

Justice, Forgiveness, and Care: A Pragmatic Balance

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ABSTRACT. This paper argues for a pragmatic resolution to the conflict between justice and forgiveness. Authors such as Derrida, who see a paradox or aporia in the conflict between justice and forgiveness, often conceive each value in absolute terms. A pragmatic approach deemphasizes absolutism and focuses instead on pluralism and sensitivity to context. One useful example of a pragmatic approach is found in care ethics, as described by Noddings. Care ethics emphasizes the concrete specificity of relationships and the needs and interests of individuals, while downplaying abstract and absolute moral principles. This approach is described in opposition to more traditional religious and moral theories that hold justice or forgiveness as abstract and mutually opposed values.

KEYWORDS. Justice, forgiveness, pragmatism, care ethics, Noddings, Derrida

I. INTRODUCTION

Forgiveness is not easily reconciled with justice. Indeed, forgiveness and justice are often conceived as opposing values that are not, in principle, reconcilable. When the two values are viewed as irreconcilable, we reach an impasse or, as Derrida has said, an aporia.¹ In many cases, proposals for moving beyond this impasse are made by simply asserting one value – justice or forgiveness – as trumping the other. But such an approach simply reinstitutes the conflict on a higher level, by maintaining that one of these values is more important than the other. A better approach is to recognize that neither justice nor forgiveness is an absolute value. Rather, these values are part of a pluralistic set of values that we develop and share in community with others. Given this pragmatic

orientation and the way it is developed, for example, in something like care ethics, it is possible to defuse the aporetic conclusions of thinkers such as Derrida. Instead of focusing on the aporetic nature of the conflict between forgiveness and justice, the way forward must include a more detailed sensitivity to context, a greater appreciation of pluralism of values, and a better appreciation of the importance of relationships and the value of care.

One useful method for finding a way to balance these competing values can be found in care ethics. As articulated by Nel Noddings (2002) and others, care ethics is a normative approach that situates ethical judgment within relationships. Care ethics has much in common with American pragmatism, sharing a concern for pluralism and the importance of concrete relations (Hamington 2004). Rather than abstract arguments about basic principles of rights or duties, care ethics is interested in the specificity of contexts, the needs of persons, and the interdependence of individuals. From the point of view of care ethics, the conflict between justice and forgiveness can be understood as arising from within traditional approaches to ethics that are focused on first principles and abstract, absolute duties. This conflict can be ameliorated if we recognize, in a pluralistic way, that each value is important and that the effort to harmonize them must be sensitive to contexts, relationships, and the needs and interests of the individuals involved. Noddings has argued, for example, that forgiveness is a double-edged value. “When forgiveness is a product of loving generosity, it may well contribute to the maintenance or reconstruction of caring relations. If it is construed as a duty, one on which one’s own status (perhaps even salvation) depends, it may have undesirable effects” (2002, 19). In the same way, a punishment regime established by a system of retributive justice can have both positive and negative consequences: while we want equal and impartial punishment based upon desert, we should also be aware that the requirements of retributive punishment can appear as cruel and gratuitous when individuals have made reparations and are willing to move forward with reconciliation.

Care ethics reminds us to be sensitive to context and relationship when we attempt to balance values such as forgiveness and justice.

In this essay, I will use the term ‘justice’ as more or less equivalent to ‘retributive justice’, since this is, for the most part, the prevailing model.² When forgiveness is offered, it is often an exception or interruption of the normal operation of the traditional retributive model. Retributive justice is focused on impartial equality and desert: paying back the criminal for past crimes is seen as a way of re-establishing the status quo ante and giving the criminal what he or she deserves. Moreover, retribution is often conceived of as a duty – by Kant, for example – such that it is unjust to fail to adequately fulfil the requirements of retribution. Retributive justice is the primary focus of the public sphere, which is institutionally required to administer justice in an impartial way. On the other hand, forgiveness is often understood as a value of the private sphere – associated with closed communities, seen as a concern of the family, or conceived as a merely religious value. As private, forgiveness appears as an exception to the public duty of impartial retribution. And as religious, it appears as a transcendent value that points beyond the public sphere toward another realm of value.

The idea that justice and forgiveness are not in principle reconcilable arises when we hold each value as absolute or, at least, as required within the parameters of a specific sphere of concern. In such a clash of absolutes, there is no possibility of combining or reconciling the opposed values; or when there is a supposed synthesis, it will be achieved by asserting one value as superior to the other. To see this, we will consider how justice and forgiveness are conceived as opposed values in the tradition.

II. DEFENDING JUSTICE AGAINST THOSE WHO ADVOCATE FORGIVENESS

Secular authors such as Kant and Hegel develop a defence of retributive justice that has deep roots in the Christian tradition. For both Kant and

Hegel, there is no room in secular justice for forgiveness.³ For Kant, especially, forgiveness violates a deep normative duty. As North puts it, in describing the Kantian approach, “The moral law, and hence the punishments that are incurred by wrongdoing, share the necessity and eternity of the divine nature. God, in His capacity as judge, cannot be moved by our pleadings and prayers for forgiveness: we cannot affect God’s nature in this way and somehow ‘change His mind’ as to our moral deserts” (1987, 500).

We might, with some qualification, describe such an approach as representing a sort of ‘Old Testament’ justice. As Martin H. Pritikin put it in a recent article on the topic: “the very term ‘Old Testament justice’ has become synonymous with harsh retribution” (2006, 715). Pritikin concludes that this idea is mistaken: “although there is a prevailing perception that Jewish law focused on retribution, our examination of the punishments that Jewish law instituted in lieu of incarceration reveals that rehabilitation and restitution were its priorities. To the extent that modern advocates of retribution invoke ‘Old Testament justice’ to support the increased use of incarceration, they are relying on an incomplete and misleading view of Jewish law” (2006, 776). Nonetheless, defenders of harsh punishments, such as the death penalty, continue to argue that God’s justice requires such strict retribution. The basic principle here is the *lex talionis* – the basic idea of an eye for an eye, a tooth for a tooth (as, for example, in Ex 21,24). It is clear that the Old Testament stipulates the death penalty for numerous transgressions. But, as John Howard Yoder and others have argued, the idea of ‘an eye for an eye’ was articulated in order to restrain vengeance. Rather than unleashing the full fury of vengeance – in which small harms are revenged with larger and more widespread harm – the *lex talionis* aimed at limiting retaliation by establishing a system of equivalence.⁴ Over the course of the development of the tradition, the principle of *lex talionis* came to be understood as establishing a minimal duty: e.g. that murder must be punished by death, and so on.

One interesting example of recent thinking about retributive justice is found in responses to Pope John Paul II's encyclical *Evangelium Vitae*. The said encyclical presented an argument against the death penalty; and John Paul II argued in other places for a hoped-for synthesis between justice and forgiveness. In his World Peace Day Address of January 1st 2002, delivered in part in response to the events of September 11th, John Paul II claimed that we must find a way to reconcile justice and forgiveness. His speech was entitled: "No Peace without Justice and no Justice without Forgiveness." John Paul claimed that in responding to atrocities we must combine forgiveness and justice. Even Nazism and Communism should be responded to in this way. John Paul said, "shattered order cannot be fully restored except by a response that combines justice with forgiveness" (2002, para. 2). The ideal would be to find a way to uphold the responsibility of justice to remedy past outrages, while also keeping open the possibility of creating a new future by way of forgiveness.

This sort of approach has been criticized by defenders of more traditional notions of retributive justice. For example, U.S. Supreme Court Justice Antonin Scalia argued in response to John Paul II that the retributive idea behind the death penalty has deep roots in the Christian tradition. Scalia concluded:

I take the encyclical [...] to mean that retribution is not a valid purpose of capital punishment. Unlike such other hard Catholic doctrines as the prohibition of birth control and of abortion, this is not a moral position that the Church has always – or indeed ever before – maintained. There have been Christian opponents of the death penalty, just as there have been Christian pacifists, but neither of those positions has ever been that of the Church. The current predominance of opposition to the death penalty is the legacy of Napoleon, Hegel, and Freud rather than St. Paul and St. Augustine (2002, 21).⁵

Scalia's point is obscured by this last claim – since Hegel was a retributivist defender of the death penalty and not an abolitionist. But Scalia is right that John Paul II did argue in *Evangelium Vitae* that the death penalty

is not necessary, if a murderer has been effectively confined and incapacitated. And the Catholic bishops in the United States have clarified this further in arguing against the death penalty, by focusing on the fact that it eliminates the possibility of forgiveness – by killing the one we might forgive before he or she has time to repent and we have time to forgive. According to the Catholic bishops, “Our faith calls us to hold people accountable, to forgive, and to heal.”⁶ The death penalty forecloses the possibility of forgiving. And forgiveness should be a possibility, even for murder. This sort of view rejects the emphasis on retributive justice. It is most closely associated with a Christian approach to love that is grounded in New Testament ideas. As Christopher D. Marshall concludes, “the New Testament looks beyond retribution to a vision of justice that is finally satisfied only by the defeat of evil and the healing of victims, by the repentance of sinners and the forgiveness of their sins, by the restoration of peace and the renewal of hope” (2001, 284).

Against this sort of advocacy of forgiveness, scholars such as Oliver O’Donovan have argued that this emphasis on forgiveness fails to understand the basic importance of judgment and its connection to death. For O’Donovan, the death penalty has a symbolic role, “in relating death to judgment,” by which he means that for Christians, the fact that we die is a sign of judgment, connected to original sin and separation from God (1998, 195). This reminds us of how deeply theological the debate about punishment and the death penalty becomes. It also explains why Kant and other philosophical defenders of retributivism were to hold that any hoped for reconciliation points toward another sphere, which goes beyond the moral requirements of the sphere of public justice. For authors such as Scalia, this emphasis on forgiveness runs counter to the mainstream of retributivism found in the tradition. Indeed, some argue that forgiveness and mercy only make sense if we first presume that retribution is deserved. If we did not assume that the wrongdoer deserved to be punished, there would be no need for mercy or forgiveness.

Thomas Pangle writes: “it is only when, and because, we fervently acknowledge that we do not justly deserve mercy – that we instead deserve punishment – that we can begin fervently to hope for God’s eternal mercy” (2003, 102). On this view, justice tells us that the wrongdoer, quite simply, does not deserve mercy or forgiveness. Thus we arrive at an aporia: if a wrongdoer does not deserve forgiveness, then forgiveness becomes paradoxical.

The religious concern for retributive justice usually establishes the need for repentance as the condition for the possibility of forgiveness. In many versions of this approach, however, there is a sense that some crimes are simply unforgivable. The idea that some deeds are unforgivable can be explained in both pragmatic and theological terms. Abominations and radical evil that turns away from God are unforgivable on theological grounds. But there are other pragmatic considerations: some deeds are so atrocious or so broadly disseminated that no human being could conceivably have the capacity to forgive them.

This comes together, for example, in some Jewish responses to the Holocaust. The martyrs of the Warsaw ghetto exhorted, ‘Never to forget – Never to Forgive’. For some, this becomes a ‘new commandment’ of justice, as Morris Schappes has explained. Schappes described this new commandment as “justified by the reality of the continuing struggle against Nazism and the forces that bred it and would still breed it” (1980, 69).⁷ Related to this is Simon Wiesenthal’s moving account in *The Sunflower* of how and why he refused to forgive a Nazi who begged him for absolution. Wiesenthal holds that it is morally inappropriate for someone who is not the direct victim of injustice to offer forgiveness. He also demonstrates that there is no way to offer forgiveness on behalf of a group of people – let alone an entire ethnic group. And most obviously, he shows that there may be some atrocities that are absolutely unforgivable.

Forgiveness can undermine the fight against injustice and the struggle for self-respect. Indeed, forgiveness appears to be part of what Nietzsche would describe as slave morality: it can be an expression of

impotence. Nietzsche seemed to hold that forgiveness was sublimated resentment: a response of the powerless before injustice. He thought that the decadence of the weak was exposed in the claim that the path of weakness was in fact the higher path. In *On the Genealogy of Morals*, Nietzsche says that the impotent transform their impotence into virtue in a variety of ways, including by holding that the “inability for revenge is called unwillingness to revenge, perhaps even forgiveness” (2010, 14). Michael Ure follows Nietzsche in claiming that forgiveness is self-regarding: a way for the powerless to heal their injuries.⁸ Indeed, forgiveness is often used to reinforce weakness. We see this when a battered wife forgives her husband – thinking, perhaps, that she deserves to be beaten or that love is expressed through violence. This sort of impotent forgiveness seems to give up entirely on justice. Indeed the forgiveness of the impotent can in fact give fuel to the fire of oppressors and abusers – by stimulating their cruelty even further. For this reason, some argue that forgiveness is only appropriate when there is repentance and genuine healing. This idea has been applied to the case of domestic violence by Judith Boss. Boss says: “forgiveness, in order to be consistent with self-respect and moral equality, is appropriate only when the offender ceases to hold a degraded view of his victim and repents of his wrongful actions” (1997, 237).

This last problem – that of repentance – shows us the depth of the predicament. For many within the Western monotheistic traditions, repentance is the key, not forgiveness. Rabbi Mark Dratch has explained this as follows, in an essay published in a volume focused on sexual and domestic abuse: “The classical Jewish approach emphasizes repentance, not forgiveness. Thus, the burden is on the perpetrator to right the wrongs for which he is responsible. Justice must be served [...] Society must be given the opportunity to seek justice and to rectify the wrongs that have been perpetrated against individuals and to prevent further violations of individuals and society as a whole. Then, and only then, is forgiveness possible” (2002, 21). This makes sense: to move forward

toward a more healthy and productive society, the perpetrator needs to make amends and show us that he or she is ready to be welcomed back into society. On some interpretations, retributive justice is a sort of “paying back” that even if it does not produce repentance helps to ameliorate whatever sort of inequality was produced by the crime. And, as we have seen, it seems that forgiveness is itself only possible when we have already determined that something is unjust – since it does not make sense to forgive someone when there was no wrongdoing.

III. DEFENDING FORGIVENESS AGAINST THOSE WHO ADVOCATE JUSTICE

We have seen several powerful arguments against forgiveness and we have briefly discussed Catholic advocacy of forgiveness. Forgiveness remains for some a higher value, which trumps the claims of justice.

Some argue, as Gandhi did, that there is simply not enough forgiveness in the world. In an interview from 1931, Gandhi argued: “What is true of individuals is true of nations. One cannot forgive too much. The weak can never forgive. Forgiveness is the attribute of the strong.”⁹ This often-quoted statement was offered in the context of Gandhi’s consideration of the death penalty and the execution of Bhagat Singh. Although Gandhi muddies the waters in a Nietzschean direction here by indicating that genuine forgiveness is the prerogative of the strong, his basic point is that in the world today, there is never enough forgiveness. Gandhi recognizes that a world of pure and radical forgiveness might be impractical. His point, nevertheless, is that in the world as it is today, we need to focus more on forgiveness than on justice.

In this way, Gandhi reminds us that forgiveness is an ideal, which we aim at but often fall short of actualizing. Gandhi claimed that he hoped he would have the strength to forgive an assassin. “If someone had killed me and I died with prayer for the assassin on my lips, and God’s remembrance and consciousness of His living presence in the sanctuary of my

heart, then alone would I be said to have had the nonviolence of the brave” (2005, 50). The tone here indicates that Gandhi was not sure that he would have the spiritual strength required for this sort of forgiveness. Indeed, this ideal has been transformed into the myth that Gandhi actually did forgive his assassin with his last words.¹⁰ Whether this is true or not is beside the main point, that for Gandhi, forgiveness was a central ideal, necessary for living and for dying well. Gandhi also claimed, for example, that he would like to have the same spiritual power as Jesus had, when he forgave his murderers from the cross.

Ahimsa is always tested in the midst of himsa, kindness in the midst of cruelty, truth in the midst of falsehood, love in the midst of hate. This is the eternal law. If on this auspicious day, we all made a sacred resolve not to spill blood for blood but to offer ours to be shed instead, we would make history. Jesus Christ prayed to God from the Cross to forgive those who had crucified him. It is my constant prayer to God that He may give me the strength to intercede even for my assassin. And it should be your prayer too that your faithful servant may be given that strength to forgive.¹¹

It is true that in Luke’s version of the crucifixion, Jesus called upon his Father to forgive those who “know not what they do” (Lk 23,24). This extraordinary passage provides a model, along with some of Jesus’ teachings – such as the parable of the prodigal son, another passage found only in Luke (15,11-32) – that sets the stage for subsequent Christian approaches to thinking about forgiveness. Religious thinkers in the Christian tradition routinely call for forgiveness and they praise its value and power. But forgiveness remains on a different moral plane. While justice is commanded; forgiveness is a free gift of grace. Episcopalian Bishop Richard Holloway puts it this way, “It makes no sense to command people to forgive, and there are clearly situations where every instinct of justice commands us not to forgive. Nevertheless, when true forgiveness happens it is one of the most astonishing and liberating of the human experiences” (2004, 12).

Deep within this point of view is the idea that by forgiving, the one who forgives achieves some sort of higher spiritual good. While forgiveness can have real world implications and consequences – such as when a criminal is provided with clemency so that he or she is not punished – forgiveness is often associated with a spiritual movement of transcendence. A mundane way of understanding this would focus on the fact that there are psychological and emotional benefits to be attained by relinquishing resentment. Moreover, forgiveness is occasionally viewed as a sort of spiritual test or ordeal. In order to attain God’s grace, we must exhibit grace. This idea can be found in Luke (6,37): “Judge not, and you will not be judged; condemn not, and you will not be condemned; forgive and you will be forgiven...” Somehow, we earn or participate in God’s grace, when we develop the virtue of forgiveness.

Forgiveness is also good for the well-being of the community. In this sense it has pragmatic implications. One does not have to be religious to agree with Archbishop Desmond Tutu about the need to use forgiveness as a way of moving forward toward rebuilding a broken community. Tutu argued in the aftermath of the Rwandan genocide that Hutus and Tutsis must learn “to go beyond retributive justice to restorative justice, to move on to forgiveness.” According to Tutu, in the context of atrocity, unless there is a place forgiveness, there is no possibility of moving forward into the future. Tutu says that without forgiveness, “there was no future” (1999, 260). Now Tutu may also be drawing on the deeper spiritual power of forgiveness, but one need not agree with the religious background in order to agree that forgiveness allows the possibility of moving into a new future.

The tradition provides the ground for understanding recent examples of the transformative religious power of forgiveness. Consider, for example, the story of Immaculée Ilibagiza, a survivor of the Rwandan holocaust. In one moving passage, Ilibagiza describes how fear and loathing were transformed into forgiveness. In wondering how she can forgive the perpetrators who raped, murdered, and left children to be

devoured by dogs, she claimed to have heard a divine answer: that even the murderers are God’s children. “Despite their atrocities, they were children of God, and I could forgive a child, although it would not be easy... In God’s eyes, the killers were part of His family, deserving of love and forgiveness” (2006, 94).

A similar story can be found in a recent book that discusses how the Amish community in the United States dealt with mass murder in an Amish school in 2006 (Kraybill, Nolt, Weaver-Zercher 2007). The authors claim that forgiveness allows us to transcend tragedy. The Amish do not deny that there is such a thing as justice – they only hold that justice is for God to mete out; and that we do not know exactly what God intends with regard to justice. When asked whether he thought that the schoolroom murderer was burning in hell, one Amish minister replied, “I don’t know. Only God can judge... But how God has judged him, I can’t say” (Kraybill 2007). While the ultimate nature of divine justice remains inscrutable for human beings, the Amish will claim that it is clear that we are commanded to forgive according to the model that Jesus personified. And the Amish are committed to a view that is both pacifist and critical of established institutions that utilize force.

The story of Amish forgiveness is remarkable. Ten girls were shot and five were killed in this schoolroom slaughter. But the Amish community reached out to the killer’s family, even participating in the burial service that was held for the murderer, who had killed himself at the end of the ordeal. This amazing sort of ‘grace’ – to use a term that the authors of *Amish Grace* are fond of – provides a place to begin thinking about the tragic conflict between forgiveness and justice. The authors argue that forgiveness provided a sort of transcendence in the aftermath of tragedy. The authors conclude: “We often assume that humans have innate needs in the face of violence and injustice. For instance, some who said that the Amish forgave Roberts (the murderer) ‘too quickly’ assumed that Amish people had denied a basic human need to get even. But perhaps our *real* human need is to find ways to move beyond tragedy with a sense

of healing and hope” (Kraybill, Nolt, Weaver-Zercher 2007, 181). While not denying the import of justice, advocates of forgiveness claim that forgiveness is the higher path.

IV. A PRAGMATIC BALANCE

We have seen that different ethical and religious arguments hold that one value trumps the other in a kind of either-or dichotomy: either retributive justice or forgiveness. This leads some to claim that there is no easy way to reconcile the two values, or if there is a reconciliation, it is proposed as a case of one value trumping the other. In such a circumstance, the conflict still remains – even though one value is subsumed under the other. On the other hand, some simply assert that love and justice are one and the same thing. We see this, for example, in the ‘situation ethics’ of Joseph Fletcher. Fletcher appeals to a sort of semantic sleight-of-hand, saying that love and justice are simply the same thing. “Even if we define justice as ‘paying what is due’... the Christian understanding of ‘what is due’ to our neighbor is ‘all the love possible.’ Love and justice are the same” (1967, 56). The problem for such a proposal is that it still does not tell us whether and how forgiveness should be applied in any given situation. Could it be that we should give a murderer ‘what is due’ – but execute him/her anyway? Or are there times in which forgiveness is not loving – say when we forgive someone who then goes on to commit worse crimes? In short, we need to recognize that justice and forgiveness are distinct values. But we should avoid absolutizing and be open to creative possibilities for achieving balance. Rather than a synthesis that denies the difference (as in Fletcher’s work), we need balance. This implies that some opposition remains, even though in a given circumstance, we seek a way to keep these opposed values in balance with one another.

Unfortunately, much of the recent literature about forgiveness has dwelt in the apparent paradox created by the conflict between forgiveness

and justice. Much of this discussion results from taking traditional religious approaches to justice and forgiveness as a model, which establishes an absolute sort of conflict. Religious approaches tend to make the task of balancing competing demands for justice and forgiveness that much more difficult, insofar as the demands of justice and forgiveness in religious traditions are each understood in absolute terms. In other words, it is the religious demand for justice that also makes the possibility of forgiveness so difficult. And, if we remain within the absolute demands of religion, we need some form of religious faith if we hope to reconcile these opposed values.

Some have concluded that forgiveness is strictly speaking paradoxical – since it runs in contradiction to the demands of justice. Derrida, for example, writes: “Forgiveness forgives the unforgivable. One cannot, or should not, forgive; there is only forgiveness, if there is any, where there is the unforgivable. That is to say that forgiveness must announce itself as impossibility itself” (2002, 32). It is justice that establishes the parameters of what is ‘unforgivable’. Derrida brings in a normative element here, and he is not simply talking about psychology: we do not only find it difficult (in psychological terms) to forgive some deeds, rather, and this is the point of the matter, there are some deeds that we ought not (in moral terms) forgive. But forgiveness is only impossible if we think that some crimes are absolutely unforgivable, and to determine this, we need a prior understanding of justice that establishes norms in which some deeds are indeed unforgivable. In other words, a conjunction of justice and forgiveness is only paradoxical or aporetic if we view each as an absolute value. The tension between these opposed values is increased when each is understood as coming from an absolute demand. When the demands of justice are increased to such a degree that certain things become unforgivable, then indeed forgiveness becomes paradoxical. But if we were to remain within a humanistic system that remained sceptical about absolute demands of justice, then forgiveness may be less paradoxical. This is not to say that a pragmatic or humanistic approach to

forgiveness makes forgiveness *psychologically* any easier. Rather, the point is that if we remain within the non-absolute demands of humanistic ethics, it is easier to resolve the conceptual conflict.

Nonetheless, even within a pragmatic or humanistic approach, forgiveness and justice still remain opposed values that must be balanced. Various sorts of pragmatic amelioration are possible when we avoid absolutist language that focuses on sin and salvation. Religious approaches raise the stakes by making it appear that we risk losing everything if the reconciliation of these values is done improperly. For example, if justice is improperly executed in the name of a mistaken idea of forgiveness, then God's will is not done. Likewise, if resentment makes forgiveness impossible, then sin and guilt return on the part of the one who is emotional or psychologically unable to forgive. Of course, the religious tradition usually offers the possibility of grace or forgiveness as a remedy for this sort of tension. If one mistakenly forgives or if one mistakenly exacts justice or is unable to forgive when forgiveness should have occurred, there is the hope that God recognizes our failings and will forgive us, so long as we sincerely do our best and are willing to repent when shown our failings. But grace is mysterious, and appeals to grace still leave us uncertain about how to balance these values.

We must sincerely do our best to struggle to find an appropriate balance between justice and forgiveness, but if the demands of justice are not absolute and the risk of failure is not understood in terms of sin, then there is room for creative experimentation. A pragmatic or humanist approach affords us the opportunity to explore various ways of living together while working to balance justice and forgiveness.

Any answer to the question of how to balance justice and forgiveness will require more specific analysis of contexts and circumstances. A good answer must rely upon sensitivity to the context, and any conclusion should be developed from within long standing relations of care. It is very difficult to answer in the abstract the question of how best to achieve this sort of balance. Care ethics reminds us that in order to

properly relate justice and forgiveness, we need deeper caring relationships that allow us to be more sensitive to the needs of individuals and the complexities of the situation.

Such an approach must avoid absolutizing either justice or forgiveness. Consider, for example, Nel Noddings' discussion of Simon Wiesenthal's *The Sunflower*. Noddings understands the difficulty that Wiesenthal has in forgiving Karl, the SS man who asks for forgiveness. But she notes that the difficulty is linked to the tendency of contemporary ethical experience to be plagued by 'separatism' and 'absolutism'. Noddings concludes that Wiesenthal – and most of those who responded to his essay by supporting the view that Karl should not be forgiven (or at least that Wiesenthal was right in not forgiving Karl) – were too concerned with abstract moral principles. In Noddings' words, they "allowed themselves to be distracted again, to be cut off – 'absolved' – in their longing for attachment to the Absolute" (1989, 214). Noddings' point is that concrete human relations of care are interrupted or undermined when we cling to moral absolutes. In a sympathetic interpretation of her idea, Kathryn Norlock explains, "what makes forgiveness appropriate depends on the relation between two individuals, and any appeal to a priori precepts that one ought to forgive or ought not ritualize forgiveness in a way that allows us to see it as somehow existing separately from the person we would forgive" (2008, 72). Although I do not follow Noddings so far as to think that Simon Wiesenthal should have forgiven Karl the Nazi, the point is a good one: what matters is the concrete situation, especially the set of relationships that exist between victim and perpetrator. Moreover, there is room for a variety of ways of responding in such situations with forgiveness and justice being combined in various ways.

This is the key: forgiveness and justice are found, formed, and expressed in concrete relation with others. Since individuals and their relationships vary, we cannot judge in any absolute way about how or whether to forgive or not. Some victims find relief in forgiveness. Some criminals want to be punished. And forgiveness and punishment can

each produce a variety of future consequences for the individuals involved and for the larger society. Any judgment about what is appropriate must take all of this complexity and contextually dependent circumstance into account.

Justice and forgiveness are only absolutely opposed if we view ethical principles as moral absolutes that come from some absolute and abstract source, such as a divine command. But absolutism of this sort rules out moderation and amelioration in applying and balancing these two important values. Any attempt to balance these values must move away from moral absolutism, and it must be developed within the specificity of the situation and the relationships involved. It remains obvious that sometimes, as the American pragmatist philosopher Josiah Royce notes, forgiveness is both reasonable and convenient: “If ‘forgiveness’ means simply an affectionate remission of penalty, that is something which, for a given community, may be not only humanly possible, but obviously both wise and desirable [...] Forgiveness is often both reasonable and convenient” (1914, 297). On the other hand, it is also obvious that retributive justice can also have practical value that is equally reasonable and convenient. Our efforts should be focused on thinking about the concrete details that would allow us to satisfy to varying degrees both the need for retribution and the need for forgiveness. Sometimes we punish and sometimes we forgive. There is no hard and fast rule telling us when we should either punish or forgive. Rather, what is needed is a sort of practical wisdom that is responsive to the circumstances and the uniqueness of the situation.

Since institutions of justice tend, for the most part, to be based upon some sort of retributivist model, the challenge is to find ways to incorporate forgiveness as a pragmatic option in dealing with social conflict. Admittedly, contemporary institutions of justice also contain non-retributivist elements: utilitarian concerns for incapacitating criminals and deterring others, for example. And there is a growing movement in support of restorative justice. However, Western institutions of justice are

grounded on the basic idea that only the guilty deserve to be punished, and that is an idea that is clearly linked to the retributive model of justice. A purely utilitarian approach to criminal justice might not be as concerned with desert as a retributivist approach would be. For example, there can be some use in establishing fear of the law that is not strictly connected with the punishment of the guilty. Moreover, a utilitarian might see punishment of the guilty as gratuitous, if in fact that punishment does nothing to prevent, incapacitate, or deter.¹² But most utilitarians do not go in this direction. They presume that punishment should be based upon retributivist ideas about desert. John Stuart Mill, for example, emphasized that one important feature of the court system was the fact that it works hard to make sure that only the guilty are punished.¹³ Thus even utilitarian justifications of punishment in the contemporary world generally connect punishment with desert. And when that happens, forgiveness appears as unjust, since it is punishment that is deserved.

A pragmatic effort to find a way to meliorate the conflict between justice and forgiveness would have to look at the psychological and social power of forgiveness, while also examining the consequences produced by retributive justice and by our system of punishment. The key question in such an inquiry would be the extent to which forgiveness and justice each operate to produce the kind of society in which we want to live. Importantly, it is possible for each value to produce social benefit. Sometimes it is necessary to punish – even to punish harshly –, and harsh punishments can produce good consequences. For example, the death penalty seems to be the appropriate punishment for war criminals and those accused of crimes against humanity – from Nuremburg and Tokyo to the Yugoslavia war crimes tribunal in The Hague and the trial of Saddam Hussein by the Iraqi Special Tribunal. At the same time, there are cases in which forgiveness is appropriate. It can work wonders to heal both the individuals involved and the community that was broken by crime. Here we might consider as an example, any of the various truth

and reconciliation commissions that have been modelled on what happened in South Africa – although to be precise, these commissions are not merely interested in forgiveness. And the power of forgiveness can be found in a few interesting recent cases, in which victims of crime have forgiven the criminals who abused them – such as the Amish for example. The basic point here is that *both values* can be of use. We should not emphasize one value over the other as an absolute trump. Rather, we should find pragmatic ways to express each of these values, while responding creatively to the uniqueness of a situation and its context.

There is wisdom to be found in the claim that forgiveness is salutary. But outside of a theological framework in which all human beings are ‘God’s children’ as Ilibagiza claims, or in which the pacifist commands of Jesus are taken as the word of God, or where there is hope for redemption and reconciliation, tragedy remains. For humanists, forgiveness remains within a dialectic that is best described as tragic; and any advice about the need for forgiveness will have to be understood in pragmatic terms. The salutary effects of forgiveness, when pragmatically understood, have to do with the ability of the community to move forward together in solidarity.

V. CONCLUSION

The conflict between justice and forgiveness becomes tragically irreconcilable when either value is conceived in absolute terms, as they often are in our religious traditions and in approaches such as Kant’s, which also deal with moral absolutes. The conflict is not as difficult to resolve if we step outside of the realm of religious and moral absolutes. When we deal with forgiveness and justice on a pragmatic level, we must be attentive to the circumstances and to the needs and interests of the individuals involved. We should avoid the sort of reconciliation that focuses on only one of these values, at the expense of the other.

In order to judge how best to balance forgiveness and justice, we need a very close and careful analysis of the complexity of the circumstances. And here is where pragmatism and care ethics are useful. They remind us to avoid absolutizing and focus on the needs and interests of individuals and their relationships. Justice and forgiveness are both goods that individuals cherish and from which they can benefit. In some tragic circumstances, we cannot obtain both of these goods at the same time. To forgive is often to deny the good of retributive justice. To pursue retribution is often to deny the possibility of forgiveness. But especially in such vexed situations, we must avoid prejudging and we must allow for plural possibilities. For example, in the case of Simon Wiesenthal, it is important to remember that it is not for any of us to judge. The situation in which a survivor of the Holocaust confronts a Nazi soldier is not one that can be easily judged or subsumed under an absolute principle. The same can be said of the Amish example and the Rwandan example we have discussed here. The circumstances are unique and the relationships and needs of the individuals involved are complex, so that it is difficult to say who is right or who is wrong in these cases. While these are extreme cases, the same complexity and difficulty of judgment occurs in more mundane cases – from minor grievances among colleagues and family members to more significant interpersonal experiences of harm. In all of these situations, it is important to remember that justice and forgiveness are both valuable. But these cherished values must always be expressed within contexts that involve the complex needs and interests and relationships of diverse individuals. The depth of the conflict between justice and forgiveness is an indication of the need for a pluralistic approach. There are a variety of goods involved here: psychological, emotional, social, political, and religious. Any concrete attempt to balance these values must take due care to be attentive to the context, the needs and interests of individuals, and the sorts of relationships involved.

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NOTES

1. Derrida (2002). For discussion see Berstein (2006).
2. There has been a movement of late toward a conception of what is commonly called ‘restorative justice’. But for the most part, secular institutions of justice still focus on retribution and rarely allow for forgiveness to interfere with the requirements of justice.
3. Joanna North claims that “neither Kant nor Hegel gives a coherent account of forgiveness” (1987, 499). Hegel does talk about forgiveness explicitly in an early work on religion, *The Spirit of Christianity*; but it plays no role in his political philosophy. Ultimately for both Kant and Hegel, forgiveness is a religious concept. In his later lectures on religion, the goal of reconciliation with God is understood as the basic structure of Christianity. Indeed, for Hegel only spirit (God or Christ) can “undo what has been done” (1988, 467). But Hegel’s systematic approach locates religious reconciliation in the sphere of Absolute Spirit, which is transcendent of the political sphere as found in Objective Spirit. Kant’s view of religion is more humanistic and less apologetic than Hegel’s. In fact, Kant is reluctant to consider the theological doctrine of forgiveness in part because it seems to undermine human autonomy. For Kant, if we are free, then any guilt we possess is absolute and infinite. Forgiveness does not factor in here, for the most part. However, Kant does hold out the possibility of a complete ‘change of heart’ such that one becomes a ‘new man’. In this sense, then the old person who committed the crime might still deserve punishment even if the new man does not. Kant concludes: “Although the man (regarded from the point of view of his empirical nature as a sentient being) is physically the self-same guilty person as before and must be judged as such before a moral tribunal and hence himself; yet, because of his new disposition, he is (regarded as an intelligible being) morally another in the eyes of a divine judge for whom this disposition takes the place of action” (1960, 68).
 4. See Hauerwas (2004); see also Logan (2008).
 5. See response by Garcia (2003, 125-133).
 6. USCCB (2002).
 7. See also Pollefeyt (2004).
 8. See also Murphy (1988).
 9. The full quote reads: “What is true of individuals is true of nations. One cannot forgive too much. The weak can never forgive. Forgiveness is the attribute of the strong” (Collected Works). See also Gandhi (2005, 166).
 10. Gandhi is supposed to have said “He Rama” or “Rama Rama” when shot; some contend that he uttered, in solidarity with Islam, “Rama Rahim.”
 11. Collected Works.
 12. These points are made in Murphy (1973).
 13. Mill says, “Our rules of evidence are even too favorable to the prisoner; and juries and Judges carry out the maxim, ‘It is better that ten guilty should escape than that one innocent person should suffer’” (1988, 309).