

IMPERATIVE VALUES OF A LOGICAL FORGIVENESS

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This article deals with the nuances of the concept of 'forgiveness' and its role in shaping law and societal institutions. In the background of Aurel Kolnai's notions on the act of forgiveness, the author analyses the different conceptualizations of forgiveness. The logical paradox of forgiveness as formulated by Kolnai is considered. The article argues that the notion of 'divine forgiveness' is not vulnerable to this paradox. Hence there is a need for interpersonal forgiveness to adopt some of the premises on which divine forgiveness is based on. The critical inter-relations between the concepts of forgiveness, patience and trust and their role in approximating interpersonal forgiveness with divine forgiveness are discussed.

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INTRODUCTION

Philosophers have long struggled with providing a coherent account of the idea of forgiveness. From the ancient Greeks through the Hebrew and

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Christian Bibles to the present day, forgiveness has typically been regarded as a personal response to having been injured or wronged, or as a condition one seeks or hopes is bestowed upon one for having wronged someone else.¹ While forgiveness as a concept does not easily lend itself to rational cognition or easy logical elaboration, the assertion that forgiveness as a phenomenon entails the foregoing of resentment has gained much academic and historical credence.² Dostoevsky's celebrated novel *The Brothers Karamazov* beautifully illustrates the difficulty in ascribing a proper place to forgiveness in our lives. Ivan Karamazov (in accordance with his principles of autonomy and freedom) considers forgiveness as a moral outrage, in itself a violation of the moral law. His brother Alyosha, on the other hand, recognizes and accepts the possibility of a divine and miraculous forgiveness as a response to guilt. This fundamental disagreement between the brothers is instructive for it directs us to an under-explored intellectual terrain generated by the persistent question of whether forgiveness is possible or impossible. A convincing response to this question is a necessary precursor to any commitment to forgiveness as a virtue or a duty in our personal lives and in the ordering of our law and societal institutions.

I will be here considering in detail a seminal paper titled *Forgiveness* by the Hungarian philosopher Aurel Kolnai (published in the *Proceedings of the Aristotelian Society* 1973-74). Kolnai discusses the central question of whether, and if so in what manner, forgiveness is possible at all.³ After distinguishing the concept of forgiveness from non-imputation, indifference, exculpation, excusing, emotional

¹ Paul M. Hughes, *Forgiveness*, *STANFORD ENCYCLOPEDIA OF PHILOSOPHY*, (2010), <http://plato.stanford.edu/entries/forgiveness/>.

² Bishop Butler's sermon on resentment is a classic example. See BISHOP JOSEPH BUTLER, *SERMONS* (Hilliard and Brown 1827) (2005) [hereinafter Butler]. In his eighth Sermon, Butler describes resentment as a "weapon put into our hands by nature, against injury, injustice, and cruelty" See Butler, at 116.

³ See Aurel Kolnai, *Forgiveness*, 74 *PROCEEDINGS OF THE ARISTOTELIAN SOCIETY* 91, 91-106 (1973-4). [hereinafter Kolnai]. This paper was published a few months after Kolnai's death in 1973. On Kolnai's characterization of his own mode of enquiry on a primarily ethical subject, he states: "In fact, I intend it to be chiefly logical in nature: the central question I wish to discuss is not how far and in what sense forgiveness is commendable or perhaps objectionable, but whether, and if so in what manner, it is logically possible at all." See Kolnai, at 91.

prescription, revised insight and revised judgment, Kolnai elaborates the logical paradox of forgiveness as:

“Either the wrong is still flourishing, the offence still subsisting: then by “forgiving” you accept it and thus confirm it and make it worse; or the wrongdoer has suitably annulled and eliminated his offence, and then by harping on it further you would set up a new evil and by “forgiving” you would only acknowledge the fact that you are no longer its victim. Briefly, forgiveness is either unjustified or pointless.”⁴

The resolution of whether forgiveness is justified or pointless is of great relevance to socio-legal studies, and Kolnai’s paradox represents an instructive trope for analysis. Legal treatment of crime and punishment rests on an often unarticulated understanding on the relationship between forgiveness and punishment.⁵ Derrida, makes the argument that forgiveness forgives only the unforgivable (in contrast to Hegel who argued that all is forgivable except the crime against spirit, that is, against the reconciling power of forgiveness).⁶ An answer to what is forgivable forms the core of the legality of reconciliation and amnesty arrangements, the treatment of crimes by juvenile offenders, justification of action and statutory exceptions to culpability, plea-bargaining and compounding of criminal offences, considerations in sentencing of criminals

⁴ *Id.* at 98-99.

⁵ Hannah Arendt’s views are worth citing in brief here: *“The alternative to forgiveness, but by no means its opposite, is punishment, and both have in common that they attempt to put an end to something that without interference could go on endlessly. It is therefore quite significant, a structural element in the realm of human affairs, that men are unable to forgive what they cannot punish and that they are unable to punish what has turned out to be unforgivable. This is the true hallmark of those offenses which, since Kant, we call “radical evil” and about whose nature so little is known, even to us who have been exposed to one of their rare outbursts on the public scene. All we know is that we can neither punish nor forgive such offenses and that they therefore transcend the realm of human affairs and the potentialities of human power, both of which they radically destroy wherever they make their appearance. Here, where the deed itself dispossesses us of all power, we can indeed only repeat with Jesus: “It were better for him that a millstone were hanged about his neck, and he cast into the sea.” See HANNAH ARENDT, THE HUMAN CONDITION 241 (University of Chicago Press 1998) (1958) [hereinafter ARENDT].*

⁶ See JACQUES DERRIDA, ON COSMOPOLITANISM AND FORGIVENESS (Mark Dooley and Michael Hughes trans., Routledge 2d ed. 2001) (1997). [hereinafter DERRIDA].

and forms of pardon and clemency, etc. When the operation of the law results in the death of the criminal due to an unforgivable crime, the violent implications of Kolnai's paradox come fully to the fore.⁷ Criminals who are punished with death (and denied pardons, mercy petitions and similar reprieves) have marked on their bodies the legal and political declaration of "unforgivability". A judgment that the specific acts by the specific person *ought not* to be forgiven can be rational only if it also successfully anticipates and accounts for whether the specific acts by the specific person *could* be forgiven.⁸ The logical possibility of forgiveness is a *sine qua non* for, the consideration of whether forgiveness is a moral or legal duty for citizens, judges and nation-states.⁹ A re-appreciation of Kolnai's paradox of forgiveness - and an articulation of the manner in which it may be resolved - contributes to identifying and characterizing the imperative operative values in any choice, judgment or characterization involving forgiveness, and more generally, punishment. In the following parts of this paper, I briefly elaborate and contextualize Kolnai's paradox, and then offer sketches of an argument (using the Kantian idea of grace) for how an analysis of divine forgiveness suggests that promoting the values of patience and trust facilitates the realization of a logical interpersonal forgiveness.

Contextualizing Kolnai's Paradox

The logical paradox of forgiveness as fully formulated by Kolnai finds reference and contextualization in much of the scholarly literature devoted to

⁷ See generally, Robert M. Cover, *Violence and the Word*, 95 YALE LAW JOURNAL 1601 (1986).

⁸ The prevailing standard in Indian criminal jurisprudence confronts this question in the form of the rule that the death penalty is permissible only in the "*rarest of the rare cases when the other option is unquestionably foreclosed.*" The Indian Supreme Court further states that "[a] real and abiding concern for the dignity of human life postulates resistance to taking a life through law's instrumentality." See *Bacchan Singh v. State of Punjab*, (1982) 3 SCC 24 (Ind.), at paragraph 224.

⁹ Derrida makes an analogous argument that all decisions and responsibilities relating to forgiveness must be made between the two irreconcilable but indissociable poles of unconditional forgiveness (exemplified by forgiveness given by God, or by divine prescription) and conditional forgiveness (the order of conditions, repentance, transformation, etc. that allow forgiveness to inscribe itself in history, law, politics, existence itself). Derrida, *supra* note 6, at 44.

forgiveness.¹⁰ It is useful to briefly highlight here how the accounts of Jean Hampton, Gideon Rosen and Pamela Hieronymi have framed Kolnai's paradox and attempted to respond to it.

The relevance of Kolnai's paradox to the requirements of any universally valid law is particularly well illustrated by Jean Hampton's question: '*How can you absolve someone from guilt and still remain committed to the idea that his actions were wrong and unacceptable?*'¹¹ Hampton opens her analysis of forgiveness in 'Forgiveness, resentment and hatred' by stating (but not explicitly denying or acquiescing with) Jeffrie Murphy's provocative thesis that forgiveness 'at times is not a duty'.¹² While this broad thesis (which Hampton identifies as of Nietzschean pedigree and which appears to be forcefully articulated in Cheshire

¹⁰ See, RS Downie, *Forgiveness*, 15(59) PHILOSOPHICAL QUARTERLY 128, 128-134 (1965); Anne C Minas, *God and Forgiveness*, 25 PHILOSOPHICAL QUARTERLY 138 (1975); Joanna North, *Wrongdoing and Forgiveness*, 62 PHILOSOPHY 499 (1987); JEFFRIE G. MURPHY & JEAN HAMPTON, *FORGIVENESS AND MERCY* (Cambridge University Press 1988); Norvin Richards, *Forgiveness*, ETHICS 99 (1988); John Wilson, *Why Forgiveness Requires Repentance*, 63 PHILOSOPHY 246, 534 (October 1988); Robert C Roberts, *Forgiveness*, 32.4 AMERICAN PHILOSOPHICAL QUARTERLY 289 (1995); David Novitz, *Forgiveness and Self-Respect*, 58.2 PHILOSOPHY AND PHENOMENOLOGICAL RESEARCH 209 (1998); Pamela Hieronymi, *Articulating an Uncompromising Forgiveness*, 62.3 PHILOSOPHY AND PHENOMENOLOGICAL RESEARCH 529 (2001); TM Scanlon, *Chapter 4 – Blame* (pre-publication draft available on file), 2008. In her study of forgiveness in the work of Hannah Arendt, Julia Kristeva makes sure to emphasize the result of a distinction that was accurately foreshadowed by Kolnai: "*forgiveness is directed toward the person, not the act. One cannot forgive murder or theft, only the murderer or the thief. In addressing someone rather than something, forgiveness reveals itself as an act of love*" ("*le pardon s'adresse a la personne, non a l'acte. On ne peut pardonner le meurtre ou le vol, seulement le meurtrier ou le voleur. En s'adressant a quelqu'un et non a quelque chose, le pardon se devoile comme acte d'amour [...]*"; *Hannah Arendt* p. 361; cited from Alison Rice, *Forgiveness: An interview with Julia Kristeva*, 117(2) PMLA 278, 280 (Mar., 2002).

¹¹ Jean Hampton, *Forgiveness, Resentment and Hatred* in Jeffrie G. Murphy and Jean Hampton *FORGIVENESS AND MERCY* 41 (Cambridge, 1988). [hereinafter Hampton].

¹² Hampton, *supra* note 11, at 36. Kolnai, while not expressly addressing this issue, seems to make allowance for situations where forgiveness is not a duty thus: '*Fred's forgiving Ralph...however duty-like, is not a strict obligation like promise-keeping or even certain acts of benevolence...*' Kolnai, *supra* note 3, at p. 101. Contrast this with the idea of forgiveness that strictly requires the granting of forgiveness in certain situations, which finds support in the Jewish religious tradition.

Calhoun's insistence that forgiveness is 'elective') remains undisturbed even at the end of 'Forgiveness, resentment and hatred',¹³ Hampton categorically rejects Murphy's 'definition of forgiveness as the overcoming of resentment' (enriched by a cognitive understanding) on account of its inability to usefully differentiate between condonation and forgiveness.¹⁴ Hampton concludes understanding that the crucial change of heart in the forgiver that constitutes the first stage of forgiveness involves a 'reapproval' or 'new understanding' where the wrongdoer is seen as '*still decent, not rotten as a person, and someone with whom he [forgiver] may still be able to renew a relationship*' or as "good enough".¹⁵ Forgiveness, for Hampton, is the decision to see a wrongdoer in a new, more favourable light achieved through the overcoming of indignation and moral hatred (in addition to repudiation of malice, spite and similar emotions) along with the transcending of resentment.¹⁶

Gideon Rosen (relying on Bishop Butler's definitional phrase - '*to forgive is to forswear resentment; it is not to abandon the judgment that the act is resentment-worthy*') also usefully articulates Kolnai's paradox (while unabashedly acknowledging that he 'can think of no plausible answer to this question'):

¹³ See Cheshire Calhoun, *Changing One's Heart*, ETHICS 103 (1992).

¹⁴ Hampton, like Kolnai, correctly points out that "the central difference between them is that condonation involves accepting the moral wrong whereas forgiveness does not." Hampton states: "*What seems required to make a change of heart towards a wrongdoer something other than condonation supplies the foundation for explaining and justifying that change of heart as something other than forgiveness.*" See Hampton, *supra* note 11, at 42. Hampton's emphasis on the example of the wife who condones (and not forgives) her father-in-law's wrongdoing to her on account of the moral end of family peace plays a prominent role in developing her argument for a new definition of forgiveness. See Hampton, *supra* note 11, at 38, 39.

¹⁵ Hampton, *supra* note 11, at 83, 84.

¹⁶ Hampton's account emphasizing a new understanding or a new relationship is reminiscent of Arendt's view of the faculty of forgiveness as a possible redemption from the predicament of irreversibility. Arendt says: "*Without being forgiven, released from the consequences of what we have done, our capacity to act would, as it were, be confined to one single deed from which we could never recover; we would remain the victims of its consequences forever, not unlike the sorcerer's apprentice who lacked the magic formula to break the spell.*" See Arendt, *supra* note 5, at 237.

‘If resentment consists in the thought that the act was wrong and that sanctions would constitute an appropriate response to it, in what sense can one forswear resentment while retaining these judgments?’¹⁷

Pamela Hieronymi’s account of an ‘articulate’ and ‘uncompromising’ forgiveness addresses Kolnai’s paradox in a very instructive manner. In much the same way as Kolnai establishes the pre-requisite conditions for the very possibility of a genuine forgiveness, Hieronymi acknowledges that the abandonment of resentment must be uncompromising towards three (interrelated) judgments in order to count as genuine forgiveness:

- 1) that the act in question was wrong;
- 2) that the wrongdoer is someone to be held responsible for her actions and is worth being upset by, and;
- 3) that the injured person ought not to have been wronged and has standing to complain about the wrongful act.¹⁸

Hieronymi makes the claim that resentment is grounded not on these three judgments which must be maintained but on a fourth judgment which, other things being equal, the three above judgments imply: that the event in question makes a threatening claim. This fourth judgment can be rationally undermined by an apology, without requiring the abandonment or revision of the other three. Since resentment protests a past action that persists as a present threat, in “*accepting an adequate apology, one can believe the threat to be past and so abandon one’s protest [and resentment] without abandoning (nor ceasing to care about) one’s judgment that the act in question was wrong, that the wrongdoer should be expected not do such things, and that one ought not be so treated. And so this account articulates how, in response to an apology, forgiveness can be uncompromising.*”¹⁹ It is in specific response to Kolnai’s

¹⁷ Gideon Rosen, *The Alethic Conception of Culpability*, ROUGH DRAFT FOR THE COLUMBIA LEGAL THEORY WORKSHOP AND THE YALE SEMINAR ON LAW AND PHILOSOPHY, January 10, 2006 [available on file with author].

¹⁸ See Pamela Hieronymi, *Articulating an Uncompromising Forgiveness*, 62.3 PHILOSOPHY AND PHENOMENOLOGICAL RESEARCH 529 (2001) [hereinafter Hieronymi]

¹⁹ See *id.*, at 552.

question as to why an acknowledgment of the moral truth of a situation without any resentment deserves the lofty title of forgiveness that Hieronymi ventures her vision of forgiveness:

“If all goes well, the joint action of requesting and granting forgiveness will leave the original meaning of the event in the past. This is the first thing forgiveness “does.”..... [w]ith forgiveness, the offended agrees to bear in her own person the cost of the wrongdoing and to incorporate the injury into her own life without further protest and without demand for retribution..... I am instead asking you to believe me when I say that I no longer see what I did to you as acceptable, to recognize and so ratify my change of heart. I am also, importantly, asking you to willingly absorb the damage that I have done and which I cannot repair, both the damage in our relationship and the broader material or financial damage, which is an offense to you and which testifies against my change of heart.”²⁰

Such an account, which traces its ancestry to both Levinas and Arendt, fails to completely resolve Kolnai’s paradox for several reasons.²¹ Most fundamentally, it fails because of the implausibility of forgiveness ever definitively leaving the original meaning of the event in the past. The internal memories of the forgiver and the forgiven, and the external recording by the archive, keep the event and the uncompromising forgiveness in the present and in the past. While a complete discussion of this theme requires a larger discussion on memory and emotions, Hieronymi’s account confuses the fundamental distinction between forgiveness and forgetting, since it ignores the possibility of forgiveness being granted but subsequently being withdrawn, or of resurfacing or regenerating

²⁰ Hieronymi, *supra* note 18, at 530, 531, 554.

²¹ Emmanuel Levinas makes the claim that “[f]orgiveness acts upon the past, somehow repeats the event, purifying it,” a notion similar to Hannah Arendt’s view that forgiveness alters the ethical significance of a wrongdoer’s past by keeping it from having a permanent or fixed character. See Lisa Guenther, *The Gift of the Other: Levinas and the Politics of Reproduction*, New York 2006, cited from, Paul M. Hughes, “Forgiveness”, in *Stanford Encyclopedia of Philosophy*, available at (last visited on 08 June 2010) <<http://plato.stanford.edu/entries/forgiveness/>>.

resentment arising from memory and cognition of the victim.²² The second feature of forgiveness offered by Hieronymi is unconvincing for a different reason. Hieronymi's account suggests that what forgiveness does is to enable the forgiver to 'willingly absorb the damage done'. However, a willing absorption of the damage does not need forgiveness, since there is no longer any wrongdoing to truly forgive. What one is willing to absorb cannot be accurately called wrongful damage that requires an apology and can be considered for forgiveness. A truly uncompromising forgiveness would require that the forgiver always unwillingly absorb the damage. Hieronymi's account admittedly suffers from further limitations. It cannot explain forgiveness in paradigm cases where: 1) no apology is offered; or 2) no present threat to protest may be clearly identifiable; or 3) other emotions such as disappointment, frustration, sadness, etc are involved while resentment is not involved; or 4) one forgives themselves.²³

As is clear from the foregoing analysis, Kolnai's paradox revolves around one central issue – the logical difficulties in conceptualizing a scenario where one [the analytic category of forgiver] can forgive the wrongdoer (and thereby forswear emotions such as resentment, hatred, indignation, disappointment, frustration and the like) *while at the same time* not condoning (but, in fact, condemning) the wrong committed. Like Hieronymi's approach, Saint Augustine's famous dictum of '*Hate the sin, love the sinner*' seems to, at first glance, provide a straightforward and satisfactory solution to the paradox. However Kolnai himself has pointed out the weakness of such solutions:

“Hate the sin” unambiguously precludes outright cynical condonation; yet “love the sinner”, encouraging unconditional and as it were instantaneous forgiveness, introduces an element of ambiguity. It postulates a neat separability between the sin and the sinner, which is fictitious, and insinuates a wholly misleading analogy between wrongdoing and illness.”²⁴

²² On the relevance of memory, history and forgetting, see PAUL RICOEUR, *LA MEMOIRE, L'HISTOIRE, L'OUBLI* (Paris, Seuil, 2000).

²³ Hieronymi, *supra* note 18, at 552-553.

²⁴ Kolnai, *supra* note 3, at 97.

Kolnai's overall unhappiness with the paradoxical concept of forgiveness and its role in moral and interpersonal life is all too evident. At one stage, he even goes so far as to formulate 'a self-sufficient maxim of interpersonal conduct' that seems to have no place for, and no need for, forgiveness:

*“Respond to value wholeheartedly, condemn and shun disvalue; be grateful for kindness done to you and reciprocate it, retaliate (within the appropriate limits, without overstepping your rights and lapsing into vindictiveness, without disproportionate hostility) for malicious wrong suffered.”*²⁵

It is possible that Kolnai felt that (a non paradoxical) forgiveness was an impossibility. We shall never know this with any degree of certainty. Here, however, it is useful to highlight two methodological choices invoked by Kolnai in his delimitation of the concept of forgiveness (the section of the paper immediately preceding his articulation of the logical paradox of forgiveness):

- 1) The analysis of forgiveness is restricted to a context of “interpersonal” relations – that is, relations between two parties “on a footing of equality”, with neither of them being the other’s “superior” or having “authority” over the other.²⁶
- 2) This interpersonal context of forgiveness is explicitly distinguished from the purely religious context(s) of forgiveness.²⁷

²⁵ Kolnai, *supra* note 3, at 98.

²⁶ Kolnai, *supra* note 3, at 91, 92.

²⁷ “[t]he literal translation of German *vergeben* (noun, *Vergebung*) would be “forgive” and “forgiveness”, but in actual usage it means “remission”, which can be granted only by God and has its place exclusively in a religious context.” Kolnai, *supra* note 3, at 94. Kolnai also adds: “[t]he form of reconciliation, called in English “Atonement”, is again a purely religious category: it means a restoration of (sinful) man’s “being at one” with God, and presupposes “penitence” or “penance” (“atoning for”), which belongs to religious language alone.” Kolnai, *supra* note 3, at 94.

We now turn our attention to the conceptual nature of divine forgiveness to ascertain whether such forgiveness is not vulnerable to Kolnai's paradox.²⁸

Divine Forgiveness, Kantian Grace and Kolnai's Paradox

Forgiveness features prominently in major religious traditions (including Buddhism, Christianity, Hinduism, Islam, and Judaism). The concept of forgiveness also features prominently in many non-religious and interpersonal contexts. India's apology for the iniquities of the caste system, Australia's apology to the stolen generations of aborigines, Japan's repentance for wartime atrocities, America's shame over its detention of people of Japanese descent and its apology to Native American populations, South Africa's Truth and Reconciliation Commission, the German apology to victims of the Holocaust, and public repentance by our political leaders, religious heads, and celebrities for their sexual infidelities, financial dishonesty, or other peccadilloes all represent examples in an increased trend where individuals, companies, armies, head of state, nations seek to be forgiven. The broad Abrahamic tradition (bringing together Christianity, Judaism, and Islam) that infuses the global grammar and idiom of law, politics, morality, economy and diplomacy plays and re-plays (in non-religious contexts) scenes of repentance, confession, apology and forgiveness drawn primarily from a religious stable. Arendt points out that '*[t]he discoverer of the role of forgiveness in the realm of human affairs was Jesus of Nazareth.*'²⁹ Derrida points out that "*the 'globalisation' of forgiveness resembles an immense scene of confession in progress, thus a virtually Christian convulsion-conversion-confession, a process of Christianisation which has no more need for the Christian church.*"³⁰ It is undisputed that the language, idiom, scene and cognition of forgiveness have evolved from

²⁸ Alexander Pope's *An Essay on Criticism* (1711) elegantly depicts the merit in a special attention to divine forgiveness. Pope states:

"Ah ne'er so dire a Thirst of Glory boast,
Nor in the Critick let the Man be lost!
Good-Nature and Good-Sense must ever join;
To err is human, to forgive divine"

See ALEXANDER POPE, *An Essay on Criticism*, available at (last visited on 08 June, 2010) <<http://poetry.eserver.org/essay-on-criticism.html>>.

²⁹ ARENDT, *supra* note 5, at 238.

³⁰ DERRIDA, *supra* note 6, at 31.

religious heritages across the world.³¹ It is in this context that a closer appraisal of interpersonal forgiveness as similar to (and different from) divine forgiveness is helpful, since it instructs us about the panoply of values, attitudes and reasons that could justify a truly logical forgiveness that resolves Kolnai's paradox.³²

While a descriptive account of divine forgiveness in the different religious traditions lies outside the scope of this paper, a useful conceptual bridge is provided for us by Immanuel Kant's articulation of the concept of grace.³³ We first note some of the salient features of Kant's moral philosophy that relate to our focus on forgiveness. In the *Metaphysics of Morals*, Kant seems to identify the existence of a limited duty to be forgiving in some situations. He however goes on to limit this duty in a manner that clearly foreshadows Kolnai's critical distinction between forgiveness and condonation. Warning us that too much forgiving manifests a lack of adequate respect for one self, Kant states: "*But this [the duty of forgiveness] must not be confused with meek toleration of wrongs... for then a human being would be throwing away his rights and letting others trample on them, and so would violate his duty to himself.*"³⁴ This recalls Aristotle's idea that the person deficient in appropriate anger is "unlikely to defend himself" and "endure being insulted" and is for this reason a "fool" (*Nicomachean Ethics*, 1126a5), and Hume's assertion that since anger and hatred are "inherent in our very frame and constitution" the lack of such feelings is sometimes evidence of "weakness and imbecility" (Hume, 1958, p.605).³⁵

³¹ The Bhagavad-Gita (one of the key holy texts of Hinduism) explicitly identifies forgiveness as a transcendental quality that belongs 'to godly men endowed with divine nature.' See Chapter 16, Text 3, BHAGAVAD-GITA.

³² For a contrary approach that argues that God is not capable of forgiveness, see Anne C Minas, *God and Forgiveness*, 25 *PHILOSOPHICAL QUARTERLY* (1975).

³³ Derrida, analyzing the right to grace and its relation to law, states: "*For the right of grace is, as its name suggests, of the order of law, but a law which inscribes in the laws a power above the laws.... The absolute monarch can, by divine right, pardon a criminal; that is to say, exercise in the name of the State a forgiveness that transcends and neutralises the law. Right [droit] beyond the law [droit].*" '*Car le droit de grâce est bien, comme son nom l'indique, de l'ordre du droit mais d'un droit qui inscrit dans les lois un pouvoir au-dessus des lois.*' See DERRIDA, *supra* note 6, at 45, 50.

³⁴ See *METAPHYSICS OF MORALS, CAMBRIDGE EDITION OF THE WORKS OF IMMANUEL KANT IN TRANSLATION* AA 06: 461 (Cambridge, 1996).

³⁵ Paul M. Hughes, *supra* note 1.

The incompatibility between forgiveness and the Kantian idea of freedom leads John R. Silber to conclude that Kant's view of freedom 'shatters on the problem of forgiveness'.³⁶ Silber, of course, acknowledges that 'Kant could clearly see the incompatibility of forgiveness and absolute freedom...was sorely troubled on this point...[and that]...[i]t is a tribute to Kant's reasonableness and humanity that he contradicted his theory by admitting the possibility of grace.'³⁷ The incompatibility between the idea of forgiveness and the conception of absolute freedom in Kant's writings arises because the purity (or strictness) of the law and the absolute nature of freedom effectively preclude the need for (or granting of) forgiveness by another. Kant points out in his opening lines in the preface to *Religion within the Limits of Reason Alone*:

*"So far as morality is based upon the conception of man as a free agent who, just because he is free, binds himself through his reason to unconditioned laws, it stands in need neither of the idea of another Being over him, for him to apprehend his duty, nor of an incentive other than the law itself, for him to do his duty.....for whatever does not originate in himself and his own freedom in no way compensates for the deficiency of his morality."*³⁸

Despite Kant's insistence that we can only become good or evil by our own efforts, Kant remains unwilling to discard the idea of grace altogether. For Kant, the notion of grace of God helps resolve the paradox that our moral transformation must already be completed before we can even coherently attempt moral improvement.³⁹ Therefore, in *Religion within the Boundaries of Mere*

³⁶ See John R Silber, *The Ethical Significance of Kant's Religion*, in the INTRODUCTION TO IMMANUEL KANT, *RELIGION WITHIN THE LIMITS OF REASON ALONE* cxxxii (Theodore M. Greene and Hoyt. M Hudson eds., 1960) [hereinafter Silber].

³⁷ See *Id.* Silber, at cxxxii, cxxxiii.

³⁸ "Preface to the First Edition", in Immanuel Kant, *Religion within the Limits of Reason Alone* 3 (Theodore M. Greene and Hoyt. M Hudson eds, 1960) [hereinafter Religion].

³⁹ Kant states: "[W]hat in our earthly life (and perhaps even in all future times and in all worlds) is always only a mere becoming (namely, our being a human being well-pleasing to God) is imputed to us as if we already possessed it here in full." See IMMANUEL KANT, *RELIGION WITHIN THE BOUNDARIES OF MERE REASON, AND OTHER WRITINGS*, CAMBRIDGE EDITION OF THE WORKS OF IMMANUEL KANT IN TRANSLATION AA 06: 75 (Cambridge, 1998) [hereinafter Religion]. Also see, David Sussman, *Kantian Forgiveness*, 96 KANT-STUDIEN 85, 92-3, 99 (2005). (hereinafter Sussman).

Reason, Kant does assign a crucial role to our belief that divine grace will supplement the inevitable moral shortfall which results from the infirmities of our being:

*“To believe that grace may have its effects, and that perhaps there must be such effects to supplement the imperfection of our striving for virtue, is all that we can say on the subject.”*⁴⁰

Significantly, Kant is confident in representing God’s decision to bestow grace as ‘elective’ or ‘arbitrary’ – as God, by hypothesis, would never be capable of wrongly apportioning grace one way rather than the other.⁴¹ Sussman points out that the divine ‘*apportionment of grace is properly represented [by Kant] as being inscrutable, not because he has no reasons to distribute it in one way rather than another, but because he has too many.*’⁴²

These broad contours of the Kantian notion of grace noted, we return to the question of why divine forgiveness is not vulnerable to Kolnai’s paradox. The French expression “*tout comprendre, c’est tout pardonner*” (to understand everything is to forgive everything) holds contained within it a part of the answer perhaps. Divine forgiveness accommodates (at the noumenal level) the idea of an existence with a unitary conception of information and time – that is, eternal knowledge and eternal time - as contrasted with the uncertain, largely indeterminate, episodic, and temporal nature of our own existence. Kant points out that a crucial part of receiving grace involves having our present state judged (by God) in terms of the totality of our character.⁴³ The notions of grace and divine forgiveness therefore are premised on an intuitive divine intellect that stands outside of time and is capable of grasping our true whole character immediately (and the constituent parts through the whole). Kant states:

“According to our mode of estimation, who are unavoidably restricted to temporal conditions in our conceptions of the relationship of cause to

⁴⁰ Religion, *supra* note 38, at AA 06: 120.

⁴¹ For a detailed discussion, see the section entitled “The Mystery of Election” in Religion, *supra* note 38, at AA 06: 143–144.

⁴² Sussman, *supra* note 39, at 103.

⁴³ As Kant says: “[T]he moral subjective principle of the disposition by which our life is to be judged is (as transcending our senses) not of the kind that its existence can be thought as divisible into temporal segments but rather only as an absolute unity.” See Religion, at AA 06: 70n.

effect, the deed, as a continuous advance in infinitum from a defective good to something better, always remains defective, so that we are bound to consider the good as it appears in us, i.e. according to the deed, as at each instant inadequate to a holy law. But because of the disposition from which it derives and which transcends the senses, we can think of the infinite progression of the good toward conformity to the law as being judged by him who scrutinizes the heart (through his pure intellectual intuition) to be a perfected whole with respect to the deed (the life conduct).⁴⁴

Divine forgiveness and grace, therefore, admit of a (divine) forgiver who stands outside of time and is capable of grasping the entirety of time (past, present and future) intuitively and is also cognizant of all possible information regarding the wrongdoer, the wrongful act, and the relationship between the wrongdoer and the injured person. If we follow Kant, this divine forgiver - while deciding whether to accord grace - judges the wrongdoer (even at the time of, or immediately subsequent to, the deed of wrongdoing) with awareness of the future 'perfected whole' of the wrongdoer. To emphasize this point, God (the divine forgiver) intuitively grasps the 'perfected whole' of the wrongdoer and (by virtue of being outside of time) is cognizant of the future path of the wrongdoer. Therefore, for God *qua* forgiver, it is possible to '*absolve someone from guilt and still remain committed to the idea that his [immediate] actions were wrong and unacceptable.*' It is these informational and temporal premises that render Kolnai's paradox inapplicable to divine forgiveness.⁴⁵

⁴⁴ Religion, *supra* note 38, at AA 06: 67.

⁴⁵ A potential human forgiver however does not have the (divine) vantage position of being outside of time nor does she have access to a totality of information regarding the wrongdoer, the wrongful act, and her continuing relationship with the wrongdoer. The injured person (or potential forgiver) therefore does not have an intuitive grasp of the 'perfected whole' of the offender and is not cognizant of the future trajectory of the offender's moral life. At the time of deciding on whether to forgive the wrongdoer, the injured person remains restricted to the empirically available information pertaining to the wrongful deed in question and the wrongdoer, to her subjective knowledge of the nature of her past relationship with the wrongdoer, and finally, to *her estimations* of her future relationship with the wrongdoer (if any). In this situation of relative uncertainty (particularly, whether the wrongdoer will behave in a similar fashion again), a human forgiver cannot *fully* absolve the wrongdoer of guilt (with the comfort of knowing that such absolution was indeed warranted in light of future developments) or condemn the wrongful act.

By contrast, the relative temporal and informational indeterminacy of interpersonal scenarios (where forgiveness is in question) leads to limitations on the wronged person's ability to both absolve the wrongdoer of guilt and to remain committed to the idea that the actions were wrong and unacceptable. In effect, the injured person finds herself in a position where she cannot grant a logically consistent forgiveness but must search for other responses.⁴⁶ This is exactly what Kolnai prophesized (and perhaps argued for) when he formulated his self-sufficient maxim for interpersonal conduct without resorting to the paradoxical notion of (inter-personal) forgiveness.

Salvaging the concept of forgiveness from complete logical havoc requires us to answer the question of how forgivers [in interpersonal contexts] can best approximate the informational and temporal premises that God *qua* divine forgiver enjoys. Such an approach is perfectly in consonance with the Kantian framework, which advocates the imitation of Christ (who represents the apotheosis of a 'humanity well-pleasing to God') as one of our fundamental duties. Speaking on very general terms, most religions support the human aspiration to imitate/approximate traits of divine beings and deities to the maximum extent possible. In order to realize forgiveness in our individual lives, in our law, and in our society, it is pertinent to ask which values, virtues or attitudes aid our moral transformation so as to provide a divine vantage position when deciding to forgive. In the final part of his paper, Kolnai attempts to 'salvage the concept of forgiveness from logical havoc' by directing us towards three inter-related enquiries that suggest the resolution of his paradox. First, Kolnai suggests a 'careful differential approach' involving degrees and variants in analyzing notions of wrongdoing, wrongdoer, etc. Kolnai states that 'genuine forgiveness...does not *necessarily* presuppose a dramatic and fundamental change of heart evinced by the wrongdoer.'⁴⁷ Second, Kolnai

⁴⁶ The Holy Quran states, in Sûrah ash Shura 42.40: "*The recompense for an injury is an injury equal thereto (in degree); but if a person forgives and makes reconciliation, his reward is due from Allah for Allah loves not those who do wrong.*"

⁴⁷ Kolnai, *supra* note 3, at 100. This is at variance with the approaches adopted by Pamela Hieronymi and TM Scanlon who agree that forgiveness is only warranted when the wrongdoer acknowledges the wrongness of the act(s) in question and takes requisite steps to reestablish a relationship with the injured party. See Hieronymi, *supra* note 10; TM Scanlon, *supra* note 10.

emphasizes the fact of the permanence of guilt of the offender *qua* the wrong, a permanence that is not altered by forgiveness.⁴⁸ Lastly, addressing the connection between forgiveness and the ‘generous venture of trust’, Kolnai emphasizes trust ‘as the culmination and epitome of morality.’ It is to this third aspect that I briefly turn my attention in the concluding remarks.

Trust, Patience and Forgiveness

In the concluding section of his paper, Kolnai idealizes forgiveness that springs from, and reveals, virtue as a very high virtue indeed. This virtue of logical forgiveness stands out in sharp contrast to a retributive attitude, to an indifference to Value and Disvalue, and to condonation and a lack of self-respect. Forgiveness, according to Kolnai, expresses the “*attitude of trust in the world which, unless it is vitiated by hare-brained optimism and dangerous irresponsibility, may be looked upon, not to be sure as the starting-point and the very basis, but perhaps as the epitome and culmination of morality.*”⁴⁹ He adds: “*It [attitude of trust] is closely tied up with the demotion of our concern about Certitude and Safety in favour of a boldly, venturesomely aspiring and active pursuit of Value – infinitely remote from a craven acceptance of Disvalue and from placing of practical success, comfort, “adjustment” etc. above Right, moral sensitivity, purity and sense of dignity. Offering trust “in advance” may increase the objective trustworthiness of the recipient*”⁵⁰ Clearly, trust is the only attitude that permits a rational account of forgiveness even in situations where it is unclear whether the offender has

⁴⁸ Kolnai’s example of Ralph who wrongs Fred and seeks forgiveness is particularly incisive. He says: “*The Ralph who has undergone this metanoia is in one sense no longer identical with Ralph the offender qua offender, but in another sense he is still identical with the Ralph who committed the offence, for he is still Ralph, i.e., the same person; in English verbal idiom, he is the Ralph who has committed the offence. Hence there is still “something to be forgiven” and an act of forgiveness on the wronged person’s-Fred’s-part is required in order to eliminate the offence from the texture of their relationship and in that sense to “annul” it (while it cannot be undone in the sense of effecting its not having been committed). The present Ralph is not discontinuous with the Ralph who once “wronged” Fred; our revoking, disavowing, regretting, condemning, repenting, etc. a past act of ours cannot, however decisively it may change our moral status, wish away our responsibility for that act.*” Kolnai, *supra* note 3, at 101.

⁴⁹ Kolnai, *supra* note 3, at 105.

⁵⁰ *See id.*

undergone a genuine change of heart regarding the offence (for example, where there is no apology and no sign of remorse and repentance).

Trust allows the injured person to recognize the potential future value of the wrongdoer and of a continuing relationship with her. Trust also allows the injured person to more fully recognize that the wrongdoer is just another person ‘like her’ – deserving of the same respect and capable of the same moral rightness. Trust promotes the feeling in the injured person’s mind that when she is being judged for her wrongdoing(s), she too will benefit from someone else (the forgiver) placing trust in her. Finally, trust also reduces the informational and temporal indeterminacy that the injured person faces (when contemplating forgiveness) by promoting several presumptions: that the offender has learned the mistake of her ways, that such wrongful deeds are not likely to be repeated in the future, that the wrongful act may be confidently judged on the basis of available information without worry about additional negative facts surfacing, and so on.

Kolnai’s parting words on the imperative value that enables trust find mention in his passing consideration of self-forgiveness. Kolnai states:

*“Yet we can have, or lack, patience with ourself: seeing that it is for our own life that we are most integrally responsible and that our total and definitive breach with ourself implies our absolute rupture with, and mistrust of, the world.”*⁵¹

Patience allows for, and nurtures, the attitude of trust that enables a logical and virtuous forgiveness. For example, patience allows the injured person to obtain more information about the wrongdoer, the wrong deed, and about the

⁵¹ Kolnai, *supra* note 3, at 106. Kolnai’s celebrated paper ends with some verses of the mediaeval “Monk of Heisterbach” quoted in Franz Brentano’s *Vom Ursprung sittlicher Erkenntnis*:

*Sonne dich an Gottes grosser Huld;
Hab’ mit Allen – auch mit dir – Geduld.*

(Bask in the sunshine of God’s great bounty; have patience with all – including thyself.)

Imperative Values of a Logical Forgiveness

(past, present and future) relationship between herself and the wrongdoer before deciding on whether forgiveness is to be granted. Patience allows the wrongdoer to endure the uncertainty of being forgiven or not. It prevents the wrongdoer from losing conviction in the Value of their redemption and remorse. Importantly, patience also helps confirm the accuracy of the characterization that the act in question was indeed wrong and that it has been correctly attributed to the wrongdoer. Patience also promotes the possibility of forgiveness on the understanding that the passage of additional time might result in the injured person feeling differently about the wrongful act and its significance.

Patience and Trust represent the imperative values for a logical inter-personal forgiveness. These values enable the best approximation of the informational and temporal attributes of divine forgiveness. Any judgment involving forgiveness and its related forms in juridico-political, judicial, and moral discussion would do well in considering how patience and trust can best be promoted through our ordering of norms, law and society.