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LOVE IN LAW'S SHADOW: POLITICAL THEORY, MORAL PSYCHOLOGY AND  
YOUNG HEGEL'S CRITIQUE OF PUNISHMENT<sup>1</sup>

Alan Norrie  
Warwick Law School

Abstract

Modern theory of punishment conflates two types of question. The first concerns the justification of state punishment, the second the moral damage that occurs when a person is violated, and how the resulting damage can be repaired. The first question leads to political theory and a particular legally based moral grammar of wrongdoing and punishment. The second goes in the direction of a different moral psychology involving a grammar of violation, grieving and reconciliation. Retrieving the young Hegel's analysis takes us in the second direction. It provides a critical vantage-point from which to view the dominant liberal political theory, including Hegel's own mature position as a founder of retributive theory. The modern theory of state punishment is legitimated by its public association with a moral psychology of violation, which it at the same time suppresses in favour of its own very different moral grammar.

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LOVE IN LAW'S SHADOW: POLITICAL THEORY, MORAL PSYCHOLOGY AND  
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*Is there truly 'that of God in everyone'?  
Lucy, when I kissed your skull  
The dome of the sky took root in my heart.*

Marian Partington (2012, 52)

LOVE AND LAW: DEEPENING PUNISHMENT'S CRITIQUE

This essay seeks to develop a new position in the critical theory of punishment, a field in which it might be thought that all that could be said has been said. That punishment is a form of political power, is historically specific, is embedded in unjust social relations, is linked to violence and occlusion of difference, is positive and productive of persons, these are all well-known themes. That its juridical expression is formalistic and in its formalism both repressive and expressive, and that this generates in practice more concrete, less abstract individualist, alternatives in the shape of restorative and transitional justice forms: such themes have also been rehearsed. I argue, nonetheless, that there remain issues marginalised in critical and mainstream discussion which should be developed to understand how punishment works as a concept and practice in modern society. I want to pursue a fresh enquiry that starts with some thoughts of Bernard Williams (2008) and which develops the idea of a moral psychology as punishment's underlying ethical ground.<sup>2</sup> This

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<sup>2</sup> This essay is in part inspired by the moral practice of forgiveness detailed by members of 'The Forgiveness Project' (Cantacuzino, 2015; Partington, 2012), whose engagement with violation unconsciously and uncannily reflects some of the ideas of the young Hegel. If his ideas engender cynicism or scepticism, I find this link supportive in dispelling them. The practice of forgiveness ties in today with what is broadly known as restorative justice. This essay does not come out of the restorative approach, though it is sympathetic to its underlying ethical impulse. It comes from a debate about the nature of the critical project in criminal law theory, where I argue that a critical ethics is required alongside the historical perspective that is otherwise

is a ground that stands adjacent to the practice, enabling a critical distance and deeper understanding.

### For a Moral Psychology of Punishment

The peg on which I hang the new critical position is punishment's ongoing attraction. I want to take this not just as an expression of the continuing effectiveness of history, power, ideology, or politics, the subject of existing critiques, but as a question of the intrinsic yet oblique moral salience of punishment's conceptual complex (its 'moral grammar'). It is not that I deny the importance of existing critical themes, far from it, but my argument is that history, power, ideology and politics remain well served by punishment because of its intrinsic connection to issues of morality, albeit

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common (Farmer, 2016; Lacey 2016; Norrie, 2014; cf Norrie, 2017a, 2017b). In that context, it is an attempt to think critically about the liberal theory of punishment via Bernard Williams and the young Hegel.

While restorative justice 'draws upon ... a definite set of ethical ideas about how we should relate to other human beings' (Johnstone, 2003, 6), I have not been able to find a developed, synthetic account of what it means in the terms of ethical theory. Gavrielides and Artinopolou (2013) accept the rooting of the philosophy of restorative justice in practice, agree there is no single account, and assert the value of an exploratory journey over the reaching of firm conclusions. Emblematic of the lack is the comparison between John Braithwaite's (1989, 1993) foundational work for restorative justice on shame and reintegration, which takes a sociological and historical route, and Williams's (2008) account of the *ethics* of shame (first published 1993). Williams's work has had some influence on the restorative justice literature (e.g. Harris, Walgrave and Braithwaite, 2004; Harris and Maruna, 2006), but its admittedly underdeveloped and therefore inchoate call for a deeper moral psychology of guilt and blame has not been taken up. Rather than searching as it were for its own Kant or Hegel, or in today's terms Duff, restorative justice draws pluralistically on a variety of cultural, historical and religious resources which provide a basis for a range of reflections, albeit with a number of commonalities: see e.g. Johnstone, 2003, part B; Sullivan and Tift, 2006, section II.

Together with an emphasis on practical experience, this seems a strength of restorative justice, but it does leave a gap for a moral theory that could critically inform what is happening. More generally, see Johnstone, 2003 and Rossner, 2017. One might conclude, in line with the argument that will be advanced here, that the focus of liberal modernity has been so intensely on law and punishment and their rationalisation that alternative approaches have had to draw on the fragments of what has been marginalised, left in the shadows, such as aboriginal experience or religious tradition. The observation indicates that a different way into the ethical theory of restorative justice could be through an understanding of what is meant by community (c.f. Pavlich, 2003).

This essay aims to think through what a critical account of violation and reconciliation might look like in ethical terms in relation to Williams's frustration with philosophy's 'morality system', his idea of a moral psychology, and young Hegel's account of violation and reconciliation. Perhaps this could be developed as a synthetic philosophical and moral basis for the theory and practice of restorative justice. That would be a further challenge to what is done here, and important in that it would have implications for ancillary fields such as transitional justice, where the moral grammar of emotions also lies at its ethical heart (see e.g. Karstedt, 2016).

these are expressed through a particular, by no means inevitable, form. The form in question is that of modern state law. As I will argue, what has been insufficiently understood is what lurks in that law's shadow.

That the law-punishment nexus is a particular way of thinking about punishment can be seen in the way that punishment is debated as a matter of political theory rather than what I call, following Bernard Williams, moral psychology (see Williams, 2008; Norrie, 2017b). It is generally taken as given that to speak about the complex of punishment terms is to speak about a form of state, law-based, action. Why not, since the whole history of modern political philosophy has cast the problem of punishment in such terms? The theory of punishment is precisely a theory of the terms in which a state can act to sanction its subjects: traced from the sovereign in Hobbes and Locke to the state based on reason in Kant, and Hegel, and on through the utilitarians, the British Hegelians and the twentieth century positivists (Norrie, 1991; Carvalho, 2017) to Hart's liberal (1968), Duff's communicative (2001), Brudner's political and Tadros's harm preventing state (2011). It addresses the proper province of state punishment (Ashworth and Zedner, 2014), the political sociology of the state today (Ramsay, 2012), the subjects of that state (Lacey, 2016) and its civilising process (Farmer, 2016). We might also naturally think of punishment as something that states do through law in a world where prisons and courts provide the setting in which punishment occurs. But political theory may not be the only way to view the matter, and it may be complicit with a particular reality in a way that occludes what is really going on. To see how that might be the case, I take my initial bearing from two quotes from Bernard Williams. Here is the first:

As soon as we look at blame not as a uniquely appropriate expression of truly moral judgment, and not, on the other hand, simply as an instrument of social control, but see it as part of a concrete ethical life, we shall be helped to understand the other psychological forces (such as love, perhaps) that are needed to make blame possible as a manifestation of the ethical dispositions. (Williams, 1995, 16)

Williams's interest was to get beyond what he called 'the morality system' or the 'ethical conceptual system' for understanding moral action, and to look at concrete ethical settings alongside what it means to possess a human psyche, subject to psychic forces such as love. Williams sensed the need for a moral psychology that would be linked in naturalistic terms (Altham and Harrison, 202-5) to the real psychological grounds of action. While he himself remained a philosopher, so that he did not push his thought as far as he might, he began to open the door to another domain, that of psychology (Lear, 2003, 2004). Emblematic of this ambivalence is the development of a psychoanalytic approach to philosophy in his *Shame and Necessity* (2008) - but as an appendix to the work as a whole.

In considering where thought might have gone wrong, Williams pointed the blame at political theory, theory that is inflected by particular political assumptions:

To the extent that our ideas about legal responsibility are shaped by [the] ideal [of self-control], they are governed by a certain political theory of freedom in the modern state, not by a moral refinement of the very conception of responsibility. (Williams, 2008, 66)

He also wrote, in the aforementioned appendix, of 'guilt-centred, autonomous, moralities' in which 'guilt is pictured as an emotion experienced in the face of an abstraction, the moral law, which has become part of the subject himself'. This generated an 'idealised picture' in which 'guilt comes to be represented simply as the attitude of respect for an abstract law, and it then no longer has any special connection with victims' (Williams, 2008, 219-22). Note here the concern about abstraction in punishment theory, and the wish to speak in a different mode about the experience of victims. Of course, the modern political theory of punishment pushes in many different directions – towards communitarianism, Aristotle or Hegel, or towards consequentialism – and not just towards what might be thought to be Williams's Kantian target above. But his aim was not just at broadening political theory. It was to take our understanding of punishment's terms to a different level, one in

which we could understand in naturalistic, not merely normative, terms the psychological as well as the moral experience of being guilty or a victim, and, under that, being a creature capable of love.<sup>3</sup>

What Williams suggests is demanding. It involves thinking about love, what it means to be violated, and how the deepest human emotions inform moral being and experience. This is the move towards psychoanalysis, opening up the ground from which to explore human moral psychology and its resulting moral grammars (c.f. Nussbaum, 2014, 2016). Here, I start this project by considering the young Hegel, who wrote about these things in a persuasive ethical voice, focused precisely on love, morality and violation, and did so while maintaining a critical distance to law. Hegel of course wrote before the question of moral psychology could be linked to intramental processes first identified by Freud. Nonetheless the young Hegel has things to say that have been too much ignored in punishment scholarship, probably because they are too far from the mainstream. The interest here is all the greater in that the mature Hegel qua political and legal theorist took a very different view of the same topic. Thus, I argue, that in the contrast between the young and the mature Hegel, we observe something like the difference between a moral psychology in the Williams mode and the kind of 'morality system' that he saw as so limited.

#### How Does Modern Punishment Retain Its Moral Traction?

This essay is then part of a project which is concerned to develop something like the moral psychology suggested by Williams. There is however a second element, the essay's 'peg', which concerns the ongoing moral traction that punishment enjoys, despite the various critiques that can be made of it. My argument here is that orthodox punishment theory draws on the kind of underlying moral psychology I have just described, but as *its hidden other*, at the same point that it denies its validity, on the theory's face. Such a moral psychology operates in the shadow of legal and

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<sup>3</sup> The idea of a naturalistic project here relates moral language to the intrinsic nature of human social being, with particular, evolving psychic properties. It is compatible with the idea of a social science that emphasises both structure and hermeneutics (Bhaskar, 1979), and Freudian psychoanalysis (Benjamin, 1988; Lear, 1990, 2003).

political normative theory through a process of illicitly fusing two things. One is an account of moral violation, grief and reconciliation, based on humankind's deep emotions. This is a moral psychology and grammar that has traction for human beings because they experience the effect of at least some serious crime as damaging and violative, and as something that should be addressed at an appropriate moral level. The other is a normative theory and practice of state punishment which does not address violations effectively, precisely because it cannot get to the substantive moral roots of what it means to violate another. There are two forms of moral psychology and two resulting moral grammars at play: one through the language of law and state, the other a broader, thicker account that addresses the underlying psychological and moral needs of violated human beings.

Here is the rub: while the political theory of state punishment has come to dominate official discussion of wrongdoing and its correction, it continues illicitly to trade off the valid moral charge of a philosophy of violation and its reconciliation based upon a distinct, non-legal, moral psychology – that with which it is fused. Thinking of things holistically, there are two forms of thought that need to be recognised for themselves and in their relation. One (the theory of state punishment) has come to dominate and occlude the other (a moral psychology of violence and its reconciliation), but the former still derives its ethical traction in part at least from the latter. My argument is that we will have a better sense of how we might develop critical thinking about punishment if we understand how moral traction relates to the forms of law; and we can do this if we separate a moral psychology of violation, grief and reconciliation from the political theory of punishment, endorsing a narrow grammar of blame, responsibility and punishment, in order to think through their real relationship.

The essay has four sections. In the next, I introduce the problem of punishment's continuing moral attraction, and present a counter-example of a different moral grammar. Thereafter I explore the account of violation, grief, reconciliation and love in Hegel's early writing and its critique of law. In the following section, I contrast the young Hegel with his mature work, and then finally, I consider



how we should regard the relationship between the two moral grammars where normally those who talk about criminal justice only see one. I begin, however, with an old tune that we can't seem to stop whistling.

#### AN OLD (AND OFF-KEY) TUNE: ON THE (NON-) INEVITABILITY OF PUNISHMENT

When the recent plebiscite for peace in Colombia was narrowly defeated, a key argument in favour of the no vote was that those who had committed crimes should be punished for what they had done. They should not get off so lightly. This might be thought to indicate the continuing strength of the demand for punishment, reflecting favourably on its immanent moral quality. So strong is punishment's ethical traction that it can defeat the possibility of peace. Faced even with the promise of a new future, we are reminded of Kant's dissolving island society where the last murderer must be executed lest the blood guilt fall on the people (Kant, 1991, 156). Not even the advocacy of victims' groups for the peace accord could stop the 'intrinsic' moral demand for criminal justice and punishment in the Colombian setting. What underlay, it is true, the no vote was a power struggle between those elite factions that have always fought to control and govern Colombia. The demand for punishment was also a manoeuvre by one party to have its say on the peace deal as a genuine interest in morality. Political power was at stake (Guardian, 3 October 2016; Observer, 9 October 2016), manifesting itself through the demand for punishment, at any cost. Striking, however, was that it was the morally expressed and seemingly felt need *for punishment* around which a regressive politics could be mobilised. The old magic had not deserted the concept, which continued to play its part in how a society values itself and how it reacts to what are seen as criminal acts. Power did not come alone. An old moral tune had been whistled to effect.

Is this the way things have to be? Do victims 'naturally' demand punishment as their irreducible right? A powerful new voice in one strand of the victims' movement says not. As part of the Forgiveness Project (Cantacuzino, 2015), victims have written of the need to take a different view on

crime and punishment. In 1984, the IRA planted a bomb in the Grand Hotel Brighton which was aimed to assassinate the then Prime Minister, Margaret Thatcher. Missing its target, it killed or wounded a number of people, including a Conservative MP, Sir Anthony Berry. Many years later, Jo Berry, Sir Anthony's daughter, met with one of those convicted of the bombing, Patrick Magee. Her aim was to try to come to terms with her loss. Over a number of years, the two developed a bond based upon seeking to understand the moral implications of what had happened. In the following passage, Berry explains her moral outlook on crime and punishment:

An inner shift is required to hear the story of the enemy. For me the question is always about whether I can let go of the need to blame, and *open my heart* enough to hear Patrick's story and understand his motivations. The truth is that sometimes I can and sometimes I can't.... Now I don't talk about forgiveness. To say 'I forgive you' is almost condescending – it locks you into an 'us and them' scenario, keeping me right and you wrong.... But I can experience *empathy*, and in that moment there is no judgement. Sometimes when I've met with Patrick, I've had such a clear understanding of his life that there's nothing to forgive.... I feel I've been recovering *some of the humanity I lost* when that bomb went off.... I've realised that no matter which side of the conflict you're on, had we all lived each other's lives, we could all have done what the other did.... I could easily have made the same choices Patrick made. (Cantacuzino, 2015, 79-80, my emphasis)

Four things emerge from this statement. The first concerns the contrast between Berry's statement and the ready-made assumptions about how victims should feel. Berry is as much caught in a process of 'transitional justice' as those voting no to peace in Colombia. Yet her position is very different.<sup>4</sup> The second concerns the terms of this difference, and what underlies her moral attitude.

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<sup>4</sup> Compare however her view with that of Lord Tebbit, who has said in 2014 that he is unable to forgive Magee after the same blast left his wife Margaret paralysed from the neck down. "I am often asked if I can find it in my heart to forgive the creature, Patrick Magee. That is not possible, for Magee has never repented," he wrote.

She speaks of the need to 'open my heart' to Magee's story, of the experience of 'empathy' with him, and of the recovery of her 'humanity'. This is remarkable and profound. It speaks of one person (a victim) opening to another (the perpetrator), of placing herself in his position, and on that basis recovering her *own* humanity. We have two people, one victimised by the other, where the resolution of the state of victimisation involves reaching out to the victimiser. It is no doubt a relationship in which both parties had to play their part, and without Magee's willingness to open himself up before Berry, the emotional alchemy would not have happened. Magee, it should be said, has never renounced the violence of the IRA, though he has expressed a general regret at the loss of life caused by its actions. Nonetheless, both Berry and Magee have maintained their dialogue.<sup>5</sup>

How are we to understand this? The idea of a relationship between the protagonists is important, but the substance is in the moral and emotional terms used by Berry: the grief and pain, the opening of the heart, the empathy with the other, the retrieval of a lost humanity after violation. Berry's actions are expressed as a relational process based upon *love*: love for herself that led her to meet Magee, love for the other so that she might put herself in his place and understand his motivations, love based on a universal nature in humankind (her and Magee's positions are interchangeable), love as the wholeness of self to be retrieved through dialogue with the other, and love as the means to retrieve the wholeness of the other.

The third thing to emerge from this statement is the gap between Berry's account of her route through love to reconciliation and her understanding of the nature of the language of responsibility. To experience her journey through love and empathy is ultimately to discard the need for judgment, to let go of the need to blame, to not see Magee's choices as central, and even to give up on forgiveness, which seems 'almost condescending'. If we pursue her line, we might think that the

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<sup>5</sup> The ambivalence in Berry's initial comments merits further analysis. In Norrie (2018a), I relate it to the ambiguity in Magee's position, arguing that Magee is torn between a sense of guilt at having killed and a sense of vindication at having been involved in a valid armed struggle. Because he is ambivalent, he cannot really express a full sense of guilt that might allow Berry to forgive him.

whole retinue of criminal justice terms is questionable: from Berry's point of view, if even forgiveness is superficial, what then of responsibility, guilt, blameworthiness, punishment? If these have any place in Berry's thinking, one thing is clear: the moral grammar of criminal punishment does not have a direct, unmediated, link to what it means to be a human being coming to terms with violation. There is a gap where we might have thought from a more orthodox standpoint there was a connection.

The fourth and final point leads us to the next section. Berry's language of love, grief and reconciliation in the face of violation is remarkably similar to that deployed by the young Hegel in his early philosophy, to which I now turn.

#### LOVE AGAINST LAW: THE YOUNG HEGEL ON VIOLATION AND RECONCILIATION

We know Hegel as a founder of the modern classical retributive theory of punishment, the political theory of punishment par excellence (Brudner, 2009), but there is 'another Hegel' before the Hegel of the *Philosophy of Right (PR)* (Hegel, 2008). The young Hegel wrote profoundly and movingly about the moral psychology of violation, grief and reconciliation and its relationship to love, law and ethics in his early theological writings, especially *The Spirit of Christianity and Its Fate (SCF)* (Hegel, 1948).<sup>6</sup> In this section, I consider this early thought. I begin with the general contrast the young Hegel creates between an ethics of love and life and an account of law and punishment. I then consider three main developments of that account: an understanding of guilt and violation, the experience of victimhood, and the nature of forgiveness, reconciliation and law. I also consider a state of mental

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<sup>6</sup> The title indicates the strong Christian element to Hegel's early thought. The key example therein of the beautiful soul who submits and forgives is Jesus (Norrie, 2005). My view is that the young Hegel's account of violation, grief and reconciliation is morally compelling in a way that surpasses this local provenance. Readers may make up their own minds as to whether the resulting moral psychology and grammar reflect something of the moral experience of violation. Practical examples of victims following a line of forgiveness, where people come from different faiths and from none, are to be found in Cantacuzino, 2015. See also Partington, 2012. For discussion of the practice of forgiveness in these examples and its relationship to an ethics of love, see Norrie, 2018b.

being that Hegel warns against, which I call righteous law-mindedness. In this state, the contrast between a 'love of law' and a 'love of life' becomes clear.

### Love, Life, Law

In *SCF*, Hegel wants to move beyond the Kantian division between duty and inclination by positing a further unifying element that transcends both. This is of course an enduring theme in Hegel, but in the early thought the englobing element is not reason or rational spirit. Rather it is provided by the 'richness and fullness of life', which he explains as a love of the wholeness of life beyond all separation. Separations include those established by law and right, which are on the side of Kantian division. A life lived in love has a 'so much richer, more living, fullness that so poor a thing as a law is nothing for it at all' (Hegel, 1948, 215). Unlike law, love 'does not leave the judge to apportion its rights; it reconciles itself to its enemy with no regard to right whatever' (Hegel, 1948, 216). Hegel considers the command "Thou shalt not kill" as a Kantian universal maxim imposing a duty on every rational being. This, he suggests, should be contrasted with the command of Jesus, which 'sets the higher genius of reconcilability (a modification of love)' in place. Reconciliation involves a higher obligation that makes Kantian duty superfluous<sup>7</sup> because of 'the wealth of living relations with the individuals ... with whom it comes into connection'. It gives a 'so much richer, more living, fullness' such that 'so poor a thing as a law is nothing for it at all' (Hegel, 1948,215). This contrast between abstract universal law (duty) and the concretely universal fullness of life and love affects directly the theory of punishment:

An eye for an eye, a tooth for a tooth, say the laws. Retribution and its equivalence with crime is the sacred principle of all justice, the principle on which any political order must rest. But Jesus makes a general demand on his hearers to surrender their rights, to lift themselves above the whole sphere of justice or injustice by love, for in love there vanish

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<sup>7</sup> 'In reconcilability the law loses its form, the concept is displaced by life; but what reconcilability thereby loses in respect of the universality ... is only a seeming loss and a genuine infinite gain....' (Hegel, 1948, 215).

not only rights but also the feeling of inequality and the hatred of enemies which this feeling's imperative demand for equality implies. (Hegel, 1948,218)

In strict contrast with what he would later write in the *PR*, law's retributive moment does not here reconcile the individual with his wrongdoing. All that law can do is record wrongdoings and punish them, but there is no moving forward morally. When the law has done to the perpetrator 'just what he did himself, it then lets go, but it still withdraws to a threatening attitude; it has not lost its shape or been made friendly....' (Hegel, 1948, 227). Left to its own devices, law produces impasse or repetition, a bad infinity. If there is to be a way forward, it must be through reaching for the qualitatively higher level of the fullness of life or love.<sup>8</sup> This can bring about reconciliation beyond *and despite* the law. We return to the point about law below, when we consider, first, the victim's courage in resisting violation and, second, the case of righteous law-mindedness. Now, however, I turn to the sense of guilt experienced at violation.

#### The Perpetrator: Guilt and Reconciliation

How does guilt work in terms of the moral grammar of violation and reconciliation? In serious violations, the reactions of both the perpetrator and the victim are at stake. The perpetrator has broken the law, but more deeply, has changed his relationship to life and love. This starts as a profound sense of unease at what has been done to the victim, but ultimately comes back to the perpetrator. His own spiritual well-being is placed in question, and he is forced to engage with what he has done, leading to the possibility of reconciliation.

#### *From Violation to Guilt*

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<sup>8</sup> For a modern work which equally rejects legal judgment in favour of 'unconditional love', see Nussbaum, 2016. For discussion of her argument, see Norrie, 2018a.

The perpetrator of a serious wrong may<sup>9</sup> experience it deeply, as a breach of the order of the world. It launches him towards a 'fate' that does not measure wrongdoing in legal terms. A killer destroys another, but attacks the fabric of his own life, turning fate against himself, making of it an 'enemy'. Such a transgression attacks the universal order of being and rebounds horribly. It turns the person slain into a 'terrifying ghost which vindicates every branch of life and lets loose its Eumenides' (Hegel, 1948, 229).<sup>10</sup> In killing, the killer seems to have survived while his victim has been destroyed, but he has undone his own life too.<sup>11</sup> The proof is seen in

the fact that the disembodied spirit of the injured life comes on the scene against the trespass, just as Banquo who came as a friend to Macbeth was not blotted out when he was murdered but immediately thereafter took his seat, not as a guest at the feast, but as an evil spirit. The trespasser intended to have to do with another's life, but he has only destroyed his own, for life is not different from life, since life dwells in the single Godhead. In his arrogance he has destroyed indeed, but only the friendliness of life; he has perverted life into an enemy. (Hegel, 1948, 229)

Hegel's language is allusive and literary, but what he is getting at is the sense of spiritual turmoil that a deeply troubled conscience experiences as it wrestles with guilt at serious wrongdoing.<sup>12</sup> Such wrestling, however, invokes and may lead to a resolution.

### *From Guilt to Reconciliation*

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<sup>9</sup> Hegel is describing a phenomenology of violation, guilt and reconciliation, a plausible account of a perpetrator's moral psychology. This does not commit him to claim that this actually happens in a particular case.

<sup>10</sup> The Furies, female spirits of justice and vengeance in Greek mythology. They are also referred to in *PR* (Hegel, 2008, 106), but there they serve only as a rhetorical embellishment to rational retribution. In *SCF*, spiritual turmoil in a deeply troubled conscience is really meant.

<sup>11</sup> Compare Dostoyevsky (1997, 334): 'Did I really kill the old woman? No, it was myself I killed! – it was myself I have irrevocably ruined.'

<sup>12</sup> Compare Dostoyevsky's *Crime and Punishment* (1997, 74): 'He suffered cruelly from this conviction, that everything, even memory, even the most elementary prudence, was abandoning him. 'Can this be the punishment already beginning? Indeed, indeed, it is!'

Importantly, the possibility of reconciliation has nothing to do with law. Law is no more than 'the lack of life, defective life appearing as a power', while the feeling of guilt at crossing a universal order goes deeper. It is only at the deeper level that guilt can become the place and beginning of redemption. Human life can 'heal its wounds again [as] the severed, hostile life ... return[s] into itself again and annul[s] the bungling achievement of a trespass' (Hegel, 2008, 230). Punishment may have a role, but equally may be unnecessary. Beyond law and punishment, the perpetrator feels a profound loss and yearns to put himself back to rights with the world:

When the trespasser feels the disruption of his own life (suffers punishment) or knows himself (in his bad conscience) as disrupted, then the working of his fate commences, and this feeling of a life disrupted must become a longing for what has been lost. (Hegel, 1948, 230)

The longing for what has been lost is the trigger for putting things right. It 'recognizes what has been lost as life'. It is a process of grieving and redemption in which the perpetrator may 'hold himself back [in order] to prolong his bad conscience and feeling of grief ... until his longing for reunion [with life] springs from the deepest recesses of his soul' (Hegel, 1948, 231-2). There can be here a 'sensing of life... which finds itself again', and this reunion with life 'is love, and in love fate is reconciled' (Hegel, 1948, 232). The upshot is a move away from division of the self and back to wholeness of the spirit. A sense of the universal in life is satisfied, 'since the trespasser has sensed as injured in himself the same life that he has injured' (Hegel, 1948, 232). In properly grieving for what he has done, 'there is no longer anything hostile in the man, and the deed remains at most as a soulless carcass lying in the charnel-house of actualities, in memories' (Hegel, 1948, 232). Love of self and the other, fate as moral engagement with what one has done, life as a wholeness that can be destroyed and repaired. This is the grammar of a moral psychology in which wrongdoing is felt and atoned, and these moral transactions are distinct from those achieved via an 'unfriendly' and partial law, crime



and punishment. Reconciliation to one's life occurs, as we saw, 'with no regard to right whatever' (Hegel, 1948, 216).

#### The Victim: Resistance, Submission and Reconciliation

Turning to the victim, there are two responses to the threat of being violated. The victim may either bravely resist an attack (courageous resistance), or may withdraw in its face and submit to its consequences (grievous submission). Both responses display a certain beauty of soul, and both present their own problems. The discussion is inconclusive but both paths provide insight into Hegel's moral psychology and its connection to law.

##### *Courageous resistance*

The victim of an unjust attack may 'arm and defend himself and his right', and with this reaction, 'his [own] guilt, his fate, begins'. In responding to an attack, he 'clings to his right and defends it' (Hegel, 1948, 233). On the face of it, acting courageously is better than submitting, for the would-be victim has stood up for himself. He has entered 'on the battlefield of might against might and ventures to oppose his adversary' thereby subjecting himself 'to fate', but also taking on himself his own fate for 'the man of courage engages with the sphere of right and might' (Hegel, 1948, 233-4). This seems straightforward. The victim feels better to have fought and lost than not to have fought at all. One takes one's fate into one's own hands. Yet to lose a fight where one has been unjustly attacked is to be violated and to experience grief at one's loss. Losing in the face of an unjustified violation is different from losing, say, after voluntary participation in a fight. Hegel's account does not consider the unjustified violation where brave resistance has been defeated, and submission then ensues. Perhaps the result is a form of 'grieving submission', though that, as we will now see, is somewhat different.

##### *Grieving submission*

The alternative to courageous resistance is the psychologically interesting case of grieving submission. This is where a person submits in the face of a threat of violation, and thereby preserves his dignity, but at a cost. By surrendering, such a person 'escapes grief for loss, escapes handling by the other or by the judge, escapes the necessity of engaging with the other' (Hegel, 1948, 235). His fate is not determined by loss at another's hand, but there is a cost in withdrawal. While self-preserving, he nonetheless experiences grief at his submission. There is thus both nobility and difficulty in following this route. When attacked, the person 'withdraws himself ... and simply lets go into the other's hands a thing which in the moment of the attack he has alienated' (Hegel, 1948, 235). He renders himself invulnerable: 'like a sensitive plant, he withdraws into himself when touched' (Hegel, 1948, 236). He thereby saves himself since to be '[a]nything in another's power would no longer be the man himself' (Hegel, 1948, 235), but at the price of a kind of self-annihilation. He renounces his relationships by abstracting himself in a process that 'has no fixed limits'. His fate then follows a logic of self-destruction which 'drives him so far toward the renunciation of life that he must withdraw into the void altogether' (Hegel, 1948, 235-6). In that lies the grief in submission.<sup>13</sup>

There is then a twist. The victim suffers an unjust fate, but turns the situation in his moral favour. Since his surrender 'is his own will, his free choice', his 'fate is rooted in himself, [and] he can endure it, face it, because his griefs are ... produced by himself.' More than that, he has 'lifted himself above fate entirely' and has taken the moral high ground. Life, it turns out, 'has become untrue to him, not he to life' (Hegel, 1948, 236). Yet this retreat costs him dearly too, for sufferance is both noble and ignoble in the same moment. The victim has still fled from his life so that his conduct combines 'the supreme wretchedest fate with elevation above all fate'. The situation is ambiguous but the victim's self-abnegation eventually becomes a chance for reconciliation with himself and the aggressor. A

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<sup>13</sup> If I give up a possession at gunpoint, I give up both my will in the matter and the thing itself. The loss of the thing may be a source of grief, alongside my grief at what submission means to me as a person. The difference between the loss of an object per se and the attack on subjectivity accompanying loss lies at the root of Freud's distinction between mourning and melancholia (Freud, 2006). It is the attack on the self on which Hegel focuses that provides the deeper cut.

heart that has raised itself above the ties of right or the entanglement of things 'has nothing to forgive the offender, for it sacrificed its right' so that 'the offender has done no injury to any right at all' (Hegel, 1948, 236). Such a heart is 'open to reconciliation, for it is able forthwith to reassume any vital relationship, to re-enter the ties of friendship and love, since it has done no injury at all to life in itself' (Hegel, 1948, 236). Yielding leaves 'no hostile feeling, no consciousness, no demand on another for the restoration of an infringed right, no pride which would claim from another in a lower sphere, i.e., in the realm of rights, an acknowledgment of subordination....' Rather, the heart reconciles itself with 'one who hurts us [and makes] friendly just so much life as was hostile to it....' (Hegel, 1948, 236). Grieving submission of this kind ultimately leaves the spirit in a position where reconciliation and the requital of grief become possible.

#### *Courageous Resistance and Conflicting Rights*

Returning to courageous resistance, there is a further issue that is worth considering. Hegel identifies a problem where what emerges is a 'struggle for right', or competition between equally valid claims. Where there are conflicting rights, each right appears as an opposing abstract universal to the other. I think I am in the right, but so do you. Accordingly, both the initially injured party who resists and the aggressor who is resisted are attacked: 'both are right, both are at war, and this gives both the right of self-defense' (Hegel, 1948, 234). Since both sides are ex hypothesi justified, this is a different situation to one where a simply unjustified attack has occurred. Here, the superior power may win, but then right is confused with might. Is this not precisely a setting where law could be invoked to resolve the conflict? The two parties may, Hegel notes, 'throw themselves on the mercy of a judge' (Hegel, 1948, 234), and that would be the rational solution in the terms of the later *PR*. In *SCF*, however, it remains a problem because law, we should recall, can provide no solution to reconciliation. It only adds to the problem as a further external intervention since it

leads [both parties] to surrender themselves unarmed and dead. They renounce their own mastery of actuality, they renounce might, and let something alien, a law on the judge's lips, pass sentence on them. Hence they submit to a treatment against which both parties had protested, for they had gainsaid the injury to their right, had set themselves against treatment by another. (Hegel, 1948, 234)

Thus, law comes on the scene, as the judge, but it does so as a form of alienation, as a way of giving up what is humanly to be done.<sup>14</sup> It acts as a further aggressor and plays no role in dealing with grief and reconciliation in the face of violation. Here, one might think, is a valid reason for seeing in law a form of reconciliation rather than its opposite, but Hegel's overall position will not permit it.<sup>15</sup>

#### The Law: Righteous Law-mindedness Versus Reconciliation

A third setting for discussion of the competing positions of law and love is that of righteous law-mindedness. Here is where Hegel most clearly sets law against love and life. It occurs where the satisfaction of the law becomes a demand in its own right, above and beyond the needs of a deeper moral psychology. It describes the pitfalls of surrendering to one's inner Kant. Hegel describes it as 'the righteous man's rage, a hating rigorous dutifulness, which must needs rage not over an injury to his individuality but over an injury to his intellectual conceptions, i.e., to the commands of duty' (Hegel, 1948, 237). The problem with this is that it accentuates the alienated part over the ethical whole and becomes a block on reconciliation. Once we cling to legal judgment, we commit to a world of right and wrong that cannot change, and in which we will all be judged and found wanting - in perpetuity. The biblical command 'Judge not that ye be not judged' contrasts with taking legal right as the yardstick. This is not to accept any and every situation of illegality, where 'a league of bad men grants leave to every member to be bad' (Hegel, 1948, 237). Rather, it means that we

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<sup>14</sup> Compare Hegel's position with Nils Christie's (1977) idea that a conflict is a person's property.

<sup>15</sup> This points towards one of the positive features of a legal order. I should make it clear that it is not my intention to deny all validity to formal law or state punishment, only to indicate what is lost in terms of an underlying moral psychology when one favours the route of political theory.

should not take righteousness and love to be dependent on 'laws and ... commands, instead of regarding them as issuing from life.' To do so is to recognise 'a lord before whom you are impotent, who is stronger than you, a power who is not yourself... an alien power over your deed.' It is to elevate 'into an absolute what is only a fragment of the whole of the human heart' (Hegel, 1948, 237-8). If the law is a fragment of human nature, then so is 'the criminal'. If law is elevated to the place of the whole, then the criminal can only ever be a criminal. Accordingly, the road to forgiveness and change is blocked:

The punishment inflicted by law is merely just. The common character, the connection of crime and punishment, is only equality, not life. The same blows which the trespasser has dealt he experiences himself.... Of reconciliation, of a return to life, there thus can be no question so far as justice is concerned. Before the law the criminal is nothing but a criminal. (Hegel, 1948, 238)

Law thus blocks change. Reconciliation is 'not grounded in an alien law superior to the man', so that 'a return is possible to the original situation, to wholeness'. When that happens 'the deed still subsists, but only as something past, as a fragment, as a corpse'. The bad conscience in the deed disappears, for 'in love, life has found life once more'. Law plays no part in this since between 'sin and its forgiveness there is as little place for an alien thing as there is between sin and punishment'. Through reconciliation, life 'has severed itself from itself and united itself again' (Hegel, 1948, 232): law can only get in the way. This is a radical account of the relation between law and love. In the next section, I will relate it briefly to what Hegel was to say in his later philosophy of law, the *PR*.

#### LAW AGAINST LOVE: PUNISHMENT AS LEGAL RIGHT

The young Hegel is concerned with the moral psychology and grammar of a perpetrator or a victim. Modern theorists of punishment generally write about state and legal punishment so that the parties to a crime are considered in that context. In *SCF*, Hegel's radicalism encourages him to relate

moral violation to the nature of moral conscience, and to view legal intervention as morally problematic. In the *PR* in contrast, Hegel locates himself firmly in the legal approach, and the result is a different theory: a reconciliation of guilt and punishment, but this time in their relation to reason, law and the state. The cost is that the justification of punishment is achieved by absorbing human subjectivity as love, conscience and will – the basis for a moral psychology - within the terms of right, reason and law.<sup>16</sup> Justice is now a legal and political matter, a move that is seen in each of the three parts of *PR*.

In its first part, 'Abstract Right', the issue of guilt is treated formally, as a matter of reconciling abstract, universal, free self-consciousness with legal right. The injury 'which falls on the criminal ...is ... a right *posited in the criminal himself*, i.e. in his objectively existent will, in his action' (Hegel, 2008, 102). Responsibility is a matter of reconciling free subjectivity, abstracted from all determinations, with a rational law of non-contradiction. The moral psychology that pervades *SCF* is abandoned. Now, crime 'is to be annulled, not because it is the producing of an evil, but because it is an infringement of right as right' (Hegel, 2008, 102). The subject of law is viewed as no more (and no less) than a rational entity. So strong is the force of this argument that what it means to be a victim becomes a non-question: 'The injury from the point of view of the particular will of the injured party ... is only something negative. The positive existence of the injury consists solely in the particular will of the criminal' (Hegel, 2008, 101). We might here recall Williams's comment that guilt is simply

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<sup>16</sup> The contrast I draw between the early Hegel and his mature philosophy can be seen in other aspects of his thought, such as his discussion of the Beautiful Soul. In Norrie, 2005, I argue that one can chart a development whereby the Beautiful Soul moves from being a vital presence at the core of the early thought to being an empty figure to be avoided in the *Phenomenology* (a 'loser'), to being an object of curiosity in the *Philosophy of Right*. What happens is that, while reconciliation lies at the core of Hegel's thought throughout, the terms in which reconciliation occurs change as Hegel moves to his mature thought, and we see this too in his discussion of punishment. In the early thought, humans are reconciled to each other; in *PR*, humans are the bearers of rational law and this is reconciled to itself. While I deal briefly with the three main moves in *PR* here, I have explored the juridical nature of the reconciliation process and the contradictions it generates in greater depth in Norrie, 1991, ch 4.

about respect for an abstract law without ‘any special connection with victims’ (Williams, 2008, 219-22).

Moving to the second part of *PR*, on ‘Morality’, Hegel attends here to a moral corollary of recasting of punishment in terms of right. His target is the claim that the criminal has a moral conscience (a primary requirement of non-alienated being in *SCF*), that could reflect authentically on action and if need be oppose law. If the modal antagonism of *SCF* is the claim of love, guilt and reconciliation *against* law and legal punishment, the equivalent in *PR* is the *validity of legal right* against the particular moral motives of the individual. Whereas previously, the authenticity of a loving soul had been the guarantee of reconciliation, now moral conviction not conforming to the precepts of the law leads only to damaging conflict. What had been the source of moral beauty and friendly fate becomes reparsed and then dismissed as ‘momentary blindness, the goad of passion, intoxication,... the strength of sensual impulse’ (Hegel, 2008, 129). What is now important is ‘to treat the criminal in accordance with the right and honour due to him as a human being ... as essentially something universal’ (Hegel, 2008, 129). In this rationalistic mindset, any claim of moral conscience which goes against the demands of the law represents a claim against the possibility of reconciliation – of right with right. A claim of conscience is no more than ‘the highwater mark of subjectivity at the level of morality; it is the form into which evil has blossomed in our present epoch’ (Hegel, 2008, 138). Note here that evil, which is abandoned in the first part of *PR* in favour of ‘right as right’ (see above), now returns in the shape of a moral conscience that would follow its own dictates against those of law. Yet this was just what animated ethical being in *SCF*.

All this prepares the ground for the third part, ‘Ethical Life’, which completes the picture by vindicating criminal justice as a form of public power. ‘The task of knowing and actualizing what is right in particular cases without the subjective feeling of particular interest falls to a public authority – the court of law’ (Hegel, 2008, 208). The law court has become the crowning glory of the penal process, ethical life made concrete. This is of course the very opposite to how law is viewed in *SCF*. If

one were to summarise the vision of wrongdoing and punishment across the three parts of *PR*, at its core lies the idea of aligning the ‘injured universal’ with law and the state, via the abstract rational subject. Individual culpability is subsumed within the rationalisation of individual right. Abstract universality wins out over the concrete singularity of human life with its attendant moral psychology. The injured universal is precisely *a universal* that has been injured, with punishment as the rational negation of the negation. This produces its own moral grammar of guilt and punishment, but in a highly rationalised and abstract form. It tells us little about the moral psychology of criminals, and even less about victims, though it tells us much about the logic of being a citizen in a *Rechtsstaat*, under the formal governance of legal subjectivity. With this very different approach to the moral psychology of violation, the question arises: how do we link the two approaches, and how might their difference be related to thinking about criminal justice today?

#### LOVE IN THE SHADOW OF THE LAW

Bernard Williams wrote of the need to move away from ‘blame ... as a uniquely appropriate expression of truly moral judgment’ or ‘as an instrument of social control’, and to see it as ‘part of a concrete ethical life’ linked to ‘psychological forces (such as love, perhaps)’ (Williams, 1995, 16) and with a ‘special connection with victims’ (Williams, 2008, 219-22). Viewing blame thus was not to embellish the basic understanding developed by ‘the morality system’, but to go to a deeper level. Seeking to refine ‘the very conception of responsibility’, Williams wished to get beyond ‘a certain political theory of freedom in the modern state’ (Williams, 2008, 66). The young Hegel anticipates this before then giving himself over to the law and its bare accounts of freedom and responsibility in his *PR*. In suggesting we might return to the early work, I connect Hegel’s insight to Williams, and beyond Williams, to developments among victims like Jo Berry, who find the language of the law unhelpful in coming to terms with their loss and reconciling with the wrongdoer. There must be a dialogue, but it is one based on love – of oneself and the other and the tragic interrelation that sometimes constitutes a human bond. The need for a different moral grammar based on a different



psychology is also articulated in the following passage by Marian Partington, who has described her own moral journey in the wake of the murder of her sister Lucy by Fred and Rose West in Gloucester in 1973:

The 'facts of the case' and the way that they were manipulated during the trial were only small aspects of the truth that was sought. More than this, there was a need for understanding of the intricate context of human relationships within our society. Ultimately, there is a need for meaning, resolution and healing. The later trial and the sentence did not answer my need to know the truth of what happened to Lucy. Human justice is mostly focused on retribution, causing more pain. Our human potential is not enlarged by this punitive process. Healing is imprisoned. (Partington, 2012, 52)

When Partington speaks of 'the truth of what happened to Lucy', I take her to mean two things. One is that the trial process did not elicit the facts of what had become of Lucy – how she had been picked up, held, violated and killed. The other is the deeper sense of the moral truth of her death: with what heart did Lucy meet the dreadful fate bestowed on her by the Wests, and what can be said morally for them? Beyond that there is the quest for truth that animates Partington's own journey. How did grief at her loss affect her, how much did she share with Rose West in terms of potential for murderous rage, and what can she do to return love and goodness to the world after so ruinous an event? Criminal justice appears a poor way to achieve what a moral psychology based upon love should seek. The young Hegel offered a philosophical account that went beyond the law and affirmed the need for 'meaning, resolution and healing'. He addressed a truth that was not found in a courtroom, and fixed firmly on what it might mean to believe in the human potential for love.

The implication of my argument is that we should resist efforts to conjoin the moral psychologies of love and law, seeing them as distinct and irreconcilable. There is however a counter-argument: that

an appropriately dialectical synthesis is available whereby the young and the mature Hegel could be reconciled. To do so, however, would be to lose the sense in *SCF* that the moral works of love cannot be appropriately mediated by law. It would also be to face up to the ways in which *PR* draws a fixed line against conscience, moral grief and the experience of victims. Nonetheless, continuing the contrary theme, it may be said that the impulses in the young Hegel towards reconciliation can be delivered within a legal system if we understand that system better. Antony Duff argues that retributive (law-based) and restorative (reconciliatory) justice can be combined in an ideal legal system so that recognition, repentance and reconciliation are parts of a legal process. Yet in law, he notes that we are not concerned with normal human relations between friends, lover, neighbours or colleagues, but with 'our (somewhat more abstract, detached and non-optional) relationships as fellow citizens' (Duff, 2003, 391). Such relationships involve 'public, not private wrongs' and a 'criminal mediation' which is subject to the logic of *punishment* (Duff, 2003, 391). Such an abstract, public, punitive process leads us back to the dissatisfactions of those who see even a good legal process as blocking the way to human resolution of violative wrongdoing.

If we pursue the line of division between the moral psychologies of love and law, how should we envision their relationship? To understand their ordering, it may be useful to represent the two elements dialectically, as separate yet connected (Norrie, 2017a). We can think of law's formal logic and structure, its moral psychology and grammar, as its *architectonic*,<sup>17</sup> and we can identify its broader social and ethical settings as its *constellation*.<sup>18</sup> Law possesses its own specificities, its own (abstract) psychology and grammar which interweaves with and rubs up against the broader moral psychology of love and reconciliation that represent moral possibilities for human being. The two

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<sup>17</sup> The term is originally Kant's, denoting a rational construction of concepts. I add to it the sociohistorical sense of a constructed, built, form in a particular social, political, economic environment (and leading to the questioning of law's rationality). Law is both material and ideational, and it has particular shapes and ways of being: Norrie, 2017a, 4-6.

<sup>18</sup> This term denotes how things that are different and distinct nonetheless stand together. It involves a relationship of part and whole, of co-embeddedness, and of constitutional difference within co-embeddedness (Norrie, 2017a, 14-15).

orders are constellated in a complex, co-related, set of (dis)connections so that it makes sense to hold them apart from each other *in order better to see how they interrelate*.

The upshot is that we can think of two orders as establishing gaps and absences, but also problematic connections and supplements. The gap is as seen as follows. In the modern world, the fusion of state punishment and moral reconciliation seems obvious or 'natural'. Society hands over its moral accounting to the state and its law and articulates an appropriate moral grammar. The basic form of this grammar is that of crime, blame, guilt, and punishment, and guilt is developed as responsibility in terms of capacity, choice and fair opportunity to do other. The victim plays a very limited role in the legal relationship between the state and the perpetrator. Reconciliation goes no further than the just exchange of punishment for crime. In his early work, Hegel enunciated a different moral grammar of violation, grief and reconciliation. Grief exists for the perpetrator, where it takes the form of guilt and its requital, and for the victim for their object loss and the damage to self. Reconciliation becomes a valid aspiration between the perpetrator and the victim since for both this is the way in which a life may again find wholeness. Wholeness embraces both figures, and gives a universal setting for their particular antagonism with its actual hostility and pain. But this separation is ultimately inappropriate, leaving a gap between what the system provides and what people need if they are to address their position as either perpetrator or victim.<sup>19</sup>

As for problematic connection, despite the gap between the two orders, the state and its law are able to trade off the deeper moral psychology of violation and reconciliation that has been repressed. While law takes for granted its own categories as *the* categories constitutive of the moral grammar of wrongdoing, it trades off the moral psychology of violation and reconciliation in popular and media-based descriptions of egregious crime form the backdrop to the application of law's

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<sup>19</sup> A gap that then needs to be filled by different ideas of, for example, dangerousness, reformability (Norrie, 2014, ch 12), or the ideas of restorative justice. On the supplementary nature of dangerousness with regard to law's ideas of responsible subjectivity, see Carvalho, 2017.

moral grammar. If law and punishment is the default mechanism for dealing with terrible violations, then punishment and law look like the only and appropriate way to deal with such things. They gain the moral credit for confronting bad things, things that give rise to a sense of violation that ought to be addressed. They garner legitimacy by trading off the moral experience of violation and grief, a grammar that they have at the same time consigned to the shadows. Of the two grammars, only one is morally adequate to reflect the reality of violation, but it is the other, the law's that appears to be doing the business in the popular imaginary. This brings us back to the problematic nexus between politics and law in the Colombian no vote for peace. It is only in a world pervaded by legal ideology that insisting on punishment can be seen as a proper alternative to peace and reconciliation. But that ideology gains traction just because punishment is seen as the only morally plausible way to address matters of violation and victimhood.

I began this essay with a sense of the continuing moral traction of the moral grammar of legal punishment together with an indication that it may not ultimately be compelling. Two levels of moral discourse, I suggested, are fused together: the political theorisation of state punishment and the moral psychology of violation, grief and reconciliation. The benefit of Hegel's early 'false start' is that it separates two things that we are used to seeing as one. In the Colombian situation, we might well think that there are issues of violation to be addressed, but the possibility of the Colombian state achieving this through the desire for punishment is another question. In Jo Berry's situation, there is a long held need for reconciliation, but law has little if any role in achieving it.

The difference between *SCF* and *PR* is that between an early account of a moral psychology of violation and its consequences and a fully evolved theory of legal and state punishment. To the latter goes the celebrity status of framing the debate on the nature and quantity of modern punishment; to the former, the obloquy of a tried and failed prototype on its quality. Yet it is in the former that we see the beginning of a moral psychology adequate to the experience of violation. Here we find a moral grammar articulating what it means to be the human who violates another,

suffers grief at what she has done, and seeks to overcome it. Hegel also begins to think what it means to be the human who receives the hostility of another, submits and grieves over his victimhood, and seeks to move beyond it. In righteous law-mindedness, Hegel also warns against fetishizing the link between law and morality. Too bad that in his mature thought, he should do just that. In the early work, Hegel refuses to let go of the idea of a deep, serious, moral reconciliation between the parties to a violation.

Which achievement, we might ask was the greater? To explore Hegel's early moral psychology is to deepen our critique of law and punishment, by understanding what is at stake in a moral grammar of violation, and how modern state practices both suppress and are legitimised by it. It is to make links between Williams's call for a radical critique of punitive thinking, and to give support to the voice of victims whose moral experience makes them aware of law's limits.

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