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Love and Justice:

Can We Flourish Without Addressing the Past?

Abstract

The focus of this essay is on how we overcome the past by dealing with it. In this setting the analysis is of the relationship between 'moral transactions' concerning blame, guilt, responsibility, apology and forgiveness and the possibility of transition away from states of trauma. The first section draws on previous work to set out a position on human love as the basis for an understanding of guilt and the 'moral grammar' of justice. The second section considers Martha Nussbaum's claim in *Anger and Forgiveness* (2016) that the idea of transition should be prioritised at the cost of a moral transactional analysis that would engage the moral grammar of blame, guilt, responsibility, apology and forgiveness. The latter is seen as potentially obstructing the transition to a better world. I suggest to the contrary there are grounds for thinking that a successful transition requires relevant moral transactions. The relationship between moral transaction and the possibility of transition is then explored in the case of the dialogue between two people, Jo Berry and Pat Magee. The former was the victim of an act of violence carried out by the latter as a member of an organisation, the IRA. I will suggest, first appearances to the contrary, that my argument against Nussbaum is borne out by the experience of their dialogue.

Keywords

Love, Guilt, Blame, Forgiveness, Nussbaum, Transitional Justice, Moral Grammar of Justice

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Love and Justice:

Can We Flourish Without Addressing the Past?

'To see a World in a Grain of Sand And a Heaven in a Wild Flower,
Hold Infinity in the palm of your hand And Eternity in an hour.'

William Blake

INTRODUCTION: TRANSACTIONS AND TRANSITIONS

The focus of this essay is on how we overcome the past by dealing with it. In this setting the analysis is of the relationship between 'moral transactions' concerning blame, guilt, responsibility, apology and forgiveness and the possibility of transition away from states of trauma. In this regard the second section considers Martha Nussbaum's claim in her recent book *Anger and Forgiveness* (2016) that the idea of Transition (with a capital T) should be prioritised at the cost of a transactional analysis that would encompass the normal sequence of moral terms (blame etc.). The latter is seen as potentially obstructing the transition to a better world. I suggest to the contrary there are grounds for thinking that a successful transition requires a moral transaction. The relationship between moral transaction and the possibility of transition is then tested in the case of two people, Jo Berry and Pat Magee, where the former was the victim of an act of violence carried out by an organisation, the IRA, in which the latter was a member and one of the perpetrators. I will suggest, first appearances to the contrary, that my argument against Nussbaum is borne out by the experience of their dialogue (Cantacuzino, 2015).

To make sense of the analyses in the second and third sections, the first section outlines a theoretical approach to the relationship between moral transactions and change that brings

together an understanding of the 'moral metaphysics' of guilt and forgiveness and a psychoanalytic approach to the nature of moral psychology. What could bring together moral metaphysics and psychoanalysis? Underpinning both is an argument for love, which can be understood both as giving rise to a metaphysics of justice and being grounded in the intrapsychic experience explored by psychoanalysis. The argument is developed out of three earlier pieces of work. The first is an essay on the moral nature of survivor guilt (Norrie, 2017, ch.10), the second a review essay on the place of love in social theory (Norrie 2017a), and the third combines love and guilt by drawing on the psychoanalytic theory of Melanie Klein and Jessica Benjamin (Norrie, forthcoming). It is on this basis that I engage with Martha Nussbaum. Though I disagree with her overall position, I find common cause with her identification of the importance of unconditional love as a category necessary to our thought and moral practices on guilt and forgiveness. That is what makes her an excellent interlocutor for my argument. The difference in our positions is based on seeing how love and our moral transactions are interrelated. My argument is that transition to a better future depends in significant part on coming to terms morally with the past. That involves understanding how the language, the 'moral grammar', of guilt and forgiveness sits alongside that of unconditional love. I think both are necessary, whereas Nussbaum wishes to discard the former in favour of the latter, providing a more direct route to a flourishing future based on unconditional love. For me, the route should be indirect, by way of a moral grammar of guilt and forgiveness along the way. Transitions, I shall argue, generally involve moral transactions.¹ Before we can get to that claim, however, we need to understand the nature of two things and their interconnection.

GUILT AND LOVE

In this section, I outline my thinking about guilt and its relationship to love, where two routes are identified to their connection, the one through moral metaphysics, the other through

¹ I qualify the claim since in the realm of a realist moral psychology, one based on how human affect and agency relate naturalistically, space must be allowed for the exception as well as for the rule, meaning the overall tendency.

psychoanalysis. I bring together in truncated form arguments developed elsewhere, but in a way that I hope is adequate to the needs of this essay. I begin with guilt, then move to love, and then consider their interconnection.

Guilt

In thinking about guilt, I have found myself travelling from law and political theory to a deeper metaphysical understanding of guilt that I derive from Primo Levi (2013; Norrie, 2017, ch 10) , in the world of historical experience, and Karl Jaspers (2000; Norrie, 2017, ch 7), in the world of critical philosophy – both in relation to the thought of Hannah Arendt around the problem of German war guilt (Arendt 1964; Norrie, 2017, ch 7). In brief, Arendt had asked how we could validly punish an Adolf Eichmann given his lack of a moral outlook with which it was possible to engage. The problem with Eichmann and others like him was that they were ‘neither perverted nor sadistic’ but were rather ‘terribly and terrifyingly normal’, representing a ‘new type of criminal [who] commits his crime under circumstances that make it well-nigh impossible for him to know or to feel that he is doing wrong’ (Arendt, 1964, 276). To address Arendt’s concern, I turned to what was expressed by Jaspers as a sense of metaphysical guilt,² by which he meant a lack of solidarity with the very idea of being human alongside every other human being in the world. ‘Somewhere among men’, Jaspers wrote, ‘the unconditional prevails – the capacity to live only together or not at all’ (Jaspers, 2000, 26). In the following passage, Jaspers states his position:

Metaphysical guilt is the lack of absolute solidarity with the human being as such—an indelible claim beyond morally meaningful duty. This solidarity is violated by my presence at a wrong or a crime. It is not enough that I cautiously risk my life to prevent it; if it happens, and if I was there, and if I survive where the other is killed, I know from a voice within myself: I am guilty of being still alive. (ibid, p 65)

² Jaspers developed a fourfold typology of political, legal, moral and metaphysical guilt. He found the first three of these limited and lacking in adequate depth, for reasons I explore in Norrie, 2017, ch.7.

Jaspers's position is stated in abstract philosophical terms, but he links it here to the issue of survivor guilt. Such guilt is more commonly understood as a straightforwardly psychological phenomenon, linked for example to the occurrence of post-traumatic stress disorder. I drew on Levi's thoughts and experience as a concentration camp survivor to argue that the guilt of the survivor was more than this, that it had, as Jaspers implies, a profoundly ethical dimension. Levi wrote, in terms very similar to Jaspers, that in the camp, the 'demand for solidarity, for a human word, advice, even only a listening ear was permanent and universal but rarely satisfied' (Levi, 2013, 82), and this was the source of the survivor's guilt. My thought was that in the face of the Nazi genocide, of a world of 'everyman as *génocidaire*' (Cesarani, 2004, 367), we must find a deeper sense of guilt that needed to be attended to if we were to understand the continuing possibility of guilt in a world that systematically denied it, i.e. even if it remains unactualised in the moral behaviour of historical actors. The idea of metaphysical guilt as a deep, non-actual, universal sense of guilt could provide some part of the foundation that was required. Another part, however, would involve understanding the nature of love, for it would be necessary to understand the broader grounds of this metaphysical state if we are to vindicate it.³

Love

The possible that remains unactualised. This is guilt as a latent moral potential grounded in human being, raising the question, what must the human world be like for guilt to be possible? Why are at least some human beings capable of such a moral sense, even, or especially, in very desperate situations? This is where the argument about love comes in, as elaborated in my discussion of Chris Smith's *To Flourish or Destruct* (2015; Norrie 2017a). Love is the latent category in that book since it emerges from the main discussion there of flourishing, destructive tendencies and the erosion of trust in modern societies. A society that flourishes, and in which people flourish, is one in which

³ Jaspers was himself concerned that metaphysical guilt would be seen as the 'crazy idea of some philosopher' (Jaspers, 2000, 68). Its deep connection with love explains why it is more than this.

there is trust, and trust is based on love and its possibility. Love features in Smith's argument in two ways: first, as a key emotion and motivation, and second, more deeply, as ontologically constitutive of human beings. It is that second sense that I find important, though underdeveloped in Smith's book. How should we pursue it?

We can do so by going in two directions, both of which are important, and then by recognising their interconnection. That they are interconnected, two sides of the same coin, confirms the overall validity of the argument. The first is through psychoanalytic theory, and here I drew initially on Jonathan Lear (1990), who gives a naturalistically grounded conception of how human beings are made through love as a central part of their being. Love is the libidinous drive and emotional relation that gets us going as people, and that through others provides the gift of our individuation. To this I now add the work of Jessica Benjamin (1988), whose account of the relationship between love and recognition provides a distinctly different but parallel account to Lear's, and which I draw on to speak directly about guilt below. From both sources, there is the argument that we are such a species that we are able to love ourselves because we are loved by another, and we go on to love others in our turn. Love is central to our nature.

The second route to love is philosophical and here I draw on Roy Bhaskar's (2012) account of love in his philosophy of metaReality, which accounts for love in both conditional and unconditional terms. In its unconditional form it spreads out from love of self to love of another, to love of all other human beings, to love of the species, to love of all other species, and to love as 'the source or sustaining power in creation itself, most customarily known as god' (Bhaskar, 2012, 181). This is, in Bhaskar's thought, a kind of dialectical progression of love as a deep quality in human being. It is one we can and should act upon, though we live in a world that may seem systematically to deny it.

Now, it might be thought that these two routes to love, the psychoanalytic and the philosophical, are not just distinct but split or divergent. However, I suggest that this is not the case, that the idea of love can be seen as *both* materially grounded in our libidinous and relational being as homo

sapiens *and* as engendering *by virtue of that grounding* a metaphysical reality of love in all its forms, one that can be comprehended in philosophical terms. Is there any reason not to see these two approaches as linked, as constellated (Norrie, 2010, 2017), in an understanding of human life as a whole? From the point of view of Bhaskar's theory, there seems no reason to doubt that psychoanalysis is an important depth science that explores the intrapsychic dimension of what he called four planar social being (Bhaskar, 1993). The question then would be whether our basic natural grounding in loving relations might not also be understood or captured in metaphysical terms such as he deployed in his metaReality. I can see no reason why not. MetaReality comprehends the identity or oneness that underlies non-identity and difference in material being, but identity or oneness as love is central to the nature of human being. Because we are the creatures that we are in, as it were, our emotional DNA, a metaphysics of love is possible.⁴

From the point of view of psychoanalysis, the attitude to metaphysical thinking of the kind explored by Bhaskar might be thought alien given for example Freud's very negative treatment of religion as a form of metaphysical thought. Though Freud cavilled against religion, and established a tradition of dismissing it in psychoanalytic thought, Lear suggests that such thinking might be seen to represent something, transposed to the metaphysical realm, that Freud did believe in, 'that love is a force permeating nature' (Lear, 1990, 221). In more recent work, pursuing a line of thought from his mentor Hans Loewald, Lear goes further, seeing Freudian psychoanalysis as one-sided and wrongly dismissive of religious metaphysics, as ignoring 'basic experiences of trust, oneness, and belonging' as 'highly integrated functions' that are organised and manifested in such thought (Lear, 2017, 204). Once one opens the door to the overall significance of love in one's understanding of human nature, it becomes hard to deny forms of experience that express and articulate love philosophically or metaphysically where these represent meaningful expressions of reasons to act in moral ways. There

⁴ This may be treated as a case of emergence in critical realist terms, where the metaphysical level of experience is dependent on (emergent from) the existence of a being that is capable of the nurturing love of its offspring, and where the precise forms of the emergent metaphysical level cannot be reduced back to the ground from which they emerge but have a *sui generis* existence (Hartwig, 2007, 166).

is much more to such thinking than illusion or infantile wish-fulfilment. Psychoanalytical and metaphysical understandings as described here appear comfortable partners at their different levels in their contradistinction.

In terms of my prefatory quote from Blake, then, my suggestion is that we think of the loving, particular, development of each human child in the parental bond as the psychoanalytic 'grain of sand' in which we espy the ground for universal metaphysics of human being in the world – in this case in terms of a universal solidarity (love), and guilt. In every child brought up in love, we see a transcendent, universal possibility. Having thus explained how I understand guilt and love, it is now necessary to think about how these two grounds of human agency, with their psychoanalytic grounds and their metaphysical reflections, may be connected. Accordingly I now turn to the linkage between them, in both psychoanalytic and philosophical terms.

From Love to Guilt

The intrinsic link between love and guilt can be seen at both the metaphysical and the psychoanalytic levels, the first quite quickly, the second with a little further development. With regard to the metaphysical, let us consider the closeness of what Jaspers (on solidarity and guilt) and Bhaskar (on unconditional love) have to say. In metaphysical terms, the discussion of love and guilt are already quite close to each other. If we can talk with Bhaskar of a metaphysics of love as entailing a love *inter alia* for humankind, then we are *already* operating with something like a universal solidarity that could be denied, generating a sense of metaphysical guilt. To have an unconditional relationship, an 'absolute solidarity', to the other of the kind Jaspers (in philosophy) and Levi (out of thoughtful experience) describe, I suggest, is just to have a loving relationship with the other, one that is grounded in a sense of universal love. Then, the failure to act in the light of that relationship is marked by a sense of guilt that one has not done so. Metaphysical guilt follows on a failure to act in accordance with an unconditional love for (a sense of universal solidarity with)

the other. The metaphysics of guilt and love operate at the same level of philosophical and ontological depth.

What about the link between guilt and love in psychoanalytic terms? This needs a little more development, but there is a clear path to follow. Here, there is the powerful argument of Melanie Klein (1998) that the relationship between love and guilt emerges in the developing infant, and remains with it as it grows into adult life. Klein's basic argument is that in a primary narcissistic phase, the intense anger that the infant feels and expresses when things aren't going well (it is e.g. hungry, uncomfortable, raging) translates into a fear that it may actually have damaged the object of its anger, the parent figure. Yet the parent figure is the one it feels most good about, in its early experience of an emotion of love. The parent makes it feel warm, nurtured, comfortable, safe - loved. Through the infantile narcissistic sense of omnipotence, infants fear that they may have hurt the one they love and this sets up an anxiety and a desire for reparation that, Klein suggests, they carry (in more attenuated forms) through life. It is this conflict and anxiety, with the accompanying reparative desire, that lies at the heart of the feeling of guilt. Guilt is a conflict and tension between what a human would deeply wish for an object of its love, and the fear that it may have damaged that very object.

If that is the root source of the feeling of guilt, it can be developed as a way of thinking about guilt in adult-adult relations using the work of Jessica Benjamin (1988; Norrie, forthcoming). In Benjamin's feminist psychoanalysis, one focus is the process of differentiation and individuation of the human in a way akin to Lear, but she develops her thought through Hegel's idea of recognition.⁵ Benjamin draws here upon the master-slave relation (Hegel, 1977), but she proposes a way of looking at this that permits what might be thought a more satisfactory outcome than Hegel himself achieved.

Successful recognition (where things go well!) between the parent and child involves the creation of

⁵ Striking is the publication within two years of each other (Benjamin in 1988, Lear in 1990) of two works by political theorists, one of Hegel, Marx and feminism, the other of Plato and Aristotle, which both articulate a psychoanalytic theory of love as the first building block of human life.

a tensed space between the two such that the parent's recognition of the child as another person gives that child the space to be that person, and invokes in the child a counter-recognition that the parent too is such an individual. Only, indeed, if the parent is herself accepted as a concrete individual person can her recognition of the child enable it to act independently as an individual in its own right. It *needs* an independent other if it is to become itself independent. Neither a parent that is slave to the child's will nor one that dominates the child can give it what it needs in order to be a person in its own right. This need continues beyond the parent-child bond into social relations. We all need the recognition of independent others to be independent ourselves, and the basic point is that the tensed space of recognition of self through another is an existential and relational element in our personal being and becoming.

How does this tie in with guilt? My suggestion is that this field of play of recognition is a perfect space in which to think about guilt. Guilt is the feeling of tension and anxiety that comes from emerging as loving animals (Klein) who are brought up to recognise and respect others (Benjamin), when in a variety of ways our actions or ways of being end up denying or disrespecting such others. Thus, if we were to violate another by, say, a serious physical injury, the possibility of guilt feelings would lie in the tensed space between our psychological sense that we should recognise and respect another, and our realisation that our actions have violated another.⁶ The language of respect, autonomy and recognition is engrained in us, as Benjamin suggests, by our upbringing in human relations based on love, and guilt ensues from acting in ways contrary to that language.

As with love itself, can we tie together the psychoanalytic and the metaphysical directions of travel, seeing them in reflexive relation with each other? The sense of guilt I am discussing is both felt and reflected upon. It is at one important level the psychosomatic feeling 'in the gut'. It keeps us awake in the night as a feeling of being troubled and ill at ease, or brings pain to our later years. It is a feeling of the psyche in its original sense, as the soul. But it is also something that we can cognise

⁶ I do not state this as a necessary rule, only as a tendency, competing with other tendencies in an open world.

mentally or philosophically as a sense of things being out of kilter in our symbolic world. When Jaspers speaks about metaphysical guilt, it is this latter sense he expresses, but I don't imagine that it only exists for him as a philosophical notion. It is something that can *both* be expressed in philosophical terms *and* that is felt in the heart or the stomach, and these two aspects are two sides of the same thing. The philosophy and the psychic experience of guilt can and should be connected. Another way of putting this, in line with Lear's comment about God and love (Lear, 1990, 221), would be to say that the philosophical and metaphysical relationship is a way of making sense at the level of moral cognition of the actual lived and felt relations between human beings. The 'psycho' and the 'somatic' are two things conjoined, not one thing that reduces being to a basic physiological level. In writing of metaphysical guilt, Jaspers, who lived in Germany through the Nazi period, and who had a Jewish wife, did not intend that those who experienced it should only do so in the library or the study.

FORGIVENESS: CONDITIONAL AND UNCONDITIONAL

This essay brings together an understanding of guilt and love which sees the former as emergent from the latter. It understands them as engaging both a metaphysical and a psychoanalytical dimension. Humans are both driven by feelings of love and guilt that are related to our basic psychic condition and capable of understanding and expressing these drives in metaphysical terms. But how does this actually work? What role do ideas of guilt and reparation play in the world of social and moral practices? What role ought they to play, and how are they related in practice to an understanding of love? To answer these questions, I turn to the recent book by Martha Nussbaum, *Anger and Forgiveness* (2016), in which she writes about guilt as a form of self-anger, its relationship to forgiveness, and its relationship to love.

Love, Guilt, Forgiveness: Passing Directly

To begin with Nussbaum's account of love, the Kleinian position I have just set out concerning psychoanalysis is roughly the one that Nussbaum used to accept but which in *Anger and Forgiveness*

(2016, 129) has come to reject. She now thinks that the psychoanalytic story about guilt should be set aside in favour of a more simple tale based upon the possibility of human compassion. She acknowledges that it may still be right to feel guilt, but she now also associates guilt with self-indulgence and narcissism, and argues that a correct focus is not on one's own guilt but on how one may make things better. This is achieved by a swift 'Transition' to focusing on the other that has been harmed, and improving their lot. Underpinning her view, however, is a sense of unconditional love.

My response to Nussbaum is that I accept that a sense of guilt may be narcissistic. The Klein-Benjamin analysis described above is indeed grounded in a primary narcissistic condition of omnipotent feeling, so this might be said to find its echo in worldly practices of guilt and demanding forgiveness. Yet, from that early phase, narcissism is contained and turned into something positive and productive, a desire to repair in case one has harmed a loved one. This is not an idealisation or rationalisation, but a description of what really happens when things go well for loving, balanced, 'good enough' individuals. Guilt in a continuing, uncontrolled, narcissistic vein, resulting from neurosis or other psychological or cultural condition, is also surely more than possible as a pathology of development. But the denial of guilt may also reflect narcissism, constituting an unconscious misrecognition of one's relation to one's acts in the world, a sense for example that one is always right. This does not even disbar from high office. Demanding that others just 'move on or 'get over it' could itself be interpreted in this way – an inability to see that others could genuinely be suffering.

None of this, however, denies the possibility that primary narcissism may be converted into a desire to repair, a relationship of positive respect for the other. I also accept that moving to change things for the better *à la* Nussbaum is important, this may indeed be a result of guilt –this was Klein's initial point about the goal of reparation. I am not therefore in favour of the shortcut that cuts guilt and its associated moral terms out. While guilt and compassion are closely entwined, guilt is *pace* Nussbaum more than just registering a lack of compassion. It is a feeling in its own right, part of our

moral understanding, our felt experience, and, importantly, our ethical process. We ought not to reduce it to something else, to downgrade it, or remove it from the picture. The guilt that for example some but by no means all perpetrators, bystanders and survivors (c.f. Levi, 2013; Norrie 2017, ch.10) feel in the face of genocidal violence is a valid moral emotion that should be engaged and engaged with. Here, then, is the valid link to a complex panoply of moral terms by which humans navigate the world.⁷

Against Nussbaum, I think she raises a challenge to guilt and its sequential terms which needs to be met; but, with her, she proves a helpful interlocutor to clarify what needs to be said. Things she says about unconditional love reflect my own line of thought, though I come to an opposite view in terms of the importance of guilt and her account of 'transactional forgiveness' (Nussbaum, 2016, 57-74).⁸ The issue comes out in her discussion of the parable of the prodigal son. The story of the son is not about guilt but the related topic of forgiveness. So to understand how the prodigal son fits into the picture, I need first to say something about how guilt and forgiveness feature together in Nussbaum's argument.

Guilt and Forgiveness

I mentioned above the notion of 'the Transition' (capitalised in her text) in Nussbaum's argument. The Transition is the moment when a person who has done wrong, or an onlooker who has witnessed wrong, moves from a sense of anger (self-anger in the case of the wrongdoer) at the shock of the wrong to a sense that the situation needs to be made better for the victim. The Transition is a forward looking moment and is ameliorative in its ethos – pushing in the direction of

⁷ Here lies the basis for the kind of moral psychology called for, but not implemented by the philosopher Bernard Williams (2008). His task remains unachieved, and the reason why is one he recognised: the predominance of a politico-legal account of guilt, responsibility and blameworthiness, which blocks a more sophisticated analysis. See Norrie 2017b. The deeper moral grammar more attuned to ethical reality is anticipated by the young Hegel before he rethought his argument in legal terms: see Norrie 2018.

⁸ When Nussbaum speaks of transactional forgiveness, she means a form of forgiving linked to 'payback' or status degradation, in contrast to ideas of transition linked to unconditional love. For me, transactional forgiveness entails a relationship that is morally valid and goes beyond the negative forms she identifies, which are no doubt present in the world.

flourishing. That moment must be contrasted with the typical way in which people think of crime and punishment. There the emphasis is usually backward looking, and this is caught in the philosophy of retributivism. Retributivism emphasises (in Nussbaum's argument)⁹ suffering inflicted for a past harm, in the irrational anticipation that putting someone down (a status degradation) or 'payback' will somehow make the world a better place. That she sees this as deriving from 'deep-rooted but misleading ideas of cosmic balance' (Nussbaum, 2016, 5) perhaps prefigures a critique of what I have been calling metaphysical guilt.¹⁰ Her general view is against a whole range of ideas (what we might call 'the penal complex') that are seemingly not related to forward-based change, but which wish to linger on the wrong done and its requital. Nussbaum wants to sweep all that aside.

This analysis covers both guilt and forgiveness. All talk of guilt, insofar as it is not a direct spur to the Transition, and all other talk that is about blame and forgiveness is part of the penal complex that detracts from what really needs to happen. Guilt and blame are about pay back and status degradation. Forgiveness is importantly tuned into the same issues. To forgive is already to declare there is something to forgive, which means looking backwards, not forwards. It comes in both conditional and unconditional forms. Conditional (or 'transactional') forgiveness is bad because it says I will only give up my anger towards you if you will apologise, change, submit, etc. It is a way of putting someone down and contains elements of 'aggressiveness, control, and joylessness' (here Nussbaum (2016, 58) cites Nietzsche). At first sight, unconditional forgiveness looks better, though it may still contain a sense of put down: 'the minute one sets oneself up as morally superior to another, the minute one in effect asserts that payback was a legitimate aim – but one that I graciously waive' (Nussbaum, 2016, 77), one's thought is 'still about the past, and it gives us nothing concrete with which to go forward'. If unconditional forgiveness is accompanied by love, it may look

⁹ Modern political philosophers such as Antony Duff (2001) argue that retributivism has both backward and forward-facing functions.

¹⁰ Though it does not stop her basing her own position on a philosophy of unconditional love.

forward, and Nussbaum cites the case of the families of the victims of the Charleston shootings, whose acts of love and unconditional forgiveness perhaps reflect the possibility of a Transition, though they offer no concrete way forward. The point here is that *love* is the key to making unconditional forgiveness move beyond its payback limits. In the process, there is a qualitative moral jump *beyond forgiveness altogether*, to a position of unconditional love.

The Prodigal Son and the Case for Indirection

This is where the prodigal son fits in, because Nussbaum uses the parable as an illustration (that goes, she says, against the grain of much of Christianity) of *neither* conditional (transactional) *nor* unconditional forgiveness,¹¹ both of which are complicit in the retributive payback approach. Rather it is an example of meeting wrongdoing with unconditional love, a moral attitude that is in line with ‘the Transition’. Before exploring what she says here, I note the dilemma this argument seems to place me in, because I am in favour of a notion of unconditional love as founding an understanding of the ways human beings are in the world. I do not however agree with Nussbaum’s use of it here to override all issues of guilt and forgiveness, so Nussbaum forces me to clarify my position.

In the parable, it is stated:

But when [the younger son] was yet a great way off, his father saw him, and he was seized by a surge of emotion ..., and he ran, and fell on his neck, and kissed him. And the son said unto him, Father, I have sinned against heaven, and before thee, and am no more worthy to be called thy son. But the father said to his servants, Bring forth the best robe,.... And bring hither the fatted calf, and kill it; and let us eat, and be merry: For this my son was dead, and is alive again; he was lost, and is found. And they began to be merry. (Nussbaum, 2016, 79-80)

¹¹ For a powerful argument concerning the role of forgiveness in Christian thought that appears to transcend the distinction between conditional and unconditional forgiveness, while basing itself on unconditional love, see Volf, 2005, 2006.

From this passage, Nussbaum suggests that the father's reaction cannot be seen as any form of forgiveness, whether transactional, conditional or unconditional. He sees the son coming from a distance and recognises him, and he can't know what the son will say, or his attitude. 'He just sees that the son he has believed dead is actually alive, and he is seized by a violent surge of strong emotion ... a type of intense love' and even after the son has spoken, the father 'does not acknowledge the issue of contrition at all' (Nussbaum, 2016, 80) but goes ahead with the celebration. This is not conditional forgiveness based on repentance and its acceptance, nor is it unconditional forgiveness: there is no forgiveness at all. 'This father is taken over by love.... This story concerns the depths and the unconditionality of parental love.... This father ... does not pause to calculate and decide: he just runs to him and kisses him. He has no thought for wrongs done to himself; his only thought is that his son is alive' (Nussbaum, 2016, 81).

This is a beguiling analysis, and one that in some ways I would like to be able to endorse. I am no fan of punishment as we mostly know it and I believe that viewed as a social phenomenon, in a world of profound structural violence, it can be seen as a way of victimising one kind of victim (i.e. the perpetrator who is herself a victim), who victimises another (see Norrie, forthcoming). Vicious payback and status degradation for their own sake lie at the heart of much that is done in the name of punishment in the penal system – and according to the set of ideas that make up the penal complex. I am not in favour of any of this. Yet, there is something in the language of forgiveness, and all the other categories such as guilt that Nussbaum is down on, that we should not just throw away in favour of Transitioning, capitalised or otherwise, to a better future. This is too simple. To begin, when a wrong has been done, I do not see that there is a necessary assumption of superiority in the transaction in hoping for an apology or an acknowledgement of wrong done. The contrary can be argued: that wronging another puts the wrongdoer into a position of false superiority that the apology redresses. Nor, surely, is it obviously narcissistic to wish, for example, that a serious violation of one's bodily integrity be recognised for what it is, a violation. My larger suggestion is that getting to a better future involves dealing morally with the past, as a condition for moving

forward.¹² Further, the relationships that need to be addressed morally in that past include those that are violent and violative. A moral grammar of guilt, forgiveness, responsibility and blame ought not to be thrown away, in favour of an abstractly expressed universal ethic of love, feeding directly into a eudaimonic transition. At the same time, the idea of such a universal ethic (expressed in metaphysical terms, grounded in our psychic being) is crucial, for it is this which underpins *both* moral transactions and transitions. The key will be to see how both are necessary.

Another way of putting this would be to say that to get to a better world, we need to learn the moral lessons of, and deal with, the past. That involves a moral language that can engage it. A significant part of dealing with the past involves engaging with the moral responsibilities that lurk there, and it is only through doing so that we find the ways to be better in the future. In fact, Nussbaum senses this, though not its implications for her argument, when she says of the father that he

might still, at some later time, talk to the son about his life's course. Unconditional love is fully compatible with guidance; indeed, since the father wishes well to this son, he is almost certain to give him advice so that his life will go better henceforth. The direction of his emotion is Transitional: his love points to a future, and that future will almost certainly contain advice. The initial impulse toward the son, however, does not come from advice or calculation. (Nussbaum, 2016, 81)

I must confess that I quote this passage in part for its blithe confidence that the giving of advice by a father will enable the son's life to 'go better henceforth'. That's not quite how it works in my experience (and for reasons on both sides). More importantly though, might one not say that it is an obligation stemming from unconditional love for a parent to tell a child (and vice versa), not just that something is not going well, but where relevant that there is a wrong and a responsibility to be addressed in moving forward. Note also that this does not undermine the unconditional love at the

¹² Nor would I deny that a transactional process can become a way of *not* moving forward, but a means of repeating the problems of the past. On this, see Volf, 2006. Nonetheless, not to see the need to address the past in ways that are linked to the future seems to me to throw out the baby with the bathwater.

level the love operates: the parent (the child) still loves the child (the parent) even if the child (the parent) ignores efforts at moral dialogue. With regard to the prodigal son, we might hypothesise that the father's relief at regaining his son prioritises the welcome over the 'post mortem', but a reckoning there still should be. In sum, the past and its wrongs and the future with its changes are intimately connected for moral agents. Pace the 1970s film, *Love Story*, love does *not* mean never having to say you're sorry, though if apology becomes repetitive, something is going wrong.

TRANSITIONS, TRANSACTIONS AND THEIR DIFFICULTIES

To put this in terms of my overall position, I suggest that we ought to think in terms of the ethical foundations of a flourishing humanity in terms of the deepest ethical commitments to love. In so doing, we are reflecting our basic human species being as creatures made out of love – and this goes from acts of procreation right through the child-rearing process and on into adulthood. We are loving creatures and this comes out in our moral behaviour, including our moral grammar of guilt and forgiveness. It also comes out in our deepest philosophical convictions, which we express in the metaphysical language of universal love and solidarity with the other. The latter becomes the way in which we express to ourselves the difficulties, the violations, the trauma, we experience in the actually existing world. These underpin the moral grammar of guilt because we are the kinds of being who in our psyches (our souls) just are capable of, and made by, love. To start from this position, however, is embrace the *mediations* of love that our being as love-engineered, individuated, beings, i.e. moral persons, requires. We cannot step straight to the overarching design, without working through our moral agency as autonomous, individuated, respected and respecting, recognised and recognising, persons in the world. And a big part of that is a language of responsibility, of guilt, and of forgiveness for those violations of another for which we are responsible. That that language is hijacked by political and legal institutions to degrade and violate those convicted of crimes does not mean there is not an ethical core that ought to be acknowledged.

To the contrary, part of understanding the *moral* attraction of vindictive state punishment might indeed rest in appreciating the truthful moral core on which it misleadingly trades (Norrie, 2018).

Blame, Forgiveness and Empathy: Jo Berry

In this final section, I consider a practical case of a dialogic relationship of forgiveness for a past wrong in order to illuminate the difference between my position and Nussbaum's. It concerns the relationship between Jo Berry and Patrick Magee. Jo Berry is the daughter of Sir Anthony Berry, a Conservative minister who was killed in a bomb blast in 1984 at the Grand Hotel in Brighton, aimed at the then Prime Minister, Margaret Thatcher. Patrick Magee was one of the IRA unit that planted the bomb. Caught and imprisoned, he was released under the Good Friday Agreement, and has since been involved in a close dialogic relationship with Berry, in which they have discussed their different perspectives and feelings about what happened. In the following passage, Berry reflects on her thinking, in terms that on their face reflect Nussbaum's position on the limitations of any account of forgiveness:

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 wanted to meet Patrick to put a face to the enemy and see him as a real human being 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. (Berry in Cantacuzino, 2015, 79-80, my emphasis)

There is something profoundly moving in the way that Berry depicts the emotional recovery that comes from talking with the killer of her father. She has been recovering her humanity through talking things out with him, and by putting herself in his place. Trying to interpret this, I think there is an important link here between the empathic moral sense that 'we could all have done what Magee did in his situation' and an understanding that the violation was not directed personally at Berry or indeed her father. We are all the same under the skin, no matter the parts we play in history. This reflects something of the sense of metaphysical responsibility, of universal solidarity and guilt, that we saw earlier in the thought of Jaspers and Levi. Yet, there is also a reflection here of Nussbaum's key points about the difficulty of a language of forgiveness and its status-degrading quality: it is condescending, says Berry, and recreating of division, to talk in these terms. She wants and needs to get beyond this to a deeper level that is about empathy, placing oneself in the position of the other. Loving herself again is ultimately about being able to love the other, unconditionally, even where the other was the perpetrator of an act that deeply violated her.

Berry's testimony is profound and humbling, but it seems to back Nussbaum against me. Or does it? The key to understanding what she is saying, I believe, is to read the main part of the passage above in conjunction with the first three sentences. On a first reading, these three initial lines look like they describe a problematic mental state (of blaming) that ought to be overcome in order to get beyond transactional blame and forgiveness, and that is how I think Nussbaum could read them. For me, a further reading is possible that would see them as more indicative of an agonistic political setting, which involves two conflicting elements. On the one side, we have a sense of the universal human bond that makes us all the same. This is the site of that universal sense of human solidarity that underlies ideas of both metaphysical guilt and unconditional love. It generates a sense of empathy and shared humanity that is crucial to understanding our 'metaphysical' position in connection with a violation. On the other side, however, it is perfectly understandable, and right, for someone in Berry's situation to feel anger, to want to blame, and from there to open up a morally transactional dialogue with the perpetrator, which might lead to apology and forgiveness. This other,

transactional, route is not to be brushed aside in favour of a direct ascent to unconditional love. It is part of the overall picture of how we might work through the sense of violation and trauma. Both sides, a sense of universal solidarity with another *and* a feeling of having been violated by another, are necessarily in play. To move forward would entail their alignment so that the latter becomes absorbed in the former. Whether that happens, however, would depend on many things, including, as I shall argue below, the overall setting in which dialogue occurs.

Forgiveness: 'Giving To' and 'Giving Up'

My claim is strengthened here if we consider a further angle on the relationship between forgiveness and the retrieval of humanity. Berry's thoughts are couched in terms of her need either to blame or to empathise, or both. I've suggested that a dialogue of blame and forgiveness might help the process of recovering empathy and humanity, and this is seen in a different way if we consider the nuance in the term 'forgiveness'. Much of the time, we think of forgiveness as the 'thing' the victim gives to the perpetrator, but the term has a double meaning. If we emphasise the 'give' in 'forgiveness', this appears focused on the person to be absolved. The victim gives something to the violator. If we emphasise the 'for' part, however, the focus of forgiveness is more on the giver, the victim herself. The prefix 'for' in 'forgive' links the word to other terms in which a person *gives up* a claim, an interest or a need. In that sense 'forgive' is like other terms such as 'forgo' or 'forswear': it is as it were 'subject' rather than 'object' focused. The victim gives up a claim against the violator *on her own behalf*.¹³

An interview appeared recently in the Guardian newspaper (Saturday, 1 April 2017)¹⁴ with a young woman in Rotherham, Sammy Woodhouse, who had been sexually groomed and abused as a fourteen year old, and had a child by her abuser at the age of fifteen. Now in her early thirties, she runs a campaigning group for victims of abuse, which targets both the abuse and the way the

¹³ For Volf (2005, 168-9) this is a secondary feature. For me, I think both 'giving to' and 'giving up' are morally as well as analytically and linguistically central to 'forgiving'.

¹⁴ Thanks to Gwen Norrie for drawing this to my attention.

criminal justice system deals with it. Her activities have allowed her to move forward: 'I don't want to constantly live in my past. I've come forward, I've reported them [the professionals who let her down]. I'm one of the success stories, if you can call it that.' Of her abuser, she says this: 'I feel different things about him. If I was to hate him, that's going to damage my son, and also it's going to damage me, because carrying hate and anger around is not healthy. I can't go back and change things. Have I forgiven him? Probably, yes. Not because I think it's right, what he did, but I need to move forward.' She adds that neither she nor her son will ever have contact with the abuser.

These comments reflect ambivalence, but the link is clear between forgiving and escaping the circle of anger in order to build a loving and emotionally healthy life for herself and her son. This is not just a case of transitioning to a better future, though that is a part. It is also about activating the subjective side of forgiving, the giving up of anger *through forgiveness*. Forgiveness here is ambiguous, but if it is also about 'giving up', in a positive moral sense, we can see why the transaction of forgiveness as a means of retrieving one's humanity is so important. To say this is not to negate the other sense of forgiveness, the gift to the perpetrator, for it seems most likely that the two meanings in forgiveness (to *forgive* and to *forgive*) are interconnected. To be able to *forgive* must in most cases be made so much the easier by a successfully achieved *forgiving*. Transitioning is then precisely an outcome of the forgiving transaction. This point returns me to Jo Berry and Pat Magee.

No Need for Forgiveness? Pat Magee

The difficulty and poignancy in their situation might not be that Berry's forgiveness would be condescending but rather that it is not ultimately possible because the dialogue with her interlocutor is politically blocked. Here is what Pat Magee says:

Someday I may be able to forgive myself. Although I still stand by my actions, because at the time we were trapped and there was no other way, I will always carry the burden that I harmed other human beings. But I'm not seeking forgiveness. If Jo could just understand

why someone like me could get involved in the armed struggle, then something has been achieved.... Between Jo and me, the big issue is the use of violence. I can't claim to have renounced violence, though I don't believe I'm a violent person and have spoken out against it many times.... No matter what we can achieve as two human beings meeting after a terrible event, the loss remains and forgiveness can't embrace that loss. The hope lies in the fact that we are prepared to carry on. The dialogue has continued. It's rare to meet someone as gracious and open as Jo. She's come a long way in her journey to understanding; in fact, she's come more than halfway to meet me. That's a very humbling experience. (Magee in Cantacuzino, 2015, 80)

There is guilt here at the use of violence, but one that is offset by a refusal to accept that what was done was wrong. It is possible to hold onto contradictory moral assertions as part of one's moral experience, though the consequence is an agonistic and unresolved conflict for that person. In my terms, this would involve a tension between what we experience in the realm of morally transactional engagement and at the level of metaphysical responsibility. In this setting, Magee resists the transactional moral grammar of guilt and forgiveness in light of the political context, but still must face the lonely hour of metaphysical regret. Even if he believes he was right to wage war against the British, he still suffers remorse at the deaths he has caused. His position catches him. I take his initial line ('Someday I may be able to forgive myself') to indicate that he *cannot* forgive himself, while the need to be forgiven, one that is seemingly suppressed by the political claim of justification, remains present. Magee says he is 'not seeking forgiveness', but feels its need. At the level of the moral transaction in the here and now, he may not; but at the level of universal, metaphysical, experience, he does. Guilt persists and cannot ultimately be resolved because at the same time as he needs forgiveness, he denies that he could need it since his actions were justified.

Unresolvable Dialogue

This is a difficult, perhaps tragic, position for Magee, but I think it also makes for difficulty for Berry. From her point of view, she is faced with a person who cannot show the repentance that might lead her fully to forgive. Magee can't be looking for forgiveness, so Berry can't give it to him – even if she wanted to. The transaction of forgiveness does not look wrong in itself. She wants to give it. It might help overcome the blame desire she feels. It might help her give up her anger, and deepen the recovery of her humanity. Giving forgiveness to Magee might allow her to move away from her feeling of violation. The problem is that the moral transaction cannot be completed. There is an element of speculation here, but what might it be like if Magee *were* to ask for her forgiveness? Would that not change the moral landscape for both people? Without it, it is surely understandable that Berry should continue to feel the split between a desire to blame *and* a desire to empathise. A full request for forgiveness might not make a difference, but on the other hand, it might. Magee's conflicted position, I suggest, withholds a morally transactional conversation that might enable a moving forward. What this suggests is that the competing values of transactional blame and forgiveness and empathic understanding, following a direct line of unconditional love, are *both* validly in play. Perhaps in conclusion, we should say that in a world which throws up these kinds of social and political conflicts, such a difficult, unresolved, dialogue, a broken dialectic (Norrie, 2017), relying nonetheless upon an extraordinary human capacity for honesty, love and grace, may be as good as it gets.

BACKWARDS AND FORWARDS: TRANSITIONS NEED TRANSACTIONS

Nussbaum's argument supports the validity of our reading issues of human violation against the backdrop of an ethic of unconditional love, but it also calls into question what I want to say about the continuing importance of a moral grammar of guilt and forgiveness. For Nussbaum, the pathway to human flourishing is a forward-looking enterprise, and in this she is surely right. The question however is where this leaves our moral grammar of guilt and forgiveness. Since we are moral beings, it seems to me that one of the ways we move to a better future is by coming to terms morally with

our pasts. That requires appropriate moral reckonings, and such reckonings require a language of what was done by whom to whom, and how both sides now feel about it. Forwards and backwards: there is a philosophical argument in critical realism that the past, the present and the future are deeply interconnected (Bhaskar, 1993, 140-4; Norrie, 2010, 33-4). I cannot make that argument here, but the practical investigation of how we take the past into the present as a means of looking to the future surely indicates the artificiality of shutting one off from the other. Transitions, in other words, require transactions. They do so because of the kind of beings humans are. Wrought out of love, able to express that love in metaphysical terms, the moral grammar of guilt, forgiveness and the rest retains an important role in how we move forward. That these basic moral instincts may be transmuted into legal forms that refract and even turn against what they appear to express cannot deny their basic validity. It may however make us reflect on what happens when we juridify moral transactions. Nussbaum's strictures may in this light be seen as a criticism of the gap between an ethical form and its legal expression, but investigating the gap requires us to defend the value of moral transactions, and their relation to moral transitions.

Bibliography

Arendt, A (1964) *Eichmann in Jerusalem* Penguin: London

Bhaskar, R (1993) *Dialectic: the Pulse of Freedom* Verso: London

Bhaskar, R (2012) *The Philosophy of MetaReality* Routledge: London

Benjamin, J (1988) *The Bonds of Love* Pantheon: New York

Cantacuzino, M (2015) *The Forgiveness Project* Jessica Kingsley: London and Philadelphia

Cesarani, D (2004) *Eichmann: his Life and Crimes* Heinemann: London

Duff, A (2001) *Punishment, Communication, and Community* Oxford University Press: Oxford

Hartwig, M (2007) *Dictionary of Critical Realism* Routledge: London

Hegel, G (1977) *Phenomenology of Spirit* Oxford University Press: Oxford

Jaspers, K (2000) *The Question of German Guilt* New York: Fordham University Press

Lear, J (1990) *Love and Its Place in Nature* Yale: New Haven and London

Levi, P (2013) *The Drowned and the Saved* Abacus: London

Klein, M (1998) *Love, Guilt and Reparation* Vintage: London

Norrie, A (2010) *Dialectic and Difference* Routledge: Abingdon

Norrie, A (2017) *Justice and the Slaughter Bench* Routledge GlassHouse: Abingdon

Norrie, A (2017a) Review Essay of Smith, *To Flourish or Destruct*, forthcoming in *Journal of Critical Realism*

Norrie, A (2017b) 'Criminal Law and Ethics: Beyond Normative Assertion and Its Critique' *Modern Law Review* 80, 955-73

Norrie, A (2018) 'From Political Theory to Moral Psychology: Young Hegel's Critique of Punishment'
Social & Legal Studies forthcoming

Norrie, A (forthcoming) 'The Moral Grammar of Guilt: Perspectives in Political Theory and Moral
Psychology' unpublished paper on file with author

Nussbaum, M (2016) *Anger and Forgiveness* Oxford University Press: New York

Smith, C (2015) *To Flourish or Destruct* Chicago University Press: Chicago

Volf, M (2005) *Free of Charge* Zondervan: Grand Rapids

Volf, M (2006) *The End of Memory* Eerdmans: Grand Rapids

Williams, B (2008) *Shame and Necessity* University of California Press: Berkeley