

# Apology, Justice, and Trauma Recovery

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On November 22, 2001, Pope John Paul II, in his first e-mail message to the world, apologized to victims of sexual abuse perpetrated by priests. In his message, the Pope states:

Sexual abuse by some clergy has caused great suffering and spiritual harm to the victims. . . . Sexual abuse within the church is a profound contradiction of the teaching and witness of Jesus Christ. . . . The synod fathers wish to apologize unreservedly to the victims for the pain and disillusionment caused to them.<sup>1</sup>

He added that the church was “unequivocally committed to compassionate and effective care for the victims, their families, the whole community and the offenders themselves.”<sup>1</sup> We are, it seems, in an era of public apology. In the past few years, the Pope has apologized for the sins and injustices committed by the Catholic church, including wrongs inflicted on Jews, minorities, and women<sup>2</sup>; the Japanese government has apologized for atrocities committed in World War II; President Clinton has apologized for America’s history of slavery and for America’s support of foreign dictators<sup>3</sup>; and the Canadian federal government has apologized for the executions of 23 Canadian soldiers during World War I, volunteers who were shot for desertion or cowardice.<sup>4</sup>

The move to public apology stems in part from a belief that public actions can cause personal pain. An aspect of this belief is the notion that apology is a necessary prerequisite to forgiveness and that forgiveness in turn leads to recovery.<sup>5</sup> A second aspect is an increased interest in restorative justice as an alterna-

tive or adjunct to criminal sentencing or civil liability.<sup>6</sup> This alternative process encourages offenders to take responsibility for their actions and to make restitution, with the joint goals of assisting the victim in the healing process and reintegrating the offender into society.<sup>7</sup>

In this article, we seek to explore the issue of apology and justice within society and to consider the impact of these processes on the healing of individual victims.

## Defining Apology

Although apology is a common part of our language of relationships, little has been written about the nature of apology and the elements that comprise it. Tavuchis<sup>8</sup> suggests that when someone apologizes, he or she is in the position of seeking unconditional pardon in the context of being unworthy of an act that can be neither forgotten nor forsaken.

Apology includes three main components:

1. Acknowledgment of the offense or provision of a truthful account of the offense so that the victim’s experience can be publicly verified.<sup>5</sup>

2. A willingness to admit wrongdoing or, in effect, issue a *mea culpa* (through my fault). To apologize is to declare voluntarily that one has no excuse, defense, justification, or explanation for the action.<sup>8</sup> Implicit in this is the agreement to accept the consequences—social, legal, and otherwise—that flow from having committed the wrongful act.<sup>5</sup>

3. A willingness to state that the act will not be repeated—that is, to make a pledge (implicit or explicit) to abide henceforth by the rules.<sup>8</sup> Consequently, it is not acceptable to apologize for abusive behavior with the expectation that one will simply apologize again when the act is repeated.

When any of these elements of apology is missing, the apology has been botched. The classic example of a botched apology, cited in many publications, is the

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case of Richard Nixon, who, in his apology for Watergate, failed to acknowledge the offense and justified wrongdoing by suggesting it was for the greater good.<sup>5,8,9</sup> Furthermore, although Mr. Nixon did not dispute the facts of Watergate, he suggested that his own acts were simply misjudgments and mistakes and his resignation was the price paid for an error, not for the commission of a crime.<sup>8</sup> Such botched apologies include statements such as, “I am sorry you hurt,” rather than, “I am sorry I did that to you.”<sup>5</sup>

### Apology, Justice, and Liability

There is little room in the legal context for apology. Lawyers reflexively advise clients to refrain from making statements that suggest that they may in any way be responsible for harm, for fear that they may inadvertently accept criminal or civil responsibility for their actions.<sup>10</sup> Because the courts do not accommodate the concept of apology, a victim may obtain monetary compensation or see the offender jailed, but cannot expect an apology. This may leave victims with the sense that no one has acknowledged their pain. Indeed, a study by Des Rosiers *et al.*<sup>11</sup> suggests that the primary desire of victims of sexual assault who pursue civil litigation is to be heard and to obtain an apology; most are severely disappointed. One commentator observed that “the time-honored privilege against the incrimination of self has, in effect, morphed into a prescription against the consolation of others [in the legal context]” (Ref. 3, p 26).

Concerns that the legal system thwarts effective apology have led some to suggest rewriting the rules of evidence to exclude some apologies as admissions by a party-opponent doctrine.<sup>3</sup> That is, some advocates want to change the current rules in which an apology is seen as an admission of responsibility or culpability. At the present time in the United States, apology is considered inadmissible only if it falls under the Federal Rule of Evidence 408.<sup>12</sup> In this situation, there must be a dispute as to the validity of the claim or the monetary amount sought in damages, and the apology must be linked to an offer to compromise.<sup>9</sup> Two states have instituted bills that create “safe harbors” for apology.<sup>5</sup> In Massachusetts, statements or writings to the family expressing sympathy for pain, suffering, or death of a victim are considered inadmissible as evidence of liability in a civil action.<sup>13</sup> Similar legislation was more recently enacted in Texas. Taft,<sup>5</sup> however, makes the important observation that the creation of safe harbors undermines a

key factor that supports the integrity of apology—that of willingness to take responsibility for the action. Further, the risk is raised that apology will be defined as merely a pawn in the power game, thus becoming part of another moral economy in which apology is used as a strategy.<sup>8</sup>

Apology is one means of acknowledging the suffering experienced by victims. An alternative method used in the courts is the victim impact statement. This in essence attempts to fulfill the second requirement for an apology: forcing the offender to face the consequences of criminal actions, whether or not the offender accepts responsibility. In the civil context, problems arise because there is no way to measure whether awards for intangible injuries are reliable and valid.<sup>9</sup> Questions are raised about whether financial compensation constitutes public acknowledgment and acceptance of responsibility. The evidence does not suggest that financial compensation for intangible losses, especially for the pervasive and insidious effects of victimization, leads to healing and resolution.<sup>7</sup> An alternative argument in favor of payment of intangible damages is that they are a deterrent, not compensation.<sup>9</sup> In other words, society is attempting to fulfill the third requirement of an apology: the willingness to pledge that the act will not be repeated. In this way, not only may a particular offender be deterred from committing the act again, but also others may be dissuaded from such action. When one considers the effects of punishment on deterrence in other contexts, however, the argument is not persuasive.

Although they may not require an overt apology, criminal sentencing determinations acknowledge as mitigation the sincere expression of remorse and acceptance of responsibility.<sup>9</sup> As a further attempt to ensure that offenders take responsibility for the consequences of their actions, impact on the victim has arisen as a factor in court decisions. In civil law, which emphasizes compensating the victim, a consequentialist position is taken. That is, the monetary value of the judgment is based in part on the magnitude of the outcome. Yet, the use of victim impact in sentencing in the criminal justice context is a matter of contention. The offender’s intention is a critical factor, and punishment is guided by normative estimations of the severity of the consequences for the victim.<sup>14</sup> Although the seriousness of the crime is certainly an important factor in impact, individual strengths and vulnerabilities of the victim also lead

to traumatic outcomes.<sup>15–17</sup> Hills and Thomson<sup>14</sup> question why offenders with the same intentions, who commit the same crimes, should receive different sentences because the characteristics of the victims resulted in different psychological consequences.

An alternative form of justice for violent offenses that is increasing in popularity is restorative justice, a term most often used to describe such informal and nonadjudicative forms of dispute resolution as victim-offender mediation, family conferences, and aboriginal forms of justice that promote joint decision-making power.<sup>6</sup> The Supreme Court of Canada has embraced restorative justice as a legitimate form of sentencing, with its emphasis on acknowledgment of harm, reparation, and community sanctions.<sup>6</sup> An additional component of the restorative justice model is the concept of disgrace and the belief that a defendant's public acknowledgment of shame acts as both a punishment and a deterrent.<sup>18</sup> Although this may appear to satisfy the three aspects of apology, Roach<sup>6</sup> questions whether restorative justice satisfies the fundamental principles of sentencing, including whether the sentence is proportionate to the seriousness of the crime. As a result, victims may believe that their continuing safety has not been considered and that the magnitude of the crime has not been fully acknowledged. Further, in an attempt to embrace the concepts of contrition and apology, the courts may simply have created an expeditious means of avoiding imprisonment.

Several other problems regarding the application of restorative justice remain unresolved. One such problem is that reparation politics often have a backward-looking dimension, promoting the cultivation of victimhood and cultural parochialism.<sup>19</sup> Victims become dependent on the oppressor to engage in the process in a fair and meaningful way. In addition, at a time when many individuals and groups are seeking justice for historic atrocities, restorative justice runs the risk of creating an environment of competition, in which each group of victims must show themselves to be the most wronged and to have incurred the greatest damage.

The implementation of restorative justice also makes many assumptions about victims regarding what is necessary for their healing and regarding their willingness to engage in the process. Society must ensure that we do not place the responsibility on the victim to ensure that an offender takes responsibility

for his or her actions. In addition, it is important to assess whether the aims of restorative justice are indeed directed more toward the benefit of the offender than the victim.<sup>6</sup> Restorative justice supports perpetrators and encourages them to take responsibility for their actions, to make some sort of restitution, and to reintegrate into society.<sup>7</sup> This may cause distress for victims who view the perpetrator as receiving equivalent or more support than they receive. Finally, it is important not to rush to include the requirement for apology in the restorative justice process on the assumption that the process and an apology will assist in the healing process. The therapeutic value to the victim has yet to be determined.<sup>9</sup> Statements can be found in the literature such as: "The evidence of victim satisfaction as a result of face-to-face confrontation with the offender and mediation of a restitutionary response is overwhelming" (Ref. 20, p 858). However, reviews of research supporting these statements demonstrate significant problems with data collection and sampling.<sup>20</sup> In addition, one must be cautious about equating satisfaction with the process of healing.

### Apology, Justice, and Healing

An assumption often made by both victims and society is that an apology is a necessary aspect of healing. In several articles the tendency has been noted for victims seeking compensation to state that if the offender had apologized, they could have begun to heal.<sup>5,10</sup> Self-help books make such statements as: "Apology has the power to heal individuals, couples and families. Almost like magic, apology can mend our relationships, soothe our wounds and hurt pride and heal our broken hearts" (Ref. 21, p 12).

Forgiveness is a concept related to apology. Much of the psychotherapeutic literature is based on the health model perspective in which forgiveness is understood as giving up one's right to retribution and letting go of anger and resentment toward the offender, with a consequent reduction in the victim's emotional distress and anxiety.<sup>22,23</sup> A change in the perspective of the forgiver is achieved through replacing negative feelings with positive ones of empathy toward the wrongdoer. From this perspective, forgiveness is a gift from the forgiver to the forgiven.<sup>22</sup> This act of forgiveness is then seen to lead to resolution of the trauma and the resultant symptoms of distress. A recent study reported in *The New York Times*,<sup>23</sup> however, suggests that Americans are more

likely to believe that God has forgiven them (75%) and to have forgiven themselves for transgressions against others (57%) than to have forgiven others for misdeeds against them (52%). Nevertheless, the researchers suggest that health benefits accrue for those who forgive.<sup>23</sup> However, if forgiveness after a show of contrition through an apology is a requisite aspect of healing, then victims continue to depend on offenders' behavior for their psychological well-being.<sup>5</sup>

It has been argued that an apology, rather than bringing about the healing of the victim, may in fact represent a means of catharsis only for the perpetrator. One Holocaust survivor stated: "I think [the apology] was invented by those who perpetrate atrocities. . . to make them feel better. I don't know how it can make victims feel better" (Ref. 9, p 184). In this way, apologies may be a way for perpetrators to save face and avoid liability but may in fact have little to do with the victim's well-being.

When one views the public statements of victims and their families, one is often struck by the belief that healing can begin only if justice has been satisfied. There is a belief that justice will allow "closure" of the issue.<sup>7</sup> On another level there may be a belief in retributive justice—that is, only when the wrongdoer has been punished, either through incarceration or financial penalty, can moral equilibrium be restored.<sup>7</sup> This places the victim at the mercy of a judicial system that may or may not be able to prove guilt beyond a reasonable doubt. If the prosecution fails, victims may feel further victimized and humiliated.<sup>7</sup> Even when the victim "wins," the experience of grueling litigation may rob that outcome of any healing potential. Secondary guilt after winning may also keep the victim from benefiting from the victory.

The quest for justice and apology, in and of itself, may thwart the healing process. Many researchers have shown that the ability to attribute some positive meaning to tragic events is associated with lower levels of traumatic reactions. This area of inquiry began with Viktor E. Frankl's *Man's Search for Meaning*.<sup>25</sup> in which he recounts his experience in a Nazi concentration camp during World War II and tells how he came to understand the world and his experience. The literature now includes studies that associate positive meaning with lower levels of symptoms in human immunodeficiency virus (HIV)-positive men,<sup>26</sup> people with disabilities,<sup>27</sup> and women with breast cancer.<sup>28</sup> Conversely, those individuals who

continue to seek meaning in events that are horrific and random, such as incest or the loss of a child, continue to have higher levels of affective arousal many years after the traumatic event has ended.<sup>29,30</sup> The search for apology and justice may have a similar outcome.

### Public Acts, Private Pain

When one considers the scope of human injustices in an event such as the Holocaust and the number of individuals who continue to be affected, the question arises of who should or can apologize. The famous doctor's trial in Nuremberg (1947–1949)—focused on the experiments of Nazi doctors on prisoners in concentration camps, which included exposure to extreme cold, high altitudes, mustard gas, sulfanilamide, seawater, and incendiary bombs—provided a window into the atrocities committed by the Nazis.<sup>31</sup> In that case, the first aspect of apology, that of naming the truth and forcing responsibility, was fulfilled. In referring to the trial, U.S. Chief Prosecutor Justice Robert Jackson stated: "The wrongs which we seek to condemn and punish have been so calculated, so malignant, and so devastating, that civilization cannot tolerate their being ignored because it cannot survive their being repeated" (Ref. 31, pp 30–31). Yet subsequent investigations such as the trial of French bureaucrat Maurice Papon in 1998 have demonstrated that complicity in the extermination of Jews went far beyond the borders of Germany and the realm of the Nazis. How many people and governments should apologize? In addition, the trial of James Keegstra,<sup>32</sup> a teacher in western Canada, who fought (unsuccessfully) for the right to teach public school students that the Holocaust was a hoax, shows that acknowledgment is not universal.

A second question arises regarding the extent to which a figurehead or group making an apology accepts responsibility for the wrongdoing. Pope John Paul II apologized for the historic misdeeds of Roman Catholics, including those against Jews, and publicly asked God for forgiveness. After the apology, however, Israel's Chief Rabbi, Israel Meir Lau, expressed disappointment that the Pope did not mention the Holocaust or the controversial role of Pope Pius XII, who, many believe, turned a blind eye to the death camps.<sup>2</sup> Clearly, for many this apology did not go far enough. In contrast, Albert Speer, one of the most sinister figures in Nazi Germany was praised for his apology, which took full responsibility

for his actions and acknowledged that no call for forgiveness was justified:

My moral failure is not a matter of this or that. It resides in my association with the whole course of events. . . . Whether I knew or did not know, or how much or how little I knew, is totally unimportant when I consider what horrors would have been the natural ones to draw from the little I did know. . . . No apologies are possible [Ref. 8, p 21].

An alternative to public apology has been the concept of truth commissions, the most famous of which was convened in South Africa. The task of the South African Truth and Reconciliation Commission (TRC) was to expose and document human rights abuses perpetrated under the system of apartheid.<sup>33</sup> In the end, the TRC took 21,298 statements from survivors or families of victims of political violence and dealt with 7,128 applications for amnesty.<sup>7</sup> Through the truth-recovery process, the commission sought to reconcile South Africa with its past and correct misconceptions and stereotypes.<sup>7,34</sup> In this way, truth commissions are designed to fuse polarized antagonistic histories into a core of shared history to which both sides can subscribe.<sup>18</sup> In addition, truth processes attempt to deal with the destructive influence of enforced silence and social discounting of the experience of victims<sup>34</sup> on the basis of the belief that revealing is healing.<sup>35</sup>

Although some view this as an important process for both individual and societal healing, others assert that the TRC was created for political reasons to smooth the political transition from authoritarian to democratic rule.<sup>34</sup> Contentions regarding whether the process was helpful or harmful to individuals appears to be highly personal and dependent on what role the individual played in the process. The commission attempted reconciliation in light of a common history, yet critics have suggested that there is no common historical perspective and therefore the potential for discounting some experiences continues to exist.<sup>7,35</sup> Others question the value of catharsis in such a prescribed manner within a prescribed time frame in which victims may even be forced to provide testimony.<sup>7,35</sup> Some have suggested that individuals may have become further traumatized by the reopening of their wounds and the recounting of events.<sup>7</sup> From this perspective, the role of truth commissions is viewed as an attempt to deal with the collective issues at the expense of the individual. In fact, a South African legislator explicitly stated: "We sacrifice justice because the pains of justice might trauma-

tize our country and affect the transition. We sacrifice justice for truth so as to consolidate democracy, to close the chapter of the past and avoid confrontation" (Ref. 7, p 466).

Despite anecdotal evidence that the process of the TRC has led to healing, there is little empirical evidence to support this claim. In a study of 134 victims, in which the outcome was compared for those who testified, those who gave written statements, and those who remained silent, no significant differences were found in symptoms of post-traumatic stress disorder (PTSD) or in the victims' levels of forgiveness.<sup>33</sup> In part, this may be because few psychological support services were made available to victims in the process of testifying or following their testimony.<sup>34</sup> Furthermore, the process leading to amnesty for perpetrators preceded the process of reparation for victims. Except in the most dire cases, victims were not to be compensated until the amnesty process was completed.<sup>7</sup> In addition, amnesty seekers were not compelled to make any form of restitution beyond the public shame of acknowledging their deeds.<sup>7</sup> Finally, it is argued that far more central to the healing process is the ongoing deprivation that contributes to the experience of primary trauma.<sup>34</sup>

Reparation campaigns for past injustices represent a new phase in relationships between states and the groups that they have victimized historically. It is hoped that these will influence the future willingness of statesmen to oppress other groups.<sup>19</sup> However, one of the problems of reparation is the possibility of backlash. Torpey<sup>19</sup> suggests that the payment by the Germans of enormous sums in reparation for acts in World War I helped generate a backlash against those who exacted the payments and contributed to the rise of the Nazi party. Further, it is possible that current attempts to obtain reparation contribute to anti-Semitism and the threat of questions about the validity of claims. Thus, the risk to individuals may in fact increase.

## Conclusion

In this review, we have considered some of the studies of apologies made in several circumstances. It is clear from the foregoing that far more systematic research is needed into the variables that affect the potential of the apology to become a step in the healing process. As this review has indicated, the current empirical evidence is insufficiently solid to support the proposition that apology by oppressors, perpetra-

tors, and defendants is a panacea leading to healing of trauma under all circumstances. The variability of injuries and their scope, the variety of victims and their psychologies, and the possibilities of mismanaged apology and inadequate personal support during the process all conspire to prevent a single paradigm from covering all conditions. In particular situations, however, such as civil harm brought to bear on groups of people, apology may be a necessary if insufficient step toward some restitution for the injury.

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