

# Political Reconciliation, the Rule of Law, and Genocide

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*ABSTRACT* Political reconciliation involves the repairing of damaged political relationships. This paper considers the possibility and moral justifiability of pursuing political reconciliation in the aftermath of systematic and egregious wrongdoing, in particular genocide. The first two sections discuss what political reconciliation specifically requires. I argue that it neither entails nor necessitates forgiveness. Rather, I claim, political reconciliation should be conceptualized as the (re-)establishment of Fullerian mutual respect for the rule of law. When a society governs by law, publicly declared legal rules establish clear and practicable standards for behavior which are enforced in practice. Subjects of the law thus can form stable and reasonable predictions of how other citizens and officials will respond to their actions. After explaining why this analysis of political reconciliation is compelling, the third section spells out the implications of my analysis for determining the possibility of achieving and the justifiability of pursuing political reconciliation.

## INTRODUCTION

Political reconciliation involves the repairing of damaged relationships among members of a society. This paper considers the possibility and moral justifiability of pursuing political reconciliation in the aftermath of systematic and egregious wrongdoing, in particular genocide. Reconciliation at the societal level intuitively seems necessary to prevent continual wrongdoing and/or reprisals for past wrongdoing. Yet, at the same time, the prospects for actually achieving political reconciliation seem extremely unlikely in precisely the contexts where it is most needed. In addition, a certain moral unease often accompanies calls for political reconciliation. A lingering worry as to whether it is permissible to try to foster political reconciliation hovers in the background, considering the extent and character of the horrific violence and wrongdoing that created the need for political reconciliation in the first place.

Ascertaining the possibility and moral justifiability of the pursuit of political reconciliation depends on first understanding what such reconciliation entails. Reconciliation is often considered synonymous with forgiveness. This implies that the possibility of reconciliation is conditional on the possibility of forgiveness in the aftermath of wrongdoing. Reconciliation's moral justifiability hinges on the moral



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permissibility of forgiveness. In the first part of this paper I argue that equating political reconciliation with forgiveness is inaccurate. Political reconciliation neither entails nor requires forgiveness. Rather, I argue in the second section, political reconciliation should be conceptualized as involving the (re-)establishment of Fullerian mutual respect for the rule of law. The third and final section spells out the implications of my analysis of political reconciliation for the possibility and justifiability of its pursuit. My goal is to develop the conceptual tools for explaining the (im)possibility and (un)justifiability of pursuing reconciliation in specific contexts.

## 1. THE FORGIVENESS MODEL OF RECONCILIATION

Reconciliation refers broadly to the process of repairing damaged relationships.<sup>1</sup> We can distinguish conceptually between a state of reconciliation and a process of reconciliation. The former outlines the end or goal toward which a process of reconciliation should aim. A conception of political reconciliation, then, should have three components. First, it should describe the ways in which relationships have been damaged. Second, it should specify the desired right or corrected relationships and draw attention to the dimensions along which relations must change. Finally, an analysis should provide prescriptions for how to repair the damage to relationships, so as to cultivate the desired or “right” relations. There are many different kinds of reconciliation that might be pursued in the aftermath of systematic and egregious wrongdoing, such as the reconciliation among individual perpetrators and victims. This paper focuses on the reconciliation among members of a society, or political reconciliation.

Before articulating my positive conception of political reconciliation, it is instructive to consider one prevalent conception of political reconciliation. In the literature on transitional justice, authors frequently link reconciliation with interpersonal forgiveness.<sup>2</sup> Forgiveness involves the overcoming of negative emotions, such as anger, hatred, resentment, and indignation, which are natural responses to wrongdoing.<sup>3</sup> For example, political scientist Rajeev Bhargava writes, “By reconciliation, I mean a cancellation of enmity or estrangement, via a morally grounded forgiveness.”<sup>4</sup> Philosopher Elizabeth Kiss also equates forgiveness and reconciliation.<sup>5</sup> David Crocker describes political reconciliation as forgiveness as a “thicker” notion of reconciliation.<sup>6</sup>

Many discussions of forgiveness focus on its importance for relationships. The ability and willingness to forgive seem necessary in order for long-term relationships, especially intimate interpersonal relationships, to be possible. It is likely that at some point individuals will be wronged by those they care about. When an individual who has been wronged retains her resentment, hatred, and anger, it can become difficult to view the wrongdoer in any light other than as “the one who wronged me.” The continuance of long-term interpersonal relationships, then, depends on a willingness of those in such relationships to overcome resentment and hurt, a willingness to trust that the wrong done does not represent the core of the individual with whom one is involved, and a willingness to maintain hope that those who wrong can act in better ways in the future.

When applying these insights to political relationships, political reconciliation as forgiveness implies that a primary source of damage to political relationships stems from the presence of pervasive negative reactive attitudes, including resentment or hatred.

Such attitudes damage political relationships by clouding interactions with such negative emotions, or by preventing or inhibiting any interaction at all. From this perspective, processes of reconciliation should encourage victims to overcome their hatred and resentment. By overcoming these negative reactive attitudes, the thought is, perpetrators and victims will no longer be alienated and separated. Processes of political reconciliation are effective, then, if they foster the desired kinds of changes in citizens' attitudes. The possibility of political reconciliation in the aftermath of egregious wrongdoing thus depends on whether forgiveness is possible in such contexts. The justifiability of the pursuit of reconciliation is determined by the permissibility of forgiveness.

In my view, there are two primary reasons why this conception of political reconciliation is problematic.<sup>7</sup> First, this description of political reconciliation is, at best, incomplete. Negative reactive attitudes are natural responses of individuals when they perceive that they have been wronged. They signal that relationships have been damaged, but do not themselves reveal the specific source or cause of this damage. Instead of specifying what happened during the interactions among citizens and officials to cause these negative emotions and subsequent estrangement, this account focuses on the legacy of the wrongdoing and harmful forms of interaction. However, an analysis of political reconciliation should help us understand what constitutes damage to political relationships.

Similarly, overcoming negative emotions is not sufficient to build or repair political relationships. Overcoming negative attitudes may set the stage for the possibility of certain kinds of interactions. However, it is also important to change interactions so as to prevent anger, hatred, and resentment from developing again in the future. Yet reconciliation as forgiveness does not help us understand what needs to happen after forgiveness occurs. It provides no concrete guidance as to how interactions among citizens need to change so that wrongdoing will not be repeated in the future. An account of political reconciliation should spell out our expectations of how members of a society will interact if reconciliation is achieved.<sup>8</sup>

A second, deeper problem with the conception of political reconciliation as forgiveness is that it is modeled on the requirements for reconciliation in the interpersonal context. Interpersonal relationships, however, differ in important ways from the *impersonal* relations characteristic of members of a society in general. Political relationships are fundamentally relationships among strangers, whose interactions are defined and shaped in significant ways by economic, political, and legal institutions. Indeed, one of the most significant facets of political wrongdoing and political reconciliation is their institutional dimensions. Institutional structures can systematically distort relationships so that individual citizens do harm to one another, and institutions themselves can cause direct harm. A model of reconciliation that focuses on characteristic features of interpersonal interactions overlooks the broader institutional context within which the impersonal interactions of members of a society occur.

Separating the concept of reconciliation from that of forgiveness entails that we reconceptualize the debate surrounding the possibility and moral desirability of reconciliation. Determining the possibility of reconciliation in the aftermath of egregious wrongdoing, like genocide, is not identical to ascertaining whether forgiveness is possible in such a context. Nor is the question of the justifiability of the pursuit of reconciliation identical to the question of the permissibility of forgiveness. In the next section I offer an

alternative analysis of political reconciliation, and spell out the implications of this analysis for thinking through these issues in the third section.

## 2. RECONCILIATION AS FULLERIAN MUTUAL RESPECT FOR THE RULE OF LAW

In this section I discuss why the restoration of Fullertian mutual respect for the rule of law is an important dimension of the process of political reconciliation. First, I describe the characteristics of political relationships structured by the rule of law, highlighting the moral values that are realized in relations of this kind, and demonstrating why (re-)establishing mutual respect for the rule of law should be a goal of processes of reconciliation. I then consider the objection that (re-) establishment of respect for the rule of law should not be an aspiration for processes of reconciliation because adherence to the rule of law can actually be a significant source of damage to relationships. After responding to this objection, I discuss how political relationships are damaged by the breakdown of the rule of law. I then address the objection that the breakdown of mutual respect for the rule of law is an insignificant dimension of damage to political relationships because it does not directly address the damage caused by substantive violations of human rights.

Let me begin by explaining why, in my view, Fullertian mutual respect for the rule of law is an important element of the kinds of relationships that processes of reconciliation should foster. The key to understanding its importance is to recognize the distinctive kind of social order law creates and the distinctive way law structures political relationships, both among citizens (horizontally) and among citizens and officials (vertically).

According to legal philosopher Lon Fuller, law involves the governance of conduct by a system of rules. In his work, Fuller articulates eight principles of legality that specify necessary conditions that law must fulfill in order to guide the conduct of citizens and officials in practice, and thereby achieve its purpose.<sup>9</sup> The first seven criteria ensure that citizens are able to take legal requirements into consideration when deliberating on how to act. They also ensure that citizens are able to fulfill legal requirements. Thus, according to Fuller, laws must be (1) general: they must identify rules prohibiting or permitting specific kinds of behavior. Laws must be (2) widely promulgated and (3) prospective, indicating how individuals should act in the future. Laws must also (4) be clear, (5) be non-contradictory, and (6) not ask the impossible. The demands laws make on citizens should (7) remain relatively constant over time. Finally, and most importantly for my purposes, the eighth requirement guarantees that declared rules provide the standard by which the actions of citizens are judged in practice. Thus there needs to be (8) congruence between declared rules and their enforcement by officials. This criterion requires government officials to punish citizens if and only if they violate the standards outlined by legal rules, and in these cases should punish citizens *because* they violated that standard. According to Fuller, each criterion must be met to a minimal degree in order for law, or a system of rules that govern human conduct, to exist.<sup>10</sup> The complete failure to fulfill any one of these criteria “results in something that is not properly called a legal system.”<sup>11</sup> Once the minimum threshold is met, legislators and citizens can fulfill the eight criteria to a better or worse extent and still succeed in making law.

As a form of social order, law involves the control of activity and entails the subordination of some to the authority of others. The creation of a legal social order produces a stable social framework for the interaction of citizens. Fuller writes, “Law is basically a matter of providing the citizenry with a sound and stable framework for their interactions with one another, the role of government being that of standing as a guardian of the integrity of this system.”<sup>12</sup> Thus law is not a social order designed primarily to facilitate the expedient or efficient achievement of the ends of government officials.<sup>13</sup> Rather, government officials play an essential role in maintaining this framework, which facilitates the interests of society generally.

Political relationships structured by law promote the exercise of agency in two important ways. First, law supports agency by furthering the ability of citizens to successfully realize their own goals and plans. Law provides a sound and stable framework within which interaction among citizens can occur. Within this framework, subjects of the law can form stable and reasonable predictions of how other citizens and officials will respond to their actions. Publicly declared legal rules establish clear and practicable standards for behavior, and thus provide a guide for what citizens and officials can expect from one another. When a society actually governs by law, these shared, reciprocal expectations are regularly met by citizens and officials. Continually reaffirmed, these expectations become part of the social background that citizens and officials can rely on, often implicitly, when interacting with others.

Second, implicit in the social order that law creates is the view of the subjects of law as responsible agents. In Fuller’s words, “To embark on the enterprise of subjecting human conduct to the governance of rules involves of necessity a commitment to the view that man is, or can become a responsible agent, capable of understanding and following rules, and answerable for his defaults.”<sup>14</sup> Political relationships defined and structured by law are respectful of agency in the sense that it is the actions and decisions of citizens, not the whim of officials, which determine the official treatment they receive. When a society governs by law, according to Fuller, “the Government says to the citizen in effect, ‘These are the rules we expect you to follow. If you follow them, you have our assurance that they are the rules that will be applied to your conduct.’”<sup>15</sup> Thus citizens can determine what official response they are likely to receive from their actions, giving them an important source of control over the trajectory of their lives and over the character of their interaction with officials.

According to Fuller, relationships structured by law realize another important moral value: reciprocity. The creation and maintenance of a system of rules that govern behavior in practice depends on the actions of both lawmakers and those subject to law. Fuller writes that the maintenance of a system of rules to regulate behavior is “the product of a sustained purposive effort”<sup>16</sup> that “depends upon the discharge of interlocking responsibilities—of government toward the citizen and of the citizen toward government.”<sup>17</sup> Specifically, to maintain a system of rules that actually govern behavior, officials must outline a standard of behavior that citizens are capable of following and must actually enforce that standard. This standard is realized when the requirements of the rule of law are met. However, citizens must also generally obey declared rules; disobedience must be the exception, not the norm. Widespread disobedience renders futile the activities of lawmakers. Underpinning the efforts to maintain a legal system is thus fundamentally a commitment to reciprocity. Fuller writes, “The existence of a

relatively stable reciprocity of expectations between lawgiver and subject is part of the very idea of a functioning legal order.”<sup>18</sup>

Relationships are also reciprocal in the sense that the moral obligation of fulfilling the duties associated with being a citizen or with being a government official depend in part on the actions of others. Whether citizens are obligated to obey the law depends in part on whether officials are fulfilling their reciprocal responsibilities to promulgate clear and prospective rules for conduct that actually regulate conduct and are enforced. Thus the obligatoriness of doing one’s part, as a citizen or official, to maintain the legal order is always conditional.

Finally, the (re-)establishing of relationships structured by law is appropriately viewed as a goal of processes of reconciliation because, in Fuller’s view, the social order created by law is conducive to substantive justice. There are two connections between the procedural requirements of the rule of law and substantive justice. The first connection is epistemic. Respect for the rule of law helps us to know that injustice exists. In Fuller’s words, “The internal morality of law demands that there be rules, that they be made known, and that they be observed in practice by those charged with their administration . . . acting by known rule is a precondition for any meaningful appraisal of the justice of law . . . . It is the virtue of a legal order conscientiously constructed and administered that it exposes to public scrutiny the rules by which it acts.”<sup>19</sup> Respect for the rule of law creates conditions for open governance in which the policies actually being pursued and promoted by governments are made known and can be critically assessed.

There is also a second, deeper connection. Fuller claims that the rule of law in practice constrains the systematic pursuit of injustice. In other work I have offered an extended argument to support this Fullerian view.<sup>20</sup> Very briefly, a government that openly and legally abandons its commitment to human rights or supports and condones practices that violate human rights risks losing its legitimacy among citizens. Internationally, a government risks isolation, sanctions, and military intervention. In addition, such open governance makes it significantly more difficult for government officials and a political community to deny to themselves, their fellow citizens, or the international community that they are acting unjustly. The inability to deny responsibility for or rationalize injustice can be extremely threatening, given that both individuals and communities have a fundamental need to see themselves as decent and moral. We thus have good reason to expect governments to avoid the open, legal pursuit of injustice. At the same time, a government official runs risks by openly flouting the rule of law, given the importance of governing by law as a criterion for legitimacy domestically and in the international arena. There is an incentive for officials to claim to govern by law and maintain the facade of law but, in practice, to fail systematically to govern by law.

I have been arguing that the (re-)establishment of mutual respect for the rule of law should be an important goal of processes of reconciliation because relationships structured by law realize three important moral values: agency, reciprocity, and justice. It may be objected that processes of reconciliation should not promote mutual respect for the rule of law because adherence to the rule of law can significantly damage political relationships. According to this objection, one of the troubling features of the Holocaust is the fact that its evil was legally pursued; during the Nazi period government officials were too scrupulous in their following of orders and adherence to the rule of law.

Hannah Arendt evidences this when she writes of Otto Adolph Eichmann that “whatever he did he did, as far as he could see, as a law-abiding citizen. He did his *duty*, as he told the police and the court over and over again; he not only obeyed *orders*, he also obeyed the *law*.”<sup>21</sup> Cloaking the pursuit of immoral goals under the rubric of law and emphasizing the importance of obeying orders, so the objection goes, precluded or impeded more careful reflection on the substantive ends that were being pursued; enabled officials to deny to themselves and others that their actions were wrong and unjust; and ultimately facilitated, rather than obstructed, the pursuit of gross injustice.<sup>22</sup>

I offer a two-part Fullerian response to this concern about the damage that may result from respect for the rule of law. First, it is inaccurate to characterize the Holocaust as legally pursued because there was a serious and systematic erosion of legality throughout the Nazi regime. The Nazi case does not provide support for the claim that governing by law is compatible with or conducive to the pursuit of injustice. Second, discomfort with promoting respect for the rule of law rests on a confusion between deference to authority, which may have been prevalent in Nazi Germany, and respect for the rule of law. Respect for the rule of law demands precisely the careful reflection that Eichmann, among other officials, failed to exhibit throughout the Nazi period. I consider each point in turn.

The case of Nazi Germany occupied Fuller throughout his writings. Fuller argued at length that there was a serious erosion of legality throughout the Nazi period. When Hitler came to power, Fuller writes, “the exploitation of legal forms started cautiously and became bolder as power was consolidated.”<sup>23</sup> Fuller highlights four major sources of the erosion of legality during the Nazi period. First, there was liberal use of retroactive legislation whose primary purpose was to “cure” previous “legal irregularities.”<sup>24</sup> Fuller discusses one vivid example following the “Roehm purge,” when following the execution of Nazis on Hitler’s order, the cabinet approved a law authorizing those actions. Second, there was extensive use of “secret laws.” Fuller cites a report stating that “killings in concentration camps were made ‘lawful’ by secret enactment.”<sup>25</sup> Third, courts routinely disregarded statutes, including Nazi statutes, whenever a ruling based on such a statute ran the risk of displeasing higher authorities. Thus, in an important sense, rulings were not based on the law but on whatever would be pleasing to the Führer. Finally, “when legal forms became inconvenient,” Nazi officials bypassed the law and acted informally through party members in the street. Fuller notes that signs in German shop windows reading “Judisches Geschäft” were not legally required but rather “requested” by the party. This informal route was taken precisely because the Nazis knew “that a formal and published legal enactment would invite foreign criticism.”<sup>26</sup> Not coincidentally, Fuller writes, systematic erosions of legality were most prominent “in those areas where the ends of law were most odious by ordinary standards of decency.”<sup>27</sup> Thus the pursuit of the Final Solution was coupled with erosion in legality, rather than being pursued in a scrupulously open and legal manner.

Second, Eichmann’s unquestioning obedience to authorities did not demonstrate respect for the rule of law nor show that commitment to the rule of law can blind us to the pursuit of injustice. Following Fuller, there is an important distinction between “deference for constituted authority and fidelity to law.”<sup>28</sup> Respect for the rule of law does not mandate unreflective or unquestioning obedience to orders from superiors. To the contrary, fidelity to law requires reflective and purposeful effort; “a realization of this

ideal [fidelity to law] is something for which we must plan.”<sup>29</sup> Respect for the rule of law requires officials to find the appropriate balance among the criteria for legality so that the resulting system of rules can and does govern conduct. Governing by law is a “practical art.”<sup>30</sup>

In addition, both citizens and officials must acknowledge that the moral duties that legal order creates for officials and citizens are always conditional. Whether citizens are obligated to obey the law or government officials are obligated to follow directives from their superiors depends in part on whether officials or superiors are fulfilling their reciprocal responsibilities to promulgate clear and prospective rules for conduct, which actually regulate conduct and are enforced. When the bond of reciprocity underlying the social order of law is ruptured, “nothing is left on which to ground the citizen’s duty to observe the rules.”<sup>31</sup> The systematic disregard of the reciprocal expectations constitutive of law undermines the law as an institution. There is no rationale for following the duties proscribed by the rule of law if the justification for those duties was the importance of maintaining a defunct pattern of social interaction. Thus fidelity to law requires that officials and citizens pay critical attention to their own actions and the actions of others.

I have been arguing that mutual respect for the rule of law is an important characteristic of political relationships that processes of reconciliation should cultivate because of the morally valuable character of relations structured by law. I now want to consider how relations are damaged when the rule of law is undermined. This analysis sets the stage for my discussion of the possibility and justifiability of the pursuit of reconciliation.

Given the affinity between the rule of law and justice, undermining legality creates a social context conducive to the systematic pursuit of injustice and violations of human rights, with genocide as the most extreme example. The open and clear form of governance that the rule of law mandates is ill-suited to the purposes of governments bent on terrorizing a population into submission, or pursuing controversial policies of injustice that will be rejected by its citizens and/or the international community. In addition to creating an environment conducive to injustice, undermining the rule of law explicitly disrespects and undermines the agency of individuals. When legal rules no longer specify clear guidelines for conduct or are no longer enforced, then the ability of individuals to successfully pursue their goals or avoid official reprimand is correspondingly compromised. Fuller writes, “Every departure from the principles of the law’s inner morality is an affront to man’s dignity as a responsible agent. To judge his actions by unpublished . . . laws . . . is to convey to him your indifference to his powers of self-determination.”<sup>32</sup>

Further, violations of the rule of law contribute to the development of a sense of betrayal, resentment, and distrust among citizens and officials, which can contribute to or further fuel conflict or violence. For citizens who live in a society that purports to govern by law, the legal system has a social meaning that influences the expectations that citizens and officials have of each other, as well as their responses to the failure by citizens or officials to fulfill these expectations. Distrust is a natural reaction to such violations, given that such violations weaken the confidence of citizens that declared rules reflect *de facto* official policy and practice. When officials violate the congruence requirement they act illegitimately and violate this fundamental principle of the rule of law; their actions are not authorized by previously declared rules. In the process, officials betray the

expectations that citizens have of them. The discovery of this betrayal can be distressing and perplexing. Finally, systematic violations of the rule of law are a source of resentment, which can become a potential source of instability. Resentment builds when officials expect citizens to obey the law despite the failure of officials to either pass laws that citizens can obey or enforce declared rules, and intensifies when officials punish disobedience by citizens but fail to punish violations of the rule of law by officials.

Finally, the undermining of the rule of law disturbs the reciprocal character of relations maintained when law successfully governs interaction. When officials fail to respect the requirements of the rule of law yet continue to expect or demand obedience from citizens, they have undermined the basis on which such obedience can be legitimately demanded. As Fuller writes, “So soon as it becomes perfectly clear that you have no intention whatever of treating me as you yourself wish to be treated, then I shall consider myself relieved from the obligation to treat you as I would wish to be treated.”<sup>33</sup> When this bond of reciprocity is ruptured, “nothing is left on which to ground the citizen’s duty to observe the rules.”<sup>34</sup>

This analysis of the damage to relationships caused by undermining the rule of law may seem unsatisfactory. Some may object that this analysis overlooks the most significant source of damage to relationships, namely, the substantive violations of the most basic human rights characteristic of the Holocaust and of genocide. It is true that the procedural framework of the rule of law does not directly address how violations of human rights and substantive justice damage general social relations; it assumes that such violations do damage relationships. However, it specifies important institutional conditions that need to be realized systematically, by citizens and officials, to prevent the damage involved in substantive injustice and violations of human rights from occurring. Mutual respect for the rule of law points to a necessary condition for the prevention of the recurrence of genocide and the realization of the hope, “Never again.” This role in inhibiting the pursuit of injustice is one reason for viewing the damage caused by undermining the rule of law as significant.

### 3. MAKING SENSE OF THE POSSIBILITY AND JUSTIFIABILITY OF THE PURSUIT OF RECONCILIATION

With the concept of reconciliation as (re-)establishing mutual respect for the rule of law in mind, I want to return to this paper’s initial questions surrounding the moral justifiability of pursuing and the possibility of achieving political reconciliation. In contexts in which there are calls for political reconciliation, perpetrators, victims, and those complicit in wrongdoing face the daunting challenge of living together in the same society. Unlike many interpersonal relationships, political relationships are more difficult to sever completely; doing so would entail, for example, secession. The fact that continued interaction is unavoidable is one source of the moral imperative to repair and change relations so as to prevent the recurrence of violence and renewed bloodshed.

Viewing reconciliation as a process of (re-) establishing mutual respect for the rule of law clarifies the importance of achieving reconciliation as a constraint on the recurrence of violence, and why its achievement is of moral value. Achieving reconciliation implies cultivating mutual respect for the rule of law and contributing to the codification and

enforcement of a set of public rules to guide and regulate behavior. The social order and political relationships structured by law and maintained through the reciprocal actions of citizens and officials hinder the pursuit of future injustice and provide a stable framework for interactions among citizens. There is moral value in developing such relationships, given that political relationships structured by law are respectful of agency and reciprocity, and act as a constraining force on the pursuit of immoral ends. In addition, developing such relationships avoids the moral concerns surrounding the view of reconciliation as forgiveness. Reconciliation does not mandate the overcoming of resentment and recognizes the appropriateness of resentment in certain contexts.

However, the moral value realized by achieving processes of reconciliation is not sufficient to establish the justifiability of its pursuit. Equally important is the character of the processes used to promote relationships defined in part by mutual respect for the rule of law. Minimally, processes should be respectful of agency and be reciprocal, given that these are defining features of relationships structured by law. The basic idea is that the end does not justify the means. It is not permissible for processes to violate the core moral values they are trying to realize.

To ensure this, it is important to consider the character of past wrongdoing. To the extent that government officials were blatantly disrespectful of the agency of citizens, whether through undermining the rule of law, violating human rights, or, in extreme cases, pursuing the destruction of a specific group, it is reasonable for such citizens to distrust officials' true commitment to respecting the rule of law. Similarly, when officials demanded unquestioning obedience without implicit or explicit acknowledgement that the moral duty to obey is always conditional on their own actions, it is reasonable for citizens to be suspicious as to whether officials are really committed to reciprocity. A moral burden of proof rests on those who failed to acknowledge the demands of reciprocity or to respect agency, to demonstrate a commitment to reciprocity and respect for agency, before making demands on others in processes of reconciliation. An acknowledgement of prior wrongdoing may go some way toward meeting this burden. Without such an acknowledgement, officials' expectation or demand of citizens' obedience may cause further damage to relationships and appear uncomfortably similar to the actions and demands of officials in the past.

Knowing that the pursuit of reconciliation is conditionally justifiable—conditional on the character of the processes used to (re-)establish mutual respect for the rule of law—does not establish that the achievement of reconciliation is possible. Reconciliation's possibility depends partly on the possibility of (re-)establishing the rule of law. Appreciating the damage to political relationships caused by the breakdown or absence of the rule of law contributes to understanding what may influence or undermine this possibility in specific contexts.

The possibility of (re-)establishing the rule of law may depend on a minimal level of trust. Citizens and officials are likely to be more willing to constrain their behavior in the way that mutual respect for the rule of law demands if they believe that their efforts will not be futile. How to (re-)create and maintain trust is an interesting and difficult question beyond the scope of this paper. However, one factor that may influence the answer is whether, and what kind of, recovery from trauma is possible. As I have argued elsewhere, systematic violations of the rule of law are consistent with the kinds of trauma that lead to post-traumatic stress disorder (PTSD) in individuals.<sup>35</sup> Like violations of the rule of law,

traumatic experiences violate fundamental expectations of individuals. Violations of the rule of law contravene the expectations citizens have about how officials or other citizens will act. Traumatic events challenge the validity of beliefs that individuals commonly hold about the nature of the world and themselves, including a belief in their agency. Individuals crucially rely on such expectations and beliefs in important ways when navigating the social world. In addition, just as resentment, betrayal, and distrust are effects of the breakdown of the rule of law, rage and a deep, general distrust of the world are symptoms of PTSD. Given the analogous character of the breakdown of the rule of law and traumatic stressors, research in psychology on PTSD may provide valuable insights into a society's ability to respond to the distrust that the breakdown of the rule of law creates, and into whether and under what conditions it is possible to cultivate the minimal trust required to begin the process of (re-)establishing mutual respect for the rule of law.

## CONCLUSION

Political reconciliation involves the repairing of damaged relationships among members of a society. In this paper I have argued that one important aspect of the repair that reconciliation requires consists of the (re-)establishment of mutual respect for the rule of law. Developing such relationships promotes agency and reciprocity, while constraining the pursuit of injustice. The moral justifiability and possibility of pursuing and achieving reconciliation were considered. The pursuit of reconciliation is morally justifiable, conditional on the character of the processes used to promote mutual respect for the rule of law. The possibility of achieving reconciliation may depend on the possibility of cultivating the minimal trust required to establish a mutual commitment to restoring the rule of law.<sup>36</sup>

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## NOTES

1. See John Roth, "Useless Experience: Its Significance for Reconciliation after Auschwitz," in *After-Words: Post Holocaust Struggles with Forgiveness, Reconciliation, Justice*, ed. David Patterson and John K. Roth (Seattle, WA: University of Washington Press, 2004), 86; Daniel Philpott, "Introduction," in *The Politics of Past Evil: Religion, Reconciliation, and the Dilemmas of Transitional Justice*, ed. Daniel Philpott (Notre Dame, IN: University of Notre Dame Press, 2006), 14; Trudy Govier and Wilhelm Verwoerd, "Trust and the Problem of National Reconciliation," *Philosophy of the Social Sciences* 32.2 (2002): 178–205. This is the second sense of reconciliation that Paul M. Hughes identifies in his "Moral Atrocity and Political Reconciliation: A Preliminary Analysis," *International Journal of Applied Philosophy* 15.1 (2001): 123–35.

2. The literature on transitional justice considers the moral issues facing societies in transition from repressive rule or civil conflict to democracy.
3. Authors disagree on precisely which negative emotions need to be overcome in forgiveness. For an example of two different views, see Jeffrie Murphy and Jean Hampton's *Forgiveness and Mercy* (Cambridge: Cambridge University Press, 1990).
4. Rajeev Bhargava, "Restoring Decency to Barbaric Societies," in *Truth V Justice: The Morality of Truth Commissions*, ed. Robert I. Rotberg and Dennis Thompson (Princeton, NJ: Princeton University Press, 2000), 45–68.
5. Elizabeth Kiss, "Moral Ambition Within and Beyond Political Constraints: Reflections on Restorative Justice," in Rotberg and Thompson, *Truth V Justice*, 68–98.
6. David Crocker, "Truth Commissions, Transitional Justice, and Civil Society," in Rotberg and Thompson, *Truth V Justice*, 99–121.
7. There are other important questions to ask about reconciliation as forgiveness; I do not address them here because the criticisms I focus on are sufficient to show why a new model of reconciliation is needed. One set of questions surrounds what role the state should play in processes designed to help citizens overcome negative emotions. Some critics of the forgiveness model question whether it is appropriate for the state to try to change our feelings or attitudes, rather than focusing on regulating how we act. In addition, though Jean Hampton and Jeffrie Murphy both recognize that forgiveness is not always appropriate, they disagree about the conditions under which forgiveness is morally appropriate and justified. An advocate of the forgiveness model would also need to spell out the conditions under which forgiveness is morally justified.
8. Interestingly, Jean Hampton, who offers one of the most influential accounts of forgiveness, states that forgiveness sets the stage for reconciliation, but is not itself reconciliation.
9. Lon L. Fuller, *Morality of Law*, rev. ed. (New Haven, CT: Yale University Press, 1969), 46–90.
10. Fuller, *Morality of Law*, 39.
11. Fuller, *Morality of Law*, 39.
12. Fuller, *Morality of Law*, 210.
13. Fuller uses the label "managerial direction" for the form of social order designed to facilitate the ends of superiors.
14. Fuller, *Morality of Law*, 162–63.
15. Fuller, *Morality of Law*, 40.
16. Fuller, *Morality of Law*, 106.
17. Fuller, *Morality of Law*, 216.
18. Fuller, *Morality of Law*, 209.
19. Fuller, *Morality of Law*, 157–58.
20. See Colleen Murphy, "Lon Fuller and the Moral Value of the Rule of Law," *Law and Philosophy* 24 (2005): 239–62.
21. Hannah Arendt, *Eichmann in Jerusalem: A Report on the Banality of Evil* (New York: Penguin Books, 1963), 135. Italics in original.
22. An analogous criticism has been leveled in the context of South Africa. For my response, see Murphy, "Lon Fuller and the Moral Value of the Rule of Law."
23. Lon L. Fuller, "Positivism and Fidelity to Law: A Reply to Professor Hart," *Harvard Law Review* 71.4 (1958): 630–72.
24. Fuller, "Positivism and Fidelity," 650.
25. Fuller, "Positivism and Fidelity," 651.
26. Fuller, *Morality of Law*, 158. The activities of the Gestapo demonstrate the erosion of legality. Authorized by a vague law, effectively left to operate without legal regulation and without subjection to judicial review, the activities of the Gestapo were not governed by rules. They could imprison individuals as part of a system of "protective custody" without legal proceedings and without needing to provide an explanation for the arrest. Their operation created conditions in practice in which citizens were subject to the whim of officials, contrary to the very ideal of law. See Frederick Hofer, "The Nazi Penal System I," *Journal of Criminal Law and Criminology* 35.6 (1946): 385–93.

27. Fuller, "Positivism and Fidelity," 661.
28. Fuller, *Morality of Law*, 160.
29. Fuller, "Positivism and Fidelity," 642.
30. Fuller, *Morality of Law*, 91.
31. Fuller, *Morality of Law*, 40.
32. Fuller, *Morality of Law*, 162.
33. Fuller, *Morality of Law*, 21.
34. Fuller, *Morality of Law*, 40.
35. Colleen Murphy, "Political Reconciliation, the Rule of Law, and Post-Traumatic Stress Disorder," in *Trauma, Truth, and Reconciliation: Healing Damaged Relationships*, ed. Nancy Nyquist Potter (Oxford: Oxford University Press, 2006), 83–109.