Cambridge University Press 978-1-107-01796-2 - Forgiveness and Retribution: Responding to Wrongdoing Margaret R. Holmgren Index More information

Index

account of forgiveness as articulate and uncompromising, 102-03 respect for morality, 83-84 respect for offender as moral agent, 100 self-respect, 75 account of self-forgiveness as articulate and uncompromising respect for morality, 123 respect for self as moral agent, 131-32 respect for victim, 119 Allais, Lucy, 86, 98 apology, 109-10 as oriented toward victim, 114 attitudes. See also objective attitude; positive reactive attitudes; retributive reactive attitudes and behavior, 24 conflicted, 25, 62 defined, 23-24 distinction between holding and expressing, 78-80 fragmented, 25–26, 61, 109 genuine attitudes defined, 26-27 importance of, 168-69 integrated, 24-25 moral appropriateness of, 56-57 primacy of, 2-3 types of, 24

attitudinal retributivism. See retributivism, attitudinal Barnett, Randy, 232 Benjabi, Hagit, 97 Bennett, Christopher on attitudinal retributivism, 79-80, 223-24 on deterrence, 252 expressive theory of punishment, 224 on Hampton's theory of punishment, 222-23 on penance, 225 on restorative justice movement, 258 Bentham, Jeremy, 211 An Introduction to the Principles of Morals and Legislation, 205 bilateral forgiveness. See forgiveness, bilateral Blum Lawrence, 88 Boonin, David, n. 6, 274 Boss, Judith, 31 Brison, Susan Aftermath, 156 Burgh, Richard, n. 23, 217 restitutive theory of punishment, conception of secondary harm, 232

Cambridge University Press 978-1-107-01796-2 - Forgiveness and Retribution: Responding to Wrongdoing Margaret R. Holmgren Index More information

288

Index

Calhoun, Cheshire, 95 capital punishment, 244 Card, Claudia, 41, 43 The Atrocity Paradigm, 107 Casarjian, Robin, 122, n. 15, 122 character traits, 26-28 character-morality. See Kekes, John choice-morality. See Kekes, John civil commitment. See prevention of unnecessary harm, and civil committment Coleman, Jules, 209 compassion, 23-24, 88, 95-96 conceptions of self, 155 and arbitrary decision-making, 155 as defined by individual's central moral convictions, 153-55 nonreductionist, 146 reductionist, 146 retributivism and thick conceptions of self, 149-56 and self as fragmented, 156-57 and self as socially situated, 155-56 conflating offender and offense, 84-94, 124-25, 130-31 conflicted attitudes. See attitudes, conflicted Dalai Lama, See His Holiness the Fourteenth Dalai Lama Daniels, Norman, n. 4, 135 Darwall, Stephen, 34 Davis, Michael, 218 deliberative perspective. See practical perspective desert. See also desert-based moral theories; justice-based moral theory defined, 170-71 distinction between evaluative and allocative desert claims, 179 and distribution of wealth and income, 187-89 and merit, 189 preinstitutional conception of, 165-66 promissory desert claims, 189-90 and restitution, 207-08

and strong moral intuitions, 165-66 desert-based moral theories and competing moral considerations, 181-82 and determining quantity of what is deserved, 179-81 and expression of reactive attitudes, 175-76 and monistic analyses of desert, 175-78 and pluralistic analyses of desert, 172-73 as sometimes inapplicable, 179 structural problems with, 171-82 virtue as desert base, 177-78 determinism. See paradigm of forgiveness, and moral responsibility; retributivism, difficulties with conception of moral responsibility deterrence as legitimate aim of punishment, 218–19, 252-54 dignity, 70 Dillon, Robin, 25 on experience of self-condemnation, 105 on remembering what we care about, 131 on self-reproach, 130 on self-reproach and self-punishment, 130 on self-reproach and self, 149 on self-reproach and self-exculpation, 131 diminished capacity, 243 Dix, George E., 242, n. 57, 242 Dolinko, David, 217, n. 23, 217, 222 drama, 100 Duff, R.A., 6 communicative theory of punishment, n. 13, 211, 218-19 on definition of legal punishment, 210 on deterrence, 252

on strong retributivism, 212 on weak retributivism, 211 duress, 243 duty-based approach to analysis of forgiveness, 52-53 Dzur, Albert, 44 egalitarianism. See also paradigm of forgiveness, and equal moral status of persons and distinction between self and its qualities, 141-42 and morally arbitrary qualities, 142-44 and potential for evil, 144-45 Ellis, Anthony, n. 13, 211 Enright, Robert D., 58, 115, 120 Enright, Robert D., and Richard Fitzgibbons, Helping Clients to Forgive, 59 ethics naturalistic approach to, 19-20 objectivity in, 19-21 two approaches to study of, 18-20 evaluation of offender. See perspective of judgment evaluative respect, 93-94, 98-99 exculpating excuses. See restitutive theory of punishment, and exculpating excuses explanatory power, and pluralistic analyses of desert, 173 Falls, Margaret expressive theory of punishment, 226 on reciprocity theories of

punishment, 216 Feinberg, Joel, 175, 207 Fitzgibbons, Richard, 59 forgiveness. *See also* self-forgiveness; separating offender from offense affective component of, 34 on behalf of another, 36–38 bilateral, 65–66 cognitive component of, 33–34

Index

289

and condoning wrong, 75-76 as corrective attitude, 32 defined, 32-35 defined as response to wrongdoing, 34 and forgetting, 40-41 genuine forgiveness defined, 63 of groups, 45-47 groups as forgivers, 47-50 invitational, 65-66 and making ourselves feel better, 57 motivational component of, 34 motive for, 38-40 and passivity, 74 rational consistency as grounds for, 96-97 and reconciliation, 41-42 and respect for morality, 84 and respecting one's own needs, 73-74 and self-respect, 66-75 and speech acts, 43-45 solidarity as grounds for, 95-96 unilateral, 65-66 as unnecessary for some, 32 as virtue, 26 Fortune, Maria, 31 fragmented attitude. See attitudes, fragmented French, Peter, 6, 76, 90 fundamental attribution error, 28

Gandhi, Mahatma, 70, 153 Garrard, Eve, 57, 93, 95 genuine forgiveness defined, 63 genuine self-forgiveness defined, 110–11 Glynn, Patrick, n. 45, 50 goodwill, 96 Govier, Trudy, n. 18, 65 on being conditionally unforgivable, 77 on forgiveness of groups, 46 on groups as forgivers, 47–50 on types of victims, 36 on vindication of victim, 70–71

Index

Griswold, Charles on conditions for forgiveness, 64 on forgiveness and communication with offender, 78 on identification of offender with offense, 86 on resentment, 30 on respect for victim, 113 on self-forgiveness, 115, 120 groups as forgivers. See forgiveness, groups as forgivers Haber, Joram, 67, 84 Hampton, Jean, 85 on deterrence, 252 moral education theory of punishment, 221–22 hard reaction to evil. See Kekes, John Harman, Gilbert on autonomous ethics, 19-20 on fundamental attribution error, 28 "Is There a Single True Morality?" 18 on naturalism, 18-19 Harris, George on Jeffrey Dahmer and benign integral breakdown, 125 on justifiable self-contempt, 123 Hart, H.L.A., 211 Heyd, David, 97 Hieronymi, Pamela, 33, 40 on conditions for forgiveness, 64 on forgiveness and respect for morality, 75 on forgiveness and self-respect, 67,69 responses to Hieronymi's challenge, 75, 83-84, 100, 119, 123, 132 Hirano, Collin, n. 18, 65 His Holiness the Fourteenth Dalai Lama, 70, 81, 96, 278 and Chinese prisoner Lopon-la, 32 Ethics for a New Millenium, 3 overall state of heart and mind, 3 Horsburgh, H.J.N., 112, 120 human point of view. See perspective of identification

identification of offender with offense, 84-86 identity, as socially constituted, 70-72 imperfect duties, and forgiveness, 52-53 imperfect self-defense, 242 integrated attitude. See attitudes, integrated invitational forgiveness. See forgiveness, invitational Jacoby, Susan, 6 Jesus Christ, 96 Johnstone, Gerry, n. 1, 257 justice as attitude, 169–70 central principle of justice derived, 167-68 justice-based moral theory and accounting for desert claims about distributive justice, 187-90 and accounting for desert claims about punishment, 245-46 and accounting for desert claims about restitution, 206-08 and accounting for evaluative desert claims, 187 and avoiding problems in utilitarian analyses, 184 ranking interests in, 185-87 structural virtues of, 184-85 justice-based theories of punishment, 228-46 Burgh's theory, 232-33 Kelly's position, 229 Montague's theory, 230-31 punishment as restitution for secondary harm, 233-45. See also restitutive theory of punishment

Kant, Immanuel Groundwork, 53 on imperfect duties, 53 on punishment, 214 Kekes, John on choice-morality and character-morality, 194-95 on malevolence, 200-01 as meritarian, 135 objections to egalitarianism, 141-44 response to Kekes' challenge to choice-morality, 256 on undeserved harm, 197 Kelly, Erin, 158 on punishment, 229 on retributivism and conception of responsibility, 162–63 King, Martin Luther, 70, 153 Kleinig, John, 167, 180 Korsgaard, Christine, 186 on conceptions of self, 147-48 on practical perspective, 147-48, 158

Lamb, Sharon, x law of torts, 206 legal punishment, defined, 210 liberalism, 165, 190–92 limits of sacrifice. *See* restitution, and limits of sacrifice for offender Luskin, Fred, *Forgive for Good*, 59

MacIntyre, Alastair, 169 Mackie, J.L., 76, 90 malevolence, and humiliation, 201 Mandela, Nelson, 70 McDowell, John, 97, 98 McNaughton, David, 57, 93, 95 mens rea. See restitutive theory of punishment, and mitigating excuses meritarian position on human worth, 134-46 common argument for, 136 consistency of, 135 Metz, Thaddeus, 91-93 "Censure Theory and Intuitions about Punishment," 254 Mill, John Stuart, 169, n. 6, 170 On Liberty, 220 Minas, Anne, 37-38

Index

291

Mingyur Rinpoche Joyful Wisdom, n. 7, 202 mitigating excuses. See restitutive theory of punishment, and mitigating excuses Montague, Phillip, 230 Moore, Eric, 177 Moore, Michael, n. 16, 213 moral agency assumption about, 21-22 as distinct from moral performance, 125 and inconsistencies with thick conception of self, 150-53 responsible exercise of, 125 moral appropriateness of attitudes. See attitudes, moral appropriateness of moral community expressing opposition to wrongdoing in, 81–82 maintaining strength of, 138-40, 201-04 and responsibilities to victims of wrongdoing, 261 Morris, Herbert, 215 Mother Teresa, 96 motive for forgiveness. See forgiveness, motive for Murphy, Jeffrie, 6 on conditions for forgiveness, 64 on dangers of premature forgiveness, 63-64 on desert and role of state, 178 on forgiveness and self-respect, 67, 68, 73 on identification of offender with offense, 85 on message in wrongdoing, 59 on motive for forgiveness, 38 on resentment, 30 on resentment and incentive to reform, 78

naturalism defined, 19 problem with, 20

Index

Nebblet, William R., 29 negative retributivism. See retributive theories of punishment, weak retributivism Nielsen, Kai, n. 4, 135 Nietzsche, Friedrich, n. 26, 70 nonreciprocal risks. See strict liability in law of torts Norlock, Kathryn, 107, 156, 157 North, Joanna, 86 Novitz, David, 43 on forgiveness and self-respect, 73 on motive for forgiveness, 38 Nozick, Robert, 56 objectification of self, 124-25 objectification of offender, 86-87 objective attitude, 84, 212 and animals, 7-8 and perspective of identification, 140 positive formulation, 101-02 objectivity in ethics. See ethics, objectivity in Oldenquist, Andrew, 6 overlapping consensus. See Rawls, John paradigm defined, 4 paradigm of forgiveness basic outline of, 4–5 and connection between attitudes and moral theory, 167-69 and constructive solutions to crimes, 276 divergence from attitudinal retributivism, 64-66, 111-12 and equal moral status of persons, 134-46 and focus on victims of wrongdoing, 258-60 incompleteness of, 4-5, 158 justice-based moral theory in. See justice-based moral theory and liberal theory of justice, 190-92 moral orientation toward persons in, 100-01, 132

and moral responsibility, 158-59 and nonreductionist conceptions of self, 146–47 and personal identity, 146-57 and perspective of identification, 137-40 and public response to wrongdoing. See public response to wrongdoing and reductionist conceptions of self, 147-56 and salient features of persons, 4, 137-39 as species of choice-morality, 195-96 Parfit, Derek, 146, 147 penance, 221, 225-26, 251 performatives. See forgiveness, and speech acts personal identity. See conceptions of self perspective, shift of, 97-99 perspective of identification, 137-40, 225 and empirical sciences, 139-40 and justifying social policies, 176 and practical perspective, 148-49 as preferable to perspective of judgment, 140 and strong moral community, 140 perspective of judgment, 85-87, 89-90, 98-99, 224-25 and abandoning moral point of view, 94-95 and determining quantity of what is deserved, 181 and justifying social policies, 176 and meritarianism, 136-40 and resentment, 30 Pincoffs, Edmund, 167, n. 17, 214 Pisar, Samuel, 71 Pojman, Louis, 135, 136 political conception of justice. See Rawls, John

Index

293

positive reactive attitudes and possible error of objectification, 90-91 as potentially too reactive, 72 proportional expression of, 82-83 as responsive, 72-73 and self-respect, 72-73 and separating persons from actions and attitudes, 90-91 positive retributivism. See retributive theories of punishment practical perspective, 147-48 and perspective of identification, 148-49 practical perspective explained, 147-48 prevention of unnecessary harm and basic human needs, 197-98 and civil committment, 204 and environmental sources of stress, 198-201 and further empirical research, 204 and mental illness, 198 and taking moral standards seriously, 201-04 primary harm defined, 206 distinguished from secondary harm, 206 importance of restitution for, 260 process of addressing wrong for forgivers, 58-63 and assessing need for protection and rewarding relationships, 61 and experiencing emotional responses, 60-61 and expressing beliefs and feelings, 61-62 importance of, 63-64 and psychological research, 59 and recognizing wrong, 60 and recovering self-esteem, 59-60 and restorative justice movement, 270-73 and seeking restitution, 62 as unnecessary for some, 58

process of addressing wrong for self-forgivers, 107-10 and addressing behavior patterns, 109 and experiencing emotions, 108-09 and making amends to victim, 109-10 as necessary for wrongdoers, 107-08 and psychological research, 108 and recognizing victim's status as person, 108–09 and restorative justice movement, 267-70 and taking responsibility for wrong, 108 provocation, 242 public response to wrongdoing and attitude of forgiveness, 205 and nonpunitive prevention of unnecessary harm, 196–205. See also prevention of unnecessary harm and restitution for primary harm, 206-10 and restitution for secondary harm, 233-46. See also restitutive theory of punishment three components of, 193 punishment. See restitutive theory of punishment; justice-based theories of punishment; retributive theories of punishment Quinn, Carol, 41 rabbit-duck case. See perspective,

rabbit-duck case. See perspective, shift of
Rawls, John, n. 4, 135, 141, 142, 186 on overlapping consensus, 191 on political conception of justice, 191 *Political Liberalism*, 191 on resentment, 29
reactive attitudes, proportional expression of, 82–83

Index

reciprocity theories of punishment. See retributive theories of punishment, reciprocity theories recognition respect, defined, 34-35 reintegration of offender into moral community, 252, 261-62 Reitan, Eric, 276 resentment. See also conflating offender and offense; self-condemnation affective component of, 30 cognitive component of, 30 defined, 29-32 as desirable under some circumstances, 68 motivational component of, 30-31 and perspective of judgment. See perspective of judgment, and resentment and respect for morality, 75-84 and respect for offender as sentient being, 87-89 and self-respect, 66-75 types of, 36-37 respect for capacity for moral choice, 91-94 respect for moral agency. See also respect for offender as autonomous moral agent, 90 respect for morality and communication with offender, 77-81 and communication with moral community, 81-82 and condoning wrong, 75-76 and expressing moral convictions, 77-83 respect for offender as autonomous moral agent, 84-94, 220-21, 222, 227, 250-51, 263 respect for offender as qualified moral agent, 222–23 respect for offender as sentient being, 87-89

restitution and limits of sacrifice for offender, 208, 237 for primary harm, 205-08 and process of addressing wrong for self-forgivers, 110 and process of addressing wrong for forgivers, 62 for secondary harm, 233-46. See also restitutive theory of punishment and self-forgiveness, 113-14 restitutive theory of punishment, 233-56 and articulation of crimes, 238-39 and communicative and expressive theories, 250-55 and concept of secondary harm, 233-37 and determining severity of punishment, 244–46 and exculpating excuses, 240 and goal of alleviating suffering, 237 as incompatible with certain kinds of punishments, 244 and intuitions about desert, 246 and making offender suffer, 255-56 and methods of making restitution for secondary harm, 238 and mitigating excuses, 240-43 and proportionality, 248-49 and reciprocity (unfair advantage) theories, 249-50 and recognition of excusing conditions, 239-43 and simple desert-based theories, 247-49 and Thadeus Metz's challenge, 254-55 and weak retributivism, 246-47 restorative justice movement central tenets of, 257-58 and constructive solutions to crimes, 276

Index

and emphasis on restitution for primary harm, 260 and face-to-face meetings between victims and offenders, 265-67 and procedural constraints, 263-65 and process of addressing wrong for offenders, 267-70 and process of addressing wrong for victims, 270-73 and respect for victim and offender as autonomous moral agents, 263 and respect for victims of wrongdoing, 260-61 retributive reactive attitudes and respect for moral agents, 7-8 and respect for morality, 8 and respect for victims, 8 retributive theories of punishment Bennett's expressive theory, 226-27 communicative theories, 218-23 Duff's theory, 218-21 expressive theories, 223-27 Falls' expressive theory, 226–27 Hampton's communicative theory, 221-23 Kant's theory, 214-15 reciprocity theories, 215–18 simple desert-based theories, 213-14 strong retributivism, 227 strong retributivism defined, 212 three types of strong retributivism, 213 weak retributivism, 211–12 retributivism and account of moral agency, 87 and account of moral development, 87 and account of moral responsibility, 87 attitudinal, 5, 64-65, 223-25, 276 central claims of, 5 connection between attitude and theory, 167 difficulties with conception of moral responsibility, 159-63

295

dilemma for, 160-62 and epistemic assessment of responsibility, 162–63 and focus on offender, 259 and justification of punishment. See retributive theories of punishment moral intuitions about, 6 and nonreducionist conceptions of self, 146-47 as part of problem of unneccesary harm, 204-05 and reductionist conceptions of self, 149-56 reasons for resurgence of, 6-7, 210-12 resurgence of, 5-6, 210 retributive reactive attitudes, 7-8 Richards, Norvin, 64 Roberts, Robert C., 41, 85

sacrifice. See restitution, and limits of sacrifice for offender salient features of persons. See paradigm of forgiveness, and salient features of persons Sandel, Michael, 149, 155 Sayre-McCord, Geoffrey, 20 Scarre, Geoffrey, 29, 37-38 conclusions of utilitarian analysis, 55 on forgiveness and self-respect, 74 on forgiveness as gift, 52 on Kant's theory of punishment, 214 on three approaches to analysis of forgiveness, 51 on utilitarian approach to analysis of forgiveness, 53-55 on virtue-ethical approach to analysis of forgiveness, 55-56 Scheffler, Samuel, 165, 191 Schmidtz, David, 171, 173, 189 secondary harm Burgh's conception of, 232-33 defined, 233-36 and local effects, 272-73

Index

self-assessment, improvementoriented and judgment-oriented, 128-30 self-condemnation affective component of, 105-06 cognitive component of, 105-06 motivational component of, 106 and respect for morality, 120-23 and respect for ourselves as moral agents, 123-32 and respect for victim, 112–19 self-forgiveness affective component of, 106 and ability to apologize adequately, 113-14 and ability to make full restitution, 114-15 cognitive component of, 106 and condoning wrong, 120 as corrective attitude, 104-05 defined, 106-07 and future moral development, 120-22 genuine self-forgiveness defined, 110-11 and harm to self, 107 and honoring victim's needs, 116-18 as integrated moral attitude, 115-16, 130 motivational component of, 106-07 and remembering what we care about, 131 and respect for morality, 120-23 and respect for ourselves as moral agents, 123-32 and respect for victim, 112–19 as trivializing victim's forgiveness, 115 and true caring about victim, 125-27 and very serious wrongdoing, 118-19 and victim's right to do forgiving, 114-15

self-respect and engaging in power struggle with offender, 68-69 and positive reactive attitudes, 72-73 as primary virtue in process of addressing wrong, 59 and protesting claim implicit in wrong, 69-70 and self-assessment, 128-29 separation between recognition and evaluative, 128-30 and trusting one's own assessment of wrong, 67-68 and vindication of victim, 70-71 self-righteousness, 100 separating offender from offense, 85, 87, 98, 100-01, 114 Shafer-Landau, Russ, 165 "Retributivism and Desert," 180 on reciprocity theories of punishment, 216 on victimless crimes, 239 shared dreadful propensities. See forgiveness, solidarity as grounds for Sharlot, M. Michael, 242, n. 57, 242 Sher, George arguments for desert bases, 173-75 as meritarian, 135, n. 23, 217 objection to utilitarianism, 183 on desert as requiring thick conception of self, 149-50 reciprocity theory of punishment, 217 Smith, Nick, n. 4, 110 Smith, Tara, 85 Snow, Nancy, n. 1, 105, 112, 113 soft reaction to evil. See Kekes, John solidarity. See forgiveness, solidarity as grounds for Solomon, Robert, 6 speech acts. See forgiveness, and speech acts Speight, Allen C., n. 17, 33

Stocker, Michael, 97 disharmony between reasons and motives, 2, 54 "The Schizophrenia of Modern Ethical Theories," 2 Strawson, P.F. on distinction between reactive participant and objective attitudes, 6-7 on objective attitude, 84, 101 on resentment, 31 on retributive reactive attitudes, 84 strict liability in law of torts, 209 strong retributivism. See retributive theories of punishment Swinburne, Richard, 112 theories of punishment. See restitutive theory of punishment; justicebased theories of punishment; retributive theories of punishment TRC. See Truth and Reconciliation Committee trust and forgiveness, 41-42, 61, 73-74, 98-99 Truth and Reconciliation Committee, 47-50 Tutu, Desmond, 70, 81. See also Truth and **Reconciliation Committee** No Future without Forgiveness, 47 unfair advantage theories of punishment. See retributive theories of punishment,

unnecessary harm defined, 197 utilitarianism and accounting for desert, 183

reciprocity theories

Index

297

analysis of punishment, 5-7, 211, 212 approach to analysis of forgiveness, 53-55 as compatibilist position, 157 and important objection to retributivism, 183-84 structural virtues of, 183 value pluralism, 186 victims, types of, 36 vindication of victim, 70-71 virtue ethical approach to analysis of forgiveness, objections to, 55-58 virtue ethics, 3-4 and focus on interests of others, 55-57 objection to, 3-4 virtue-ethical approach to analysis of response to wrongdoing, 168-70, 277-78 virtues defined, 26 possession of, 27-28 ranking of, n. 18, 178 Von Hirsch, Andrew, 219 Walker, Margaret Urban, 261 Moral Repair, 235-36 Watson, Gary, n. 45, 229 weak retributivism. See retributive theories of punishment, weak retributivism

Wertheimer, Alan, 44

wide reflective equilibrium, 2, 17-18

Wiesenthal, Simon, *The Sunflower*, 116–17

Williams, Bernard and human point of view, 137 "The Idea of Equality," 137

Wolfendale, Jessica, 32, n. 55, 87