

Justice, Injustice, and Mercy

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Paul Babbitt
Southern Arkansas University
prbabbitt@saumag.edu

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This paper is based on a deceptively simple logic:

1. Mercy is opposite of cruelty.
2. Cruelty is injustice.
3. Therefore mercy is the opposite of injustice.

Though justice, injustice and cruelty receive significant attention in political theory, mercy is not commonly associated with politics or modern political theory. Yet there is space where a discussion of mercy may be useful. While it seems obvious that justice is opposed to injustice, and by extension justice corrects or addresses injustice; mercy can also be opposed to injustice.¹ The absence of mercy is mercilessness, which also means cruelty.² Mercy is often understood as abandoning the demand retribution or compensation in the face of injustice in order to move forward, however there is a second, equally relevant, conception of mercy as well: Mercy is an attempt to relieve suffering of others. For example, providing relief to people suffering from poverty is considered an

¹ Malcolm Bull, *On Mercy*, (Princeton, NJ: Princeton University Press, 2019) 114.

² Alwynne Smart, "Mercy" *Philosophy* 43 no. 166, 1968, 345.

act of mercy. Both conceptions of mercy are relevant in the following paper, though the latter does not necessarily challenge ideas of justice. (It might however challenge the idea that for example some people in poverty deserve their fate with others are “innocent” who suffer poverty “through no fault of their own.”) The conception of mercy offered here is intentionally broad, as it seems that a broad concept is needed to compare with broad concept of justice.

There are at least two potential problems with justice. First, a just resolution to a conflict may be too costly in terms of suffering, and this suffering will usually be born primarily by the innocent and powerless, not the decision makers responsible for the injustice. The second problem emerges when it is realized that there is no just resolution, nor even a resolution that leads to us closer to justice. The complexities of historical realities, of violations and retaliations over decades and even centuries mean any imagined resolution will be an over-simplification of a complex reality.

Mercy is understood as concluding the quest for justice. A community may accept a resolution as good enough if a perfectly justice solution remains elusive. The weak claim defended in this paper is that under circumstances where achieving justice is costly, mercy can serve as substitute to resolve the conflict. The stronger claim is mercy should be valued at least as much, if not more than justice. The claims this paper defends should be understood as attempts to explore the relevance of mercy to communities and to politics. Incorporating mercy as a conceptual tool available to political theorists and others offers insight and solutions to difficult political problems.

Appeals to mercy provide reasons for ending violent conflict, engaging in humanitarian relief, and form a justification for human rights, and can do so in ways that are more persuasive than appeals to justice, at least in some contexts. The logical formulation at the beginning of this paper though provides an answer – mercy reduces cruelty and suffering. It is in fact difficult to find a more compelling reason to do anything than this. “Why be merciful” is the easiest question posed in this paper. What more could be required?

In fact, the complexities of real history make justice itself a weapon. All too often, justice is deployed as a reason to continue a conflict. It becomes a reason to reject a resolution in pursuit of and those who urge accepting something “less than justice” are dismissed as abandoning principles. Weaponizing justice usually serves the interests of those who have the power to impose their vision of justice. Mercy allows us to hold principles while avoiding cruelty in upholding them. Mercy does not demand that justice be abandoned. Rather, it says that continuing to inflict cruelty (almost always on the powerless) will not bring justice closer, and thus claims of justice does not excuse it.

Rhetorically, justice is synonymous with revenge: “The barbarians instigate and the civilized are forced to respond. The starting point of history can always be shifted, such that one side is always instigating, the other always justified in response.”³ We should think about mercy because history has no starting point. There is no “original

³ Omar El Akkad, *One Day Everyone Will Have Always Been Against This*, (New York: Knopf, 2025) 24. El Akkad’s use of the word civilized in this context is ironic.

position,” no Garden of Eden moment we can point to and say “here all was just” and assign moral responsibility accordingly. Human history involves movement of peoples from one place to another, and rarely are the places people move to empty. The labels we use – migrants, refugees, settlers, colonizers and so on – reflect moral conflict about who deserves what. Over time, the judgments change. The end result are conflicting claims about justice where even if there were agreement about who deserves what cannot be practically resolved. Mercy can address some vexing problems that resist attempts at a just resolution. That is, where justice eludes the parties for reasons of uncertainty or impracticality of implementation, the idea of mercy can point to a solution acceptable to the parties involved.

Mercy (and cruelty) are terms of moral judgment. Yet they contain a degree of objectivity many moral terms lack. In general to call an act cruel is to condemn and to call an act merciful is to praise it, but it is easy to come up with exceptions, to describe a cruel act as necessary and even beneficent, and to describe a merciful act as harmful. Common sense and ordinary usage are more than adequate in discussing these terms. Thus, the point of this paper is not so much to develop a theory of mercy but rather to defend it as a concept that can address certain practical political problems when existing concepts in political theory do not appear adequate. The most important thing mercy can do is dull the problem of who deserves what.

This paper starts by presenting a way in which modern, secular political theory can incorporate mercy, first by contrasting it with justice, and second, by developing an

idea of mercy as it relates to communities, as opposed to the more conventional discussions that focus on individuals. The paper then briefly discusses some potential applications of how to apply mercy to some thorny political problems – reparations and humanitarian aid. Then, it responds to objections that mercy is only possible in conditions of inequality. Finally, the paper shows how mercy is a critical idea, much like toleration, for liberal practice.

The argument here makes two moves regarding mercy as a concept. First, it broadens the scope of mercy beyond its application in arguments regarding law and criminal justice. Here, mercy largely concerns whether or not to impose a lesser sentence on an offender or whether debts can be forgiven – mercy as nothing more (nor less) than forgoing an allowed punishment. This idea of mercy is firmly anchored in the modernity and its commitment to rule of law and rationality though its origins are of course pre-modern and even ancient. However, mercy can be applied more broadly and this is done in many religious and ethical traditions and in fact is still reflected in common usage of the term mercy. In this paper I want to consider applying mercy to the idea of relieving suffering, a conception for which there is substantial precedent.

The second move is to consider mercy as it applies to communities, “scaling up” the concept as it were. If mercy poses a challenge to justice for an at the level of an individual, then there is no obvious reason why that cannot be so at the communal

level.⁴ Much of political philosophy involves scaling up ethical principles, and doing so with mercy does not pose any serious challenges. Justice of course is commonly applied to social institutions, but it also describes individuals and their actions.⁵ We simply reverse the process in applying mercy to communities. There is precedent for taking an individual act and applying it to communities with forgiveness, widely acknowledged to be relevant to politics. As a virtue, it is commonly associated with mercy – one who is forgiven may expect mercy, though forgiveness is not a requirement for mercy. To be sure, the psychological origins of mercy – for example sympathy – are properties of individuals. Other similar acts – charity for example – are also associated with individuals but communities are of course capable of charitable giving.⁶

Mercy as a Communal Act

Discussions of mercy typically focus on it as an act of individual, and thus may seem more properly an issue of ethics rather than political theory. Discussions of mercy by Seneca encourage those in power (specifically in “On Clemency”) to show mercy as

⁴ I deliberately choose the word community and its cognates over candidates such as society which seems overly broad and vague, or state or nation, which seem too specific. In this context, communities recognize themselves as such, and have a distinct identity. A community can range in size and scope from a group of nation-states (as in a formal or informal alliance or be as small as a neighborhood. It need not be limited geographically. The term thus provides flexibility necessary for this analysis. Looking at communities, we see lots of times when one community committed an injustice against another community. Often, these acts were not even recognized as injustice at the time they were committed, but have been judged by history. Furthermore, in some cases cycles of vengeance and injustice by one community meant that the status of victim and perpetrator are not clear cut. This idea is similar to the idea of a “peoples” in Rawls’s *The Law of Peoples*. See John Rawls, *The Law of Peoples* (Cambridge, MA: Harvard University Press, 1999) 23-27.

⁵ Claudia Card, “On Mercy,” *The Philosophical Review* v. 81 no 2. 1972, 189.

⁶ Claudia Card sees mercy as a “form of charity”. p. 182.

an example of good statesmanship. However, rather than emphasizing mercy as an individual act, or an act of a community towards an individual; this paper will explore how mercy may be more appropriate than justice in resolving conflict between communities. To be sure, much of what applies to individual acts of mercy may also apply to communal acts, as this paper will demonstrate.

Even when mercy is discussed as a public virtue, it is described as an act of individual discretion. It appears to contrast with modern ideas of rule of law and bureaucratic rule following which try to minimize the space where individual discretion can operate. We see this for example in discussion of those who have been convicted of crimes are to be treated. This framing of the idea of mercy results in the following question “when should a criminal receive a less severe punishment than the law allows?” being central. In this formulation, mercy is closely related to the idea of clemency. These discussions often include discussions of related concepts, especially forgiveness but also sympathy and empathy. Though this literature is useful and valuable, its focus on individual acts and sentiments explains why its application to political theory is less common. First, though acts of mercy are typically acts of individuals, these individuals are acting in their official capacity—a judge or a prince. Seneca encouraged Nero to exercise mercy, while Machiavelli seemed to discourage his prince from showing too

much mercy. Second, mercy is entangled with justice. Mercy then as an individual virtue is widely admired. However, it receives less admiration and comment as a public virtue.⁷

Communities commonly find themselves in conflict, and in the course of conflict injustices are commonly committed. It does not take long under such conditions, with rapidly multiplying claims and counter claims for anything resembling justice to be elusive and unsatisfying. Often, one assumes that it should be possible, at least in theory, to untangle all that has happened and reach (and impose) a just solution that addresses all legitimate grievances, resolving and ending the conflict. Reflection shows this is absurd. Death, destruction, and displacement are all things that happen. They cannot be undone. It is not merely that justice is an elusive ideal that we might try to approach. It is that justice is no more than a fantasy. It is not just an impossible idea, it literally does not exist because in many cases justice would require undoing history.

Most significant here is how communities can be morally responsible as communities. Does mere membership in or identification with a community entail responsibility for injustices done by that community, especially if membership is not voluntary? Communities can impose punishment as well as be punished. However, there are objections to communal punishments. Communities are made up of individuals, who like vary in terms of their power, influence, and the extent to which they conform to the dominant opinions of the leadership of the community. Considering mercy in fact makes

⁷ Alex Tuckness and John M. Parrish, *The Decline of Mercy in Public Life*, (Cambridge: Cambridge University Press, 2014) 1-2.

those objections more pointed. More generally, communities can suffer as well as relieve the suffering of others. Here, considering mercy may create obligations on one community to attempt to relieve the suffering of others. Mercy avoids problems inherent in ideas of justice.

Moral responsibility is difficult enough to assign to individuals. Communities raise more complex and ultimately irresolvable problems. If we cannot confidently assign blame to individuals based on their membership in a community, then mercy seems an appropriate response, even if there are arguments that these individuals may bear some moral responsibility. That being said, even if it is illegitimate to punish citizens for the acts of their government, even in a democracy, those citizens still have an obligation to address the suffering their governments caused.⁸ Another way to see this is to see how retributive justice is illegitimate even though a community may still have obligations due to restorative justice.

Applying mercy to conflicts between communities diminishes the impact of one common criticism of mercy – that it can be arbitrary in treating similar cases differently. In the case of criminal law, this is quite possible. However, since communal conflicts are practically always *sui generis*, the issue of treating like cases differently is less salient. One can certainly use cases to make analogies to cases that appear similar in the morally relevant ways, but generally it will be possible to make plausible arguments why one

⁸ Anna Stilz, “Collective Responsibility and the State” *Journal of Political Philosophy* 19(2) 2011, 205.

case differs from another in some morally relevant way. While one can accept the argument that a judge is wrong for treating two convicted criminals different

In some sense, the scope of mercy presented in this paper is a conceptual re-engineering of the concept. There are many political conflicts that appear irresolvable for any number of reasons. In many of those cases the on-going conflict and the difficulty in reaching a just settlement means suffering continues. Merely abandoning justice though is not satisfactory. Even if both parties have legitimate claims, a likely outcome is simply the stronger party or community will prevail and impose its will on the weaker, and have this settlement bolstered by its legitimacy while ignoring the legitimate claims of the weaker party. To ask the weaker party to accept a settlement simply because they are weaker is unacceptable. If no just settlement is practical or even imagined, and the facts on the ground cannot be accepted, then mercy is what remains.

Mercy and Justice Contrasted

The definition of justice is contested, while the definition of mercy is comparatively straightforward. Justice requires a theory. In *The Republic* Plato explores various theories all of which are plausible. Hobbes claims justice is obeying the law. Beyond political philosophy, justice often justifies status quo inequalities. Shklar interprets Nietzsche's idea of justice as "licensed cruelty"⁹. In this formulation then far

⁹ Judith Shklar, "Subversive Genealogies," in *Political Thought and Political Thinkers* ed. Stanley Hoffman (Chicago: University of Chicago Press, 1998) 149.

from justice and injustice being antonyms, they become synonyms! Justice is often a cover for resentment and vengeance. It can be an excuse for continued score settling. Mercy simply demands being merciful. We know when we are being merciful in a way we cannot know when we are being just. There are hard cases in determining what justice demands.

The idea that there can be a contradiction between mercy and justice, even going so far as to argue that being merciful is to commit an injustice at least under some circumstances, suggests mercy and justice are distinct and often at the very least in tension. Sometimes, mercy is appropriate as a “good in itself” but other times is it considered “immoral.”¹⁰ The view that mercy contradicts justice is common, found in the earliest discussions of the topic. It is also prominent in Enlightenment ideas, especially prominent for example in Kant’s moral philosophy, and seen in the utilitarian thought of Bentham and Mill.¹¹ In short, the objection to mercy is that justice demands that those who have committed say a crime be punished, or that those who owe a debt should be forced to repay. Justice though is not the only, or even ultimate morality.

This argument is commonly associated with St. Anselm, and is something of a paradox. However, the paradox depends on a punitive, or retributive sense of justice. Whether this paradox applies to God is not relevant here, but at least a few words about human beings are appropriate, though the literature on this is too extensive to

¹⁰ Smart, 350.

¹¹ See Tuckness and Parrish for an account of this history.

summarize here. The basic arguments can be rendered: “If mercy requires a tempering of justice, then there is a sense in which mercy may require a departure from justice...thus to be merciful is perhaps to be unjust. But it is a vice, not a virtue to be manifest injustice. Thus mercy must be, not a virtue, but a vice.”¹² It is not difficult to come up with a definition of mercy that includes the possibility of mercy as unjust—for example, if mercy is minimally defined as declining to impose a deserved punishment. One curious thing about this paradox is that one could in fact do the opposite—rather than seeing mercy as a kind of injustice, one could see it as adding to justice, because rather than blindly following the rules it takes a broader view of the circumstances.¹³ Morality and justice are not the same—justice is one component of morality.¹⁴ This holds even for politics and political theory. This contradiction though depends on a narrow conception of both justice and mercy, one that associates justice and mercy with the law and punishment. Mercy is seen as allowing for too much discretion on the part of the person responsible for upholding the law.

Even limiting mercy to its relationship to punishment leaves important avenues for considering mercy as relevant. Mercy need not be a deviation from justice. The law itself can be merciful.¹⁵ Therefore, acting in accordance with the law, acting justly, is also merciful.¹⁶ Few believe that law is always accords with justice—to claim a law is

¹² Bull, 95.

¹³ Card, 191.

¹⁴ George W. Rainbolt, “Mercy: An Independent, Imperfect Virtue,” *American Philosophical Quarterly*, (vol. 27, no. 2 1990) 171.

¹⁵ Card however disagrees on this point, and claims that “pseudo mercy” is an attempt to correct an injustice of the rules. 194-5.

¹⁶ Tuckness and Parrish, 179. Tuckness and Parrish are specifically referencing Beccaria here.

unjust is not a contradiction. Even just procedures (if we could agree what that means) will yield unjust laws. One way to evaluate a law then would be in light of mercy. A law that produces needless suffering, or seems disproportionate to the infraction can therefore be challenged on the grounds of mercy. That is, the law should be changed because doing so would be merciful.

The idea that mercy does not depend on what people deserve is a strength of mercy. It allows people to provide mercy without pausing to consider whether the merciful act was deserved or not. It seems that the question of who deserves what in specific relationships is a question of underestimated difficulty. Indeed, classical economics has more or less simply left the question of who deserves what (in terms of wages or in the sale of their goods) to an impersonal force they call “the market.” The rest of us formulate complicated and arbitrary rules – resources that people need (health care, education, etc.) are limited, and decisions must be made concerning their distribution, and there is no morally perfect way of doing so. Mercy is simply reducing a person’s suffering without regard to whether they deserve that suffering or not. In the cases I am most interested in – suffering by communities, or to the vulnerable members of communities – suffering is not deserved. However, even in those cases it is not clear who, if anyone, has an obligation to relieve that suffering.

The claim that mercy is the opposite of *injustice* challenges common ideas about the relationship between justice and mercy. Recall that to show mercy to a person who deserves punishment is to fall short of justice and therefore mercy and justice are in

conflict. This would seem to suggest the claim that mercy is the opposite of injustice is faulty or incoherent in some way. As Shklar points out, injustice is commonly viewed as an absence of justice, or a violation of justice.¹⁷ But perhaps the problem lies in the words we use, and instead we should see justice as nothing more (nor less) than an absence of injustice. Such a view may not be so inspiring, rendering justice as a kind of neutral state where people are not deliberately harmed by others, or perhaps a kind of place where they have the opportunity to live decent lives and even flourish. Justice becomes a set of minimal conditions in contrast to a foundation for utopia that often animates accounts of justice from Plato to Rawls. However, if we abandon the idea that injustice is opposite of justice, perhaps because elaborations on this point result in tautologies or perhaps because justice is conceptually empty or vague and thus its opposite is as well and instead go with Shklar's point that cruelty is injustice, then opposition of mercy to injustice is on firmer ground. Note that there are two moves here – Shklar's move of describing injustice, and the move offered here that injustice and justice are not opposites despite the definition of the prefix "in-" as not.¹⁸ All we really have done is chosen a different initial premise that has far reaching consequences as the argument develops.

The idea here is that if there appears to be a contradiction between being merciful and being just, in many cases the better choice is mercy. One reason to offer

¹⁷ Judith Shklar, *Faces of Injustice* (New Haven, CT: Yale University Press, 1990) 16.

¹⁸ It is interesting that many words would lack obvious antonyms without the prefixes "in-" or "un-" and the like. Orwell's Newspeak in 1984 sought to reduce this further. This seems to make Shklar's project of understanding injustice as a thing in itself rather than the lack of justice even more urgent.

mercy is the sense that the person to whom mercy is offered has “suffered enough” and any further punishment would be superfluous.¹⁹ This reasoning surely applies to communities, where many innocents have surely suffered enough. The problem of desert is then less relevant – as noted above, assignment responsibility to individuals in a community is either difficult or impossible and many members of “guilty” communities are innocent as individuals. Indeed, in the real world the individuals who rule their communities and are those most responsible are least likely to suffer, even if the war that results is “just” or the conflict “righteous.” Another point though is that there is another way the term mercy is relevant here – mercy as the relief of suffering. That is, in thinking about communities, mercy is *more* appropriate than justice in many contexts, because justice is less relevant. Justice is often a question of history, particularly in communal conflict. Right and wrong often depend on the historical starting point. Much of history is vengeance upon vengeance. Right and wrong depend on the choice of starting point. Cruelty and mercy just are – the historical questions fade into irrelevance. Even if there is a clear historical injustice, undoing the accretions of injustice may result in further injustice.

At least some accounts of justice demand vengeance. Demands for justice are too often excuses for cruelty. The victim, now in a position to punish the offender, sees justice as getting even. Thus, there is a paradox. The political problem of unjust means to achieve just ends is well known. But the problem reaches deeper than that.

¹⁹ Jeffrie C. Murphy, “Forgiveness and Resentment” in *Forgiveness and Mercy*, Jeffrie Murphy and Jean Hampton (Cambridge: Cambridge University Press, 1988) 26-7.

Considering mercy does not resolve the paradox, but it may help avoid it. Even if we are able to determine what justice requires we may find implementing it is so costly that the achievement of justice is not worth it. Often, justice simply is not relevant to the resolution of political conflict – the injustices are too deep, too distant in past, too embedded in current arrangements to be ever resolved. Rather than emphasizing acknowledgment of past injustices, mercy emphasizes building a better future for all parties, regardless of their culpability. The question of when should a community consider mercy and perhaps sacrifice justice is at bottom a political one. That is, there can be no fixed formula one can apply to know what should be done. The idea that mercy should be considered when the cost of justice is too high is deceptively simple. What counts as “too high” is a political issue. It means considering incommensurable values. In thinking about the relation among justice, injustice, and mercy, we should see how mercy may be directed in both directions: towards the perpetrators as well as the victims of injustice. That is, considering mercy is a reason to stop doing an injustice as well as an argument against creating more suffering in response to an injustice.

One problem with mercy as a substitute for justice is that it seems impotent. What inspires people is the elimination of injustice. “What moves us, reasonably enough, is not that the world falls short of being completely just – which few of us expect – but that there are clearly remedial injustices around us which we wish to eliminate.”²⁰ While it is beyond the scope of this paper to empirically justify it, it seems

²⁰ Amartya Sen, *The Idea of Justice*, (Cambridge MA: The Bellknap Press of Harvard University Press, 2009) vii.

that great historical movements, the passions that drive people to make great sacrifices are fights against injustice. The Montgomery Bus Boycott was a reaction to an injustice, as was the storming of the Bastille. At least at first, the motivation is to eliminate an injustice and there often is little more than that behind those demands. This is how we can understand justice as merely the elimination of injustice. There are problems though with a minimal account of justice: It leaves us unsure about how to address injustice. This is because rather than seeing injustice as the absence of justice, we have flipped our understanding and see justice as the absence, rather than the presence of certain social and political arrangements.

Accepting mercy in the place of justice seems like giving up, surrender. A critic can charge the advocate of mercy of abandoning or discounting questions of right and wrong. The argument offered here is that at least in some contexts questions of right and wrong are beside the point. Settlements that end conflicts between communities may fall short of justice, but continuation of the conflict will result in more cruelty, and thus more injustice. This highlights an important danger with mercy, one that is well recognized even by most of its advocates. In modern conflict, effective self-defense may include targeting the innocent, but failure to resist an invader will simply invite further attacks. Though Machiavelli had little patience for mercy, he remains an important reminder of its dangers. Note that much of the argument for mercy presented here depends on the difficulties in determining what justice requires. If, by contrast, claims for justice point in a clear direction, few would morally settle for mere mercy. Not all communal conflicts

are complicated, but when they are parties could adopt a degree of epistemic humility regarding justice and recognized that there are points where continued cruelty can no longer be excused by demands for justice.

Rather than contrasting mercy with justice, this can tension can be addressed by contrasting mercy with punishment. The question one asks then is “what is the purpose of punishment?” Punishment of course can have many purposes – retribution, deterrence, even restorative justice can be perceived as a punishment by those who are doing the restoring. Thus, it may very well be reasonable to impose reparations on a community judged to have acted unjustly towards another community. But imposing unnecessary or unproductive suffering on a community too often serves no purpose and instead deepens resentment leading to further injustices. Communal punishments rarely have a deterrent effect, unless one is willing to go so far as to salt the ground as Rome did with Carthage. But then we are no longer discussing justice at all.

The use of the term mercy here may be challenged. All that has really changed though is that mercy as a reflective position can exist even if the power to inflict harm does not. However, there is another power in play – the power to forgive. The harm is not necessarily physical harm, but the harm of being judged. The forgiving party can be said to be merciful, given that at least one consequence of forgiveness is makes “reestablishment of the relationship” possible. If the moral debt cannot be paid in full, then mercy is a possible response that allows forgiveness.²¹

²¹ Peter Digeser, “Forgiveness and Politics: Dirty Hands and Imperfect Procedures” *Political Theory* 26 (5) 1998 701.

Peace treaties in fact often fall far short of justice. It is difficult for peace treaties to change “Facts on the ground” which are often established by injustice. This raises serious problems: Victory in warfare, which establishes those facts, is morally arbitrary. Might and right have nothing to do with one another. Prevailing in violent conflict does nothing to justify the resolution of that conflict. Nevertheless, reducing suffering is good, even if we do not know whether it will result in greater justice.²²

The broad conception of mercy presented here may seem better understood as something like sympathy or even pity. However, I do not want to attribute such sentiments to communities or other corporate bodies. And, as sentiments rather than virtues, they lack ethical or normative content even though they may be where intuitions regarding mercy originate. In part, much like ideas of justice, I do not want the obligation of mercy to depend on the presence (or absence) of specific sentiments. Suffering, like pain, may be subjective in that it is a subject who experiences it, but it is real. Thus, it is merciful to reduce it, regardless of who is feeling what.

Reparations

History is one injustice after another. To put it another way, history is the history of victims and victimizers: “Every question about responsibility, personal independence, and public freedom and every mental disposition haunts when we begin

²² Bull, 117.

to think about victims.”²³ To be clear: the discussion of reparations is not that granting reparations to a community that has suffered from injustice would be merciful. Quite the opposite – it is up to the community that has suffered to grant mercy to their oppressors.

One reasonable response of these injustices is to try to correct them with some form of reparations. As a practical matter though working out who owes what to whom is impossible. Thus, we find ourselves dealing with communities. Ta-Nehisi Coates’s essay on reparations emphasizes the harm injustices have done to communities.²⁴ Coates points out that the problems (and thus the reparations due) are not merely monetary – though poverty and the absence of a social safety net, in addition to living in neighborhoods characterized by poverty are critically important issues that require addressing. The fact that numerous lives have been harmed, that suffering was widespread, suggests that reparations by themselves will never suffice in terms of justice. That is, justice demands more than can ever be granted. Something else is needed. That additional element would be mercy. To be sure, only members against whom an injustice has occurred have the authority to grant mercy. The purpose of this section then is to describe how mercy may in fact empower those communities suffering from injustices even as justice itself is elusive:

²³ Shklar, *Vices*, 17.

²⁴ Ta-Nehisi Coates, “The Case for Reparations”

Perhaps after a serious discussion and debate – the kind that HR 40 proposes – we may find that the country can never fully repay African Americans. But we stand to discover much about ourselves in such a discussion – and that is perhaps what scares us. The idea of reparations is frightening not simply because we might lack the ability to pay. The idea of reparations threatens something much deeper – America’s heritage, history, and standing in the world.²⁵

Granting mercy would not be a matter of a community “getting over it” so to speak. Indeed, mercy could be contingent on accepting and acknowledging harm deliberately done. There is however another way to consider this: To ask for mercy in this context is an act of penance. At the very least, it requires an admission of guilt, and if we push the metaphor of penance, a pledge to “sin no more”. A request for mercy requires humility. That is, mercy in such cases follow a request for forgiveness. In the kind of historical cases under consideration here, the debts involved can never be repaid. The injured community will therefore receive less than justice requires.

One element that may have some restorative benefit here can be found in “truth and reconciliation.” Like forgiveness and mercy, the idea here is about moving forward as a society. Reconciliation and restoration are not the same. Forgiveness, like mercy is in tension with justice, in that it may result in a lesser punishment than justice demands. But forgiveness does free the forgiver, from resentment.²⁶ Mercy in some sense takes

²⁵ Coates, 53.

²⁶ Digeser, 707.

this a step further – it seems mercy would not be offered under conditions of resentment. Therefore, forgiveness is a condition for mercy. Mercy and reparations should be seen as distinct from truth and reconciliation commissions, if the purpose of the latter is to prevent hostility and continued enmity as those who committed injustice are punished. That is, by granting amnesty they are intended to discourage those guilty from undermining the new regime.²⁷ One may even hope it will reconcile them to a regime that no longer countenances the kind of tactics used for purposes like persecution and political repression. Reparations, in the sense used by Coates and others are about communities.

One could for example see mercy as an ongoing symbol of remembering the past injustice. Ceremonies of penance, renewing calls for forgiveness and accepting responsibility on behalf of others, along with (partial) reparations. The idea of mercy here is one of remembrance without resentment. That is, mercy is necessary: “Simply giving up resentment cannot be a sufficient condition of forgiveness.”²⁸ The point is to move past anger. Like forgiveness, mercy is forward looking.²⁹ There must be caution though: Failing to acknowledge past wrongs of course will not lead to a forgetting of those wrongs, but may likely rekindle and thus should not be the desired result of either forgiveness or mercy.

²⁷ Jonathan Allen, “Balancing Justice and Social Unity: Political Theory and the Idea of a Truth and Reconciliation Commission” *University of Toronto Law Journal* 49 (3) 1999, 315.

²⁸ Charles L. Griswold, *Forgiveness: A Philosophical Exploration* (Cambridge: Cambridge University Press, 2007) 16.

²⁹ Nussbaum, 172.

There is no reason why granting mercy cannot be conditional on the recipient of mercy continuing to accept responsibility and perform what I am calling “penance”. Mercy does not wipe the injustice away. Mercy can be withdrawn if the unjust ceases to acknowledge their guilt or fails to perform acts agreed upon as a condition for mercy. The wronged party is under no obligation to forgive unless certain conditions are met, and this logic applies to mercy as well.³⁰ Even more importantly, the wronged party should not put itself in a position where it finds itself vulnerable again.

One can reasonably hope the contrition upon which mercy depends causes a change in a community. There is a possibility of restoration following the grant and acceptance of mercy. Rather than a community that has acted cruelly and unjustly towards another community, it is a community that repudiates that act of cruelty. : “What I’m talking about is more than recompense for past injustices – more than a handout, a payoff, hush money, or a reluctant bribe. What I’m talking about is a national reckoning that would lead to spiritual renewal.”³¹ Its symbols and celebrations and memorial are Such ceremonies are power elements through which communities become communities. Thus, the transformation of its ceremonies, its holidays are a meaningful and substantial change. Since the individuals who comprise the community will ultimately change as old member die and new members are added, such a

³⁰ Nussbaum, 65.

³¹ Coates, 55.

transformation need not involve any kind of mystical or spiritual transformation, but an achievable and understandable historical transformation.

In many cases where reparations ought to be considered, the debt cannot be repaid. Forgiveness acknowledges that past injustices cannot be undone, but that we can move on.³² Restorative justice can be appropriate when repairing the injustice is straightforward. However, time tangles responsibility, suffering, and benefit. There are debts, some of which can be paid, but who should pay them, and to whom should they be paid? There are good reasons to consider mercy in some cases of reparations. For one, many of the people from whom reparations are expected in the most well-known cases did not choose to commit an injustice, even though they benefit from it. Over decades and centuries the benefits are diffuse and difficult to identify. Nor is it difficult to imagine an individual who on the basis of ancestry is both owed and owes reparations.

Even more strongly, mercy in these cases should not put the community granting mercy at risk. The notion that mercy, properly understood, does put the polity at risk is commonly asserted in accounts of mercy. This is found for example in the works of Grotius and Hobbes.³³ Thus, in the case of peace treaties or other official resolutions to conflicts, guarantees against future injustice are at all incompatible with mercy, but indeed may be a reasonable condition for it.

³² Elizabeth Minnich, *The Evil of Banality: On Life and Death Importance of Thinking* expanded edition (Lanham, MD: Rowman Littlefield, 2017) 227.

³³ Tuckness and Parrish, 157.

Humanitarian Assistance

Given contemporary understandings, it would seem mercy is not quite an appropriate concept to consider responses to humanitarian crises. An emphasis on mercy decenters questions that might arise from the perspective of justice – questions such as who is to blame for the crisis and who is most responsible for providing assistance. For example, justice could lead to calls that those responsible for a crisis have the moral responsibility to address, and no one else need do anything. Mercy by contrast merely insists that help be offered, and nothing else really matters. Mercy answers the question of why should a community help another community.

Mercy also avoids questions of how much are the victims of suffering responsible for their plight. For example, some people resist providing assistance to the unhoused on the basis that it is somehow their own fault they are suffering. However, from the perspective of mercy, it is irrelevant why someone lacks adequate housing. All that matters is lacking shelter results in suffering, and mercy requires addressing the suffering. To be sure, it is possible that addressing “underlying causes” may be more efficient in allocating resources to solve social problems, but there is also strong evidence that “housing first” policies are more effective – that is, though unhoused people may have many problems that contribute to their lack of housing, providing housing provides the resources that enable such a person to begin to address those “underlying” problems. In any event, it is not hard to see how lacking housing will

contribute to mental health problems. Thus, though appeals to mercy do not necessarily depend on efficacy, it should not be a surprise that offering to address the most salient suffering, thus showing mercy, is also effective.

Modern ideas, especially those based on utilitarianism, frames these types of issues in terms of justice and rights, rather than mercy because of the concern that mercy was contingent and potentially meant that some would receive assistance and others would not.³⁴ If justice has a role in such situations, it might to establish conditions which prevents a crisis from occurring in the first place, or giving a community the resources and autonomy that makes it possible to address problems if a crisis occurs. A related element to consider at this point concerns what are the most persuasive arguments that move people to assist those in need. It has commonly been observed that utilitarian arguments do not seem to move the sentiments, while those based on mercy can be more effective at moving people to offer help.

Beyond helping individual in need, mercy has important applications in other humanitarian crises. The obligations of mercy towards communities that confront natural disasters is relatively straightforward. Though mercy is usually considered supererogatory, when considering responsibility in addressing humanitarian crises, there seems to be at least for some, an intuitive obligation. It may be that if justice does not compel a community to offer assistance, then that makes it seem that mercy is not a requirement of justice.

³⁴ Tuckness and Parrish, 219.

A more complicated issue though are humanitarian crises caused by government or other elements within a community. Indeed, some regimes (outlaw regimes in Rawls's terminology) may commit "crimes against humanity" that result in great suffering of people under the sovereignty of the regime. Even simply living under such a regime may entail great suffering and deprivation. Interfering in the affairs of a sovereign nation that is causing suffering of its own population raises many difficult questions, far beyond the scope of this paper. Rawls notes this difficulty as well, arguing that money rarely results in desirable change, and use of force violates "the law of Peoples".³⁵ The suggestion here then is that mercy is a legitimate (though far from the only legitimate) factor in considering what should be done in various circumstances.

Mercy results in reframing current crises regarding refugees, asylum seekers, and migration more broadly. Mercy shifts the focus away from who deserves asylum, who is permitted to cross a border, who may reside in a safe place to who suffers and how that suffering may be alleviated. Even more so that protecting positive human rights, current attempts to create and implement just laws as people move from one nation to another for all sorts of reasons have not produced satisfactory results. Depending on justice in fact seems to make arguments about "illegal" immigrants more plausible than they should be. Appeals to mercy by contrast shift the dynamic considerably. People emphasizing immigration *law* (and implicitly claiming those laws

³⁵ Rawls, 110.

are automatically just) do not seem to be arguing in good faith. By contrast, appealing to mercy would result in a very different approach to immigration of all sorts.

None of this should be taken as an alternative to the idea of human rights. Rather, the consideration of mercy supplements the idea of human rights in two ways. First, it decenters concerns about who is obligated by the assertion of a right. To claim a positive right such as health care is to claim that someone has an obligation to provide that assistance. The problem is determining who precisely obligated? Mercy tells us that anyone in a position to help has that obligation. The second way mercy supplements human rights is that as a sentiment it offers motivation to do something.

Liberalism and pluralism

Though liberals like Bentham and Mill were unenthusiastic about mercy, there are ways in which mercy fits within some versions of liberalism. This idea of liberalism as a *modus vivendi*, a kind of muddled agreement to live as peaceably as possible with those who may disagree even profoundly about the good life. At least some versions of liberalism – Shklar’s liberalism of fear is a leading example, but one might even find such an idea in Michael Oakeshott and certainly Isaiah Berlin – deliberately eschew a comprehensive vision of the good. Mercy, does not seem to require such a comprehensive account. Thus, the lack of a consensus about justice may not be fatal to a pluralistic society if mercy is seen as a public virtue.

Mercy is a solution for the mess of reality. Some version of liberalism, such as that of Rawls, attempt to abstract that reality away. One can therefore be confident that punishment is just.³⁶ Thus, a society organized according to Rawls's theory of justice would have no need for mercy. This seems to be a mistake. It would presume a consensus about the appropriateness of not just what acts should be punished, but what the punishment should be and why. Mercy is commonly described as tempered justice, but tempered justice seems incompatible with Rawlsian liberalism. Rawls may be correct that the greatest political evils would disappear following the establishment of just (or "at least decent") political institutions are established. but one may wonder how realistic Rawls's "realistic utopia really is."³⁷

There are other versions of liberalism more skeptical about justice and especially the state and thus more compatible with pluralism. As Shklar writes: "Through history, war and punishment have been the primary functions of government. No liberal ever forgets that governments are coercive."³⁸ Shklar's claim here poses an important challenge to the argument that mercy can be a tool in addressing communal conflict. Even if communities are capable of mercy, governments do not seem to have that capability. It is important though to consider that Shklar herself says little about mercy, despite the prominence of cruelty in her work.³⁹ Recall that discussion of mercy from people like Machiavelli and Seneca focus on individuals acting in their official capacity.

³⁶ Bonnie Honig, *Political Theory and the Displacement of Politics* (Ithaca, NY: Cornell University Press, 1993) 145.

³⁷ Rawls, 7.

³⁸ Judith Shklar, *Ordinary Vices*, 244.

³⁹ Bull, 114.

Furthermore, there are questions about legitimacy if the modern rational bureaucrat or judge shows mercy in decreasing the penalty the law would otherwise impose. In order for mercy to be relevant, it is important to consider communities as distinct from states and governments.

Mercy and tolerance are complementary virtues. Like tolerance, mercy contributes to liberalism by making pluralism possible. Under some circumstances mercy may be an element in developing a tolerant mindset. At the very least mercy gives communities a reason to “agree to disagree.” Mercy pushes against persecution of those who have different notions of the good. Tolerance was necessary for removing theological disputes from civil life. Mercy can have a similar function with regard to ideology. Ideological thinking is a source of cruelty: “It is nevertheless extraordinary how easily misanthropy moves even the most determined loners to a worship of violent collective public action. That is the work of ideology, and like Fortune and necessity in an earlier age, it serves as an excuse for every kind of political cruelty now.”⁴⁰ Mercy then works against ideological thinking. Thus mercy is an important element in liberal pluralism.

Mercy may even precede toleration by moving a religious community in the direction of toleration. Even a community convinced that those on the outside may be heretics and blasphemers may accept those communities continued existence on the basis of mercy. Since communities do not share values, the fact that mercy is easier to

⁴⁰ Shklar, *Vices*, 21.

apply than justice under conditions of pluralism mean that it can be a helpful tool in addressing conflicts between communities.

The problem of inequality

Throughout this paper, I have noted some problems with mercy in regards to its deficiencies. The reader should not take away from this work the idea that mercy should in all cases substitute for justice. Mercy does seem to belong to a different set of concepts than ones familiar with modern political thought. Furthermore, critics of the Enlightenment in political theory do not have much to say about mercy either. Indeed, Machiavelli and Nietzsche are quite critical of mercy, though for very different reasons.

In addition to be related to forgiveness, mercy is also related to pity, and as such may even exacerbate inequality, rendering the subject of mercy more dependent than they were before mercy was granted. That is, mercy does not appear to offer relief from domination, which in the republican tradition means an absence of freedom. A merciful master is still a master. Mercy then may be understood as a strategy that makes an unjust relationship more palatable to outside observers, or more stable as it may, for example, forestall rebellion.⁴¹ It is important though to return to the idea that mercy in some contexts means doing less than justice demands. If domination is unjust, then mercy is irrelevant. What is really happening is that the dominator is exercising

⁴¹ Bull, 48.

privilege that may have some (temporary) benefit towards the dominated, but is neither mercy nor justice.

Importantly mercy does not contribute to injustice. The injustice of domination is not made less (or more) unjust if the dominator is merciful. It seems clear that there are two ways to consider mercy – most often, mercy is doing less than justice allows. Where the power relationship is not based on justice, what happens is the powerful individual may choose to do less than they could do, given their power. This could still be called mercy, but this seems a rather different dynamic than the one typically explored in discussions of mercy, such as when a judge imposes a lighter sentence than the law allows. The problem is not really a problem of mercy, but rather one of power and domination.

All government, as Shklar noted above, exists in an unequal relationship with those who are governed. The modern state is really not easily distinguished from the Hobbesian sovereign. Even if it appears to be limited by a constitution, or checks and balances, these afford little protection for many, if not most subjects. We may wish it were not so, but mercy may be necessary to make this bearable – consider Orwell's vision of the future in *1984* of a boot stomping on a face forever. Given that, one might be skeptical that mercy really can be a useful tool in diminishing injustice even if it can result in less cruelty. This objection would hold that the real injustice is in the conditions that gave rise to the inequality itself, and that under conditions of real justice

such inequalities would never arise. (Keep in mind much of my focus here is mercy as a way to protect communities largely populated by innocent people.)

There are two responses here. The first acknowledges the inherent inequality in political and economic relations. Outside of the most unrealizable perfectionist account, inequalities are inevitable. Mercy gives the powerful a reason to relieve the suffering of the powerless. The power relationship may not be direct – one example is that the citizens of a prosperous democratic nation have more power than those of a poor authoritarian one. Mercy is a reason to address their suffering. It may even ultimately undermine the inequality. Even if the relationship is a direct one, for example one of war, mercy serves to delegitimize the cruelty one party imposes on the other. Consider military power differentials – the fact that one community can inflict cruelty on another community has no bearing on whether it *ought* to do so. Indeed, most likely moral analysis will suggest that it ought not do so.

The second response is that one inequality central to the argument here is what I call *moral* inequality. That is, mercy can be granted to the party that has committed a moral infraction. Such inequality does not presuppose an inequality of power or even legal authority. The opportunity for mercy arises because one person has a claim on the other person, not because of power but because one party has committed a wrong against another party. There may be many inequalities between these parties, but the critical one for our purposes is one of morality, rather than power.

Conclusion

Any conclusions here are meant to be tentative. The purpose of this work is to consider the usefulness of mercy as a concept in approaching seemingly interminable conflict, particularly those where appeals to justice are either impractical or impossible. That is, mercy is a conceptual tool that justifies taking steps to reduce suffering. The world is complicated. Simple or simplistic accounts of justice simply are incomplete in helping us figure out what is to be done. Even if we can imagine just solutions to the myriad conflicts between communities we confront, implementing those solutions all too often entails further injustice and suffering of innocents.

Much remains to be said about the specific ways consideration of mercy can address difficult political problems. Nevertheless, I believe this paper has demonstrated that mercy is a powerful and underappreciated normative tool for political theory, and has significant practical implications for the conduct of politics. Mercy is a response to the problem of cruelty posed by Shklar in *Ordinary Vices*. The purpose of this paper is to suggest further directions for discussions on how mercy as a concept can be deployed in the ongoing and difficult political conversations. We do not know enough, we lack wisdom, to consistently apply justice to particular situations, even if we could come to some agreement about what justice was.

Bibliography

- Akkad, Omar El. 2025. *One Day, Everyone Will Have Always Been Against This*. New York: Knopf.
- Allen, Jonathan. 1999. "Balancing Justice and Social Unity: Political Theory and the Idea of a Truth and Recononciliation Tradition." *University of Toronto Law Review* 49 (3): 315-353.
- Bull, Malcolm. 2019. *On Mercy*. Princeton, NJ: Princeton University Press.
- Card, Claudia. 1972. "On Mercy." *The Philosophical Review* 81 (2): 182-207.
- Digester, Peter. 1998. "Forgiveness and Politics: Dirty Hands and Imperfect Procedures." *Political Theory* 700-724.
- Griswold, Charles L. 2007. *Forgiveness: A Philosophical Exploration*. Cambridge: Cambridge University Press.
- Honig, Bonnie. 1993. *Political Theory and the Displacement of Politics*. Ithaca, NY: Cornell University Press.
- Minnich, Elizabeth. 2017. *The Evil of Banality: On the Life and Death Importance of Thinking*. Expanded Edition. Lanham, MD: Rowman Littlefield.
- Murphy, Jeffrie C. 1988. "Forgiveness and Resentment." In *Forgiveness and Mercy*, by Jeffrie C. Murphy and Jean Hampton, 14-34. Cambridge: Cambridge University Press.
- Nussbaum, Martha C. 2016. *Anger and Forgiveness: Resentment, Generosity, Justice*. Oxford: Oxford University Press.
- Parrish, Alex Tuckness and John M. 2014. *The Decline of Mercy in Public Life*. Cambridge: Cambridge University Press.
- Rainbolt, George W. 1990. "Mercy: An Independent, Imperfect Virtue." *American Philosophical Quarterly* 27 (2): 169-73.
- Rawls, John. 1999. *The Law of Peoples*. Cambridge, MA: Harvard University Press.
- Sen, Amartya. 2009. *The Idea of Justice*. Cambridge, MA: The Belknap Press of Harvard University Press.
- Shklar, Judith. 1990. *Faces of Injustice*. New Haven, CT: Yale University Press.
- Shklar, Judith. 1998. "Subversive Genealogies." In *Political Thought and Political Thinkers*, by Judith Shklar, edited by Stanly Hoffmann, 132-160. Chicago: University of Chicago Press.

Smart, Alwynne. 1968. "Mercy." *Philosophy* 43 (166): 345-59.

Stilz, Anna. 2011. "Collective Responsibility and the State." *Journal of Political Philosophy* 19 (2): 190-208.