JUSTICE THROUGH APOLOGIES

In this follow-up to *I Was Wrong: The Meanings of Apologies*, Nick Smith applies his theories of categorical apologies to law. State agents determine punishments for millions of offenders by consulting gut feelings and rendering unappealable decisions regarding the defendant’s contrition. Findings of remorse can determine whether an offender lives or dies, yet we expect reviewers to “know it when they see it”: look into the defendants’ souls, intuit the depths of their evil, and punish accordingly. Smith argues all major theories of punishment should typically endorse “apology reductions” *only if* offenders demonstrate moral transformation by satisfying rigorous standards for apologies. Smith also explains how apologies have become pawns for civil defense attorneys who consider them cheap and low-risk litigation strategies to appease victims. Recent legislative trends increase the likelihood that offenders will gain the many financial and public relations benefits of “saying sorry” even when they do not accept blame, provide redress, or reform behaviors and policies to prevent additional injuries.

Justice through Apologies: Remorse, Reform, and Punishment

Nick Smith
University of New Hampshire
To my parents, Carol and John Smith, 
in part for helping keep me on this side of the law and 
for teaching me compassion for those on the other side. 
In their words: “No one is better than anyone else.”
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Acknowledgments

This book is about righting wrongs, but, to quote a friend, we can also make the rights even more right. Appreciating the people who have helped you walk a long path is one small way to do this.

One of the pleasures of researching apologies has been how the interdisciplinarity of the work emphasizes the collective nature of thinking clearly about such complex issues. This book is one link within an expanding web of research, and I benefited immeasurably from the work of many others across disciplines and fields. I attempt to acknowledge these debts in my notes, but a few deserve recognition here.

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people like me began to study them, and clerking for him was a profoundly formative experience for me. In his chambers I learned that even though reasonable people can disagree about resolutions to legal disputes, we need to find the best argument and side with it. Jennifer Robbennolt’s writings were especially helpful as I organized my thinking about social scientific research on apologies. Michael O’Hear guided me through the Federal Sentencing Guidelines. Philosophers of punishment too often ignore the role of plea bargaining, and I follow down the path of Richard Lippke’s trailblazing work. Cesar Rebellon, Chris Colocousis, and Stefan Sobolowski contributed at many levels. Philadelphia attorneys David Shapiro and Steven LaCheen deserve special recognition for their zealous advocacy for not only their clients’ legal interests but also for their moral development. For the reasons discussed throughout this book, this is a difficult position to sustain. I recommend them to remorseful offenders seeking guidance through the process of apologizing within the legal system.

I learned quite a bit regarding court-ordered apologies and the analogy to requiring children to apologize from conversations with thoughtful friends and family as well as academic colleagues. In particular, I am grateful for the practical wisdom of Albert Chang, Drew Christie, Andy Colby, Alix Handelsman, Michelle Holt-Shannon, Rebecca Johnson, Tom and Jonti Rodi, Bob Scharff, John and Keena Smith, and Charlotte Witt.

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Previous attempts at these ideas appeared in various venues, including my first book, I Was Wrong: The Meanings of Apologies. Given that this current book builds on and applies my previous work, readers will find some redundancies between the texts. Editors for these earlier publications helped me crystallize the content and form of this book over the years. John Berger at Cambridge has been the ideal editor, always present but never hovering. His wisdom allowed me to write two books on apologies rather than hastily

But my wife Nicole is the best editor – as well as the best person – I have ever worked with. She has many talents, and I must resist breaking into verse to declare my appreciation for her here. Our house overflows with love thanks to her. As with apologies, my gratitude to her cannot be expressed merely in words. It orients me every day.

My three young children contributed to this book in ways I hardly understand. Because they are little for so short a time, every experience becomes endowed with such significance. Children amplify the significance of life, which is why I refer to them as my “meaning machines.” Caring for such beloved children as I thought about the examples in this book brought all of it home. The people I discuss – the worst offenders and the most sympathetic victims – were once young and just wanting to play and cuddle. Then something terrible happened. As we analyze these cases we can become desensitized to the suffering of these people and their struggles. We risk treating them as cases, abstractions we never look in the eye. The fragility of my own children reminds me of the humanity and finitude they share with all victims and offenders. I note this here because the cold lens of analysis risks obscuring the respect I intend to afford everyone involved in the injuries considered in this book. The following pages document much pain, and I hope my arguments perform a bit of alchemy to convert those losses into a future with less suffering.
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