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ORIGINAL PAPER

Reply to Critics

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Abstract One of the central moral challenges facing numerous political communities today is political reconciliation. In the aftermath of repression, conflict, and injustice, communities confront the task of repairing damaged relationships among citizens and between citizens and officials. In *A Moral Theory of Political Reconciliation*, I develop a theory of what this process entails and of its moral significance. My central claim is that political relationships are damaged when and to the extent that they fail to express reciprocity and respect for agency. Failures of reciprocity and respect for agency are how relationships go wrong during extended periods of repression and conflict, and it is in cultivating these two values in relations among citizens and officials that relationships are repaired. I am very grateful for the thoughtful, incisive, and stimulating comments provided by Cindy Holder, Tracy Isaacs, and Alice MacLachlan. In this reply to their commentaries, I first provide a brief background of the motivation for my project and an overview of the main theses that I defend over the course of my book. I then turn to three kinds of concerns raised by Holder, Isaacs, and MacLachlan. The first urges me to rethink the restriction of my analysis of political reconciliation to contexts of transition. The second challenges the particular way that I conceptualize the demands of reciprocity and respect for agency in political relationships. The final set turns to my analysis of the processes that can facilitate reconciliation.

Keywords Transitional justice · International criminal trials · Reconciliation

This symposium is based on the Author Meets Critics session on my book at the 2012 Pacific meeting of the American Philosophical Association. Val Napolean was one of the critics at that session, and I am also grateful to her for her reflections on my book.

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Overview of *A Moral Theory of Political Reconciliation*

Civil conflict and repression leave significant damage in their wake—to people, to institutions, to infrastructure, and to relationships. An interesting feature of contemporary discussions of such damage is the prominent role that a concern for political reconciliation plays. Appeal to political reconciliation dominates political and theoretical discussions of how communities should move on from periods of conflict and repression and, ideally, in their wake usher in a period of democracy. South Africa following the end of apartheid, Iraq upon the overthrow of Saddam Hussein, and Argentina in the aftermath of the military junta are just a few of the dozens of examples of societies that have attempted or are attempting this transition.

There is a widespread consensus that the possibility of success in the establishment of democratic institutions hinges on the ability of a community to repair the relationships that have been damaged throughout the course of conflict or repression. This is unsurprising. Wrongdoing is characteristic and characteristically widespread during conflict and repression. Communities in transition are thus looking forward—attempting to move on from conflict and repression and establish democratic institutions—but do so in the shadow of the past, and in particular past wrongdoing. When individuals and/or those they care about are subject to arbitrary arrest, torture, or humiliation; denied basic political rights; or become the target of a genocidal campaign, it is difficult if not impossible to envision interacting at all with those responsible for such abuses, let alone cooperatively interacting in a peaceful and democratic manner. Yet some degree of interaction is unavoidable and necessary insofar as groups previously in conflict remain part of the same community, and if interaction is to avoid repeating the wrongs of the past, it must be cooperative and just.

But why exactly is cooperative, just interaction seemingly impossible? What has gone wrong to block or impede relationships in the future? What can be done to create conditions that make interaction possible? Is, for example, the primary impediment the presence of resentment and/or the erosion of trust? Do criminal trials impede the process of reconciliation, or are they required for reconciliation to be possible? Only recently have theorists begun to systematically examine these questions, and one finds little consensus on the answers among the accounts. Diverging accounts of the sources of damage to relationships exist, as well as conflicting views about what will be effective in promoting repair.

Underlying questions about how best to understand political reconciliation and the efficacy of various efforts to promote reconciliation are fundamentally normative concerns. The promotion of reconciliation is contentious politically and theoretically not only because it asks for those formerly at conflict to work together, which practically may be extremely difficult to achieve. It is contentious because it is not obvious whether or under what conditions this call for cooperation is morally justified to make. In the aftermath of serious and systematic wrongdoing, does urging reconciliation place an unreasonable demand on those who have been subject to wrongdoing? Moreover, it is unclear that justice and reconciliation can be pursued at the same time. Justice is an especially salient concern during transitions because of past wrongs. Is there a tension between these two ideals, or are they fundamentally compatible? If reconciliation and justice do conflict, which moral value should be pursued? Should reconciliation be sacrificed for the sake of justice, or justice for the sake of reconciliation?

Against this background, *A Moral Theory of Political Reconciliation* begins by articulating standards of success for an account of political reconciliation. In my view, an adequate account addresses three basic questions: How are political relationships damaged

during the course of conflict and repression? What are the general characteristics of repaired relationships? And what are the criteria we should use when evaluating the effectiveness and justifiability of efforts to promote such repair? Given the moral debates prompting interest in reconciliation, I argue that the answers to each of these questions should be normative. For example, an explanation of how relationships are damaged must articulate and clarify why such damage is morally concerning. An account must capture the institutional dimensions of political relationships—the way that institutions formally structure interaction by providing rules for permissible conduct—as well as the more informal features of such interaction, including importantly the attitudes that citizens and officials take toward each other.[1] Methodologically, I claim that political reconciliation should not be treated as a subject of applied philosophy. In particular, it is a mistake to use an existing account of ideal democratic political relationships or a general theory of reconciliation to understand the characteristics of reconciliation in the political case. Rather, an analysis of political reconciliation for transitional contexts must be tied to and grounded in the dynamics of conflict and repression.

My central thesis is that, at the most general and abstract level, relationships among citizens and officials break down during conflict and repression because there is an erosion of respect for agency and recognition of the demands of reciprocity. Relationships are damaged when interaction runs afoul of these two values. What are the signs or evidence that respect for agency and a commitment to reciprocity have been eroded? To answer this question, I appeal to three normative frameworks: the rule of law, reasonable political trust, and relational capabilities. Each of these frameworks articulates some of the specific demands that reciprocity and respect for agency make on officials and citizens. During conflict and repression, these demands are characteristically unfulfilled to an important degree.

Following Lon Fuller, I understand the rule of law to specify a set of requirements for citizens and officials.[2] Such requirements are designed to ensure that legal rules govern conduct in practice. The requirements for officials specify the form that laws must take (e.g., be clear, consistent, relatively stable) and emphasize the necessity of officials guiding their conduct according to such regulations in practice. For their part, citizens must obey declared rules. By contrast, during conflict and repression officials frequently disregard legal limitations on their conduct, such as by engaging in torture when officially proscribed. Political trust refers to an attitude of optimism taken with respect to the competence and lack of ill will of fellow citizens and officials.[3] Competence indicates knowledge of and ability to fulfill the role-related responsibilities associated with citizenship or occupying an official role (e.g., president, member of the military, or legislative member). Lack of ill will captures the idea that fellow citizens and officials are willing to abide by the institutional order structuring interaction. Political trust requires trust responsiveness, a disposition to take seriously the fact that trust has been placed in oneself when deliberating about what to do. By contrast, during conflict and repression the default attitude toward officials and/or fellow citizens is generally one of distrust; officials are seen as committed to inflicting harm instead of protecting citizens from harm, especially in contexts of genocide, or unwilling to fulfill their duties toward citizens in contexts of systematic corruption. Capabilities capture the scope of freedom of individuals within their

[1] For the argument for these criteria see the Introduction, *A Moral Theory of Political Reconciliation* (New York: Cambridge University Press, 2010).

[2] For my analysis of the role of the rule of law see Chapter 1.

[3] This account of trust draws on the work of Karen Jones and is developed in Chapter 2.

relationships, and in particular the extent to which they are free to be recognized as members of a political community, respected, participate in the institutions of their community (political, social, and economic) and avoid poverty.[4] Conflict and repression characteristically diminish such freedoms by, for example, restricting who can participate in political processes by law or social convention. Processes of reconciliation (e.g., truth commissions) are effective insofar as they promote the rule of law, political trust, and relational capabilities.

Political Reconciliation and Transitions

My analysis of political reconciliation is developed specifically for communities emerging from extended periods of repression and civil conflict during which there were systematic violations of human rights, and attempting to transition to democracy. However, Holder and MacLachlan both note that the types of damage to relationships that I identify are found in other contexts, in particular stable democratic contexts. They cite violations of the requirements of the rule of law and cynicism among voters in the United States and Canada as examples. Both urge me to expand the contexts to which my analysis applies beyond those in which regime change has occurred and violence recently ended.[5]

MacLachlan further argues that the fact that my analysis has more general applicability creates a theoretical dilemma. As noted above, I claim that political reconciliation should not be treated as a subject of applied philosophy, but should be grounded in an understanding of the dynamics of conflict and repression. This suggests that there is something distinctive about the damage to relationships we find in transitional contexts, which a general framework will miss. Yet the frameworks I use to conceptualize the damage to relationships and corresponding repair seem to be general and do not pick out something distinctive about relationships in transitional contexts; we find violations of the rule of law and issues of trust in a broad range of contexts including stable democratic ones.[6] On the other hand, my account could be seen as offering a general account of political health. Reconciliation signifies a certain state of political relationships, and in particular a level achieved after a period of ailment. However, this suggests that I am doing applied philosophy, namely applying a general framework of political health to the particular context of transitions, an account that does not depend on an understanding of the dynamics of transitions. "'Reconciliation' becomes a threshold achieved in a broader scale of political health—and note that we need not know the particularities of political (or economic) 'illness' to recognize if and when that threshold is reached."[7]

In responding to MacLachlan's dilemma, I first want to clarify the reasons for my more modest claim about the applicability of my analysis. I restrict the scope of my analysis to transitional contexts because I take the standard of success for my account to be how well it captures the damage that characteristically occurs during contexts of repression and conflict, and the subsequent repair required. It is in that context that the pursuit of political reconciliation is the subject of ongoing discussion and carries significant normative weight in debates about how to deal with past wrongs. This is not to suggest, nor do I claim, that

[4] The framework of capabilities is the subject of Chapter 3.

[5] Holder, "Transition, Trust and Partial Legality: On Colleen Murphy's *A Moral Theory of Political Reconciliation,*" doi:10.1007/s11572-014-9297-2.

[6] MacLachlan, "Political Reconciliation and Political Health," doi:10.1007/s11572-014-9296-3.

[7] Ibid., p. xxx.

the damage I identify is unique to transitional contexts. In fact, as both Holder and MacLachlan correctly point out, we do find violations of trust and the rule of law in stable democracies. Furthermore, I am open to there being aspects of what MacLachlan terms "political health" that are not captured by my analysis and/or damage that characteristically occurs in other political contexts that I do not describe.

My methodological claim is that the starting point for my theoretical reflection about political reconciliation should be the descriptive account of relationships during conflict and repression, not a general framework of ideal democratic relationships or general account of reconciliation. One reason for starting with the particular dynamics of political interaction in such contexts is that it draws attention to dimensions of the process of political reconciliation that analyses of democratic political relationships or general accounts of reconciliation typically neglect, namely the social and moral conditions for morally justifiable and valuable interaction. Such conditions are characteristically present—and so often implicitly taken for granted—in analyses developed in stable democratic contexts. Moreover, they are not conditions needed for the repair of more personal relationships. But such conditions are precisely what are needed to be cultivated in transitional contexts in order for repair of political relationships to occur.

For example, declared rules govern behavior in practice only if certain conditions obtain. As Fuller points out, citizens must have faith in law. This faith captures a confidence and trust that officials are, in Fuller's words, "playing the game of law fairly" and so formulating public and general rules that are actually respected and enforced in practice.[8] Such faith is needed because chronic suspicion can motivate a continual scrutiny of government actions that impedes and interferes with interaction. Moreover, the inclination of citizens to restrain their conduct according to legal prescriptions is impacted by their faith in law and legal processes. Only when such faith is widespread will citizens in general be willing to constrain their conduct in the way declared rules demand. When there is a widespread sense that obedience is futile because officials do not respond to individuals on the basis of whether they have violated the law or because it is impossible to determine how legal rules will be interpreted, such faith breaks down and disobedience is more likely to become widespread. Groups targeted by violence or injustice frequently lack precisely this faith in law, and it is this faith that processes of reconciliation must cultivate and ensure is reasonable to cultivate. Similarly, it is not just that trust may be absent among certain groups within a community; it is also the case that the basic conditions that would make trust reasonable are absent, such as the presumption that other groups within one's community do not desire to harm or destroy oneself or the groups of which one is a part.

Focusing on the particular dynamics of interaction in contexts of conflict and repression is also important because there are fundamental differences in the degree of damage experienced in stable democratic contexts and paradigm transitional contexts. To illustrate, no society perfectly satisfies the requirements of the rule of law; satisfying the demands of the rule of law remains an aspiration for most communities. However, in conflict and repression, the violations of the rule of law are systematic and widespread, and it is common to find an erosion of legality so severe that the basic existence of a framework of law governing interaction can be called into question. We do not find this level of erosion in stable democratic contexts.

These differences in the damage found in transitional contexts versus stable democratic contexts impact the necessity of pursuing societal political reconciliation as an objective of

[8] Lon Fuller, "Human Interaction and the Law," in Kenneth Winston (ed.), *The Principles of Social Order: Selected Essays of Lon F. Fuller* (rev. ed), (Portland: Hart Publishing, 2001), pp. 231–66, at p. 255.

public policy in each case. Given the extent and depth of the damage to relationships one finds in transitional contexts, there is a clear need for an explicit social commitment to interact in better ways and a conscious effort to effect such change. However, an explicit commitment to and pursuit of political reconciliation may not be as imperative in stable democratic contexts, given that the scale of damage is smaller and that the social and moral conditions on which relationships structured by law, trust, and capabilities depend are basically unaffected.

The differences in damage also impact the role of processes such as a criminal trial in each context. For example, processes that may be effective in a reasonably just democratic community may not be effective in repairing relationships in transitional contexts. Trials risk being perceived as, and are sometimes used to mete out, mere victor's justice in transitional contexts. In stable democratic contexts, with an absence of civil conflict, trials do not have this risk. Even when effective, processes may also have a different function in each context. Insofar as general reconciliation is not a pressing objective in stable democratic contexts, trials need not be used to address wrongdoing to promote that objective.

The Collective Character of Political Relationships

A general concern expressed by all three critics is that my analysis of political reconciliation is too individualistic. By conceptualizing damage based on how individual lives are affected and appealing to the normative ideals I choose, I fail to capture the collective character of relationships and of wrongdoing. In sect. 5, I address Isaacs's specific worry about the efficacy of international criminal trials given this collective character. Here I consider Holder's concern that an individualistic framework yields a descriptively and normatively inadequate model of political relationships.

Holder begins by noting that I conceptualize relationships in terms of interactions among individuals. However, she claims, citizens and officials interact as members of various groups. In her words, "… Murphy assumes an individualistic model of political relationships—a model in which individuals relate to state officials and to one another primarily as individuated persons rather than as constituents or tokens of groups…" Because citizens interact as tokens of groups, their experience of the state and of civil society varies. For example, repression and violence are not uniformly encountered, and the justification for violence frequently appeals to groups' identity. The manner in which I conceptualize relationships, Holder suggests, does not provide resources for describing this variation.

Holder raises important concerns about the descriptive adequacy of my account. In response, I want first to note my normative reason for conceptualizing political relationships in what Holder calls "individualistic" terms. A basic assumption I make is that the fundamental unit of moral concern is individuals. In my view, any explanation of why certain forms of interaction are morally concerning must ultimately be grounded in an account of how that interaction affects individuals. Focusing on individuals and how the terms of relationships impact individuals is important for explaining why the damage of political relationships and the process of their repair are morally significant. My argument is that the damage stemming from the erosion of the rule of law, trust, and relational capabilities is concerning because of how it prevents individuals from being recognized as agents and having the demands of reciprocity acknowledged. Groups are of normative interest secondarily because and to the extent that they matter to individuals.

Of course, the normative reasons for focusing on individuals do not address Holder's descriptive concern. As Holder correctly notes, groups and group identities in fact frequently impact how citizens are treated. This is an important point and I am grateful to her for drawing attention to it. For example, the constraints demanded by the rule of law were not respected toward black South Africans during apartheid in the way they were respected toward white South Africans. Moreover, political trust characteristically has a group dimension; trust is a phenomenon mediated by groups. Who individuals view in a given context as competent and lacking ill will often depends on to which groups the individual in question belongs; prejudice can impede recognition of the competence of members of certain groups.

However, in my view, the influence of group identity does not by itself show that the kinds of damage to which I draw attention are not apt or do not capture the salient sources of concern; rather, group identity informs how that concern is experienced. In addition, the influence of group identity means that the process of repairing relationships may require an explicit concern with groups. The possibility of restoring trust may depend on altering the way in which certain social groups are viewed within a given community. Stereotypes and prejudice may need to be countered before the competence of groups that have been historically discriminated against is acknowledged. Countering group stereotyping is one of the roles that I suggest truth commissions can play.

A distinct but related worry that Holder raises concerns the implications of the group-based character of political interaction for the normative significance of relationships structured by law. In *A Moral Theory of Political Reconciliation,* I argue that respect for the requirements of the rule of law by officials is instrumentally valuable because of the way in which it constrains the systematic pursuit of injustice. That is, there is tension between respecting the rule of law and the systematic pursuit of injustice. The rule of law requires openness and transparency on the part of officials in terms of the actions being undertaken and policies pursued; this is what the eight requirements guarantee. Such openness, I claim, constrains what officials and citizens are willing to do and pursue, given the fundamental desire individuals have to be viewed as decent by others.

Holder contends that the phenomenon of partial legality challenges my claim that there is a fundamental tension between the rule of law protections and injustice. Partial legality refers to segmentation in how law operates. The requirements of the rule of law are respected by officials toward one group, but not another. Thus there is not a general corrosion of the rule of law, but segmented and targeted erosion. As Holder notes, "In partial legality, breakdown in the rule of law is differentially distributed, so that its failure to obtain is systematic but not necessarily system-wide".[9] The phenomenon of partial legality is, Holder claims, durable and sustainable in my political contexts; "differentiated legality seems to be highly stable, especially when those liable to repression are a numerical minority and geographically, culturally or historically distinct".[10] What is normatively significant is that, in contexts of partial legality, injustice is systematically pursued by law over an extended period of time. In such contexts, there does not seem to be tension between law and injustice, nor does law seem to constrain injustice's pursuit. To illustrate these points, Holder discusses law in South Africa during apartheid and Argentina during the military junta, both contexts that exhibited partial legality.

[9] Holder, p. xxx.

[10] Ibid., p. xxx. Holder cites the following in her quote: Hurst Hannum, *Autonomy, Sovereignty and Self-Determination*, Revised Edition (Philadelphia: University of Pennsylvania Press, 1996); Ted Gurr, *Peoples versus States: Minorities at Risk in the New Century* (Washington, DC: United States Institute of Peace, 2000).

In response, I want to note that in one sense the phenomenon of partial legality confirms my claim that there is tension between the rule of law and the pursuit of injustice. In contexts of partial legality, we see an erosion of legality precisely where injustice is being pursued. The absence of the restraint demanded by the rule of law occurs toward groups that are targets of injustice. This is what my analysis would anticipate, given the way in which rule-based governance makes one vulnerable to internal and external scrutiny and requires a commitment to restraint on the part of those governing, even when this is not the most efficient means for achieving policy objectives.

There is another sense, however, in which partial legality poses a fundamental challenge to my account. For, in contexts of partial legality, though there are areas in which the rule of law erodes, overall a system of law does seem to obtain. Moreover, this system, as Holder describes it, is stable and well-functioning; pockets of erosion in the rule of law do not seem to threaten the system as a whole. From this perspective, the rule of law and pursuit of injustice (and unjust ends) are not in tension but sit comfortably. Law does not constrain injustice's pursuit and is not threatened by the presence of injustice.

This is an important challenge to my account, and I cannot fully respond to this concern here. However, I do want to offer two preliminary remarks. The first is that in my view it is an interesting and open question just how sustainable partial legality is over time. A detailed investigation is needed to determine the extent to which the erosion of the rule of law toward some groups impacts the erosion of the rule of law generally. Fuller's framework of law emphasizes the importance of considering in detail how legal systems function when evaluating the extent to which law obtains.

Second, if the breakdown of law is in fact isolated and sustainable in the way Holder suggests, this does not demonstrate that the law does not constrain injustice. Rather, partial legality may point to the fact that law has *conditional* instrumental value. That is, under certain conditions the law constrains the pursuit of injustice. In contexts of partial legality, those conditions do not obtain. There is a failure by officials and citizens to recognize and be motivated to respect the constraints on conduct that extends to all subjects of a legal system, including the constraints required by the rule of law. Partial legality could thus draw attention to conditions that permit a failure of recognition of these demands with respect to a certain group, and a subsequent failure of law to constrain injustice.

The Rule of Law, Trust, and Capabilities

My critics raise an interesting set of questions about the three normative frameworks I use to analyze political relationships. MacLachlan, for example, suggests that what I have developed is a capability account of reconciliation, where at the core is a concern about the freedom of individuals to be respected, recognized as members of the political community, and to participate in the economic and political processes and avoid poverty. On this interpretation, the rule of law matters because it enhances the freedom of individuals. When rules are unclear or are contradictory, they constrain action by providing an incentive for individuals to not participate so as to avoid running the risk of violating the law. Trust could be understood as an outcome of possessing a given capability. Trust exists among individuals in a community when they are mutually respected and recognized as members of the community.[11]

[11] MacLachlan, p. xxx.

MacLachlan is right to think that this relationship can obtain among capabilities, the rule of law, and trust. However, this is not always the way the frameworks interact. Each framework can be a condition for or outcome of the other two. For example, trust is a condition for the functioning of law; for rules to effectively govern behavior in practice, citizens and officials must be willing to constrain their conduct in the way that rules demand. Such constraint can be eroded if trust does not exist. Similarly, trust can be a condition for, and not just an outcome of, the presence of certain capabilities. Responding to the trust of another and proving trust responsiveness are ways to manifest respect for that individual. Implicit in trust responsiveness is recognition of the standing of others to make demands on us and to call us to account for failing to satisfy those demands. Finally, a condition for the rule of law to obtain may be that citizens enjoy the freedom to avoid poverty at some threshold level. The ability of an individual to live within the law can be eroded if she cannot achieve basic capabilities.[12]

Each ideal also articulates a distinct kind of concern we may have about political relationships and so constitutes a distinct kind of moral evaluation we may make of relationships. Capabilities draw attention to the relative freedom of individuals to shape the terms of their interaction with others. By contrast, the rule of law focuses on the general method that will be used to exercise power and control behavior. The rule of law represents a distinct form of social order. Behavior is controlled not on the basis of psychological manipulation or threat, but by offering individuals guidelines for action and interaction that they can choose to obey. Moreover, the purpose of law is to facilitate self-directed action and interaction, that is, to put individuals in a position to pursue their own goals and objectives, not to facilitate the most efficient achievement of a government's goals and objectives.[13] Trust focuses on the attitude that citizens and officials take with respect to one another, and importantly whether they regard each other in an interpersonal manner. It reflects the importance not just of the actions we take, but also of the view that we have of others when assessing relationships.

MacLachlan also argues that it is too demanding to require trust for relationships to be repaired. The requirements of trust are seldom satisfied in consolidated democracies, let alone transitional communities. She cites cynicism about politics in general and laws designed to restrict voter fraud as examples of the absence of trust in stable democracies. "… [W]e need only think about the widespread, disheartening cynicism expressed by most Americans towards those involved in political campaigns and electoral politics, the prevalence of laws claiming to restrict voter fraud, or the heavily racialized justice system, to see that American political relationships—and others in many stable Western democracies—do not 'generally exhibit default trust' or trust-responsiveness."[14] Nor is there an expectation that politicians—or even fellow-citizens for that matter—will be trust-responsive and so directly and favorably moved by the thought that they are being counted upon.[15]

I do not want to deny the failures by officials and citizens' corresponding skepticism about the competence and lack of ill will of officials that MacLachlan cites. However, despite this, my account only requires a minimal standard of trust, a standard that is not too demanding and is largely satisfied by democracies. Let me describe the contrast class I had

[12] On this point see Jonathan Wolff and Avner de-Shalit, *Disadvantage* (Oxford: Oxford University Press, 2007).

[13] On this point see Chapter 1.

[14] MacLachlan, p. xxx.

[15] Ibid., p. xxx.

in mind when articulating the standard for political trust that I outline. During conflict and repression many citizens and officials do not, and it is reasonable for them not to, presume the basic decency and lack of ill will of others. To assume an attitude of default trust is to expose oneself to physical harm. That is, citizens do not presume, for example, that they are immune from being the targets of genocide, in one extreme case, or a target of sexual violence when rape is used as a weapon of war. Moreover, the basic competence of officials in understanding their roles is doubted and reasonable to doubt. Thus citizens do not assume that officials view public funds as designed to be used to serve the public interest rather than designed to serve the personal desires or interests of politicians. Large-scale embezzlement of public funds by repressive leaders is not uncommon. Finally, there is often no basic presumption by officials that citizens are competent in exercising basic democratic rights or are entitled to such rights. Such basic presumptions do, by and large, obtain in the United States and in other consolidated democracies generally.

One final set of questions about trust I wish to take up are raised by Holder and concern the implications of my analysis, in particular how I would categorize cases in which individuals trusted but should not have because it was unreasonable.[16] In the context of discussions of partial legality, Holder notes that citizens who are members of groups that experienced the relative functioning of a legal system may have mistakenly assumed the relationships were generally well-functioning and so adopted a default attitude of trust toward government officials. Though this default is reasonable with respect to that group, it is not with respect to other groups to whom officials act repressively. So, is the trust of citizens toward officials unjustified? If it is, how should individuals who mistakenly trust respond? In particular, should those who trusted come to distrust their own trust? And how should other citizens view those who trusted in this way?

In my view, trust was in fact misplaced. For a default attitude of trust to be warranted, it is insufficient that government officials (in this case) act in an appropriate manner toward oneself or the groups of which an individual is a part. Government officials have a responsibility toward all citizens to act in a manner that comports with the requirements of the rule of law and that promotes relational capabilities. A failure by government officials with respect to members of one group undermines the claim that they are competent in the sense that they know and are able to act on their role-related duties. Part of what citizens have a responsibility to do is to take steps to ascertain whether there are discrepancies in how groups of citizens are treated. This includes taking seriously complaints from marginalized groups about their treatment by government officials.

A reasonable reaction among other citizens toward those who trusted when unwarranted is default distrust. Misplaced trust—like misplaced distrust—signals a failure of competence. In the case under consideration, such misplaced trust is a function of culpable ignorance about the actions of government officials in practice, and the implications of such actions for the default standard that it is reasonable to adopt. Evidence of trustworthiness must be given before a default attitude of trust would be reasonable to adopt again. One way to provide minimal grounds of such evidence would be to recognize the past failures of government officials to possess and exercise the competence that their roles demands. Citizens moreover have reason to distrust their own judgment about the competence of government officials, and to give special weight to the judgments of those historically subjected to unjust treatment in determining what attitude it is reasonable to adopt toward officials.

[16] Holder, p. xxx.

Processes of Reconciliation

The second half of my book discusses processes of reconciliation, and both Isaacs and MacLachlan express disappointment with the particular processes of reconciliation that I consider. In their views, I missed an opportunity to use the theoretical resources I provide to highlight the various, nonstandard methods that could be used to deal with past wrongdoing and the resulting damage to political relationships, such as grassroots processes. Instead, I consider the relatively traditional processes of truth commissions and criminal trials.

Isaacs and MacLachlan are right to draw attention to this limitation. I focus on trials and truth commissions because they are the focus of considerable discussion in the literature. I thought it important to engage with these discussions to demonstrate the novel and underappreciated ways such processes could contribute to the repair of relationships. For example, criminal trials are frequently justified as ways of satisfying the basic demands of retributive justice, of deterring wrongdoing in the future, and, in the international case, of strengthening the binding character of international law. By contrast, I argue that international criminal trials can serve an educative function that facilitates political reconciliation. They offer a model of legal processes of responding to wrongdoing that can provide some grounds for citizens to trust in law (especially where such trust has been absent before), and for officials to recognize discrepancies in how they dealt with alleged perpetrators of wrongdoing and how they should have treated alleged perpetrators. Such recognition on the part of officials can ideally lead to reform and greater legal decency and good judgment in the future. Truth commissions provide an officially sanctioned forum in which victims of wrongdoing can testify about what happened to them and have that testimony be taken seriously and acknowledged.[17] Exposing the human rights abuses of the past and the consequences of such abuses for victims can humanize those who were dehumanized and previously subjected to severe stereotyping. It constitutes a way of recognizing the standing of victims to demand a certain level of treatment from other members of the political community and protection of that standard by the state. Thus truth commissions can foster the repair of political relationships by challenging stereotypes; promoting a more inclusive understanding of membership in a political community; and, in the process, fostering the capacities of moral agents to care about, empathize with, and respond to the second-person reasons of others.

However, MacLachlan and Isaacs usefully point out that nontraditional forms of dealing with past wrongdoing may be effective in repairing political relationships and so promoting political reconciliation. Here, I would like to highlight two instances of such forms. Given the emphasis I place on respect for agency and the necessity of structuring relationships predicated on such respect, it is important that the decisions about how the past will be dealt with are made with input from all segments of the community, including importantly victims who are often members of groups that were marginalized socially and politically during the course of conflict and repression. Additionally, economic reform can be a critical component of political reconciliation. One recurring source of concern in postapartheid South Africa has been the persisting economic inequality within the community; many black South Africans in particular continue to struggle for access to basic services and the income gap remains significant. In my view, addressing such economic inequality promotes political reconciliation by enhancing the capability of historically marginalized groups to avoid poverty and to participate in the economic life (and then, often as a result, the political life) of their communities.

[17] For my discussion of truth commissions see Chapter 5.

In addition to expressing disappointment with the limited focus of my discussion of processes of reconciliation, Isaacs raises a number of concerns with my claim that international criminal trials can foster political reconciliation. I argue that such trials can contribute to the rebuilding of the rule of law by fostering the social conditions required for law to function. In particular, they demonstrate or provide to alleged perpetrators—even the worst of the worst—the kind of treatment such perpetrators denied to fellow citizens during conflict or repression. International criminal trials remain committed to following a specific process to determine the guilt or innocence of officials. By not forgoing such processes and the protection that a system of criminal justice ought ideally to provide to alleged perpetrators, international trials can encourage faith in law on the part of citizens and cultivate decency on the part of government officials. Such trials communicate the importance of restraint in the treatment meted out to others so as to ensure that such treatment is consistent with recognition of their inherent dignity. They also ideally demonstrate that how one will be treated is not simply a function of whether one holds power; holding or losing power does not, for example, determine the outcome of criminal trials.

In Isaacs's view, it is a mistake to think that trials are fundamentally important because they foster intrasocietal reconciliation. Insofar as such trials contribute to reconciliation, it will primarily be reconciliation at the international level, not at the intrasocietal level. This is because such trials have as their primary audience the international community and attend to international, not domestic, law. Thus they primarily impact relationships between states. There is also, she notes, little reason to think that promoting intersocietal reconciliation will foster intrasocietal reconciliation.

Isaacs also argues that there is reason to doubt that trials will have the impact I suggest on reconciliation, either at the inter- or intrasocietal level. The atrocities persecuted by international courts are inevitably selective; Isaacs notes that no one in South Africa was tried in international courts, despite the systematic violation of international law during apartheid. This fact could undermine the message that I claim international trials are in a position to send, namely, that it does not matter what side one is on when determining the kind of treatment to which one will be subject. Thus "while due process might well be upheld in international courts, the selective pursuit of international criminals suggests that international justice is not completely blind."[18] Moreover, international trials largely deal with the worst of the worst, that is, those accused of the most egregious human rights abuses or leadership roles in "mobilizing the atrocities."[19] When international standards for trial and conviction are compared with the standards and quality of the procedures used domestically to prosecute lower-level perpetrators, there are grounds for a complaint of unfairness—or at least the perception of unfairness within communities. The worry is that "those accused of the most egregious offences suffer the least and benefit from "more justice."[20]

Moreover, by their very nature, international criminal trials fail to capture the collective dimension of the damage wrought by conflict and repression. Crimes are conceptualized as acts committed by individuals acting alone without a political dimension. By treating political acts as mere criminal acts, they express "the attitude that political violence is nothing but crime" (Luban 2011, p. 70).[21] Trials also do not consider the broader context in which actions occur. However, some types of wrongdoing require such a context to be

[18] Isaacs, "International Criminal Courts and Political Reconciliation," doi:10.1007/s11572-014-9294-5.

[19] Ibid., p. xxx.

[20] Ibid., p. xxx.

[21] Ibid., p. xxx.

possible. Genocide is a collective enterprise that has a genocidal intent.[22] The collective context changes what would otherwise have been murder into an act of genocide and so a breach of international law. By individualizing guilt, trials risk reinforcing the message that wrongdoing was the product of individual and criminal wrongdoing and will as a result impede societies from both recognizing and repairing the conditions that made wrongdoing—with its subsequent damage to political relationships—possible.

In response, I want first to acknowledge that Isaacs highlights important limitations with international trials. Isaacs's discussion shows that the contribution of international criminal trials to intrasocietal reconciliation may be even more limited than I originally suggest. My original claim about the potential contribution of international trials to intrasocietal reconciliation was modest. I did not argue that trials are the best, or even an important, mechanism for promoting intrasocietal political reconciliation. Rather, taking as my starting point skepticism about the ability of trials to have any contribution to political reconciliation, my objective was to articulate one way in which international criminal trials may be able to contribute to intrasocietal reconciliation. My goal was to counter the idea that such trials would have no impact, or even a negative impact, on reconciliation. Given the fact that the primary audience for international criminal trials is the international community and that domestic law may remain untouched, and the views of citizens and officials unaffected, by remote proceedings, there is reason to think the educative function of such trials may in the end be quite minimal.

However, insofar as international trials can impact the views of citizens and officials, I believe that there are ways of blunting some of the shortcomings to which Isaacs draws attention so that the contribution to political reconciliation is more likely to be realized. For example, insofar as domestic trials are unlikely to adhere to the same standards as international trials, there is reason to consider other, nonpunitive responses to wrongdoing. This could mitigate the charge of unfairness. To counter the emphasis of international trials on individual actions and motivations, rather than the collective context in which such actions take place, communities could establish processes to work in parallel with international trials. Recent research on the efficacy of transitional justice processes emphasizes the importance of a holistic approach to dealing with past wrongdoing.[23] A truth commission established in conjunction with criminal trials can draw attention to the collective context of wrongdoing by providing a broad picture of the patterns of abuses and the conditions that made such abuses possible.

Political reconciliation remains one of the most challenging, and vital, goals of communities emerging from extended periods of strife and repression. In *A Moral Theory of Political Reconciliation,* I articulate one vision of what this goal entails and its moral significance. I thank Holder, Isaacs, and MacLachlan for their careful and critical reflections, which forced me to clarify certain aspects of my view and drew attention to questions that remain to fully answer.

[22] Ibid., p. xxx.

[23] See Tricia Olsen, Leigh Payne, and Andrew Reiter, *Transitional Justice in the Balance: Comparing Processes, Weighing Efficacy* (Washington, DC: United States Institute of Peace Press, 2010).