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Reparative justice and the victim's burden: why accepting an apology is not a moral obligation

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Abstract

A number of authors make a seemingly compelling case for holding the victim of a wrong morally obliged to accept the genuine apology of the wrongdoer. This is a crucial issue in questions of reparative justice, since reparation typically requires not just the giving but also the acceptance of an apology. Yet it is a case that we should ultimately reject. If it is credible to think that the victim might suffer anew in exercising any duty of this kind, that suffering must be factored into the moral reckoning from the outset. It is only if we can be sure that the victim will not suffer again by attending to, and ultimately accepting, the wrongdoer's apology that it would be right to impose upon her any duty of this kind. Yet, in all non-trivial cases, the victim's burden is unknowable in advance and has the potential to be considerable. In such situations, I argue, the victim has no duty to accept the wrongdoer's apology. There are limits, too, to the utility of the bipartite victim-wrongdoer account of reparation on which such arguments are typically predicated. For the harm the wrongdoer causes is not exclusively suffered by the immediate victim but also by the community of all potential victims. Genuine reparative justice requires more than a recalibration of the relative moral standing of the wrongdoer and the victim through the giving and receiving of an apology. I consider how this might be achieved without imposing upon the victim a burden that fails to achieve the moral reckoning anticipated.

Keywords Apology · Reparative justice · Victim · Wrongdoer

A number of authors, most recently and perhaps most notably Cécile Fabre (2016, 2023, pp. 268–280), make a compelling, if perhaps initially counter-intuitive, case for holding the victim of a wrong morally obliged to accept the genuine apology

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of her wrongdoer (see also Emerick, 2011, 2017; Gill, 2000; Govier & Verwoerd, 2002; Spelman, 2002). This is an important argument. For although most of the existing literature limits its discussion of the duties associated with apologies to the obligation of the wrongdoer to apologize to her victim (Bovens, 2008; Davis, 2002; Gardner, 2018; Radzik, 2009), reparation typically requires also the acceptance of an apology (Bennett, 2022; Goffman, 1971, pp. 138–149; Govier & Verwoerd, 2002, pp. 67–68; McKeown, 2021; Tavuchis, 1991).¹ To establish that victims are under a moral duty to accept the apology of the wrongdoer, if appropriately offered, is then of great potential significance in questions of reparative and restorative justice.² But compelling though the argument might seem, it is one that I will argue we should ultimately reject.

Located in the literature on reparative justice, yet reduced in its parsimony and elegant simplicity to a moral dilemma involving just the wrongdoer on the one hand and the victim on the other, such arguments have the great appeal of analytic precision and clarity. Their eloquence—very evident in Fabre’s own exposition—undoubtedly helps us to work through the complex web of ethical questions at stake here. But the case they make is far from unproblematic, as a variety of caveats and seeming concessions, above all on the potential cost to the victim of the reparative process envisioned, suggest.

Fabre’s account is here emblematic, and I will take it as representative of the wider debate. It seeks to establish, as others have before, that, as she puts “reparative justice makes demands on victims too” (2023, p. 377). That is undoubtedly true (empirically as much as morally). Yet those demands can be considerable and we might need to consider protecting victims from them, especially if the wrongs they have suffered at the hands of those who would now apologize to them are themselves grievous. If we are to acknowledge this, I will argue, we cannot follow Fabre and others in placing a moral burden on victims. It would be wrong, I will argue, to require of them to revisit the scene of the harms inflicted upon them that is the very condition of attending to their assailant’s apology, let alone obliging them to accept such an apology (where it is appropriately and contritely offered).

I will argue, too, that, however illuminating it might be, the bipartite morality tale on which such accounts are typically predicated (of victim and wrongdoer) is insufficiently nuanced to deal with the complexities of reparative justice. For these are, by their very nature, more profoundly social (and hence multipartite) than a victim-wrongdoer account is capable of acknowledging. Above all, the harm the wrongdoer causes is not exclusively suffered by the immediate victim. As such, genuine

¹ This is not to understate the ethical significance of the offering of an apology in itself and alone. In effect, a two-stage process of moral reckoning is typically imagined here, in which the offering of a genuine apology by the wrongdoer already achieves a partial moral gain (for the wrongdoer, society more broadly and quite possibly for the victim too). But, in such a conception, it is only with the acceptance of the apology by the victim that the full potential of the apology for moral recalibration between the parties is achieved.

² As Barrett M. Emerick puts it, “If we understand apologies to be fundamentally reparative, but if an apology’s acceptance is necessary for such reparation to take place, then we must understand such acceptance to be something that is possible for most wrongs” (2011, p. 137; see also Fabre, 2016; Golding, 1984, p. 133).



reparative justice requires more than a recalibration of the relative moral standing of the wrongdoer and the victim through the giving, receiving and acceptance of an apology (see also Bennett, 2022; Tavuchis, 1991; Walker, 2006, 2015).

In what follows I will take Fabre's account as paradigmatic of the more general attempt to defend the victim's duty to her wrongdoer. But in a sense, it is more than that. For it is by far the most explicit account of the nature of the victim's burden to her wrongdoer and the most detailed and direct in the moral political reasoning in and through which that obligation is justified. It is, in short, the most sophisticated and robust defence of the victim's duty thesis, and it warrants close attention. I will venture beyond the parameters it sets only where other authors either depart clearly from Fabre's reasoning or address concerns beyond the scope of her treatment.

The art of apologizing

It is perhaps important to establish at the outset that although our conclusions are starkly opposed—Fabre sees the acceptance of an apology as a duty whereas I do not—our approaches share much in common and build on common foundations. Typically, we draw rather different inferences from an ostensibly similar analysis—and in much of what follows I draw quite closely on Fabre's detailed exposition and the definitions of key terms she helpfully elaborates. Our most significant difference relates to the adequacy and hence, ultimately, the utility of the two-party victim-wrongdoer formulation of the question that lies at the heart of her discussion of these issues, and a judgement as to the extent to which victims are prone to suffer anew in attending to the apologies of their wrongdoers. These problems, I suggest, Fabre shares with all those who have sought to defend the duty of the victim to accept the apology of her wrongdoer (including, above all, Emerick, 2011).

Fabre proceeds from the observation that the question of what victims owe to wrongdoers is both a neglected and yet potentially crucial consideration in adjudicating issues of restorative and/or reparative justice. I agree. She seeks to show us that, perverse though it might at first seem, “victims are under a (*pro tanto*) moral duty to wrongdoers to accept their apologies” (2023, p. 355; though see also Bovens, 2008; Davis, 2002; Gardner, 2018; Radzik, 2009).

Whether or not we ultimately accept that argument, the steps through which the conclusion is reached and then defended are extremely helpful—not least in clarifying the nature and moral status of both an apology and the acceptance of an apology by the victim. There is much to gain from the clarity of Fabre's exposition here. Indeed, it is precisely that clarity that allows us to see the potential problems with the more general argument that she and others ultimately defend. I will draw directly on much of it in what follows in the hope of retaining as much of its precision as possible.

So, what is an apology? An apology, for Fabre, is “an illocutionary utterance or gesture by which a wrongdoer explicitly admits to his victim that he [has] wronged her, commits himself not to reoffend (be it against her or against others) and expresses appropriate reactive attitudes in relation to his wrongdoing (regret, guilt,



remorse and so forth)” (2023, p. 357; see also Bennett, 2008, 2022; Bovens, 2008; Cohen, 2018).

Drawing on Austin (1962) and Searle (1979) and, as the above definition makes clear, Fabre sees an apology as essentially tripartite in form. It is *verdictive* in the sense that it requires the apologist to have understood fully the wrong committed and, internally, to repudiate it as a wrong morally. It is *expressive* in that it requires of the apologist that she recognises the wrong and communicates directly and explicitly to the victim her remorse for it. And it is *commissive* in that it requires a commitment on her part not to reoffend (either against the original victim or other potential victims) and to act, forthwith, in a manner consistent with that commitment and the remorse occasioning it (see also Davis, 2002, p. 171; cf. Kort, 1975; Smith, 2005).

This seems to me entirely reasonable, with perhaps one small caveat, the potentially significant implications of which we will need to return to in more detail presently (when we discuss what it is to *accept* an apology). The caveat relates to the “be it against her or against others” sub-clause, in parentheses, in the original definition.

To be clear, the problem is not the incorporation of this within the definition of an apology *per se*; it is more the consequences arising from this (above all for the conditions under which an apology might be deemed to have been accepted). The definition itself is good and fine. For it would surely be somewhat perverse to see the apologist as having furnished an apology if she had committed herself *only* not to reoffend against the original (and, at the present time, let us assume, single) victim and not to extend such a commitment to all potential future victims. But therein lies the difficulty. For the concerned parties here are no longer just the immediate victim and the wrongdoer. That there are or might be other significant stakeholders in this is a complicating issue almost entirely overlooked in Fabre’s article, as indeed, in the wider literature.³

To push the point a little further, as the very possibility of future potential victims immediately suggests, the harm caused by the wrongdoer is not solely a harm to the immediate victim. This is, above all, the case if the wrong is seen (as Fabre insists), in Kantian terms, as a failure to treat others as worthy of the concern and respect their status as rational and moral beings warrants (the same approach is adopted by Emerick, 2011). Put more precisely, if the offence and the harm it causes are not just that to the victim, but that to all potential victims (were the offending behaviour of the wrongdoer to become habituated, for instance), then the appropriate audience for the apology is broadened. Indeed, and above all in Kantian terms, the relevant stakeholders here are not just the victims (actual and potential) of the harm caused but the wider community within which the harm arose. The implications for what it is to accept such an apology and, indeed, who might be deemed capable of accepting such an apology, as we shall see, are complex.⁴

³ The single reference in Fabre’s article is implicit and parenthetical. Indeed, it is contained within the parentheses whose contents we are here discussing.

⁴ In the case of Emerick (2011), that is perhaps something of an understatement. Like Fabre, he suggests that there is an obligation on the part of the victim to accept the wrongdoer’s apology—a “reparative



Accepting an apology

Having established what might be seen to constitute an apology (such as might be deemed worthy of acceptance by a victim), it is important that we turn to the altogether more involved and contentious question of what it is to *accept* an apology. That in turn will allow us to consider whether, to what extent, and under what conditions, if any, a victim might be morally obliged to accept such an apology. This is a point hastily skated over in much of the literature.

Here again, Fabre's text is a model of precision and lucidity. Like the offering of an apology, the acceptance of an apology is, for her, a tripartite process (see also Emerick, 2011, ch. 4). It involves three necessary conditions, all of which need to be satisfied. The first is *doxastic*: for the victim to accept an apology is for her to form the belief that the declaration of the wrongdoer is sufficiently verdictive, expressive and commissive to count as a genuine apology (that, in effect, it fits the definitional standard for an apology set out above) (see also Davis, 2002). The second is *communicative*: for the victim to accept an apology is for her both to acknowledge that a genuine apology has been offered (where she believes this to be the case) and to communicate that understanding clearly to the wrongdoer. The third is *attitudinal* (and, indeed, *transformative*): for the victim to accept an apology is to commit herself to a recalibration of the relative moral standing between the two parties and, just as importantly, to future behaviour consistent with the new moral order established between them.

The acceptance of an apology in these terms requires cognitive, attitudinal and behavioural change. By implication, if the acceptance of an apology were to be regarded as a moral imperative, then such cognitive, attitudinal and behavioural change would become, in effect, a moral duty on the part of the victim to the wrongdoer.

As this perhaps already implies, the potentially tricky clause here is the third. To see why we need to delve a little deeper into the details of Fabre's analysis. For much depends on the degree of cognitive, attitudinal and behavioural change we are talking about here. Once again, Fabre is crystal clear on the point. The victim cannot be deemed to have accepted the wrongdoer's apology "if she keeps insisting that he repudiates himself, again and again, or if she continues to regard him with contempt, nurtures her anger towards him, tells all and sundry, at the first, second and third opportunity, what he did to her—if, in other words, her interaction with and/or perception of him is [and continues to be] largely shaped by her negative reactive attitudes" (2023: 362).

This is a fascinating and illuminating passage in equal measure. It is also one that I find deeply problematic, at least in the overall impression it gives. We will

Footnote 4 (continued)

obligation" as he terms it (after Ross, 2002). But, unlike Fabre, he also suggests that one can accept apologies on behalf of others, including the dead. This generates a seemingly rather perverse implication: namely, that those who are able to accept apologies for others, whilst presumably no less obliged to do so than victims, are also under no less of a *prima facie* moral obligation to strive to identify, where it is not already evident, those whose apologies they might be able to accept on such a "proxy" basis (the term is his). This seems excessive.



come presently to its implications for the question of the moral duty (or otherwise) of the victim to accept the wrongdoer's apology. For now, suffice it to note that the condition of having accepted an apology, as specified here, is that the victim's interaction with, let's say, her assailant after his apology is accepted is one no longer shaped by any "negative reactive attitudes" she might previously have held towards him (presumably, arising from the harm he inflicted upon her and her cognitive and emotional processing of it).

Though Fabre is clear that accepting an apology is not akin to an act of forgiveness (2023, pp. 361–362, 369–371, 14; see also Emerick, 2011, ch. 6), it would seem that we are very close to a situation in which the moral slate is rubbed clean and a neutral (or certainly far more neutral) moral order between the victim and the wrongdoer established (or, if they were previously acquainted, re-established).⁵

That, it need hardly be pointed out, is quite a high threshold—all the more so, it would seem, the more heinous the wrong. Fabre goes on, "prior to his having apologized ... [the victim] is (up to a point) entitled to discount ... [the wrongdoer's] interests relative to her own interests and to the interests of others, to a greater degree than if he had not wronged her. If she continues so to discount his interests, on the grounds that he wronged her, even though he has apologized, she is not aptly described as having accepted his apology" (2023, p. 361).

It anything, this passage troubles me more. For it removes any shade of ambiguity in the previous one. To accept an apology, Fabre is arguing, the victim needs to commit forthwith to acting in relationship to her assailant (to continue the example) as if he had never assaulted her. Before the apology is accepted, it is admissible and legitimate for the victim in effect to give a lower salience to the interests of her assailant relative to others. But having accepted his apology it is no longer. Presumably, that remains the case (only) for so long as he does not reoffend or she remains ignorant of any recidivism on his part.

I find this a rather inflexible interpretation of what the acceptance of an apology might reasonably be taken to imply. For there is, of course, an alternative. That alternative, I submit, might help us out here. It is to suggest that the acceptance of an apology does not entail (even though under certain conditions it might allow for) the restoration of a condition of moral equivalence between the victim and the (confessed and contrite) wrongdoer. What it does entail, however, is a moral reckoning leading to a moral recalibration in favour of the (confessed and contrite) wrongdoer by the victim in recognition of the character and credibility of the confession, the

⁵ Her argument in this respect is very similar in both form and substance to that of Josh Brandt (2020) who sees the act of accepting an apology as releasing the wrongdoer from a (quite justified) "negative partiality" previously displayed towards him (Fabre, 2023, p. 363, also 368). But in adopting such a position I detect a certain definitional slippage. For Fabre's more formal attempt to draw the distinction between the acceptance of an apology and forgiveness seems to me both different and rather less problematic. Here, to accept an apology is to acknowledge and to take as genuine the wrongdoer's acceptance of their own culpability, their responsibility for it and their intention not to wrong again in this or an equivalent way—and, crucially, to recalibrate one's future disposition and behaviour towards them accordingly. To forgive is, additionally, no longer to seek redress for the harm caused by the wrong and, as Fabre herself puts it, "to waive [the wrongdoer's] reparative duties" (2023, p. 370). The putting aside of all "negative partiality" might well be a condition of the latter. But it does not seem to me at least to be a direct implication of the former.



contrition and the apology offered. In some instances that might come close to wiping the moral slate between the two clean, as it were, restoring something akin to moral parity and ending “negative partiality”. But such instances are likely to prove rare, above all where the wrong in question is of a non-trivial kind. What Fabre is asking for, in effect, is that the victim bear no future resentment towards the wrongdoer and acts towards him from now on *as if* she no longer blames him for the wrong committed. Either way, and far more significantly for what follows, I do not see the restoration of the moral order before the wrong was committed as a condition of the apology having been accepted. That, it seems to me, would come close to equating the acceptance of an apology with forgiveness.

The victim's obligation

That brings us to the crux of the matter. Should it be considered a moral duty on the part of the victim to accept the genuinely offered apology of a wrongdoer—and if so under what conditions?

Even having moved to a rather more accommodating and less exacting understanding of what it is to accept an apology my answer remains an unequivocal ‘no’. However, desirable it might be for a victim to accept the genuine apology of her wrongdoer, and whether or not the offering and acceptance of an apology is considered a public good in this respect (Gill, 2000, p. 11; Tavuchis, 1991, p. 35), she is under no moral compunction so to do.

Here, again, it is useful to follow the structure of Fabre's logical exposition. Surveying, albeit briefly, the existing literature, she identifies two types of potential justification for the duty to accept an apology.

The first is based on the *sui generis* moral value or worth of reconciliation itself (Kumar, 2014; Radzik, 2009; Walker, 2006). This line of argumentation, however, she sees as doubly problematic in that, first, reconciliation is possible even in the absence of apology and, second, the offering and acceptance of an apology may (and often does) arise in situations in which the parties were previously unknown to one another. Here, she suggests, there is simply nothing to reconcile—no pre-existing relationship the restoration of which might generate a moral imperative to attend to an apologetic utterance.

It might of course be protested that a wrong, certainly any wrong of this kind, is a violation of an at least implicit moral contract between individuals (as citizens, perhaps)—and that this does imply the possibility of a reconciliation (or at least something closely analogous, to wit the restoration of that moral contract). However, since this is not the type of argument that Fabre herself seeks to advance, there is perhaps no need to pursue the point further.

The second type of justification is Kantian—and it is on this basis that Fabre builds her argument (Alston, 1988; Wrenn, 2007 and, more generally, Foot, 1972). It is premised on the requirement of basic concern, respect and equivalence of treatment for others as rational and moral actors. Here the harm caused by the offender is a (more or less direct) violation of that respect; an apology (at least in the terms



formulated by Fabre) is a manner of acknowledging—as an initial step in the path to correcting—that breach. As Fabre herself puts it,

when someone culpably fails to give proper regard to another person’s fundamental interests, he fails to treat her as someone worthy of his concern and respect. Not only does he owe her material reparations: he also owes it to her to make it clear that she always was worthy of concern and respect and that he failed to treat her appropriately. A wrongdoer who, in addition to failing so to treat his victim, fails to manifest to her that he erred and is committed not to reoffend compounds the initial wrong which he has done to her (2023, p. 360).

This seems to me both entirely reasonable and relatively uncontroversial, if not so very different from the version of the reconciliation-based justification alluded to above.

What is undoubtedly more controversial is the extension of the argument to the victim—whose Kantian duty it is, Fabre suggests, to accept the apology of the wrongdoer. The victim, in such an account, shares with the wrongdoer what Emerick (2011) terms “restorative obligations” (even if they are not the same). The argument itself is relatively simple. It proceeds from the fundamental Kantian imperative “of treating others, including wrongdoers, with the respect they are owed as rational and moral agents” (2023, p. 364). To treat someone as such, Fabre suggests, is “to comport oneself with them on the assumption (pending evidence to the contrary) that they are responsive to reasons and do have a relatively accurate understanding of the world we both inhabit and of our respective places within it; that they are morally responsible, and thus that it is appropriate to hold them accountable for their actions” (2023, p. 364). This seems reasonable, especially if it is also acknowledged that at least some of the wrongs inflicted upon victims might well be considered *prima facie* “evidence to the contrary” sufficient to overturn the imperative.

This notwithstanding, and insofar as the imperative still holds, Fabre goes on, two important implications follow. The first is that “we may deliberately subject someone to harsh treatment only if and on the grounds that they have acted in such a way as to warrant it; or, under conditions of uncertainty, only if and on the grounds that we have sufficient evidence to that effect” (2023, p. 364). In other words, in the absence of evidence to the contrary, Kantian respect for the other accords to them the benefit of any doubt (see also Vilhauer, 2023).

The second implication follows directly from this: “unless we have evidence that he [a wrongdoer] is not to be trusted, we should recognize him as having testimonial authority in respect of the facts that concern him” and hence we owe a duty to him to be open to “any relevant and reliable evidence of his innocence” he might furnish us with—such as that provided in the form of an apology (2023, p. 365).⁶

It is but a small step from here to the (now ostensibly Kantian) duty of the victim to accept the apology of her wrongdoer. For, in apologizing to her, the wrongdoer is both giving to her, and showing himself to be giving to her “relevant and reliable evidence ... that he understands both that he has committed a wrong and what the

⁶ Except, of course, that any apology is predicated on the acceptance of guilt (and is thus logically incompatible with any claim to innocence).



nature of his wrong is, that he is appropriately remorseful and that he is committed not to reoffend” (2023, pp. 365–366). In short, she has all the evidence she needs (especially if she accords him the benefit of any doubt) to recalibrate the moral balance sheet in his favour. Consequently, should she refuse to believe him, “notwithstanding the evidence he gives her, she fails to grant him the respect she owes him as a rational and moral agent” (2023, p. 366). She is, in other words, at fault for failing in her duty to accept his well-intentioned and appropriate apology.

The victim's burden

So, what are we to make of this? The logic itself is neat and the argument compelling. But the final judgement of the victim who refuses to accept the apology of her wrongdoer, in my view, is overly harsh, just as what is expected of her morally is overly onerous.

The problems here are numerous. Some are internal to Fabre's exposition, whilst others are more an artefact of the way in which that exposition is set up in the first place. Let's begin with the former set of problems, of which I contend, there are three.

First, put simply, if it is reasonable for rational and moral subjects to act with due respect and concern for others, then to reveal oneself not to have done so—by wronging others—is itself *prima facie* evidence that one is either unreasonable, irrational or immoral (a less than fully “rational and moral agent”). Whilst that might not entirely negate the Kantian imperative to treat others with respect, it is materially significant to the degree (and, indeed, to the character) of the respect one deserves. An actor who has shown herself to be unreasonable, irrational or immoral, then, is worthy of a respect of a rather different kind to that envisaged above (that deserving of a “rational and moral agent”). This is so even if it is credible to think that, in and through some process of contrition, she is no longer the actor she was. And, crucially, the respect owed to an agent of this kind might not extend to the duty to accept that agent's apology, however genuinely offered it might be.

Second, to apologize genuinely for the harm, wrong or offence one has caused, and to commit to striving not to reoffend, might well still leave a rational and reasonable moral subject with a lingering anxiety about one's future conduct. It is not entirely unreasonable, I would suggest, for such a subject to anticipate a greater rate of recidivism amongst the genuinely contrite former offender than the rate of first offence amongst those still yet to offend. Criminologists would undoubtedly concur (see, for instance, Cossins, 2008; Daly, 2006; Fazel & Wolf, 2015; Petrucci, 2002; Scurich & John, 2019). And is it not reasonable, given that, to place oneself in a rather different moral relationship to prior offenders (however contrite they may now show themselves to be)? In short, even if it were still deemed a moral duty on the part of the victim to accept the apology of her wrongdoer, it would seem excessive to see that acceptance as demanding of her an end to all negative partiality with respect to him (as Fabre insists). Arguably that is to require that she become (or at least act in relation to him as if she had become) naïve.



The third point is very closely related. Surely if anyone is to be excused for not giving the benefit of the doubt in situations of uncertainty, it is former victims in the face of the apologies of their ostensibly contrite wrongdoers. Might they not be indulged just a little meanness of interpretive spirit in matters of this kind without being castigated as at fault by virtue of their palpable failure to enact the moral duty projected onto them by others who have not suffered as they have (for an argument of a similar kind, see Matheson, 2024)? Whilst Fabre is clearly sympathetic to an objection of this kind that sympathy does not seem to translate into any softening of the moral duty she would impose on all victims, other than to suggest that there are circumstances under which the victim might waive the wrongdoers' duty to apologize. We will return to that caveat presently.

Significant though these points are, however, arguably each pales into insignificance in relation to two objections of a rather more fundamental kind. These relate more to the type of exposition Fabre presents than to its internal logic and coherence. The first is what I will term the victim's burden; the second, the consequences arising from the narrowly bipartite formulation of the problem by Fabre and others.

It is to her immense credit that Fabre anticipates the first of these, addressing it in some detail towards the end of her paper. It relates to the (up until this point) overlooked and unconsidered question of the personal cost (psychological and emotional, above all) to the victim associated with the performance of the duty to the wrongdoer that the Kantian imperative would (ostensibly) impose upon her (on the implications for restorative justice see also Byrne, 2004).

For me this question takes us to the very crux of the matter. Quite simply, if it is credible to think that the victim might suffer anew in exercising any duty to her wrongdoer she might be seen to owe him (as Fabre clearly does), then that suffering must be taken into account *before* we impose upon her any such duty. Arguably this is where any reflection on reparative justice needs to start.

It is important to be clear here. Fabre explicitly accepts both the possibility in the abstract that the victim might suffer additional (and, as such, unnecessary and avoidable) harm in attending to (and ultimately accepting) her wrongdoer's apology and, more concretely, that this suffering might be considerable. Indeed, above a certain threshold, she suggests, such suffering might legitimately be regarded as an intolerable burden to impose upon the victim.⁷ Where the victim's burden (as we might call it) surpasses this threshold, Fabre concedes, it is reasonable to remove the duty she would otherwise owe to her wrongdoer (to attend to his apology and so forth). It is this that leads her to invoke what she calls the "no undue cost" proviso (2023, p. 376).

For me, however important this concession is, it simply does not go far enough. For it remains a concession—an exception to the general imperative.⁸ Above all, it

⁷ The type of harm that elsewhere in this debate would usually occasion the obligation on the part of the wrongdoer to issue an apology.

⁸ Where I do agree with Fabre, however, is that it is for the victim and the victim alone to accept or not the apology. The decision is hers, at least for this kind of an apology (I will deal with a different and more general kind of apology presently). For a rather different view of forgiveness that might apply equally to apology see Milam (2018).



gives to the victim only a partial exemption clause (the proviso) to be triggered only under certain specific (if, as yet, unspecified) conditions. As she herself puts it, if the costs to the victim of attending to the apology “fall within a reasonableness threshold (which threshold, in turn, is set by reference to the seriousness of the wrong, the victim's circumstances, etc.), she can [still] be held under a duty to the wrongdoer to accept his apology” (2023, p. 377).

This, I would contend, is to get things the wrong way around and to fail adequately to deal with the victim's burden objection. For it is only if we can be sure that the victim will not suffer again through this potential act of reparative justice that we are right to impose upon her any duty of this kind (however desirable it might be that she were to act as if she had such a duty).⁹

Crucial, here, is that the extent of the victim's burden (and the associated suffering it might cause to her) is both unknown and unknowable to us, as of course it is to her, at the moment that we have to decide whether or not she owes it to her assailant to revisit with him the assault he inflicted upon her. It is unknowable, in part, but only in part, because it is contingent upon the content, character and, indeed, performance of the apology itself, but also because it is contingent upon the specificity of the original wrong, how it was experienced at the time and its subsequent cognitive and emotional processing by the victim. The point is that, in any such situation, it is only reasonable to accept that we do not have and cannot have enough information to know that significant suffering would not arise from the enacting of the duty (and its associated burden) that Fabre and others would impose upon the victim. To apologize, retrospectively, for any additional harm that should be occasioned by the imposition of such an obligation is clearly not adequate.¹⁰ As this implies, whilst in most trivial cases, the victim's burden is likely to turn out to be marginal, the very definition of triviality here is not a simple matter.

This is not, then, nor can it ever be, a threshold judgement. And, more significantly, the glass threshold is shattered—as, with it, is the duty owed by the victim to the wrongdoer—in any and all but the most trivial of cases. Finally, it is important to note, in such trivial cases any obligation the victim might owe to the wrongdoer is of little reparative consequence. For in such cases, the harm done by the wrong is of little or no societal consequence, the lack of respect for the other shown by the wrongdoer is negligible, hence the extent of the moral recalibration required to set the record straight in Kantian terms is minimal. In such cases, a duty to accept appropriately offered apologies might be considered a norm, but there is no *prima facie* reparative case to warrant rendering that norm an obligation. And, more significantly, in any situation likely to be deemed of reparative significance (where the logic of a Kantian imperative might well apply), the costs to the victim of the

⁹ The desirability, all things being equal, that a victim accept the apology of her wrongdoer is not in question here. What is at issue is the potential cost to the victim of such a reparative process. On the nature and extent of that cost see, again, Byrne (2004); and on the cost to the victim of a disingenuous apology, see Govier and Verwoerd (2002, pp. 73, 79).

¹⁰ Especially if we can assume in advance that she is obliged to accept such an apology if it is genuinely offered.



reparative process envisaged by Fabre cannot be discounted. In such situations, as I have argued, the victim owes to her wrongdoer no duty to attend to or accept his apology.

The waiving of the duty to apologize

It might be thought that this already brings our reflection to its conclusion. Not quite. For in discussing what I have called the victim's burden, Fabre makes a second and potentially very significant concession with important implications. The concession is that, accepting that a victim might wish never to be reminded of the wrong inflicted upon her, she might dispense her obligation to her wrongdoer by waiving his duty to apologize—at, or shortly, after the moment the wrong is committed (2023, p. 371).

In Fabre's terms, and although in some sense sub-optimal, this is the moral equivalent of accepting the wrongdoer's apology without ever having to hear or attend to it. The waiving of the wrongdoer's duty to apologize is assumed a costless gesture on the victim's part and, of course, it obviates the need for a future reparative encounter that, it is feared, might prove costly to the victim. Crucially, for Fabre, it fulfils the victim's primary duty in relation to her wrongdoer without her ever having to accept (or even hear) his apology.

This sounds like a tempting solution to the moral quandary. But it is perhaps not quite as simple as it appears. For it is not quite true that waiving the wrongdoer's duty to apologize does fully fulfil the victim's obligations here. Fabre is clear that she, the victim, remains bound to him, the wrongdoer, in relationship to the wrong inflicted upon her even after she waives his duty to apologize. For, absolving him of the need to present to her an apology that she might accept, she must undertake to think and act in relationship to him, forthwith, without any negative partiality. That, as pointed out above, might be something of a tall order, not least as it comes perilously close to treating him forthwith as if he were forgiven.

There are two kinds of problems with this. The first is already implicit in the preceding discussion. For if, as I have argued, it is already somewhat unrealistic and unreasonable to expect a victim, in accepting her wrongdoer's apology, to commit to end all negative partiality with respect to him forthwith, is it not all the more unrealistic and unreasonable to expect the same of someone who has not even been offered such an apology (more precisely, *in lieu* of the need for any such apology)? The wrongdoer, it seems, is let off the moral hook here rather lightly and perhaps prematurely (had the duty not been waived, he would be left dangling on the end of the line until at least his apology had been heard). This seems perverse, especially when (as Fabre freely concedes) the situation is most likely to arise in cases of the most grievous wrongdoing where the victim would suffer most to have to pay attention to the apology of her assailant and is thus most likely to wish for a "clean break" (as Fabre puts it).

A further potential perversity is that the more an obligation (such as that of the victim to accept the apology or to waive the wrongdoer's duty to provide one)



becomes normalized, the more it is likely to become the source of social pressure. The danger here is that victims, anticipating the burden of accepting apologies, might go through the motions of waiving their wrongdoers' duty to apologize simply out of some sense of moral compulsion. That is clearly not what Fabre has in mind (and, of course, whether or not the duty has in fact been waived in such a situation is a moot point).

Such objections notwithstanding, there is a second and rather more fundamental point here too. Recall that to apologize is to commit, genuinely and credibly, not to reoffend—be it against the victim or against others. If that is so, then the victim herself is in no place to absolve her wrongdoer of the duty to apologize for his conduct. For it concerns not just her. Whilst she might well be deemed able (and, for Fabre, obliged) to set the moral record straight between herself and her wrongdoer with respect to the wrong inflicted upon herself alone, she is clearly in no position and has no authority to absolve the wrongdoer of his duty (his duties) to other potential victims (and perhaps also to the wider society whose norms of appropriate behaviour he has violated). Those victims, I would contend, are not just all potential future victims of his wrongdoing (were the behaviour at fault to become habituated) but also all of those who *could* have been victims of his wrongdoing had things turned out slightly differently (the cyclist who regained her balance before she fell after his carelessly driven vehicle mounted the pavement, for instance).¹¹

It might be objected at this point, that the wrongdoer might simply be required to readdress his apologies to all such potential victims (present and future). But, quite apart from the complexities of establishing the parameters of this community (and the performative contradiction of apologizing in advance for wrongs not yet committed), that is not quite the issue here. For all genuine wrongs committed within a community cause harm not just to their immediate victim but to the very bonds of that community itself. If that is accepted, a different act of apology would need to be performed for the moral order to be re-established; the victim is neither the appropriate recipient nor the appropriate judge of the acceptability of such an apology.

The issue this raises is a more general one, and it reveals a fairly fundamental flaw in the simple bipartite morality tale that lies at the heart of Fabre's treatment of the moral duty to accept apologies. For the victim and the wrongdoer are not the only stakeholders here, as in any question of reparative justice.

Part of the wrong that the wrongdoer commits is the risk (the potential to cause harm) that his actual and/or continued wrongdoing represents to those thus far fortunate enough not to have suffered directly from it (on risk as potential harm see Finkelstein, 2002). Any genuine reparation for his wrongdoing needs to attend to this too. There is no simple apology-based solution to this problem, and it strikes me that

¹¹ Interestingly and perhaps tellingly, Fabre does not discuss the question of whether apologies can be accepted on behalf of others and, if so, by whom and under what conditions. But that question is discussed at length by Emerick (2011: ch. 5). What is clear is that the immediate victim of a wrong does not meet any of the criteria that he would defend as the condition for being considered morally able to accept the apology of the wrongdoer on behalf of potential victims, let alone citizens more generally. The immediate victim of a wrong may well be the most credible person to receive such a general apology. But the ethical case for that has yet to be made nor its implications for the consequences of accepting such an apology established.



much of the desire to construct a moral imperative on the part of the victim to accept the apology of the wrongdoer is based on the fallacy that there is. In short, there are limits to the utility of viewing the moral issues at stake here through the lens of the victim–wrongdoer relationship alone. I will return to the question of whether a more complex potential solution can be constructed presently.

As this suggests, and as I have sought to argue, genuine reparative justice requires more than a recalibration of the relative moral standing of the wrongdoer and the victim through the giving and receiving of an apology (see also Radzik, 2009; Tavuchis, 1991; Walker, 2006, 2015). For even if the apology is accepted by the victim, that acceptance cannot change the moral standing of the wrongdoer with respect to others whom he could (but did not) directly harm, whom he has yet to harm, or whom he might never harm but who live in the community in which that harm arises and where it has the potential to arise again. To place that additional burden on the victim is clearly unreasonable. Whilst reparative justice does indeed make demands of victims too, that is a demand and a burden too far.

From apology to reparation

Those who argue for the obligation on the part of the victim to accept, if genuinely offered, the apology of their wrongdoer do so by appeal to a familiar Kantian logic. The moral recalibration achieved, though never akin to forgiveness, is for them a collective good of societal value. Their focus, perhaps understandably, is on establishing both the nature and extent of that good. But it leads them, as I have argued, too swiftly to discount the potential cost to the victim—the victim’s burden, as I have termed it.

In any and all non-trivial cases, I contend, the victim’s burden cannot be so discounted and may well be considerable. But I have argued, too, no less significantly, that the moral recalibration imagined by Fabre and others is not as great as is assumed—that the collective good is neither as collective nor as good as envisaged. This is because we tend to think of apologies in bilateral terms, as a story of the contrition of the wrongdoer in the face of their victim. But the Kantian logic that is at the heart of this requires us to think in more complex, multipartite, terms—in terms of the victim and the wrongdoer, for sure, but also in terms of the wider community of potential victims and (where it is not the same) the community of which the victim and wrongdoer are a part.

As I hope to have shown, it is only if we continue to view things in bilateral terms that an acceptance by the victim of the apology of her wrongdoer serves to achieve the wider moral recalibration that, for Kantians, is the crux of the matter and the source of the (putative) obligation. In a more credible multipartite consideration—of victim and wrongdoer, potential victims and potential wrongdoers and those amongst whom they all live—that is no longer the case. There are multiple stakeholders here.

In this more richly social contextualisation of the act of apology and its potential acceptance, the victim would need to address herself to a more general apology offered by the wrongdoer. That apology would seek to demonstrate contrition not (or



not just) for the specific wrong done to the actual victim but for the propensity of the wrongdoer to commit wrongs of this kind to a much greater community of potential victims—and, additionally, to the community at large (if all members of the community are not potential victims of the wrong in question).¹²

But therein lies the problem. For such an apology would not be appropriately addressed, were it to be directed at the victim (or the victim alone). Nor, logically, would its acceptability be appropriately adjudicated by her—both because it is far from clear that she has the capacity to accept an apology on behalf of those others to whom it might more appropriately be addressed, and because to place her in such a position would impose upon her not just an additional burden of judgement (a Solomonic burden) but also a second victim's burden.

But, crucially, in the absence of such a process—the adjudication of the acceptability of this more generalised societal apology—the moral recalibration sought by Kantians cannot be achieved. The societal stakes of the acceptance by the victim of the apology offered by the wrongdoer are considerably lessened. And so too is any obligation that we might associate with it. In short, given that it cannot achieve the moral recalibration that is the collective good here, it would be perverse to impose upon the victim the burden to address herself to, and potentially to accept, the apology of her wrongdoer.

So where does this leave us? Should we simply give up on the idea of achieving the Kantian ideal to which Fabre and others make reference and in whose name they ground the imperative of the victim to accept her wrongdoer's apology? I think not. For that is not at all the implication of the above reflections.

Indeed, such reflections suggest two potential ways out of the Kantian *cul-de-sac* we seem to have entered. Both require us to differentiate much more clearly than does Fabre (and the wider literature within which her contribution is embedded) between apology-based moral recalibration (whose logic is non-compensatory) and justice-based moral recalibration (whose logic is compensatory). The latter, of course, tends to be legal, and it is here instructive to note that legal processes typically reduce the significance of apologies—seeing them as relevant to proceedings only insofar as they might be taken as evidence of guilt and the acceptance by the (alleged) wrongdoer of their responsibility for the (alleged) offence. Their logic is entirely different. It is compensatory. Justice does not require the offering, let alone the acceptance, of an apology; but what it does require is the “payment” of a societal debt incurred by the wrongdoer in the act of committing an acknowledged wrong.

This might seem to provide the basis for a neat solution to our dilemma: more specifically, a division of labour between a bipartite apology-based moral recalibration between the victim and the wrongdoer (alone) and a reparative, restorative or even retributive system of judicial recalibration achieved through a public legal process to take care of the societal harm associated with the wrong (the offence to society caused by the wrong done to the victim).¹³

¹² Such as an act of sexual aggression committed against a child.

¹³ The division of labour, it might also be noted, is between the “morally restorative” and the “substantively reparative”. Where the latter is compensatory, the former is non-compensatory (no reparation is required).



But there is an alternative, a more ambitious alternative, that may well be normatively desirable here and that might also be seen as a direct implication of the above reflections. Here, I follow Fabre's implicit (normative) argument that substantive reparation (and the wider logic of compensation in and through which it works) is not enough. It is at best a proxy for the kind of moral recalibration that can only be achieved in and through the offering and acceptance of a genuine (and appropriately addressed) apology. But, as I have argued, the (narrowly bipartite) apology procedure that Fabre has in mind is not adequate for this purpose. So how might it be revised or, indeed, complemented to achieve more credibly the Kantian aspirations she has for it?

What might here be envisaged is a two-part and, indeed, two-phase process; the sequencing of the phases is crucial. Fabre's bipartite apology procedure remains in place, though with the obligation that she would place upon the victim removed. But to that process is added a second element, a parallel but largely independent societal apology procedure. This might be initiated, at the request of the victim and wrongdoer together, if—and only if—an apology had already been offered by the wrongdoer and considered and accepted by the victim under no obligation or duress. In a process analogous to a judicial hearing (but independent of, and outside of, any formal legal procedure), a citizen's jury would receive and consider, with an eye to accepting, the more general apology of the wrongdoer, with the possibility of the cross-examination of the acknowledged wrongdoer (but not the victim).¹⁴

The two-phase procedure envisaged here protects the victim from undue suffering in that the burden that would otherwise be placed upon the victim is removed. But it also facilitates, in situations in which the victim is prepared to attend to and potentially to accept her wrongdoer's apology, the wider moral recalibration that Fabre's appeal to a Kantian imperative imagines. And it does so without compromising either the form or the substance of any legal process associated with the prosecution of the wrongdoer for the societal offence their wrongdoing has caused. In short, it has much to commend it.

But there is a clear and obvious objection to it. That objection is that in its two-phase design, this more complicated process for the enacting of apologies constructs the victim as a kind of veto-player and, in the process, restores (whilst, of course, never imposing) something akin to the moral imperative that the victims' burden objection clause ostensibly protected her from. It makes her responsible again, at least in part, for the fate of the wrongdoer and for the moral recalibration sought. For it is only if the victim first accepts the apology of her wrongdoer that any wider societal recalibration is possible—it is a necessary but not in itself sufficient condition of the latter. That, in the end, I see as unavoidable. But, crucially for me, any perceived imperative here is of the victim's own construction. It is not societally imposed and precisely because of that, I believe, that this is the more desirable solution. For those who do not, and who see this as an albeit less onerous variant of the victim's burden, the rather simpler legal solution considered above remains an alternative.

¹⁴ Indeed, there would be no requirement that the victim be present in any such proceeding.



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