. For example, one witness in the South African

TRC testified “[w]e do want to forgive but we don’t know whom to forgive” (Tutu 1999, 115). By helping to identify wrongdoers, the state can facilitate acts of personal forgiveness.<sup>24</sup>

Finally, the state can assist in a very practical way by providing resources to victims. This does not make personal forgiveness contingent on reparation, but in some cases, tangible recognition by the state of harm (irrespective of whether that harm can be attributed to the state) helps with the moral calculation that the victim makes by bestowing upon the victim a sense in which the community recognizes her harm. Particularly when the state extends legal forgiveness to wrongdoers (and thereby cedes its right to exercise legal justice over them), the state may also be served by supporting victims asked to consider personal forgiveness for the sake of a shared political future.

### *The Role of Christianity in the Shared Narrative*

The shared narrative that makes political forgiveness possible may also be facilitated by non-state norms and institutions. Theoretically, these non-state influences may derive from any number of cultural, historical or religious influences. Yet the explicitly Christian context of the South African TRC suggests a reason to explore whether Christian influences are integral to the possibility of political forgiveness. Chairman Tutu’s reflections about the Commission set the stage:

Theology helped us in the Truth and Reconciliation Commission to recognise that we inhabit a moral universe, that good and evil are real and that they matter. They are not just things of indifference. This is a moral universe which means that, despite all the evidence that seems to the contrary, there is no way that evil and injustice and oppression and lies can have the last word. For we who are Christians, the death and resurrection of Jesus Christ are proof positive that love is stronger than hate, that life is stronger than death, that light is stronger than

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<sup>24</sup>Of course, this also entails risk. If the state identifies to a victim a previously unknown wrongdoer, the victim may choose to respond with personal retribution rather than personal forgiveness.



darkness, that laughter, joy, compassion, gentleness and truth, all these are so much stronger than their ghastly counterparts (1999, 76).

Tutu notes that the Commission agreed to his request for prayer at the beginning and end of each meeting, as well as a midday pause for “recollection and prayer” (1999, 72). He believed that “[m]ost of us felt that what we were being asked to undertake was profoundly religious and spiritual” (1999, 76). Prayer was a central and indispensable part of the hearings for Tutu:

When the TRC was to begin hearings in Johannesburg in May 1996, Fazel Randera, the head of the Johannesburg office, argued that prayers and hymns did not belong in a judicial hearing. Tutu agreed to a moment of silence at the beginning. But when the first witness was brought to the stand, Tutu, visibly uncomfortable, said: “No, this won’t work! We really cannot start like this. People, close your eyes so that we can pray!” (Graybill 2002, 28).

These were not platitudes or mere sentimentality for Tutu. They were ontological affirmations, and they permeated Tutu’s approach to the entire process.

That Christianity played a substantial role in framing the forgiveness that facilitated transitional justice in South Africa does not mean that the capacity to forgive is limited to those who adhere to a Christian narrative. Nelson Mandela, whose exemplification of forgiveness was heralded by Tutu and so many others as indispensable to the peaceful transition in South Africa, did not reach his magnanimity on Christian or religious grounds.<sup>25</sup> Yet Mandela’s acts of forgiveness, inviting his former wardens to be guests of honor at his inaugural address and extending a lunch invitation to the prosecutor who had argued unsuccessfully for his death sentence, are among the most striking and well-known in South Africa.

Mandela demonstrates that personal forgiveness need not be grounded in a Christian narrative, but this leaves unanswered the question of whether political forgiveness (as the aggregation of individual acts of personal forgiveness) is practical outside of a Christian

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<sup>25</sup>Mandela did not view himself as “particularly religious or spiritual,” but it was “the strength of his commitment to a nonracial democracy that sustained him” (Graybill 2002, 19).

narrative. It was not Tutu alone who gave political significance to personal acts of forgiveness—he had an audience that understood his words. Existing Christian practices gave widespread coherence to Tutu’s challenge to forgive. Absent these shared practices, it is difficult to envision how people could have embraced a normative challenge rooted in theological particularity on a large enough scale to lead to political forgiveness.<sup>26</sup>

It may be that Christianity offers important resources to the kind of narrative that can aggregate acts of personal forgiveness to the level of political forgiveness. Christianity, for example, asserts the primacy of love over violence even in the face of the apparent loss of community. Such a loss may be a real possibility in circumstances of mass atrocities preceding transitional justice as the question of “where is God?” inches ever closer to the question of “where is the community out of which we might be able to enact forgiveness?” Jones suggests that this is the situation that the German theologian Dietrich Bonhoeffer confronted in the midst of Hitler’s rise to power:

In one sense, Bonhoeffer thought the violence of Nazi Germany was so pervasive that forgiveness perhaps could no longer be effective. He knew that forgiveness could be effective when grounded in the disciplines of Christian community, but the virtual collapse of such communities perhaps also meant the virtual collapse of forgiveness (1995, 26).

Jones suggests that Bonhoeffer ultimately concluded otherwise: “Bonhoeffer knew that such a claim would abandon the very heart of the Christian gospel, conceding that violence and death are more powerful and determinative than God’s gracious forgiveness” (1995, 26). If Jones and Bonhoeffer are right that the Christian hope of forgiveness can never grant ontological victory to

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<sup>26</sup>I am indebted to Chris Rice for helping me think through the ideas in this paragraph. Chris is the Director of the Center for Reconciliation at Duke Divinity School, and his international work focuses on reconciling communities torn by deep conflict. His reminder of the role of the audience in the discourse of forgiveness cautions against attempts to export the “method” of the South African TRC to other contexts without attention to narrative, audience and an openness to “the art of serendipity in social change” (Lederach 2004, 118).

the forces of violence, then the Christian narrative might offer the most resilient account of forgiveness in the face of mass atrocities that often complicate questions of transitional justice.

The kind of personal forgiveness that releases a debt otherwise un-payable is not merely a theoretical possibility—it happens, and when a shared narrative infuses collective meaning into multiple acts of personal forgiveness, the possibility of political forgiveness arises. In the context of transitional justice, political forgiveness may create peaceful and forward-looking political change. This does not guarantee successful transitional justice, but it holds out the possibility of hope in what may otherwise seem like hopeless conditions. In Tutu’s words, these claims are not “just airy-fairy religious and spiritual things, nebulous and unrealistic” but are instead “the stuff of practical politics” (South African Truth and Reconciliation Commission 1998, 351).

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