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978-1-107-01796-2 - Forgiveness and Retribution: Responding to Wrongdoing

Margaret R. Holmgren

Excerpt

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I

Introduction and Overview

My purpose in this book is to develop and defend a broadly coherent position on response to wrongdoing. The response I wish to defend is the response of forgiveness, or more specifically, unconditional genuine forgiveness – a concept I define in some detail in the next two chapters.

My approach to the question of how we ought to respond to wrongdoing diverges from the traditional approach to this question. For a long time, philosophers addressing this topic have focused primarily on crime and punishment. Their central concern has been to articulate the legal practices we ought to adopt to respond to serious wrongdoing. Much has been written about whether the state is justified in punishing criminal offenders, and if so, on what grounds, how severely, and under what circumstances.

Very recently, the discussion of response to wrongdoing has turned to what P.F. Strawson calls the “reactive attitudes” of forgiveness and resentment.¹ I believe that this new focus is potentially very fruitful. I also believe that an examination of basic attitudes is the best place to start if we wish to formulate a broadly coherent position on response to wrongdoing, for two primary reasons. First, as an immediate practical matter, we are each faced with concerns about forgiveness and resentment in our personal lives. Human wrongdoing is ubiquitous, and sooner or later each of us struggles to adjust to the fact that someone has wronged us or that we have wronged someone else. Further, the way in which we respond to wrongdoing has a significant effect on the quality of our lives. From the personal level to the international level, the quality

¹ P.F. Strawson, “Freedom and Resentment.”

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of our relationships with one another is at least partially defined by our attitudes toward forgiveness. And our attitudes toward self-forgiveness play a significant role in forming our conceptions of ourselves, and consequently in determining our ability to function well in various aspects of our lives. It is therefore important to each of us to be as clear as possible about the moral status of the attitudes of forgiveness and resentment and their self-referential counterparts. Any position on response to wrongdoing that fails to address these attitudes is seriously incomplete.

Second, from a more theoretical point of view, I think the basic attitudes of forgiveness and resentment are much more central than we have recognized to a more comprehensive account of response to wrongdoing, as I will argue here. In the past four decades, the predominant methodological approach in practical ethics has been to address social issues using some version of wide reflective equilibrium. On this approach, we construct moral theories that perform well in explaining our considered moral judgments and that cohere well with relevant background theories. We then apply these theories to moral issues, hoping they will give us approximately the results we want. Finally, we work back and forth, making adjustments in our beliefs at various levels in an attempt to develop an overall package of beliefs that is more or less coherent. (I will say more about this methodology at the end of this chapter.) While this approach is good as far as it goes, it seems that in applying it we have missed a deeper and more fundamental level of moral thought. In his classic article, “The Schizophrenia of Modern Ethical Theories,” Michael Stocker points out that “one mark of a good life is harmony between one’s motives and one’s reasons, values, justifications. Not to be moved by what one values – what one believes good, nice, right, beautiful, and so on – bespeaks a malady of the spirit. Not to value what moves one also bespeaks a malady of the spirit.”² Stocker goes on to argue that the reasons for action articulated in our most prominent moral theories (respecting rights, maximizing utility, being able to will the maxims of our actions as universal law, etc.) fail to coincide with appropriate motives for action.

I believe that we will be able to avoid the kind of malady of the spirit that Stocker identifies, and construct more compelling and holistic moral theories if we begin by examining our basic attitudes and the motivations they incorporate. If we carefully examine our motives and attitudes to ensure that they are worthy, then every other aspect of our

² Michael Stocker, “The Schizophrenia of Modern Ethical Theories,” p. 453.

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moral lives should fall into place – the actions we take as individuals, the moral theories we construct, and the social practices we institute. His Holiness the Fourteenth Dalai Lama makes this point in *Ethics for a New Millennium*. He says, “In Tibetan, the term for what is considered to be of the greatest significance in determining the ethical value of a given action is the individual’s *kun long*... When this is wholesome, it follows that our actions themselves will be wholesome.”³ He tells us that the Tibetan term *kun long* is generally translated as “motivation,” but this translation does not capture its full meaning. A more complete translation would be “overall state of heart and mind.” It includes cognitive awareness, affective response, and motivation, all of which are inseparable components of the same psychological state. For convenience, I will refer to this state as an attitude (a more detailed discussion of attitudes will be found at the beginning of Chapter 2).

This book begins, then, with an examination of the basic attitudes of forgiveness and resentment, and proceeds from this examination to questions about moral theory and social practices. I argue that the attitudes of unconditional genuine forgiveness and genuine self-forgiveness incorporate the attitudes of respect, compassion, and real goodwill for persons. Further, I argue that the attitudes of unconditional genuine forgiveness and genuine self-forgiveness are always appropriate and desirable from a moral point of view in response to wrongdoing. I then argue that if we extend the basic attitudes of respect, compassion, and real goodwill to all persons equally, we will be led to adopt a justice-based moral theory that enjoins us to secure for each person the most fundamental interests in life compatible with like benefits for all. Finally, I argue that from these basic moral attitudes and the moral theory that emerges from them, we will be led to endorse a specific set of social practices as a public response to wrongdoing. My hope is that by proceeding in this manner, we will be able to generate a broadly coherent account of response to wrongdoing that is both philosophically rigorous and holistically compelling. An account of this sort should bring our motives and reasons for action into harmony with one another, and allow us to function as whole and healthy moral agents.

By structuring my account of response to wrongdoing in this way, I am aligning myself directly with virtue ethicists. If my extended argument is successful, it should help to counter a long-standing objection to virtue ethics: that virtue ethics may tell us who we should be, but it

³ His Holiness the Fourteenth Dalai Lama, *Ethics for a New Millennium*, p. 30.

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fails to give us sufficient guidance as to what we should do. The defense of the attitude of unconditional genuine forgiveness that follows has a multitude of specific implications for our actions and social practices, as we shall see.

More specifically, this book constitutes an extended development and defense of what I will call the “paradigm of forgiveness.” There are two senses of the word “paradigm” that should be distinguished at this point. First, we may use the word to refer to a particularly clear, typical, or unproblematic example of whatever it is that we want to address. This is not the sense of paradigm that I am using in this book. The second sense of paradigm, which is what I intend here, is, broadly speaking, a philosophical or theoretical framework. My goal is to develop a relatively comprehensive theoretical framework in reference to which we can think about response to wrongdoing.

To elaborate further, our initial examination of the attitudes of forgiveness and self-forgiveness will reveal that these attitudes express a particular moral orientation toward persons. In the context of this orientation, certain features of persons are regarded as salient – our capacity to experience happiness and misery; our basic desire for happiness; our capacity for moral choice, growth, and awareness; our status as autonomous beings who can lead meaningful lives only as the authors of our own choices and attitudes; and our status as limited beings who are vulnerable to error. Further, certain responses to these salient features of persons are regarded as morally appropriate. These responses are, broadly speaking, respect, compassion, and real goodwill.⁴ Clearly this moral orientation toward persons rests on a set of philosophical presuppositions about the nature of persons, which I attempt to make explicit. I argue that if we endorse the basic attitudes of forgiveness and self-forgiveness, the moral orientation toward persons that they express, and the philosophical presuppositions about the nature of persons on which they rest, then, as noted, we will be led to adopt a justice-based moral theory and a particular set of social and legal practices as a public response to wrongdoing. I refer to the unified position that emerges from this examination as the paradigm of forgiveness and I defend it on moral and philosophical grounds. (It is important to note, however, that my development of the paradigm of forgiveness in this book is not complete. In particular, the completion of this project would require a

⁴ The general account of virtue that I draw on here is John McDowell’s, developed in his “Virtue and Reason.”

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well-developed position on both self- and other-defense, which I do not undertake here.⁵)

At the same time, I am centrally concerned in this book to compare the paradigm of forgiveness with retributivist positions on response to wrongdoing. There have been a number of different attempts to defend retributive reactive attitudes and retributive theories of punishment, so we lack a single, unified paradigm of retribution. Nevertheless, retributivists systematically endorse a set of conclusions that are opposed to those that emerge in the paradigm of forgiveness. Those who defend retributive reactive attitudes (whom I will refer to as “attitudinal retributivists”) hold that enduring attitudes of resentment and self-condemnation are morally appropriate under certain circumstances, while the paradigm of forgiveness endorses attitudes of forgiveness and self-forgiveness in these circumstances instead. And those who endorse retributive theories of punishment argue that punishment is an intrinsically appropriate response to crime, whereas the paradigm of forgiveness holds that punishment can be justified only if it provides fundamental benefits for all citizens.

To arrive at their conclusions, retributivists generally start from three very plausible moral claims – claims that are also endorsed in the paradigm of forgiveness. These claims are that we must respect the offender as a moral agent, that we must respect the requirements of morality, and that we must respect the victims of wrongdoing. In spite of the agreement on these basic moral tenets, however, retributivist analyses of response to wrongdoing differ from the analysis that emerges in the paradigm of forgiveness in important ways. In addition to the divergent conclusions cited earlier, retributive positions often differ from the paradigm of forgiveness in that they express a different moral orientation toward persons, rest on different philosophical presuppositions about the nature of persons, lead to moral theories with a fundamentally different structure, and result in different implications for our social and legal practices. Throughout the book, I explicate these differences, and in each case I argue that in spite of the plausibility of some of their central moral tenets, retributivist analyses are seriously problematic on both moral and philosophical grounds.

Retributivism has been enjoying a resurgence of popularity recently, and for good reason. The defects of the utilitarian approach to responding

⁵ I thank an anonymous reader from Cambridge University Press for drawing this important point to my attention.

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to wrongdoing have by now been well explored in the literature. Initially, when the discussion of wrongdoing centered primarily on crime and punishment, critics of the utilitarian position focused on the troubling possibility that it might sanction punishment of the innocent, severe punishment for lesser crimes, and the abolition of some well-established excuses in the criminal law. Some authors attempted to correct for these problems either by adopting rule utilitarianism or by introducing principles of fairness to govern the distribution of punishment.⁶ Rules or principles designed to guarantee the fairness of punishment were thought to be the only aspect of retributivism worth preserving.

However, in R.A. Duff's words, "a striking feature of penal theorizing during the last three decades of the twentieth century was a revival of positive retributivism – of the idea that the positive justification of punishment is to be found in its intrinsic character as a deserved response to crime."⁷ I think this phenomenon can be attributed to two objections to the utilitarian position that go beyond the concerns about unfair punishment. The first is the simple fact that utilitarianism does not seem to account for our deep-seated moral intuitions about response to wrongdoing. As Andrew Oldenquist has observed, "The universal insistence upon retribution for grievous crimes is deeply felt, intractable, and largely independent of utilitarian considerations."⁸ Several authors have made the same point about retributive reactive attitudes – for example, Jeffrie Murphy, Peter French, and Robert Solomon.⁹ Both retributive reactive attitudes and retributive intuitions about punishment seem to be deeply engrained in the human psyche. Any adequate account of response to wrongdoing must either endorse these intuitions or offer a persuasive explanation of why they are mistaken.

Second, philosophers have argued that the utilitarian analysis of response to wrongdoing is problematic in that it fails to respect offenders as autonomous moral agents. Strawson's distinction between reactive participant attitudes and what he calls the "objective" attitude sheds light on this problem. Strawson's reactive attitudes – resentment, forgiveness,

⁶ For the former strategy, see, for example, John Rawls, "Two Concepts of Rules," or Richard Brandt, *Ethical Theory*. For the latter, see H.L.A. Hart, *Punishment and Responsibility*.

⁷ R.A. Duff, "Legal Punishment," p. 10.

⁸ Andrew Oldenquist, "An Explanation of Retribution," p. 464.

⁹ See Jeffrie G. Murphy, *Getting Even*; Peter A. French, *The Virtues of Vengeance*; Susan Jacoby, *Wild Justice: The Evolution of Revenge*; and Robert Solomon, "Justice v. Vengeance – On Law and the Satisfaction of Emotion."

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love, gratitude, and so on – are the attitudes we hold toward one another in the context of engaged interpersonal relationships. We hold these attitudes toward those with whom we hope to relate as equals, with a status comparable to our own, and regarding whom we therefore have certain hopes and expectations. In contrast, Strawson defines the objective attitude as follows: “To adopt the objective attitude toward another human being is to see him, perhaps, as an object of social policy; as a subject for what, in a wide range of senses, might be called treatment; as something certainly to be taken account of, perhaps precautionary account, of; to be managed or handled or cured or trained; perhaps simply to be avoided.”¹⁰ The utilitarian analysis of response to wrongdoing seems to embody the objective attitude that Strawson describes. Offenders seem to be in some sense “objectified” as we try to manage their attitudes, beliefs, and behaviors in the attempt to maximize good consequences. They do not seem to be addressed in a straightforward manner as persons who are our equals, or as autonomous moral agents.

In contrast, retributive reactive attitudes seem to be rooted directly in respect for persons as autonomous moral agents. Retributive reactive attitudes are clearly inappropriate toward beings that lack the capacity for moral agency. My golden retriever, Campbell, repeatedly digs holes in the backyard as she hunts for small animals. Although this activity damages the lawn and creates extra work for me, I do not resent her for it. I do not judge her to be selfish, arrogant, bad, or evil. Nor do I withhold my goodwill from her until she repents and does her best to fill in the holes. Instead, I try to think of ways to manage her behavior. In short, I adopt Strawson’s objective attitude toward her, and here the objective attitude seems appropriate. On the other hand, if one of my colleagues were to engage in the same behavior, I would fail to respect him as an autonomous moral agent if I tried to manage his behavior by pepper spray or by taking him to obedience school.

It is important to recognize that I do not adopt an objective attitude toward Campbell because I cannot have a relationship with her. In fact we have a wonderful relationship characterized by a variety of other reactive attitudes (love, affection, gratitude, etc.). Unlike some of our other reactive attitudes, however, retributive reactive attitudes require the possibility of relationship between *moral agents*. It seems, then, that to hold an attitude of resentment toward an individual who has engaged in wrongdoing is to acknowledge that individual as an autonomous

¹⁰ Strawson, “Freedom and Resentment,” p. 9.

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moral agent who is capable of full participation in the moral community. Conversely, to adopt an objective attitude toward a moral agent is to fail to regard the individual in this manner. Thus, retributivism seems to incorporate a ground-level respect for the offender's autonomy and capacity for moral agency.

For retributivists, however, the capacity for moral agency is a double-edged sword in that it carries with it both rights and responsibilities. On the one hand, our capacity for moral agency imposes obligations on others to respect our autonomy, to regard us as equals, and to refrain from managing or manipulating us for their own ends. On the other hand, our capacity for moral agency also renders us subject to the requirements of morality and makes us accountable for the extent to which we abide by them. As moral agents, we are responsible for recognizing the overriding importance of moral requirements and for recognizing the value of the beings or objects that these requirements protect. At this point we can see that in addition to embodying a ground-level respect for persons as moral agents, retributive reactive attitudes seem to embody a fundamental respect for both the requirements of morality and the victims of immoral behavior.

These three forms of respect are closely entwined in our retributive reactive attitudes. When an individual violates a moral requirement and harms someone as a result, we tend to respond with resentment or moral anger. In part, this anger reflects the extent to which we care about the person harmed. For example, if we respond with pleasure, indifference, or amusement when someone is murdered, we clearly lack sufficient concern and respect for that person. But moral anger reflects more than our concern and respect for the person harmed. If one of our loved ones is killed in a tornado, we would feel profound grief rather than moral anger. Resentment and moral anger respond not only to the value of the one who has been harmed, but at the same time to the fact that the harm was inflicted wrongfully by a moral agent who could have and should have done otherwise. Again, if we were to respond to a moral offense with indifference or amusement, our response would show that we do not take the requirements of morality seriously and that we do not take the offender seriously as a moral agent. Retributivism, then, seems to embody these three fundamental forms of respect in a very coherent, direct, and plausible manner. In doing so, it seems to avoid the central problems that arise in utilitarian analyses of response to wrongdoing and also to be strongly grounded in our best deontological moral theories.

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As plausible as this position may seem, I believe that it is seriously mistaken. Here I take it as a given that any plausible position on response to wrongdoing will embody the three forms of respect just described: respect for the offender as a moral agent, respect for the requirements of morality, and respect for the victims of immoral behavior. Nevertheless, while granting the validity of these central moral tenets, I argue that the paradigm of forgiveness actually expresses these three forms of respect much more fully and adequately than retributive positions. Further, although retributivists succeed in avoiding Strawson's version of the objective attitude, they commit another more subtle form of objectification of persons that makes their positions very difficult to defend on both moral and philosophical grounds. The paradigm of forgiveness, on the other hand, avoids both Strawson's objective attitude and this latter form of objectification, and as a result is more philosophically and morally defensible.

Briefly, my argument progresses through the chapters as follows. Chapter 2 creates the framework for the discussion in the remainder of the book. I first present an analysis of attitudes in general, and suggest that they are the central elements of character traits. Attitudes are described as having three components: a cognitive component, an affective component, and a motivational component. I go on to identify three types of attitudes: integrated, conflicted, and fragmented. I argue that a virtue is a morally worthy integrated attitude that has been sufficiently ingrained to constitute a fairly regular response to a given type of recurring situation. Therefore, in the context of the virtue-ethical analysis of response to wrongdoing that I will develop here, the central task is to determine which of the attitudes that we might adopt in response to wrongdoing is the most appropriate and desirable from a moral point of view. To aid us in this task, I introduce the concept of a genuine attitude, which will be important in both Chapters 3 and 4.¹¹

I then provide a conceptual analysis of the attitude of resentment by articulating the three components it incorporates. In the same manner, I provide an analysis of forgiveness, which may be construed as a corrective attitude that replaces an initial attitude of resentment that we have found to be unworthy. Finally, in order to avoid confusion in the discussion that follows, I address several of the controversies in recent literature about the nature of forgiveness, including the especially contentious

¹¹ I am especially grateful to an anonymous reader from Cambridge University Press for pointing out the need to clarify this concept early in the manuscript.

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questions of who can forgive, whether there are restrictions on the motive for forgiving, whether forgiveness is best construed as an internal change of heart or as a speech act, and whether groups can forgive or be forgiven.

Geoffrey Scarre has argued that we have good reason to approach the moral analysis of forgiveness from a utilitarian perspective rather than from the perspectives of duty or virtue.¹² Chapter 3 begins with a critical analysis of this claim, in which I suggest instead that we have good reason to set aside the perspectives of duty and utility and to adopt the perspective of virtue. I respond here to some central objections that Scarre and others raise to a virtue-ethical approach to the analysis of forgiveness.

From a virtue-ethical perspective, forgiving is a process that may take some work. Premature forgiveness may well be incompatible with the victim's self-respect, and therefore morally inappropriate. It may also amount to condoning the wrong, deceiving oneself, or evading difficult tasks, rather than truly forgiving the offender. I outline the process that victims of wrongdoing must often complete in order to respect themselves and reach a state of genuine forgiveness. Both retributivists and advocates of the paradigm of forgiveness can endorse this process. Further, both types of theorists can agree that the victim of wrongdoing who has not sufficiently completed the process of addressing the wrong may legitimately hold an attitude of resentment toward the offender.

Retributivists and advocates of the paradigm of forgiveness will part company, however, on the question of whether someone who has completed this process (or who has no need to do so) should forgive the offender or continue to resent him. In developing the paradigm of forgiveness, I argue that an attitude of unconditional genuine forgiveness is always appropriate and desirable from a moral point of view, regardless of whether the offender repents and regardless of what he has done or suffered. On the other hand, retributivists argue that forgiveness is morally *inappropriate* under certain circumstances. Most commonly, they hold that an attitude of resentment is called for when the offender fails to repent or when he has done something especially heinous.

In order to defend my claim that an attitude of unconditional genuine forgiveness is always appropriate and desirable from a moral point of view, I argue that this attitude fully incorporates the attitudes of self-respect, respect for morality, and respect for the offender as a moral

¹² Geoffrey Scarre, *After Evil*, Chapter 3.