

Forgiveness, Forgetting, and Resentment

Christopher Kutz*

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INTRODUCTION

Dean Martha Minow's lecture¹ is so careful and eloquent that I aim here to supplement rather than challenge her discussion of forgiveness. Dean Minow's proposals for law's role in cultivating forgiveness are powerfully suggestive but intentionally ambivalent. As she recognizes, urging that victims forgive can mean forgoing the protections of justice for the weak, ultimately rendering the vulnerable yet more vulnerable.

Dean Minow's ambivalence about forgiveness's possibilities is correct: although she does not say so directly, the idea that law can foster forgiveness is deeply puzzling, not because forgiveness cannot be fostered but because we usually think that when law intervenes in conflict, it leaves a residue of bitterness and pain in its wake. Criminal law, when it convicts, adds the pain of punishment to the victim's original pain even as it brings satisfaction to victims and the public. Tort law, when it holds liable, shifts pain to a recalcitrant defendant without necessarily making the plaintiff whole. Bankruptcy law may give some creditors more than they expect, but all get less than they like or deserve. Thus, the very idea that law in action could aid a project of forgiveness, when it creates new liabilities, should seem strange to us. It is one of the great merits of Dean Minow's essay that this proposition seems a little less strange by its end.

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* C. William Maxeiner Distinguished Professor of Law, Jurisprudence and Social Policy Program, University of California, Berkeley, School of Law. I am grateful to Dean Martha Minow and Professor Kathryn Abrams for the rich interchange around Dean Minow's lecture.

1. Martha Minow, *Forgiveness, Law, and Justice*, 103 CALIF. L. REV. 1615 (2015).

I will use the opportunity of this brief Essay to further two objectives. First, I will draw some distinctions within the dimension of forgiveness, mapping in somewhat more detail the terrain Dean Minow has sketched for us. These distinctions are between what I will call *chosen* versus *found* forgiveness and between *sentimental* versus *institutional* forgiveness.

My second goal is to suggest that, in some cases, we may also want to avoid the dimension of forgiveness altogether and see the occasional value in what Friedrich Nietzsche called *forgetfulness*. Forgetfulness is a kind of radical forgiveness, but it is a kind outside the moral system in which forgiveness exists.

I.

DISTINGUISHING FORGIVENESS: CHOSEN VERSUS FOUND

The first distinction I want to make is between chosen and found forgiveness. First, however, we must clarify what Dean Minow means by forgiveness. She first defines forgiveness as “a conscious, deliberate decision to forgo rightful grounds for grievance against those who have committed a wrong or harm.”² This definition relies on three key terms: “grounds” for a “grievance” and “choice.”

You have grounds for grievance whenever you have been wronged. The grounds refer to the objective assessment of the situation relative to moral or legal rules—namely, whether you have been wronged in having been harmed.³ You *have* a grievance when a wrong has been done to you.

Grievances come in two kinds: objective and subjective. We often speak of people *holding* or *nursing* a grievance. In these cases, a grievance is a legitimate grudge; it is a form of subjective emotional affect (resentment) grounded in a claim that one is entitled to resent the harm done to him or her. But one may merely have a grievance in a more affectless sense. I might say I have a grievance against the parking ticket officer who ticketed me for overstaying my meter by a minute, as I could reasonably object that a minute’s cushion of time could be expected in a human system of parking regulation. Nonetheless, in this case I recognize the pressures the officer is under, and the fines are limited—and so in fact my emotions are fully in check.

The objective, affectless type of grievance is relevant to Dean Minow’s discussion, addressed later, in the context of debt forgiveness, where “forgiving” may have little to do with feelings of resentment and more to do

2. *Id.* at 1622.

3. Not all harms are wrongs, of course. If you get the job I would like or marry the person I had my heart set on, I will be grievously harmed but not necessarily wronged. And not all wrongs involve harms, understood as damage to my concrete interests. To take the example of Arthur Ripstein, you wrong me if you trespass on my empty property at night and sleep in my bed, though you do not disturb a blade of my grass and fully restore my possessions. Arthur Ripstein, *Beyond the Harm Principle*, 34 PHIL. & PUB. AFF. 215, 218 (2006).

with the forgoing of claims for repayment.⁴ (Indeed, debt forgiveness has little to do with grievance, since a debt need not involve a wrong at all.) But the core of Dean Minow's definition clearly implicates the emotionally laden concept of forgiveness. She goes on to describe the value for a victim of "letting go of resentment and blame"⁵ and moving past the emotional sequelae of a wrong as well as the formal, normative claims to restitution and reordering.

The idea of moving past a grievance brings us to the third and most important term in Dean Minow's definition: choice. According to her, forgiveness is a matter of grace, a gift from the wronged to the wrongdoer. A forced gift is an oxymoron, both a tribute and a burden. A child forced to forgive by her parents is feigning forgiveness, not giving it. Instead, the forgiver lets go of her claims through an uncoerced choice to alter her attitudes and her moral or legal claims on the person forgiven. The grounds for forgiveness are many, including having witnessed contrition or remorse, as well as an effusion of empathy for the wrongdoer herself. But the ground of forgiveness, for Dean Minow, is an existential moment brought about as a matter of choice; it is a willing of self-transformation as well as a transformation of the normative environment of the wrong.

Dean Minow closely examines the example of South Africa's Truth and Reconciliation Commission (TRC) process.⁶ The process offered occasions for the victims of both state and African National Congress (ANC) political violence to exhume the facts of the underlying crimes, to witness the wrongdoers' remorse, and then to engage in a (rarely offered) public declaration of forgiveness accompanying a legal declaration of amnesty. Nelson Mandela and Desmond Tutu guided the TRC process, declaring the need to forgive in order to forge a common future and so shaping a broader national process toward this fragile goal. While the TRC represents a political and institutional moment, the example is also charged with feelings of fear, anger, and desire for vengeance. The decision to look forward rather than backward seems to have been guided but not compelled by the ANC's political interests in consolidating a stable democratic state. And while forgiving does not eliminate the victims' families' grief, forgiveness seems to let them move past their pain. All the elements of the definition are exemplified.⁷

4. Minow, *supra* note 1, at 1638–43.

5. *Id.* at 1618.

6. *Id.* at 1621–25.

7. Lucy Allais describes another TRC moment of forgiveness:

Gobodo-Madikizela describes a meeting between de Kock and two widows, Pearl Faku and Doreen Mgoduka, whose husbands were murdered by de Kock. The meeting was requested by de Kock in his first appearance before the TRC; he testified about his role in the murders and said he wished to meet the widows in private, to apologize to them. In the meeting, both widows said that they forgave him. After the meeting Faku said, "I couldn't control my tears. I could hear him, but I was overwhelmed by emotion, and I was just nodding, as a way of saying yes, I forgive you. I hope that when he sees our tears, he knows that they are not only tears for our husbands, but tears for him as well . . . I would like to hold him by the

The standard example of forgiveness in philosophical literature also highlights the element of choice.⁸ Imagine a spouse seeking forgiveness for some incident of dishonesty or infidelity. He pleads with his partner to let go of this past infraction, lest it destroy the rest they have built or foreclose a future as a family. The wronged spouse considers dispassionately: his husband made a mistake and did so without excuse, and temptation affects us all. There is no way to see the betrayal as unimportant, and there is no reason to be sure that it will not happen again. But divorce is hard, and harder yet is to share a life and a bed with a partner and a grudge. And so the wronged spouse forgives, though likely with negotiation, both tacit and explicit, about the rules going forward. Forgiveness need not be unconditional. A story like this represents a decision to accept the conditions as sufficient and to bank the contrition of the wrongdoer as collateral for the relationship going forward.

Dean Minow is right to think that choice can be the crux of forgiveness, especially in the institutionally or emotionally constructed dramatic spaces of a TRC hearing or a peace conference between angry lovers. However, I believe such situations are not nearly as common as another form of forgiveness, the kind of forgiveness we *find* in ourselves when time has passed or after the initial failure to meet another's valid moral claim. Found forgiveness can be easily confused with simply ceasing to care—writing off the offender as someone not worth indignation. I believe we can agree with the analysts of forgiveness that ceasing to care is not forgiveness—forgiveness must in some way articulate its erasure of claims. I might cease to care about a debt because the effort to collect is more costly than the debt itself, but I have not thereby forgiven the debt; it is simply uncollected and without emotional charge.⁹

Yet, that still leaves room for found forgiveness. One can imagine the spouse whose trust is abused, and after a period of simmering anger now *finds* forgiveness rather than *chooses* to forgive the other. The spouse may find forgiveness, not because the infidelity is excused or the spouse is not worth resenting, but simply because infidelities may happen in a life together under the strains of a committed relationship and because the future—a future that is fuller with a less compromised love in it—is more important than the past. The wronged spouse cares about the history of betrayal but finds that when he thinks of that moment of history, it is sublimated in a longer narrative. Found forgiveness, precisely because it is not an artifact of will, is all the likelier to stick. The negotiations surrounding the choice to forgive can always be second guessed in retrospect, the deal unraveling.

hand, and show him that there is a future, and that he can still change.”
Lucy Allais, *Wiping the Slate Clean: The Heart of Forgiveness*, 36 PHIL. & PUB. AFF. 33, 40–41 (2008) (ellipsis in original).

8. See, e.g., Pamela Hieronymi, *Articulating an Uncompromising Forgiveness*, 62 PHIL. & PHENOMENOLOGICAL RES. 529, 541 (2001).

9. See Allais, *supra* note 7, at 43.

Similarly, one can imagine a crime victim who chooses not to forgive, either at trial or at a restorative justice conference, because the wounds were too great or the perpetrator's expressions of remorse were insufficient. But this victim might also find herself in a state of forgiveness, not because a punishment has paid the debt, but again because a state of remembered grievance locks both victims and perpetrators into the past and present and thus blocks the future. As the victim moves into her future and imagines or sees the offender move into a separate future, she might find that she has forgiven.

Because found forgiveness is not a choice, a state that actively promotes it must justify this goal as an exception to the general liberal presumption in favor of choice-sensitive policies. But found forgiveness may be a more realistic goal than the chimera of the more profound but difficult chosen form. While there is an important place—for example, in the domestic restorative justice movement¹⁰—for the practices and ceremonies organized around chosen forgiveness, law may be better able to foster the conditions for found forgiveness by creating the conditions of stability and peace in which it can be found.

In more material terms, the most important role for the state in cases of ordinary crime might not be directly aiding the emotional reconciliation of victims and perpetrators but instead rendering each of them safe, so that the demand for forgiveness need not be on the victim. By definition, forgiveness is not a demand, and trying to move a victim toward forgiveness too soon may simply exacerbate the sense of powerlessness. What we need instead is not only a justice system that pays specific attention to the economic and psychic damage done to victims, but also a social system that generally makes citizens less vulnerable to the shocks of crime—a system of adequate health care and accommodation in employment. And this means a correctional system that enables a post-conviction life for the offender. Found forgiveness appears in a life in conditions of security. Law's role here is profoundly *ex ante*, constructing a world of security rather than reconciliation.

II.

SENTIMENTAL VERSUS INSTITUTIONAL FORGIVENESS

Thus far I have deliberately dealt with the emotional register of forgiveness as it arises primarily in interpersonal contexts, and I have emphasized that forgiveness can be valued even as a form of resignation, rather than active choice. At stake with emotional forgiveness is a change in the forgiver's attitudes and emotions, grounded in a judgment that her claims against a wrongdoer have been released. Dean Minow, however, also rightly

10. See, e.g., Mary Louise Frampton, *Transformative Justice and the Dismantling of Slavery's Legacy in Post-Modern America*, in *AFTER THE WAR ON CRIME* 207 (Mary Louise Frampton, Ian Haney López & Jonathan Simon eds., 2008).

targets the question of what institutions can do, not just to foster or impede individual acts of forgiveness, but what they can do on their own as the only entities with standing to let go of valid claims against categories of debtors, wrongdoers, and others. Institutional forgiveness seems paradoxical on its face: Since institutions cannot feel, how can they genuinely forgive? Yet, where institutions and social groups—tribes, trusteeships, political parties, ethnic, or religious groups—hold claims, no individual could be in a position to forgive either.

If we insist that sentimental forgiveness is central to the process of forgiveness, we will be left with this paradox and thus the conclusion that forgiveness is not possible in institutional contexts. This conclusion would be unfortunate for two reasons and so should be rejected. First, it links our notion of forgiveness too tightly to the concept of love and mercy, sentimentalizing a social process that can occur in the absence of affect, as we have seen. Second, it gratuitously forgoes the core aim that law, in its generality, enables groups as well as individuals to release valid claims. Indeed, I suggest that we do better to treat the institutional case as the central example of forgiveness and the sentimental case as the more puzzling one. That is, let us define as central to forgiveness simply *the conscious release of valid normative claims*, omitting the concept of grievance.¹¹ A thinner definition of forgiveness will include both the betrayed spouse moving toward reconciliation and the creditor who releases the debtor from repayment.

The institutional account is preferable because, as Dean Minow recognizes, the sentimental account of forgiveness, especially in its chosen form, has an inevitably religious—and specifically although not exclusively Christian—ring to it.¹² Indeed, in the (apparently rare) examples of forgiveness following the end of Apartheid, the salient emotions seem to be not just withdrawn resentment but an upsurge of agapic, Christian love—a love that values the offender even as it hates his crime.¹³ To the extent we fix our minds

11. Moreover, the idea of “conscious withdrawal” is meant to include a found consciousness as well as a choice.

12. Minow, *supra* note 1, at 1618–19.

13. While this Essay was in editing, we witnessed the horrific shootings at Emanuel African Methodist Episcopal Church by young white supremacist Dylan Roof. In an extraordinary scene at Roof’s arraignment, several relatives of victims and survivors of the shooting said they “forgave” Roof for his crime, in a gesture that has been a traditional part of the Christian nonviolent civil rights movement. Their declaration of forgiveness spurred what was widely seen as a collective decision by South Carolina politicians of both parties to remove the Confederate battle flag from the state house; similar actions, unthinkable not even weeks before the shooting, have followed in neighboring states. Catherine E. Shoichet, Ashley Fantz & Holly Yan, *Charleston: Governor, Senators Join in Saying Confederate Flag Should Go*, CNN (updated June 24, 2015, 4:10 PM), <http://www.cnn.com/2015/06/22/us/charleston-church-shooting-main>. I am moved by the power of this movement of forgiveness, but share much of the mystification of writer Ta-Nehisi Coates about the nature of such an emotion and its meaning in the wake of an act of such cruelty. See *Ta-Nehisi Coates on Police Brutality, the Confederate Flag and Forgiveness*, NPR (July 13, 2015, 1:59 PM), <http://www.npr.org/2015/07/13/422554778/ta-nehisi-coates-on-police-brutality-the-confederate-flag->

on the sentimental form of forgiveness, we are (in the West) bound to that Christian tradition.¹⁴ It is an emotionally and narratively powerful tradition, to be sure, but I believe we need to be cautious about that conception for a number of reasons.

First, the sentimental conception makes it harder to think clearly about the bloodless, functional questions of forgiveness as they relate to institutions—categorical questions regarding issues such as amnesty and debt relief. Questions of releasing feelings of resentment or of satisfying the conditions of agapic love are inherently moralized and answered by reference to the moral conceptions animating these reactive emotions. But moralization can be the enemy of sound social policy, making it impossible to discuss strategies of harm reduction instead.¹⁵ The public, Tea Party-fueled debate on whether to offer mortgage relief for underwater homeowners is a classic case where an overly moralized conception of debt prevented a sounder housing policy that might have done more to preserve neighborhoods from the blight of systemic foreclosure.¹⁶ Similarly, a number of analysts fault German politicians for moralizing the question of Southern Europe's debt repayment and thus promoting a policy of fiscal austerity that depresses the entire European economy.¹⁷ Another case in point is the moralization of amnesty in relation to unpermitted border crossings. Highlighting a sentimental, highly moralized conception of forgiveness puts enormous pressure on the idea of amnesty, which might better be analyzed in functional, policy terms.

The second concern I have about sentimental forgiveness brings me to the contrast between *ordinary, moral* forgiveness and *radical, extra-moral* forgiveness. The great moral psychologist, Friedrich Nietzsche, names this as the difference between forgiveness and forgetting. Radical forgiveness leaves the claims of morality behind rather than merely cancelling particular claims while staying within the moral economy.

and-forgiveness. The highly sectarian form of forgiveness expressed by the Emanuel survivors is not a natural part of the universe of democratic politics, even as it leads to welcome outcomes. It also raises the concern that the Christian mantle of forgiveness might be used to muffle the protests of those who do not want to forgive but prefer to stoke a righteous and reasonable anger. More generally, it raises difficult questions about the relation of religious discourse to secular politics in a pluralistic society.

14. There is of course a general concern about an officially secular, liberal state such as the United States and its legal institutions fostering religiously anchored conceptions, but that is not the primary concern because law does symbolic work with the cultural materials at its disposal.

15. For a discussion of harm reduction in the context of the War on Drugs, see Robert J. MacCoun, *Moral Outrage and Opposition to Harm Reduction*, 7 CRIM. L. & PHIL. 83 (2013).

16. The moralization began with the famous rant of CNBC Reporter Rick Santelli. See Eric Etheridge, Opinion, *Rick Santelli: Tea Party Time*, N.Y. TIMES (Feb. 20, 2009, 12:48 PM), <http://opinionator.blogs.nytimes.com/2009/02/20/rick-santelli-tea-party-time>.

17. See, e.g., Paul Krugman, Opinion, *Europe's Greek Test*, N.Y. TIMES (Jan. 30, 2015), <http://www.nytimes.com/2015/01/30/opinion/paul-krugman-europes-greek-test.html>.

In his *On the Genealogy of Morals*, Nietzsche discusses what he calls the “slave revolt in morality,” the morality of *ressentiment*.¹⁸ Slave morality is our Judeo-Christian morality, and it is characterized by the transformation of the heroic values of good and bad—roughly, strong and weak—into the Christian values of good and evil. In this Christian value system, “weak” becomes “meek” and an exemplar of a new idea of good, while heroic good becomes evil, thoughtless abuse by the powerful.¹⁹

Nietzsche calls this transformation a slave morality for two reasons. First, it is the morality of the slaves who stage a cunning revolution over their masters, a revolution of value rather than a revolution of force. Second, it is a slave morality because it is constituted by an internal bondage of conscience, a conscience internalized through a literal history of sadistic punishment that has made us creatures worthy of being taken at our word. The history of this torture, Nietzsche says, is the history of our modern idea of the good.²⁰ The modern moral conscience, then, is the conscience of a slave whose master does not need to use iron chains because the slave binds himself.

Nietzsche’s attitude toward the value of our slave morality system, which makes obligation central, is perhaps more nuanced than at first glance. While there is value in binding ourselves with promises and in the kinds of complex social organizations that promising makes possible, Nietzsche’s central point is that the morality of promising—that is to say, the morality of creditor and debtor—is both historically specific and not beyond reflection and question. The ordinary concept of justice, which involves paying what one owes, is bound up in this economy of moral debt and in the ways that morality serves not as a basis of freedom (as Kant thought), but instead an internalized bondage of the will.

I discuss the background of our fraught emergence as promising creatures because I want to make use of a contrast Nietzsche offers between what I have called normative forgiveness and what he calls forgetfulness. He writes:

To be incapable of taking one’s enemies, one’s accidents, even one’s misdeeds seriously for very long—that is the sign of strong, full natures in whom there is an excess of the power to form, to mold, to recuperate, to forget (a good example of this in modern times is Mirabeau, who had no memory for insults and vile actions done him and was unable to forgive simply because he—forgot). Such a man shakes off with a single shrug much vermin that eats deep into others; here alone genuine “love of one’s enemies” is possible—supposing it to be possible at all on earth.²¹

18. Friedrich Nietzsche, *On the Genealogy of Morals*, in *ON THE GENEALOGY OF MORALS AND ECCE HOMO* 36 (Walter Kaufmann & R.J. Hollingdale eds. trans., Vintage Books 1989) (1887).

19. *Id.* at 36–42.

20. *Id.* at 60–62.

21. *Id.* at 39 (footnote and emphasis omitted).

I take Nietzsche to say that ordinary, moral forgiveness does not genuinely leave an open future but is yet another cunning strategy of morality. Forgiveness within the moral system consolidates the moral power of the forgiver—it is itself a form of *ressentiment* in its self-consciously genuine abnegation of claims. The strong person, Mirabeau, moves beyond the morality system, beyond the limitations of that particular set of values.

I believe forgetting is not an appropriate value or goal in many cases, including in the cases of top level war criminals, political officials who order torture, or the deeply troubling case of child soldiers, all of which were discussed so sensitively by Dean Minow.²² Child soldiers are people we want fully back within the moral system, with their consciences bound by moral respect for vulnerable others. Yet, there are also contexts in which radical forgetting is an appropriate goal. The possibility of a truly radical forgetting is, I think, what is so interesting about the post-Occupy goal of debt forgiveness, which should not be confused with its primarily Christian, Jubilee-inspired fellow traveller.²³ The post-Occupy goal is precisely not to cancel particular debts while remaining within the creditor-debtor structure of contemporary capitalism but instead to question that system and the way it constructs and binds us as its subjects—to reject the economy of debt and release. The radicalism offered by that possibility, whether or not we take it, is an important window through which to view the contemporary social and economic order. That window only exists, however, to the extent that we move away from the moral frame of forgiveness.

A second brief example is the case of ordinary political revolution, particularly the post-Communist revolutions of Eastern Europe. A logic that promotes forgiveness in lieu of score settling is better than a cycle of revenge, but it still leaves the primary focus of nascent democratic institutions in the past rather than the future. As I have argued elsewhere, the demands of justice in the present and for the future morally dominate the demands of the past.²⁴ The ephemeral excitement of young Arab progressives during the so-called “Arab Spring” was grounded in the idea of an open future, one that could transcend the tribal, religious, and party-based strategies of the past. Those revolutions failed for many reasons, but I suggest that among them was too great a concern for working through, rather than overcoming, the past. Put another way, I see the promise Dean Minow suggests for a politics of forgiveness, but I worry that when forgiveness fails—when there are no Mandelas and Tutus to guide—score settling will be the result. Forgetting, by

22. Minow, *supra* note 1, at 1624, 1633–37.

23. *See id.* at 1640–44. “Jubilee” refers to the Old Testament idea that every fifty years, the chains of servitude and debt are to be broken. *Leviticus* 25:8–17. While not all the organizations pursuing jubilee debt forgiveness are religious, the religious echoes are clear. *See, e.g.*, JUBILEE DEBT CAMPAIGN, <http://jubileedebt.org.uk> (last visited Aug. 21, 2015).

24. *See* Christopher Kutz, *Justice in Reparations: The Cost of Memory and the Value of Talk*, 32 PHIL. & PUB. AFF. 277 (2004).

genuinely wiping the slate of the moral claims and debits, may offer the better prospect of a future.