

## **Redeeming the Wages of Sin: the workings of reparation**

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**Abstract:** Acts of violence and injustice by their nature call for a response. Where neither retribution nor unconditional forgiveness is good enough, a third possibility – of a redemptive justice which satisfies the desire for both peace and justice – may take place in the work of reparation. This paper considers the conditions and inner logic of four different scenes of reparation (atonement, “good sports”, healing/moral witness, and legal), and concludes with a brief application of this framework to the proceedings of the South African TRC.

**Keywords:** reparation, transitional justice, resistance, Truth and Reconciliation Commission, South Africa, Levinas, Derrida

*“The true problem for Westerners is not so much to refuse violence as to question ourselves about a struggle against violence which - without blanching in non-resistance to evil - could avoid the institution of violence out of this very struggle.”*  
Emmanuel Levinas (1991:177)

Those who have suffered unjust violence have recourse to two basic responses - retribution and forgiveness. But, as Levinas (1998: 37) has written: “Such a rectification [of human violence] does not put an end to violence: evil engenders evil and infinite forgiveness encourages it. Such is the march of history.”

Retribution is repayment, retaliation, a return of *quid* for *quo*, and as such appeals to justice but does not warrant peace. Seeking peace, unconditional forgiveness gives up on the debt it is owed, but thereby neglects justice. It may be that a third possibility – of a redemptive justice which satisfies both justice and peace – may take place in the work of reparation.

The distinctive aspect of unjust violence is the way in which it inescapably calls for resistance. A cycle of violence will thus never be ended by violence, but only through a consummation of this obligatory response from which no further violence is reborn. The power of this response – and it is first of all an ethical power – resides with the victim of violence. When one tries to imagine different

instances where reparation indeed achieves both peace and justice, the basic scene seems to contain the following elements:

- It takes place in the moment after violence, and
- involves a perpetrator and a victim (to use the language of the South African Truth and Reconciliation Commission), where
- the victim is willing to forego a justifiable use of violence
- in exchange for restitution or amends made by the perpetrator, such that
- the violence ends and the victim's place is restored.

For reparation to be effective, I would suggest that certain conditions, such as the following, are required. In principle,

- *reparation must be offered freely and without conditions to the victim of violence,*
- *by an implicated and penitent party,*
- *in recognition of the victim's prerogative to resist injustice.*
- *It must serve to recognize and restore the human and civic dignity of, and be freely accepted by, the one to whom it is owed,*
- *and it must signify an end to violence and a real turn towards peace.*

For reference, here is the Oxford English Dictionary definition of reparation:

"1. The action of restoring to a proper state; restoration or renewal, b. Spiritual restoration, salvation; 2. The action of repairing or mending; 3. Repairs; 4. The action of making amends for a wrong done; amends, compensation"

and from the Merriam-Webster Collegiate Dictionary:

"... the act of making amends, offering expiation, or giving satisfaction for a wrong or injury; compensation in money or materials payable to a defeated nation for damages to or expenditures sustained by another nation as a result of hostilities with the defeated nation."

Note the words "expiation" and "salvation" - reparation has both material and metaphysical or spiritual meaning. Reparation can't be exclusively material, because we are speaking of human suffering and human dignity which are opposed to such

reduction and commodification: reparation does not mean “cashing in” on suffering. On the other hand, reparation can't be only symbolic because human suffering and dignity are inseparable from the fact of mortal human life and the vulnerability of flesh.

So, having turned away from the option of revenge or retaliation - after violence, in the desire for an end to violence - those involved are left with some form of “forgiveness”, of the cancellation of a debt. Aggression demands a response: once push has come to shove, the ball is in the court of the one who has been shoved. If retaliation is rejected, only forgiveness, only some dismissal of that obligation is left. Forgiveness also has two modalities: absolute or conditioned. If we are talking about reparation, we are already talking about “conditional forgiveness”, and if we are conditioning forgiveness, it is both because of the claims of justice and also because – as Levinas observed - infinite forgiveness encourages violence.

Beyond these basic common elements, the various performances of reparation may be grouped into four basic scenes, which I delineate below as scenes of “atonement”, “good sports”, “moral witness” and “legal code”.

### **1. The “atonement” scene - remorse and forgiveness**

The perpetrator, humbled by remorse, makes his apology manifest by offering reparation as amends. Its acceptance by the victim in turn makes forgiveness manifest. Peace is made by the sincere repentance of the perpetrator. No further violence will be done by this hand. And after forgiveness, after reparation is offered and accepted, no vengeance is possible. Remorse and humility of the perpetrator are key, the means to forgiveness. Also, the humility of the victim to accept amends and forego retribution. Hence atonement, expiation, salvation.

It matters that both parties respond freely to their own individual “voice of conscience”. Meaning is intimate, extended between the perpetrator and the

victim - and perhaps God. In this scene, no one can be substituted for and there can be no coercion.

Forgiveness has two conditions here: firstly, acknowledgement by the perpetrator of the moral wrong done to the victim. It is not just that the deed was done, but that it *should not* have been done and *will not* be done again. Secondly, the victim's return recognition of the perpetrator – rehabilitation of the perpetrator - and relinquishment of the rights of revenge.

Reparation functions as amends, both practical and symbolic representation of apology, the acceptance of which implies satisfaction, or at least some sufficient degree of completion. Given the penitence of the perpetrator, a cessation of the original violation is assured, but reparation is still required for justice.

The practical limitation of atonement or expiatory forgiveness is that it depends upon the perpetrator's uncoerced remorse, and it can only be granted by the victim who has authority to forgive. It is a purely intimate scene. It also depends on something like grace and mercy, and is thus separate from the order of politics and bureaucracy.

## **2. The “good sports” scene – Queensberry rules and “*noblesse oblige*”**

Here, the hostilities have been a contest with rules which are understood and accepted by all participants as a matter of honour. There is a certain expectation of equality, of a fair fight which doesn't yield a perpetrator and a victim, but simply a winner and a loser. And the winner does not kick a man who is down, but rather helps him up. To the victor go the spoils, but the nobility of victory carries a burden of obligation to the weaker: chivalry rather than charity, the *noblesse oblige* to high-minded principles and noble actions which can include reparations as small as the handshake at the end of a schoolyard fight or contest.

The key factors here include a significant degree of equality, and a shared understanding of honour and of the nature of the conflict in which the

contenders are engaged. The appeal is to honour rather than justice, because the context already assumes justice. Reparation is required to re-establish the peace.

There is a paradoxical exchange of power in this scene. It would appear that the obligation to nobility originates with the victor who graciously expresses it -even though, in the actual ethical situation, this obligation arises as the victim's right to response. At the same time, the payment and reception of sporting reparations confirm the ascendancy of the victor. The loser may have recourse to a rematch, but straight vengeance is impossible if he aspires to an honourable victory (and whatever is at stake, no matter the size, is usually framed in terms of honour – even if the code of honour differs in different arenas).

After a conflict between nations, this same sense of code-bound honour may be referred to in the payment of reparations – although a less-than-noble expedience or self-interest may also be in play. Recall the Merriam-Webster definition of reparation: “compensation in money or materials payable to a defeated nation for damages to or expenditures sustained by another nation as a result of hostilities with the defeated nation.” Reparation acts to establish and reinforce a social or geopolitical order as well as to compensate the loser for harm done and reinscribe him in the order of things.

The problem with the “good sports” scene is that it flattens the ethical aspect of reparations, by taking fairness and justice as already given. If the violence was no game to begin with, its reduction to this scene is a further injustice.

There are a couple of key differences between the “good sports” scene and the “atonement” scene. First, violence signifies differently. In the “atonement” scene, the violence of the perpetrator is seen by both parties to have been an evil and in need of redemption. The one violated is both innocent and the way to this redemption. The “good sports” scene understands violence as simply a natural, even essential, part of the game. As long as the rules are followed, issues of innocence and wickedness simply do not arise.

The second difference is in the symbolic use of reparation. In the “atonement” scene it serves, if you will, as the chalice of the mystery of redemption. In the “good sports” scene, reparation is like the consolation prize in a contest: real enough compensation, but it also confirms who is the winner and who is not.

What these two scenes of effective reparation have in common is, firstly, that they involve only the direct participants – all that signifies arises *between them* - and, secondly, both stifle any escalation of violence, even though the “good sports” scene does so through creating a momentary balance of power rather than an outright cessation. They could be seen to mirror each other: in the “atonement” scene, peace is at hand and reparation is justice done; in the “good sports” scene, justice already prevails and reparation seals the peace.

### **3. The “moral witness” scene: substituting the perpetrator**

In this situation, there is no expression of remorse from the perpetrator, and the focus is on the effects of violence, particularly on the personal harm incurred by the victim. Reparation as a recognition and restoration of the victim’s dignity and welfare takes place as a service rendered by someone who enters the intimate scene from outside. It is, in some ways, a ritualized version of the “atonement” scene.

In terms of neither reacting with violence nor “blanching in non-resistance to evil”, atonement would seem the most satisfactory conversion of unjust violence - but it is achieved only in an intimate scene of penitence and forgiveness.

Without a penitent perpetrator, it is as if the victim’s right of reply itself becomes a burden that weighs down upon the original violation. If retribution is either impossible or undesired, the victim is stranded alone with the unanswerable injustice of violation.

Without recourse to a penitent perpetrator, there now come third parties whose very care and attention declare an ethical stand on the side of the victim. It is these witnesses – in the place of the missing perpetrator - who acknowledge the

wrong done to the victim. It is important to consider how this could possibly provide reparation or redemption: how does a third party enter this scene and create the conditions for atonement to occur?

One possibility would be as a force-bearing authority, such as the judiciary described in the "legal code" scene below. Another is the intervention of a "moral witness" who takes the place of the perpetrator by acknowledging and repenting, as if witnessing itself was an indictment of responsibility for the injustice done. As if, as a moral witness, one's own innocence could be set aside, revealing a responsibility for another's suffering and thus for their restoration in the world. Whatever else is offered to the victim in compensation, the key reparation here is this willingness of the witness to acknowledge and suffer for the victim's twin burdens of violation and inexpressible resistance.

And yet, because the presence of the intimate witness signifies precisely the absence of the perpetrator, the victim's forgiveness, or surrender of the right to respond, takes place through an acceptance that the debt of return owed to the assailant is unpayable. Forgiveness, as the forfeiture of the right to respond, takes place as grief or mourning in the presence of a witness. Shared grief as reparation for the irreparable: this is indeed a strange scene.

It is, however, very easy to get this wrong. The one who steps into the perpetrator's place is in a treacherous position. (Consider the feckless comforters of Job!) The victim is simultaneously empowered - in the sense of holding the moral high ground, or right of resistance - and helpless, distraught or destroyed. The intimate witness has to stay in relation with both of these aspects, daring to neither tempt the victim to further violence nor adding to the injury. The witness must step into the vacant space of the perpetrator without assuming that role, either as a scapegoat for the perpetrator (it would be a mistake for the witness to be killed or exiled) or by continuing the persecution of the victim by, for example, bearing down upon the victim's identity as only the humiliated, wounded and dependent one, or insisting upon the victim's supposed obligation to forgive.

The pain and humiliation of violence renders the victim an outcast. In Elaine Scarry's apt phrase, it "unmakes the world". To speak of reparation is to speak of the possibility of remaking the world, for the victim to return to his or her self and dignity, to be redeemed. Here, this redemption is accomplished even in the absence of a penitent perpetrator, even perhaps in the absence of material compensation. Through the intervention of a moral witness, the victim may find peace. However, this scene may also fail justice and encourage violence to the extent that the absent or unrepentant perpetrator is simply let off the hook.

This "moral witness" scene of atonement and reparation is again both intimate and subtle, and therefore outside of the control of politicians and bureaucrats.

#### **4. The "legal code" scene: restitution by the force of law**

The second possibility of reparation through third party intervention is through the judicial proceedings of a court of law. Rather than substituting itself for the perpetrator, as does the moral witness, here the state takes over the role of the victim - and the victim's obligation to respond - by referring the violation to itself.<sup>1</sup>

There is a third force at work here which claims authority over both the freedom of the perpetrator and the ethical force of the victim. With this force, call it the "force of the law", the court takes over the burden of retribution from the victim by referring the violation to the state, and compels alleged perpetrators to publicly appear and account for themselves. As in the "good sports" scene, this is a force of social construction but, importantly, it recognizes and acknowledges the violence as a violation and a wrong.

After the violence, both victim and perpetrator have recourse to a court of law with established norms for the justification of violence and consequences for their violation. As citizens, both victim and perpetrator are considered equal



before the law and are both subject to its force. Both sides are heard, and a judgement is made. If the perpetrator – now the defendant – is found to be guilty, he will have to pay appropriate reparations to the state. (If this is conceived as punishment, the scene shifts toward retribution.)

The court hears the victim – now the plaintiff – and in that hearing acknowledges his or her civil dignity. The wrong of the violation is publicly confirmed by the sentencing of the convicted perpetrator. After completing the conditions of the sentence, the perpetrator may be restored to the community.

As in the “moral witness” scene, reparation is accomplished through the intervention and substitution of a third party. As in the “good sports” scene, there is an assumption of equity and fair conduct. As in the “atonement” scene, the perpetrator is present to make amends, albeit under duress.

Although “the legal code” scene alone has the benefit of being suitable to public and civic action, it bears its own set of problems. Being an abstracted or proxy power, the force of law may forget its source or be subverted to other interests. It is capable of both vengeance and injustice, of breaking with both the peace and the justice it is meant to serve. In recognition of this, judicial power is subject to various checks and balances, including explicit recognition of the rights of the accused perpetrator.

Secondly, victims’ rights must be carefully tended as well. Assuming the victim’s right to respond may be an act of compassion or it may be a further injustice. The state cannot ever forgive – in an ethical sense – on behalf of the victim.

Forgiveness in this sense is always the prerogative of the one who has directly sustained the injury. The force of law is not intimate enough to the scene to invoke and receive either forgiveness or grief. The transformative or redemptive aspect of reparation is therefore unrealized.

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<sup>1</sup> I’m using the example of criminal rather than civil law here, simply to bring out the play of third party substitution in this scenario.

Finally, there is the uncertainty of judgement itself, what Derrida (1992:22-27) calls “aporias of justice”, three of which he names as the “*épokhè* of the rule”, “the ghost of the undecidable”, and “the urgency that obstructs the horizon of knowledge”. Further, insofar as juridical law relies upon precedent and established community norms, its authority will be more tenuous in transitional societies or after unprecedented violence.

Various complementary relationships can be found between these reparation scenes: very loosely, the “moral witness” and “atonement” scenes are forward-looking and anticipate peace, while the “good sports” and “legal code” scenes are more backward-looking and concerned with justice. The “atonement” and “good sports” scenes directly involve both victim and perpetrator, while the “moral witness” and “legal code” scenes insert a third party in place of one or the other. The victim has greater personal agency in the “atonement” and “good sports” scenes, less in the “moral witness” and “legal code” scenes. Reparation is more material in the “legal code” and “good sports” scenes; more symbolic – even metaphysical – in the “atonement” and “moral witness” scenes.

I began this essay with the suggestion that reparation could be instrumental to a redemptive justice when it is offered freely and without conditions to the victim of violence, by an implicated and penitent party, in recognition of the victim’s prerogative to resist injustice; and that it must serve to recognize and restore the human and civic dignity of, and be freely accepted by, the one to whom it is owed, and it must signify an end to violence and a real turn towards peace. All four of the reparation scenes I have described may have the potential to meet these conditions, alone or in combination. Whether or not they succeed will be dependent on the particular situation, just as the particular situation will dictate which scene is most appropriate.

Ultimately, it is the last point on the list which is crucial. Reparation must mark an end to the violence and a real turn towards peace. Although some may choose to relinquish their claim easily, whether through generosity or exhaustion (even while some others cling to theirs as a grudge or a cross or a curse “unto a

thousand generations”), victims dare not forgive their obligation to respond to injustice without a reasonable expectation that the violence they have suffered is over. A just peace must be available. If it is not, the ethical force of justice will continue to provide fuel for a forceful resistance.

But, let me stress, such resistance – whether actualized or not - is always a part of redemptive justice. The expression of resistance already acknowledges and begins to restore the human dignity of the oppressed. Forceful resistance may first of all be required to bring about the conditions for reparation and the settling (or forgiveness) of the debt incurred by injustice, as, for example, was the case in South Africa. In the words of Chris Hani, the anti-apartheid leader assassinated in 1993: "When we finally launched an armed struggle, we were not abandoning our quest for peace, we were pursuing that quest in the most effective way left to us by an intransigent and brutal regime." (SACP:2003).

### **Resistance, reconciliation and reparation in South Africa**

As we know, an end to the armed conflict in South Africa was eventually negotiated and the new democratic government established a Truth and Reconciliation Commission (TRC) to provide “a bridge between the past of a deeply divided society characterized by strife, conflict, untold suffering and injustice, and a future founded on the recognition of human rights, democracy and peaceful co-existence for all South Africans” (RSA:1995). The Reparation and Rehabilitation Committee of the TRC was instructed to provide for “affording victims an opportunity to relate the violations they suffered; the taking of measures aimed at the granting of reparation to, and the rehabilitation and the restoration of the human and civil dignity of, victims of violations of human rights” (ibid.)

The TRC has recently submitted its final report to the state president and its recommendations for reparation are being discussed. The complexities of this debate are beyond the scope of this paper, but I would like to briefly refer to some of the difficulties which faced the Commission as it tried to carry out its mandate of nation-building and reconciliation. My setting of the various scenes of reparation may perhaps help to highlight the significance and hazards of these challenges.

In this founding document, the stated goals of the TRC are to do with peace. The orientation is forward, to a peaceful future, looking to the past only in order to memorialize the violations which occurred in hope that they not be repeated – “building a human rights culture” in the future. A primary goal is to rehabilitate and heal victims: specifically by giving them an opportunity to appear and be heard, and by granting reparation, and by the restoration of their dignity, both human and civil. In my framework of reparation scenes, these concerns belong to either the “moral witness” or “legal code” scenes.

Both of these are scenes of substitution. As the third party “moral witness”, the Commission took the place of the absent (for the most part) remorseful perpetrators by giving victims an opportunity to testify to their experiences. The state, as the arbiter of the law, also took up the victims’ burden to discharge the debt of injustice. At the same time, it was constrained by a transitional political agreement that amnesty be granted to perpetrators for fully- and truthfully-confessed, politically-motivated atrocities such as kidnapping, murder and torture. As well, the new South African Constitution was cited in the TRC’s founding legislative document (“The Promotion of National Unity and Reconciliation Bill, 1995”), declaring a need “for understanding but not for vengeance, a need for reparation but not retaliation, a need for *ubuntu* [an African expression of humanism], but not for victimization”. Thus, it would seem that the state has taken over the victims’ claims for justice, while it already has a prior commitment to forgiving – and even forgetting, which is the more literal meaning of amnesty – the crimes that were done to them. The government was taken to the Constitutional Court (“AZAPO v. President”) over this issue, and the court found that while this curtailment of the victims’ right of “access to court” was justified in the circumstances, amnesty for perpetrators was to be balanced by informational truth, reconstruction and reconciliation.

There is a clear undertaking by the government and the judiciary that the violence of the past shall be resolved and left behind, but justice now depends, at least in part, upon the reparations to be offered to and accepted by those who

suffered under apartheid. To the extent that the new democratic order represents a true national liberation, and to the extent that it is able to provide “a better life” for its citizens, the new state and political dispensation is itself reparation. The Reparation and Rehabilitation Committee of the TRC has also made specific proposals for reparations which are victim-oriented and concerned with healing and remembering, and restoration and development. These include Individual Reparation Grants, symbolic reparation, legal and administrative measures, community rehabilitation programmes, and institutional reform (TRC: no date).

In these proposals, the state is asked to carry on its third party intervention and provide for the sort of reparations that fit the “moral witness” (grief work and memorialization) or “legal code” (legal measures, grant payments) scenes. This is to be paid for from a President’s Fund, which was also set up through the TRC process, and is funded by parliament and private contributions. As voluntary contributions have not thus far been significant, the TRC has also made various suggestions to government for a dedicated collection either from the public or from business – that is, from those who benefited from apartheid.

This raises another complicating factor - the attitude of apartheid’s beneficiaries. My impression is that most would like to believe that they are actually in a “good sports” scene. They would like to say that “A war was fought between two sides, our side lost and now it’s time to move on, just forgive and forget. And since we lost, any call for us to make reparation is itself unjust and humiliating.” This is somewhat bizarre, but it has so far proven an effective restraint on government action, given both the desire for national reconciliation and unity and the hard fact that most of the economy is still controlled by white interests, and also in the absence of vigorous moral leadership in the so-called “white community”.

Only a clear and meaningful offering of significant reparations, including a recognition of the moral evil and injustice of apartheid will allow victims to honourably give up their claim for retribution. If the perpetrators and the beneficiaries won’t come forward, what can guarantee the peace? If not the state

and civil society, then it will fall yet again to the victims to carry the load for us all. This absence of justice always brings to mind the anguished angry voice of Paulina in Ariel Dorfman's play "Death and the Maiden":

*"And why does it always have to be people like me who sacrifice, why are we always the ones who have to make concessions when something has to be conceded, why always me who has to bite her tongue, why?" (1994:66)*

South Africa's transition towards peace and liberation is undeniably full of promise, but the spectre of past horrors will continue to disturb us as long as the issue of reparation remains unresolved. The force of justice will abide with the oppressed until it can be transformed and redeemed. In the absence of remorse and its grace the state must, in all good faith, shoulder that burden - either by offering reparation in place of the perpetrators and beneficiaries, or by forcing some meaningful form of payment from them. In the event that it does not or cannot do so, those who have suffered must continue to struggle for peace, justice and the redemption of their dignity.

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