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An Introduction: The Richness of Forgiveness Studies, Policy, and Practice

Calvin William Sharpe*

I. FORGIVENESS STUDIES: GROUNDSWELL AND RATIONALE

It may not be surprising to consider that forgiveness has been a topic in religion since the days of antiquity.¹ It is less widely known that, increasing-

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Since forgiveness may be a result of apology and a cause of reconciliation, forgiveness is a core concept that is intertwined with both apology and reconciliation. For this reason, forgiveness as used in the title of this article encompasses apology and reconciliation. However, the three topics are discrete, and they are discussed separately in the literature, this article, and the symposia.

1. See Genesis 50:17 (New International 1984) (Joseph is told that his dead father has left instructions for him to forgive his brothers “the sins and the wrongs they committed in treating [him] so badly”); Matthew 6:14–15 (New International 1984) (Jesus says, “For if you forgive men when they sin against you, your heavenly Father will also forgive you. But if you do not forgive men their sins, your Father will not forgive your sins.”); and Ephesians 4:31–32 (New International 1984) (“Get rid of all bitterness, rage and anger, brawling and slander, along with every form of malice. Be kind and compassionate to one another, forgiving each other, just as in Christ God forgave you.”); QUR’AN, Surat An-Nur, 22 (“Those of you possessing affluence and ample wealth should not make oaths that they will not give to their relatives and the very poor and those who have made hijra in the way of Allah. They should rather pardon and overlook. Would you not love Allah to forgive you? Allah is Ever-Forgiving, Most Merciful.”); QUR’AN, Surat Ash-Shura, 40 (“The repayment of a bad action is one equivalent to it. But if someone pardons and puts things right, his reward is with Allah. Certainly He does not love wrongdoers.”); BHAGAVAD GITA, 16.01–03 (“Splendor, forgiveness, fortitude, cleanliness, absence of malice, and absence of pride; these are the qualities of

ly, forgiveness has been a topic of rigorous philosophical and scientific examination since the 1980s.² Jeffrie Murphy and Jean Hampton, in their influential book *Forgiveness and Mercy*, provided a rationale for philosophical attention to the subject as follows:

Given . . . that passions are at least in part cognitive states, states of belief and not just feeling—it is reasonable to suppose that some of the emotional tensions described above [resentment and retributive emotions excited by wrongdoing] represent intellectual tensions, and thus reasonable to suppose that the gap between superstructure and substructure, between doctrine and underlying passion is not as sharp as some seem to believe. Thus there are issues here that will profit from being thought through—questions that are philosophical (and not merely casual) in nature and that require philosophical theorizing.³

Everett L. Worthington has made the following case for scientific research on forgiveness:

Understanding of forgiveness and its promotion . . . have . . . benefitted by science. People forgave others for centuries. Peacemakers, religious leaders, and helpful friends advocated forgiveness. But we did not know the social, personality, and developmental processes underlying forgiving and not forgiving. We could not describe the interpersonal interactions around transgressions despite millennia of experience in human conflict. The fledgling field of scientific research known as forgiveness studies, involving both basic and clinical science, is transforming our understanding of forgiveness just as the understanding of medicine was transformed by medical research. When Rockefeller began to fund research on health and medicine in the early 1900s, many people thought he was crazy: “Why give away money to egghead scientists to do laboratory studies when there are a lot of sick people who could be helped?” they asked. People have said the same about basic research in forgiving. But basic research and theory are needed.⁴

those endowed with divine virtues, O Arjuna.”). See also Mark S. Rye, et al., *Religious Perspectives on Forgiveness*, in *FORGIVENESS: THEORY RESEARCH AND PRACTICE* (Michael E. McCulloch et al., eds. 2000) (comparing forgiveness in Christianity, Judaism, Islam, Buddhism, and Hinduism).

2. See, e.g., JEFFRIE G. MURPHY & JEAN HAMPTON, *FORGIVENESS AND MERCY* (1988); CHARLES L. GRISWOLD, *FORGIVENESS: A PHILOSOPHICAL EXPLORATION* (Cambridge 2007); EVERETT L. WORTHINGTON, *FORGIVENESS AND RECONCILIATION* (2006) (explaining that the publication of LEWIS SMEDE, *FORGIVE AND FORGET: HEALING THE HURTS WE DON’T DESERVE* 1–2 (1984), was the beginning of the forgiveness movement.). Worthington also credited John Templeton, MD and his largesse for doing “more to promote a scientific understanding of forgiveness than anyone I know.” He also cites over 400 mostly scientific sources that have contributed to this movement.

3. MURPHY & HAMPTON, *supra* note 3, at 5–6.

4. WORTHINGTON, *supra* note 3, at xii–xiii.

II. ISSUES IN THE LITERATURE

Both the philosophical and scientific literature have unveiled the complexity of the topic. Questions ranging from the meaning of forgiveness to how forgiveness is related to other virtues and responses to wrongdoing have occupied thinkers and scientists since the groundswell in forgiveness studies commenced.⁵

For example, philosophers Hampton and Murphy raise the following questions at the outset of their examination:

When, if ever, is hatred or anger toward wrongdoers appropriate? When, if ever, should hatred be overcome by sympathy or compassion? What [is] forgiveness and to what degree [does it] require—both conceptually and morally—the overcoming of certain passions (hatred perhaps) and the motivation by others (compassion perhaps)? If forgiveness [is] indeed [a] moral virtue, what role, if any, should it play in the *law*?⁶

5. See MURPHY & HAMPTON, *supra* note 3, at 6.

6. *Id.* (emphasis in the original). Cf. GRISWOLD, *supra* note 3, at xx–xxi, who sets forth the following thirteen questions answered in his book:

- Is forgiveness (or the disposition to forgive) a virtue?
- Is the wrongdoer or the deed the focus of forgiveness?
- What, if anything, ought the candidate for forgiveness say or do or feel to warrant forgiveness, and what the victim truly to forgive?
- Are you morally obligated to forgive when the offender has taken the appropriate steps, or is forgiveness a “gift”?
- How is forgiveness related to apology, mercy, pity, compassion, excuse, contrition, and condonation?
- How is it related to justice (especially retributive justice, and the issue of punishment)?
- Is there such a thing as “the unforgivable”?
- Is forgiveness necessary to moral and spiritual growth, and to what ideal does it aspire?
- How is forgiveness related to reconciliation?
- Can one person forgive (or ask for forgiveness) on behalf of another?
- Can one forgive (or be forgiven by) the dead or forgive the unrepentant?
- How is forgiveness to be understood?
- Does forgiveness have a political role to play?

On the relationship between forgiveness and revenge, see JEFFRIE G. MURPHY, *Getting Even: Forgiveness and its Limits* (2003) (a nuanced philosophical examination affirming the values of revenge and forgiveness without releasing the former of accountability while embracing the latter), and see MICHAEL E. MCCULLOCH, *Beyond Revenge: THE EVOLUTION OF THE FORGIVENESS INSTINCT* (2008) (arguing that both revenge and forgiveness are products of natural selection and that we have the capacity as context-sensitive, cultural, and cooperative creatures to create more forgiveness).

While just as complex, the project of social scientists in the field of forgiveness studies is to explain the behavior of forgiveness by using the scientific method—to understand the social, personality, and developmental processes underlying forgiving and not forgiving.⁷ Professor Julie Exline raises five challenging questions about forgiveness: (1) What does forgiveness mean? (2) Does forgiveness invite or deter repeated offenses? (3) Are certain offenses or persons unforgivable? (4) What motives underlie forgiveness? (5) Do factors that influence perceived injustice also influence forgiveness? Each of these general questions leads to many subordinate questions.⁸

One of the purposes of these investigations is to facilitate appropriate forgiveness interventions, such as that called for by Professor Maldonado in her symposium article. In describing his stress and coping theory of forgiveness, Dr. Worthington's explanation of its conceptual underpinnings unveils some of the complexity in scientific context:

At the center of this stress and coping theory of forgiveness rests several concepts. First, there are different types of forgiving. Instead of treating forgiveness as an all or none, think of it as different processes. They occur differently in different types of relationships—we forgive strangers and acquaintances differently than we do loved ones who violate our trust. Our decisions to forgive have different effects than our emotional experiences of forgiving. Therefore, our common notion of complete consistency as the indication of forgiveness is not productive. Second, forgiveness is a global term that suggests changes over time. Because all sorts of events happen over time, it is often difficult to say whether we have “fully forgiven” once and for all time. Third, forgiveness is related to perceived injustice. Fourth, despite this complexity, one aspect of forgiving is the major barometer of change over time—emotional forgiveness.⁹

Worthington goes on to weave, from earlier research findings and scientific models of forgiveness (interpersonal and intrapersonal), a “biopsychosocial theory of forgiveness.”

As a bridge between offense and forgiveness, apology's role in facilitating forgiveness is well settled in the scientific literature on forgiveness.¹⁰ Yet moral and legal questions abound about apology, including the following, to state a few: What are the elements of an apology? Do collective

7. See Julie Juola Exline et al., *Forgiveness and Justice: A Research Agenda for Social and Personality Psychology*, 7 PERS. & SOC. PSYCHOL. REV. 337, 337–348 (2003)

8. *Id.*

9. WORTHINGTON, *supra* note 3, at 17.

10. See Exline et al., *supra* note 8, at 344 (noting that the “positive association between apology and forgiveness is well-established in the forgiveness literature”).

apologies from corporations, governments and other collectives raise special concerns? What is the appropriate role of apologies in sentencing or punishment in criminal cases? Is there a role for apologies in an adversarial legal system? In the context of a lawsuit such as medical malpractice, is it possible to apologize without admitting guilt? Should certain apologies be shielded from introduction as evidence at a trial? Is there a distinction between expressions of sympathy and apologies? What is the relationship between the moral components of apologizing and legal practices involving apologies?¹¹

Even though apology can facilitate forgiveness and lead to reconciliation, there seems to be general agreement that reconciliation does not necessarily flow from forgiveness.¹² Relationship variables determine whether reconciliation is desirable.¹³ However, Professor Griswold makes the following argument about the necessary connection between forgiveness and reconciliation:

Interpersonal forgiveness is a necessary condition of reconciliation in the stronger sense of affirmation and friendship; but not of mere acceptance in the minimal sense of the term. One could reach acceptance by other means. For reasons of psychological or social survival, for example, one might decide to refrain from violence or revenge, to put aside guilt and resentment as best one can, and cooperate with what self-preservation requires.¹⁴

Griswold says in part the following about the senses of reconciliation:

“Reconciliation” can of course be understood in a number of quite different ways. It may mean resigned acceptance, perhaps in the light of the futility of protest . . . [o]r it may simply mean acceptance and an agreement to cease hostilities, as when two warring nations reconcile in the sense of establishing a truce: hatred may subsist, but forcible intervention in each other’s affairs stops. In a quite different register “reconciliation” may carry a strong sense of affirmation, as when previously antagonistic partners find a way to rebuild and even flourish together. As is sometimes pointed out, the

11. See Nick Smith, *Apologies In Law: An Overview of the Philosophical Issues*, 13 PEPP. DISP. RESOL. L.J. 1 (2013).

12. See WORTHINGTON, *supra* note 3, at 3 (making the point that forgiveness is internal to the forgiver, while reconciliation “is [repairing] damage in a relationship, not inside an individual.” Forgiveness is independent of whether a person can trust the forgiven offender or seeks to reconcile, hold the offender accountable, or obtain justice.)

13. See Exline et al., *supra* note 8, at 343 (“To the extent that forgiveness facilitates relationship repair, it should be more likely when offended parties assign a high value to relational goals.”)

14. See GRISWOLD, *supra* note 3, at 111.

very term suggests (though it does not require) a narrative in which two parties begin as friends, become estranged, and become friends again—the basic pattern being one of unity, division, and reunification.¹⁵

Accepting this view, forgiveness is necessary for reconciliation (at least in the stronger sense), even though reconciliation is not a necessary consequence of forgiveness.

III. FORGIVENESS AS POLICY

If we think of policy as a value promoted for some useful social purpose, forgiveness has emerged as one of the most important policies in contemporary conflict and dispute resolution. Perhaps the most widely recognized example of forgiveness as policy was seen in South Africa's Truth and Reconciliation Commission, designed in part to promote forgiveness.¹⁶

Less well known is forgiveness as policy as expressed in the Foreign Claims Act of 1942 (FCA). It was set up during World War II “[t]o promote and to maintain friendly relations through the prompt settlement of meritorious claims” against the US military for civilian casualties. Perhaps equally unknown to the public are the millions of dollars in *salatia* (solace) condolences paid by American Commanders to families of civilians harmed or killed by American soldiers in Iraq and Afghanistan.¹⁷ Like South Africa's TRC these are designed to promote forgiveness in the interest of promoting relationships.

What is rich about forgiveness as policy is its two-dimensional effect. It can be both cathartic to the individual and protective of relationships. For South Africa, it can liberate citizens from the bitterness associated with the atrocities and indignities of apartheid, while creating space for the nation to heal and step into a constructive future.¹⁸ McCullough makes the point that payments under the FCA, as well as *salatia* and condolence payments, “attempt to quell resentment and restore a positive relationship between [the affected civilians] and the United States.”¹⁹

15. *Id.* at xxiv–xxv.

16. TRUTH & RECONCILIATION COMMISSION, www.justice.gov.za/trc/ (last visited Apr. 6, 2013). See DESMOND TUTU, *No Future Without Forgiveness* (1999). See also UNITED STATES INSTITUTE OF PEACE, <http://www.usip.org/publications/truth-commission-digital-collection> (last visited Apr. 6, 2013) for detailed reports on TRCs.

17. 10 U.S.C. § 2734(a) (2006) (“[t]o promote and to maintain friendly relations through the prompt settlement of meritorious claims . . .”). See GAO-07-699, May 23, 2007, <http://www.gao.gov/products/GAO-07-699>. See generally MCCULLOUGH, *supra* note 7, at 157–160.

18. TRUTH AND RECONCILIATION COMMISSION, *supra* note 17. See MCCULLOUGH, *supra* note 7, at 230–231 (referring to TRCs as cultural change that creates more forgiveness).

19. *Id.* at 158.

On a micro level, as suggested by Professor Maldonado in this issue, the policy of forgiveness within the suggested parameters can create more inner peace with the couple as individuals and a more nurturing environment for children. She urges recognition of this role for forgiveness in family law.

Like reparations, a policy of apology can produce forgiveness. This makes apology a particularly luxuriant branch of the forgiveness tree. As Professor Smith's article makes clear, there are numerous policy questions surrounding the apology—from necessary elements to legal protection.

IV. PRACTICAL FORGIVENESS

In practice, forgiveness derives its richness from the applicability of its two-dimensional effect in a variety of contexts.²⁰ In the clinical setting, the focus is on forgiveness intervention—the deployment of psychotherapeutic approaches to help clients with personality change. The object is to help the client become more forgiving of self and others and to perhaps promote reconciliation.²¹ The Maldonado article offers a glimpse of the importance of this issue.

Can mediation or the attorney-client relationship, which involves counseling and may include litigation, be appropriate settings for forgiveness intervention by non-therapists? These are among the issues addressed in the Barker article. The Taft article focuses on the practice of apology in mediation

20. Interestingly enough, one of the oft-cited examples of practical forgiveness comes from the Prisoner's Dilemma, a theoretical and empirical study from game theory. Generally, in this game involving two players where the player with the most points wins, the rules of the game give the players more points for both being cooperative than for both being competitive. However, a player being competitive (defecting) while the other player is being cooperative gains the most points for the round while the cooperating player gains none. In a subsequent round of the game, if the cooperating player continues to cooperate with the previously defecting player, the former is showing forgiveness toward the latter. See MICHAEL E. MCCULLOUGH ET AL., *Forgiveness Theory Research and Practice* 5–6 (2000). See also MCCULLOUGH, *supra* note 7, at 98–99 (arguing that the most successful tit-for-tat strategy in increasing cooperation over multiple rounds of the prisoner dilemma game shows that revenge and forgiveness, both products of natural selection, have useful roles to play).

Scientists have also observed tit-for-tat (revenge followed by forgiveness) to encourage cooperation in other species. See McCulloch, *supra* note 7, at 78-87.

21. See WORTHINGTON, *supra* note 3, at 155–222. In addition to psychotherapy, pastoral counseling falls into this category. See FORGIVENESS: THEORY RESEARCH AND PRACTICE, *supra* note 21, at 281–295.

V. POSTSCRIPT

Forgiveness, apology, and reconciliation are all a part of the legal landscape.²² An overarching law reform question that these symposia address is whether a heightened understanding and strategic deployment of these processes can improve legal outcomes. On the theory that interdisciplinary insights sharpen understanding and legal responses, this symposium issue is informed by psychological and philosophical observations as well as by legal policy and practice. It is expected that further thought will be given to these ideas and how they may be extended to other areas of law.

VI. SYMPOSIUM ISSUE PARTICIPANTS

This symposium issue features both scholars and practitioners, whose work together contributed to academically and personally meaningful symposia. On April 10, 2009, five of these authors gathered for a symposium hosted by the Center for the Interdisciplinary Study of Conflict and Dispute Resolution (CISCDR) on “Forgiveness, Reconciliation, and the Law,” at the Case Western Reserve University School of Law.²³ On November 2, 2012, the *Pepperdine Dispute Resolution Law Journal* and Pepperdine’s Straus Institute for Dispute Resolution co-hosted a symposium on “Rescuing Relationships: Apology, Forgiveness, and Reconciliation.” This gathering included speakers from the Case Western symposium, in addition to scholars and practitioners who joined the symposia dialogue for the first time in Malibu, California.²⁴

22. See EXLINE et al., *supra* note 8, at 338 (discussing the increasing emphasis on restorative justice as an alternative to retributive justice). See NINTH ANNUAL STEIN SYMPOSIUM, 27 *FORDHAM. URB. L.J.* 1351, 1351 (1999) (featuring distinguished keynote speakers and panelists exploring the role of forgiveness in various criminal, civil, and international legal contexts).

23. This symposium included Professors Calvin Sharpe, Julie Exline, Nick Smith, Solangel Maldonado, and Susan Daicoff, whose writings appear in this issue. It concluded with a presentation by Doug Wojcieszak. He is the founder of the Sorry Works! Coalition, a leading national and international organization advocating full disclosure as a middle ground solution to the medical malpractice crisis. His essay, *Sorry Works! The Disclosure and Apology Movement*, gives the reader a practical account of the distinction between empathy and apology in successfully resolving medical malpractice issues. Doug Wojcieszak, *Sorry Works! The Disclosure and Apology Movement* (unpublished essay) (on file with author). The organization’s work as an educator and resource center for the use of disclosure and apology models solutions that will serve patients, doctors, hospitals, and society.

24. Lee Taft and Eileen Barker, whose articles appear in this issue, spoke at the Pepperdine symposium with Professors Daicoff, Sharpe, and Smith. In addition, this symposium featured Ken Cloke, Director of the Center for Dispute Resolution; Sam Edwards, Associate Professor at Green Mountain College; David Lerman, General Counsel at Kaiser Permanente; and Peter Robinson, Managing Director of the Straus Institute for Dispute Resolution. Professor Robinson deserves par-

In *The Thorny Issue of Forgiveness: A Psychological Perspective*, Professor Julie Exline, a psychologist and a leader among scientists in forgiveness studies,²⁵ gave a concise treatment of the many issues, psychological and philosophical, that surround the forgiveness phenomenon. The article usefully lays out the broad terrain of burgeoning psychological research, before grounding the discussion around equity theory and lucidly discussing the many issues raised in both the psychology and philosophy literature. Professor Exline's article is perfectly suited as a gateway to the symposium. Many of her observations will resonate in the articles that follow—from the role of apology, to the impact of forgiveness in committed relationships and the appropriate conditions for forgiveness interventions.

In a *tour de force*, Professor Nick Smith, a philosopher and lawyer, reviewed the complexity of apologies as unearthed in his seminal interdisciplinary treatment of the issue in *I Was Wrong*.²⁶ The book has been described as:

bringing a nuanced theory of apologetic meaning” and an “account of apologies [that] is without equal—packed with fine-grained discriminations, pointed examples (real and imaginary), picture perfect judgments of depth and scope (variously generous and skeptical) . . . a dense taxonomy of forms, functions and conditions of apologies that brings the discussion of this topic to a new level. In providing us with the gritty details of apologetic meaning, Smith has put us all in his debt. All future discussions of apologies will start here.²⁷

Professor Smith's comprehensive article in this symposium builds upon his earlier work.

Through the prism of the book's conceptual richness, he critically examines the apology in criminal and civil law in treatise-like fashion.

In *Facilitating Forgiveness and Reconciliation in “Good Enough Marriages,”* Professor Solangel Maldonado, a leading family law scholar,²⁸ de-

ticular acknowledgement for his multi-year role in envisioning, encouraging, and realizing a symposium on apology, forgiveness, and reconciliation at the Pepperdine University School of Law.

25. See EXLINE et al., *supra* note 8 (reviewing existing scientific research and setting an agenda for future research involving a range of questions in forgiveness studies).

26. NICK SMITH, *I WAS WRONG: THE MEANINGS OF APOLOGIES* (2008).

27. *Id.* See praise for the book by Prof. J.M. Berstein (New School for Social Research).

28. See Solangel Maldonado, *Illegitimate Harm: Law, Stigma, and Discrimination Against Nonmarital Children*, 63 FLA. L. REV. 345 (2011) (arguing that despite the Supreme Court's recognition that children should not be penalized for their parents' choices, the law and society continue to discriminate against nonmarital children); Solangel Maldonado, *Cultivating Forgiveness: Reducing*

ployed her expertise in family law and steeping in the forgiveness literature to solve a public policy problem in low discord marriages, particularly those ending in divorce. Professor Maldonado does not overstate her claim for the effectiveness of forgiveness. Rather, she argues persuasively that forgiveness as a resource, targeted especially toward low discord divorces involving children, can make a pivotal difference for the members of those families and society in general. Her article also exemplifies the thoughtful use of forgiveness to reform legal rules and inform public policy.

In *Apology, Forgiveness, Reconciliation & Therapeutic Jurisprudence*, Professor Susan Daicoff, a psychologist, legal scholar and early exponent of the Comprehensive Law Movement,²⁹ applied the symposium themes of apology, forgiveness and reconciliation to four vectors of that movement: Therapeutic Jurisprudence (TJ), Procedural Justice (PJ), Transformative Mediation (TM), and Restorative Justice (RJ). Because TJ seeks to engage social science to improve the sanative effects of legal regimes, Professor Daicoff sees a place for apology, forgiveness and reconciliation in settling legal disputes. Similarly, the findings of social science suggest that voice and participation by the parties are important values in legal processes. Apology may advance PJ by demonstrating that participant voices have been heard. Professor Daicoff argues that apology may reflect a shift away from self-centeredness and toward recognition of the other party, one of the components of the moral growth objective sought by TM. Professor Daicoff calls RJ the “most relevant of the vectors, as it explicitly incorporates apology, forgiveness and reconciliation of victims, offenders, and society into its resolution of criminal matters.” The last part of Professor Daicoff’s article is dedicated to demonstrating the use of apology, forgiveness, and reconciliation in the practice and adjudication of law on the comprehensive model.

Hostility and Conflict After Divorce, 43 WAKE FOREST L. REV. 441 (2008) (arguing that the law should facilitate forgiveness between divorcing parents by making marital misconduct irrelevant in divorce, property, and custody proceedings and requiring high-conflict divorced parents to participate in a forgiveness education program); Solangel Maldonado, *Beyond Economic Fatherhood: Encouraging Divorced Fathers to Parent*, 153 U. PA. L. REV. 921 (2005) (arguing that custody and child support laws have facilitated paternal disengagement following divorce and applying social norms theory and legal reforms to encourage “involved fatherhood” after divorce); SOLANGEL MALDONADO ET AL., FAMILY LAW IN THE WORLD COMMUNITY (2009).

29. See Susan Daicoff, *Law as a Healing Profession: The “Comprehensive Law Movement,”* 6 PEPP. DISP. RESOL. L.J. 1 (2006) (documenting the rise of innovative approaches, including therapeutic jurisprudence, preventive law, creative problem solving, restorative justice, collaborative law, and problem solving courts, among others, and arguing for the synthesis of these disciplines into an overarching movement). See also SUSAN DAICOFF, COMPREHENSIVE LAW PRACTICE: LAW AS A HEALING PROFESSION (2011) (textbook surveying the key features of the “vectors” or disciplines of the comprehensive law movement); Susan Daicoff, *The Comprehensive Law Movement: An Emerging Approach to Legal Problems*, in *A Proactive Approach*, 49 SCANDINAVIAN STUD. IN L. 109–29 (Peter Wahlgren ed., 2006).

In *Apology in Mediated Settings*, Lee Taft brings his depth of knowledge on apology to bear on the practical issues of mediation for the claimant lawyer and client, defense lawyer, and client as well as the mediator. Out of a twenty year career as a plaintiff's litigator, Mr. Taft evolved as an innovator in designing, developing, and implementing conflict resolution processes. This journey took him to Harvard Divinity School where he began to contribute to the fledgling discourse on apology. Since then, he has been one of the leading voices in the apology literature.³⁰ In this paper, he provides a fulsome backdrop of developing apology issues before homing in on mediated settings and the differential impact of apologies on party expectations. He then sets forth a detailed practical guide to addressing those issues from various perspectives.

Eileen Barker is an attorney and mediator working in the employment, probate and divorce areas. She helps her clients view conflict as an opportunity for healing and growth including forgiveness. Not only is forgiveness integral to Ms. Barker's legal practice, but she also teaches classes, leads workshops and coaches on forgiveness.³¹

In her article, *The Case For Forgiveness in Legal Disputes*, Ms. Barker goes beyond the less controversial setting of mediation and advocates using forgiveness in conventional legal practice. She makes a persuasive case for a number of reasons. First, she is firmly grounded in the forgiveness literature, which enables her to speak with insight and authority. Second, she understands the shortcomings of the adversarial culture for all participants and the ameliorative role that forgiveness can play. Third, she appreciates the circumstances in litigation that render forgiveness impossible. Fourth, she dispels myths about forgiveness, such as it forestalls accountability, and explains that it can actually make forgiving litigants more effective. Fifth, she makes the important point for the theme of the DRLJ-Straus Institute Symposium that forgiveness may be relevant and can be applied to virtually any

30. See, e.g., Lee Taft, *Apology Subverted: The Commodification of Apology*, 109 YALE L.J. 1135 (2000) (considering apology as exacerbating claimant's suffering); Lee Taft, *On Bended Knee (With Fingers Crossed)*, 55 DEPAUL L. REV. 601 (2006) (exploring the role of apology in healthcare); Lee Taft, *Apology and Medical Mistake: Opportunity or Foil?*, 14 ANNALS HEALTH L. 55 (2005) (addressing the role of apology in the disclosure of unanticipated outcomes in healthcare); Lee Taft, *Disclosure Danger: The Overlooked Case of the Cooperation Clause*, 8 HARV. HEALTH POL'Y REV. 150 (2007) (addressing the potential legal dangers of apology); Lee Taft, *Apology within a Moral Dialectic: A Reply to Professor Robbenholt*, 103 MICH. L. REV. 1010 (2015) (a response to Robbenholt's empirical examination of apology and legal settlement).

31. Her written work includes THE FORGIVENESS WORKBOOK (2009), which includes a Forgiveness Mediation CD.

dispute—not just those involving significant personal relationships—that triggers strong emotions such as an impersonal business relationship and for plaintiffs as well as defendants. Sixth, she makes the important point that counseling forgiveness is consistent with the ethical obligation of zealous advocacy, while detailing some of the emotional and other costs of hardball advocacy. Seventh, she situates the focus on forgiveness in a broader and growing model of lawyering that explores cooperative and conciliatory legal strategies and shows them to be more effective than competitive strategies. Eighth, she points out that effective client counseling involves a lawyer's consideration of a range of issues related to conflict including forgiveness, and that may necessitate developing a new skill set. Ninth, she cites lack of professional education and training as the “true obstacle” to forgiveness. Tenth, she suggests eight steps for incorporating forgiveness into legal practice. The author usefully illustrates a number of these points using actual cases.