FORGIVENESS, BLAME, AND PUNISHMENT

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Abstract: When someone commits a crime with no exculpatory defenses, he is blameworthy and deserves to be punished. Nevertheless, assuming the criminal were to satisfy some conditions, he could become forgivable. In this Essay, I defend a restorative theory of what it means to forgive a criminal and when the forgiveness of a criminal would be warranted. My defense is unique in that I ultimately derive my theory of forgiveness from a novel theory of when criminals deserve to be punished. My restorative theory of forgiveness yields at least two general insights that are generally not appreciated in the prior literature on forgiveness. First, I argue that, in the standard case, fully forgiving a criminal would be warranted only if the criminal has undertaken all the punishment he deserves. Once we are warranted in fully forgiving a criminal, the criminal would no longer deserve any further punishment. So any additional punishment of a criminal who has become fully forgivable would be unjustified. Second, my restorative theory of forgiveness yields a precise distinction between two senses in which a criminal might be unforgivable: a contingent sense and a necessary sense. As a consequence of these insights, this Essay not only advances the important academic literature on forgiveness, but also yields new practical implications for how to respond to criminals.

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INTRODUCTION

Consider two crimes differing in degrees of seriousness.\(^1\) The first is an extremely heinous crime that Jean Hampton describes.\(^2\) A Caucasian farmer employed an African American farmhand and his four sons. The farmhand did something to anger the farmer, but nothing to constitute provocation. The farmer then murdered the farmhands by hanging them from a tree in burlap sacks and burning them to death. I suggest that the murderer is, in some sense, unforgivable. No matter what the murderer might do in response to his crime, nothing would warrant fully forgiving him for committing his heinous offense.

Now consider a second less serious crime. An African American family moves to a primarily Caucasian neighborhood to take advantage of nicer housing, better schools, and a safer environment. But some of the Caucasian residents resist the relocation of the African Americans. In an attempt to intimidate them into leaving, these Caucasian residents burn a cross on the lawn of the African American family.

Although less serious than the aggravated murder, the cross burning is still a very serious offense. In burning the cross, the Caucasian residents manifested insufficient concern for the African American family’s right to security in their property and freedom.

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\(^1\) I suppose the essence of a crime consists in manifesting insufficient concern for the rights of others in committing a criminal act. The manifestations of such insufficient concern entails a degree of recklessness: an awareness of an unjustifiable risk that one’s criminal act will violate the rights of others. See Model Penal Code § 2.02(2)(c) (1985); Larry Alexander, Kimberly Kessley Frezen, with Stephen J. Morse, CRIME AND CULPABILITY: A THEORY OF CRIMINAL LAW 23-31 (2009); Larry Alexander, Insufficient Concern: A Unified Conception of Criminal Culpability, 99 CALIF. L. REV. 93 (2000). I also assume that a more serious crime manifests a worse deficiency in the offender’s concern for the interests of others, and the harmful results of the crime, if any, do not bear directly on its seriousness. See e.g., Alexander, Frezen & Morse, supra, at 171-96 (arguing that the harmful results of a crime do not affect the culpability of the offender); Joel Feinberg, Equal Punishment for Failed Attempts: Some Bad But Instructive Arguments Against It, 37 ARIZ. L. REV. 117 (1995).

from intimidation. Unlike the murderer, though, the cross burners do not seem unforgivable in the same strong sense. For there seems to be something which the cross burners could that would warrant fully forgiving them for their crime.

In this Essay, I make sense of these different intuitions about the two cases by defending a restorative theory of what it means to forgive a criminal and when the forgiveness of a criminal would be warranted. My defense is unique in that I derive my theory of forgiveness from a novel theory of when criminals deserve to be punished. My restorative theory of forgiveness yields at least two insights that are generally not appreciated in the prior literature on forgiveness.

First, I argue that, in the standard case, fully forgiving a criminal would be warranted only if the criminal has undertaken all the punishment he deserves. Once we are warranted in fully forgiving a criminal, the criminal would no longer deserve any further punishment. So any additional punishment of the criminal would violate his rights and, hence, be unjustified.

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3 To clarify, I assume that a criminal deserves a punishment in the negative sense that a state would not violate his rights by imposing the punishment on him against his will. See J.L.A. Garcia, Two Concepts of Desert, 5 LAW & PHIL. 219, 219-23 (1986) (expounding this negative sense of punitive desert). On the negative sense of punitive desert, the fact that a criminal deserves to be punished means that he has forfeited his right not to be punished. Cf. Christopher Heath Wellman, The Rights Forfeiture a Theory of Punishment, 122 ETHICS 371 (2012) (arguing against several objections to the claim that criminals forfeit their right not to be punished). I provide a summary of any novel theory of deserved punishment below. See text accompanying infra notes 15-27. For a more extensive exposition and defense of my theory of punitive desert, see Jim Staihar, Proportionality and Punishment, 100 IOWA L. REV. 1209 (2015).

4 In the prior literature on forgiveness, some suggest to the contrary that a state could be justified in punishing a criminal even after others are warranted in fully forgiving him. See, e.g., Charles Griswold, Forgiveness: A Philosophical Exploration 39 (2007); Jeffrie Murphy, Forgiveness and Resentment, in Forgiveness and Mercy 14, 32-33 (Jeffrie G. Murphy & Jean Hampton eds., 1988); Lucy Allais, Wiping the State Clean: The Heart of Forgiveness, 36 PHIL. & PUB. AFF. 33, 65 (2008).
Second, my restorative theory of forgiveness yields a precise distinction between two senses in which a criminal might be unforgivable: a contingent sense and a necessary sense. In a contingent sense, a criminal might be only contingently unforgivable. In a necessary sense, a criminal might be necessarily unforgivable. As a consequence of these insights, this Essay not only advances the academic literature on forgiveness, but also yields new practical implications for how to respond to criminals.

II. WHAT FORGIVENESS IS NOT

To focus our inquiry on the relevant concept, I start by briefly distinguishing forgiveness from some related but distinct ideas, such as mercy. To illustrate, a state could have mercy on the cross burners merely by not punishing them or not forcing them to compensate their victims. Perhaps the state chooses to have mercy on the cross burners out of concern that the state’s punishing them or requiring them to provide compensation would have extraordinarily bad effects on innocent third parties, such as the families of the cross burners. In this case, the state would not forgive the cross burners because the state would continue to blame them for their offense. Unlike mercy, forgiveness essentially involves suspending feelings of blame.

More precisely, I assume forgiveness involves the suspension of a previously warranted attitude of moral blame, such as resentment or indignation. To forgive someone for committing a

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5 See e.g., Murphy, supra note 4, at 20-21 (distinguishing mercy from forgiveness); Allais, supra note 4, at 47-49.

6 See e.g., Murphy, supra note 4, at 22 (claiming that forgiveness involves forswearing resentment); Allais, supra note 4, at 41 (contending that forgiveness involves overcoming retributive emotions). Although I only focus on attitudes of moral blame in developing any theory of forgiveness, a broader conception of forgiveness might take forgiveness to consist in suspending a broader array of negative emotions. Cf. Norvin Richards, Forgiveness, 99 ETHICS 77, 77-79 (1988) (expanding the range of negative emotions whose suspension could constitute forgiveness).

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crime presupposes that the person was really blameworthy for the offense. Forgiving is not excusing. If a criminal was never blameworthy for committing his offense, then there is something to excuse, but nothing to forgive.

Forgiveness, though, does not consist in merely ceasing to experience feelings of blame, even an attitude of moral blame that was once warranted. For example, the African American victims of the cross burning might cease to blame the cross burners because of amnesia. That is, the victims might stop blaming the cross burners because the victims might simply forget that the crime ever occurred. But forgiving is not forgetting.

Forgiveness essentially involves suspending blame for a reason, in response to a judgment. However, not just any judgment will suffice for forgiveness. To illustrate, the victims of the cross burning might somehow manage to cease blaming the cross burners because the victims’ prior feelings of blame were themselves were damaging the victims’ health. After all, the experience of anger or resentment can itself be a source of anguish. This would be a “state-based reason” to suspend blame, bearing only on whether the victims would be warranted in desiring to blame the cross burners.

and moderating a previously unwarranted attitude of resentment). For this interpretation of Butler, see Griswold, supra note 4, at 19-37.

8 See e.g., Allias, supra note 4, at 43.
9 See e.g., Murphy, supra note 4, at 22-23.
10 See e.g., id. at 23-24 (claiming that forgiveness involves forswearing resentment for moral reasons); Pamela Hieronymi, Articulating an Uncompromising Forgiveness, 62 Phil. & Phenomenological Res. 529, 530 (2001) (taking forgiveness to involve a judgment or change in view). For the ideas of a judgment-sensitive attitude, see T.M. Scanlon, What We Owe to Each Other 20-24 (1998).
11 See e.g., Jean Hampton, Forgiveness, Resentment and Hatred, in Forgiveness and Mercy 35, 36-37 (Jeffrie G. Murphy & Jean Hampton eds., 1988).
12 See Allan Gibbard, Wise Choices, Apt Feelings 37 (1990) (distinguishing the issue of whether an attitude is rational from the issue of whether desiring the attitude is rational, and noting that a person can rationally desire not to have a rational attitude); Derek Parfit, Rationality and Reasons, in Exploring Practical Philosophy: From Action to Values 17, 27 (Dan Egonsson et al. eds., 2001) I borrow the terms “state-based reason” and “object-based reason” from
Such state-based reasons to cease blaming a criminal would undermine the rationality of desiring to blame the criminal, but not the rationality of the blame itself. In other words, such state-based reasons would undermined the rationality of desiring to feel an attitude of moral blame towards a criminal, but such reasons would not undermine the rationality of the feelings themselves. I suggest that forgiveness consists in suspending feelings of blame for “object-based reasons,” which would make the continual experience of those feelings itself unwarranted. However, not just any object-based reason for suspending blame will suffice for forgiveness.

To illustrate, suppose the cross burners were to become insane sometime after committing their offense. In becoming insane, the cross burners would lose their capacity to respond appropriately to reasons. On a standard view of culpability, the insane as such are not fitting targets of blame. So in this case, the African American victims of the cross burning should cease blaming the cross burners in response to their insanity. Continuing to blame the cross burners after they become insane would be unwarranted. I suggest, though, that the suspension of blame in response to the insanity of an

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Derek Parfit. See John Broome, Reason and Motivation, 71 PROC. ARISTOTELIAN SOC. 99, 137-38 (Supp. 1997) (discussing Parfit’s use of these terms).

13 For discussion about the problem of identifying the considerations relevant to whether feeling an attitude of moral blame is warranted or, in other words, fitting or rational, see, e.g., Stephen Darwall, The Second-Person Standpoint: Morality, Respect, and Accountability 15-17 (2006); Gibbard, supra note 12, at 36-40; Justin D’Arms & Daniel Jacobson, The Moralistic Fallacy: On the ‘Appropriateness’ of Emotions, 61 PHIL. & PHENOMENOLOGICAL RES. 65 (2000); Parfit, supra note 12, at 17-41; Wlodek Rabinwitz & Toni Ronnow-Rasmussen, The Strike of the Demon: On Fitting Pro-Attitudes and Value, 114 ETHICS 397 (2004).

14 Cf. Scanlon, supra note 10, at 280 (describing exculpatory defenses consisting in an incapacity to respond appropriately to reasons); Gary Watson, Responsibility and the Limits of Evil: Variations on a Strawsonian Theme, in PERSPECTIVES ON MORAL RESPONSIBILITY 119, 123 (John Martin Fischer & Mark Ravizza eds., 1993); R.A. Duff, TRIALS AND PUNISHMENTS 14-38 (2005); Victor Tadros, CRIMINAL RESPONSIBILITY 124-29 (2005); P.F. Strawson, Freedom and Resentment, in FREEDOM AND RESENTMENT AND OTHER ESSAYS 1, 8-10 (1974) (arguing that we should take the “objective attitude” toward those who have lost their incapacity to respond appropriately to reasons).
offender would not constitute forgiveness because the suspension would not be for the right kind of object-based reason. I take the challenge of demarcating the right kind of reason to be the challenge of developing a plausible theory of forgiveness.

III. A THEORY OF DESERVED PUNISHMENT

Ultimately, I derive my restorative account of forgiveness from a novel theory of deserved punishment. My theory of deserved punishment is a type of unfair advantage theory of punitive desert. In defending my theory of punitive desert, I argue that a criminal incurs an obligation to undertake a punishment from committing his offense. The criminal deserves to be punished because unless he suffers a punishment, he will obtain an unfair advantage consisting in the illicit benefit of freedom from the burdens he is obligated to undertake as a consequence of committing his crime. The challenge in defending my theory is to explain why criminals incur an obligation to undertake certain burdens by committing their offenses.

When someone commits a crime without any exculpatory defenses, I assume he undermines his trustworthiness. More precisely, he undermines the minimally acceptable degree of trustworthiness that we are warranted in demanding each other not to under-

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15 The summary of my theory of punitive desert that I provide below is based on Staihar, supra note 3, at 1216-23.
16 In the literature on the justification of punishment, unfair advantage theories of punitive desert are the most prevalent. Cf. David Boonin, THE PROBLEM OF PUNISHMENT 120 (2008) (stating that “the fairness-based approach is arguably the preeminent form of retributivism in the currently literature”). For other variants on unfair advantage theory of punitive desert that have been proposed in the literature, widely discussed, and roundly criticized, see Staihar, supra note 3, at 1212-16.
mine. A person’s minimally acceptable degree of trustworthiness consists in the conditions that are necessary for others’ being justified in believing with a minimally acceptable credence that he is not disposed to commit crimes.

An unexcused crime undermines the offender’s minimally acceptable degree of trustworthiness because it is sufficiently strong evidence of a standing deficiency in the offender’s concern for the rights of others, such that he lacks a sufficiently reliable character trait not to commit crimes.\(^{18}\) Hence, for a range of comparably serious crimes and situations, the offender poses an unacceptably high risk of committing such crimes over a significant run of such situations.

Unless a criminal restores his trustworthiness, he unacceptably risks causing others certain especially significant harms.\(^{19}\) For example, an untrustworthy criminal unacceptably risks committing a range of other offenses in the future. In addition, an untrustworthy criminal also unacceptably risks causing others to incur certain costs of insecurity, which would constitute harms to others even if the criminal were never to commit another offense.\(^{20}\)

Three costs of insecurity seem especially salient. First, others might rationally need to invest in costly precautionary measures to protect themselves from an untrustworthy offender. For example, they might need to engage in costly monitoring of the criminal and to invest in costly protective services when interacting with him is unavoidable.

Second, others might rationally need to forgo pursuing some personally and socially valuable activities that would leave them too vulnerable to an untrustworthy offender. In other words, people might rationally need to reduce their activity levels in response to

\(^{18}\) Cf. R.B. Brandt, Blameworthiness and Obligation, in Essays in Moral Philosophy 3, 14, 16-17, 32 (A.I. Melden ed., 1985) (arguing that if someone is blameworthy for performing an act, then his performing it warrants our inferring a motivational defect in his character).

\(^{19}\) See Staihar, supra note 17, at 283.

\(^{20}\) Cf. Thomas Hobbes, Leviathan ch. 13 (Richard Tuck ed., 1996) (noting the costs of insecurity that people rationally must incur in response to being justified in believing that others are disposed to engage in acts of aggression).
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the criminal. Third, others might rationally experience higher levels of fear in response to the higher risk of the offender’s committing crimes again. Given the significance of these costs of insecurity to the lives of others, I presume that these costs would constitute harms that others have a right against incurring.

To avoid the unacceptable risk of causing others to incur the relevant harms, a criminal incurs an obligation to restore his trustworthiness expeditiously. Given this obligation of restoration, the offender is obligated to undertake any burdens necessary to restore his trustworthiness to a minimally acceptable degree. Assuming the criminal must undertake certain burdens to do so, the state may impose those burdens on him as a punishment against his will without violating his rights. For unless the criminal suffers such burdens, he will obtain an illicit benefit consisting in his freedom from the burdens necessary to fulfill his obligation of restoration.

According to the main principle of my theory of punitive desert, a criminal deserves a punishment for his crime that is proportional to the burdens he must undertake to fulfill the obligation of restoration he incurs from committing his crime. In other words, a criminal deserves a punishment that is proportional to the burdens he is obligated to undertake to restore his trustworthiness to a minimally acceptable degree. Once the criminal undertakes a

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21 I assume that insofar as an offender poses a higher risk of committing further crimes, then others will rationally believe with a higher subjective probability that the offender will commit further crimes. See David Lewis, *A Subjectivist’s Guide to Objective Chance*, in PHILOSOPHICAL PAPERS: Volume II 83 (1986) (discussing the concept of subjective probabilities and their relation to objective probabilities).

22 A criminal is obligated to restore his trustworthiness expeditiously because the longer he takes to restore it, the longer he will pose an unacceptable risk to others. For a statement of the importance of restoring trustworthiness in the more general context of reparations, see Margret Urban Walker, *WHAT IS REPARATIVE JUSTICE?* 25 (2010) (writing that “[t]he gesture of reparations needs to model the kind of relationship between victims and responsible parties that creates a new or renewed basis of trust for the future, precisely what was lacking in the circumstances in which the wrong was done”).

23 As a corollary, a criminal does not deserve a punishment for his crime that is more severe than the burdens he must undertake to fulfill the obligation of restoration he incurs from committing the crime. In other words, a criminal does
punishment proportional to such burdens, he deserves no more punishment for his offense.\textsuperscript{24}

Now I argue that a criminal must in fact undertake some burdens to restore his trustworthiness. To restore it, I suggest that the offender must signal his reform. Such a signal\textsuperscript{25} would be a directly observable property which is sufficiently strong evidence that the criminal has rectified the deficiency in his concern for others that he manifested in committing his crime.\textsuperscript{26} Offenders must restore their trustworthiness by signaling their reform because people are unavoidably vulnerable to each other under any acceptable system of criminal justice available.\textsuperscript{27} No acceptable means of deterrence or incapacitation available can adequately reduce the risks that untrustworthy criminals pose to others.\textsuperscript{28} Moreover, there is no reliable way for others to induce reform in a criminal, and none seems forth-

\textsuperscript{24} So after the state punishes an offender in proportion to the severity of the burdens necessary to satisfy his obligation of restoration, the state is not morally permitted to punish the offender for the relevant offense.

\textsuperscript{25} In general, a signal is a directly observable property that is strong evidence of its bearer’s possessing another property that is not directly observable. \textit{Cf.} Michael Bacharach & Diego Gambetta, \textit{Trust in Signs, in TRUST IN SOCIETY} 148, 159 (Karen S. Cook ed., 2001).

\textsuperscript{26} See Staihar, \textit{supra} note 17, at 287. By rectifying the deficiency in his concern for others, the offender would develop a good will. As Annette Baier states, when we trust others, we are confident they have a good will toward us; therefore, “reasonable trust will require grounds for such confidence in another’s good will. …” Annette Baier, \textit{Trust and Antitrust}, 96 ETHICS 231, 235 (1986).

\textsuperscript{27} See Staihar, \textit{supra} note 17, at 284-87; \textit{cf.} Jeffrie Murphy, \textit{Marxism and Retribution}, 2 PHIL. & PUB. AFF. 217, 231 (1973) (noting that “our moral language presupposes … that we are vulnerable creatures—creatures who can harm and be harmed by each other”).

coming. Hence, there is a need for a sign from the offender himself that he has come to develop a sufficiently high degree of concern for the interests of others.

To be credible, I suggest that a sign of reform must be costly. A criminal cannot signal his reform through mere costless means, such as merely apologizing for his crime or pleading a change of heart. Such “cheap talk” is not credible because criminals who do not care at all about others would be willing to convey it. So a credible sign of reform must be too costly for criminals who have not rectified the revealed deficiency in their concern for

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29 See e.g., Michael R. Gottfredson & Travis Hirschi, A General Theory of Crime 268 (1990); Staihar, supra note 17, at 286-87. Absent an exculpatory defense, there is no form of clinical treatment that criminals can undergo which would provide others with the needed assurance of reform.

30 At this point, I note that my theory of punitive desert is a practical theory. That is, I seek to explain why and how much offenders deserve to be punished in the actual world given the natural facts that generally characterize the unavoidable conditions under which people actually live. So my theory presumes that there are no extraordinary means available of obtaining epistemic access to or changing an offender’s disposition to commit crimes. Cf. John Rawls, A Theory of Justice 157-61 (1971) (developing a theory of distributive justice with a similarly practical aim and its own presuppositions about the natural facts under which it applies).


32 For analyses of the credibility conditions on cheap talk, see, e.g., Joseph Farrell, Meaning and Credibility in Cheap-Talk Games, 5 Games & Econ. Behav. 514 (1993); Joseph Farrell & Matthew Rabin, Cheap Talk, 10 J. Econ. Persp. 103 (1996); Robert Stalnaker, Saying and Meaning, Cheap Talk, and Credibility, in Game Theory and Pragmatics 83 (Anton Benz, Gerhard Jäger & Robert van Rooij eds., 2005).
others. In other words, a credible sign of reform must be too costly for criminals who have not come to care sufficiently about the interests of others by developing a sufficiently benevolent character. Thus, to demonstrate reform, I assume a criminal must send others a costly signal that he has developed a sufficiently benevolent character. In general, benevolence is a trust warranting property that is inconsistent with the sort of insufficient concern typical of criminals.

To demonstrate the development of a sufficiently benevolent character, I contend that a criminal must signal that he has acted with a sufficiently high degree of benevolence for a sufficiently long time after committing his crime. To show that he has acted with such benevolence, the offender must sacrifice some of his sufficiently important personal interests for a sufficiently long time for the sake of benefitting others. To make such a sacrifice for others, I suggest the offender must standardly engage in labor intensive community service, and he usually must do so under reasonable conditions of incapacitation to mitigate the risk he poses to others while the service is performed. The more service the criminal performs for the sake of benefitting others, the stronger it will serve as evidence that he has rectified the revealed deficiency in his concern for the interests of others.

Hence, to fulfill his obligation of restoration, and thereby restore his trustworthiness to a minimally acceptable degree, a criminal must undertake some burdens. The offender deserves to

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33 This is the “non-pooling condition” on the credibility of a costly signal of reform. Bacharach & Gambetta, supra note 25, at 160; Staihar, supra note 17, at 289.

34 See Staihar, supra note 17, at 287.

35 See e.g., Bacharach & Gambetta, supra note 25, at 154 (noting benevolence as a trust warranting property); Staihar, supra note 17, at 287.

36 Cf. Keally McBride, PUNISHMENT AND POLITICAL ORDER 136 (2007) (reporting that “prisoners who work in prison are 24 percent less likely to return to prison after release”); Linda Radzik, MAKING AMENDS: ATONEMENT IN MORALITY, LAW AND POLITICS 99 (2009) (writing that “[t]he greater the sacrifice that is required to make the reparation payment, the more evidence we have that the wrongdoer is remorseful for her past action”); Staihar, supra note 17, at 287.

37 Like other trust building or maintaining processes, the process of a criminal’s restoring his trustworthiness has a “multi-layered inferential structure.” Bacharach
be punished in proportion to those burdens because unless he suffers in proportion to them, he will obtain an illicit benefit consisting in his freedom from the burdens necessary to fulfill the obligation of restoration he incurs from committing his crime. In summary, under my theory of punitive desert, the absolute severity of the most severe punishment that a criminal deserves for an offense corresponds to the absolute severity of the burdens that he must undertake to fulfill the obligation of restoration he incurs from committing the offense.

IV. BLAMING CRIMINALS

When someone commits a crime without any exculpatory defenses, the offender not only deserves to be punished for his crime. The offender also is blameworthy. Once others learn of the crime, others would be warranted in blaming the criminal for committing his offense. That is, others would be warranted in feeling an attitude of moral blame toward the criminal for committing his crime. Such an attitude of moral blame might consist in resentment or indignation. I suggest that my theory of punitive desert illuminates some of the presuppositions and demands constitutive of an attitude of moral blame.

& Gambetta, supra note 25, at 162. In addition to undertaking the required burdens, other steps might also be necessary to restore an offender’s trustworthiness, such as the offender’s apologizing for his crime and compensating any victims. The criminal might need to undergo some form of therapy and take steps to eliminate aspects of his situation that pressure him to commit crimes, such as unemployment, corrupting social influences, and problems of addiction. Much will depend on the specifics of the case. However, because these other steps are not necessarily burdensome for the criminal, they need not be part of his punishment properly understood.

38 Cf. Justin D’Arms & Daniel Jacobson, Sentiment and Value, 110 ETHICS 722, 745 (2000) (noting that whether someone is warranted in feeling a particular emotion, like an attitude of moral blame, toward something depends on what she has evidence for believing about it).

39 See Darwall, supra note 13, at 17; Strawson, supra note 14, at 14-15; Watson, supra note 14, at 121, 126-28; Stalhar, supra note 3, at 1231-32.
When others blame a criminal for committing an offense, they presuppose that the criminal undermined his trustworthiness by committing the offense, and they demand him to restore his trustworthiness to a minimally acceptable degree by undertaking certain burdens in order to demonstrate that he has reformed. The more severe the burdens that people demand the criminal to undertake, the more they blame him for committing his offense, and vice versa. An attitude of moral blame toward a criminal is warranted only if the attitude’s constitutive presuppositions and demands are warranted.

Thus, I contend that there are two essential parts to blaming a criminal: the aforementioned epistemic presupposition and demand. As a consequence, we might cease blaming a criminal in one of two ways. On the one hand, we might give up the epistemic presupposition. That is, we might conclude that the crime really did not undermine the offender’s trustworthiness. In this case, we would presume that the criminal has an exculpatory defense, such as an excuse or justification. Perhaps, the offender was provoked, involuntarily intoxicated, or suffering from some other condition that temporarily diminished his capacity to respond appropriately to reasons at the time he committed the crime. As a consequence, the criminal’s offense is not sufficiently strong evidence of a standing motivational defect in his character at the time of assessment.

40 The epistemic presuppositions of blaming criminals on my view are similar to those made under T. M. Scanlon’s view of blame. Cf. T. M. Scanlon, MORAL DIMENSIONS: PERMISSIBILITY, MEANING, BLAME 122-23 (2008).
41 See Staihar, supra note 3, at 1231-32.
42 According to a character theory of excuses, a consideration constitutes an excuse if it blocks the otherwise justified inference from the fact that someone performed a criminal act to her having a motivational defect in her character at the time of assessment. See, e.g., Michael D. Bayles, Character, Purpose, and Criminal Responsibility, 1 L. & PHILOS. 5 (1982); R. B. Brandt, A Motivational Theory of Excuses in the Criminal Law, in CRIMINAL JUSTICE: NOMOS XXVII 165 (J. Roland Pennock & John W. Chapman eds., 1985); Richard B. Brandt, A Utilitarian Theory of Excuses, 78 PHIL. & PUB. POL’Y REV. 337 (1969); cf. Scanlon, supra note 10, at 277-79 (suggesting that some considerations constitute excuses because they “sever the connection between the action or attitude and the agent’s judgments and character”); Strawson, supra note 14, at 8 (stating that “[w]e shall not feel resentment against the man he is for the action done by the man he is not; or at least we shall feel less”); Watson, supra note 14, at 123 (describing excuses that,
On the other hand, even if we retain the epistemic presupposition, we can have other reasons to suspend the demand on the criminal to restore his trustworthiness to a minimally acceptable degree. In other words, even if we presume that an offender really did undermine his trustworthiness by committing his crime, we can have reason to cease demanding him to restore his trustworthiness to a minimally acceptable degree. A subset of these reasons is constitutive of my proposed restorative theory of forgiveness.

V. A RESTORATIVE THEORY OF FORGIVENESS

A. What Forgiveness Means

To forgive a criminal for committing an offense, I contend that we must suspend blaming him for the right reason. According to my restorative theory of forgiveness, the right reason consists in judging that the criminal has restored his trustworthiness by signaling his reform.\(^{43}\) To signal his reform, the offender must demonstrate that he has rectified the revealed deficiency in his concern for others that he manifested in committing his crime.\(^{44}\)

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\(^{43}\) Cf. Aurel Kolnai, *Forgiveness*, 74 *Proc. Aristotelian Soc.* 91, 101 (1973) (taking forgiveness to involve judging that the forgiven has undergone a change of heart); Murphy, *supra* note 4, at 24 (stating that one reason people forgive is that the wrongdoer repented or had a change of heart); Griswold, *supra* note 4, at 50 (suggesting that forgiveness involves judging that the wrongdoer has shown through deeds and words a commitment “to becoming the sort of person who does not inflict injury”).

\(^{44}\) Although my theory specifically concerns forgiving people for committing crimes, it could also explain forgiving criminals for their bad character traits or, more precisely, the motivational defects in their character that they manifested in committing their crimes. On the possibility of forgiving someone for her bad character, see Macalester Bell, *Forgiving Someone for Who They Are (and Not Just What They’ve Done)*, 77 *Phil. & Phenomenological Res.* 625 (2008).
B. Degrees of Forgiveness: Full versus Partial

Under my restorative theory, forgiveness can be full or partial. Before someone commits an offense, others are justified in believing with a particular baseline credence that she is not disposed to commit crimes. Her offense undermines her trustworthiness by lowering to an unacceptable degree the credence with which others are justified in believing that she is not disposed to commit crimes. Hence, by committing an offense, a criminal’s trustworthiness is undermined to a degree. Similarly, an offender’s trustworthiness can also be restored to a degree.

Fully forgiving someone for committing a crime involves judging that she has fully restored her trustworthiness to a minimally acceptable degree. That is, fully forgiving someone for committing an offense involves judging that the criminal has justified others in believing with a minimally acceptable credence that she has fully rectified the revealed deficiency in her concern for the rights of others that she manifested in committing her crime. Hence, our fully forgiving someone for committing a crime involves our suspending all the blame we felt toward her for committing the crime.

Mere partial forgiveness, though, involves a correspondingly weaker judgment and is consistent with our continuing to feel some residual blame toward an offender. When we partially forgive a criminal for committing an offense, we judge that she has restored her trustworthiness to a degree, but not to a minimally acceptable degree. We judge that the criminal has partially, but not fully, rectified the revealed deficiency in her concern for the rights of others. So we continue to demand the offender to restore her trustworthiness to a higher degree. In partially forgiving a criminal, we mitigate how much we blame her, but we continue to feel some residual degree of blame.

C. Who Can Forgive: Three Perspectives

Under my restorative theory, forgiveness can be given from three distinct perspectives, corresponding to three distinct attitudes
of moral blame. As a personal reactive attitude, a direct victim of a crime is warranted in feeling resentment toward the offender. As an impersonal reactive attitude, anyone is warranted in feeling indignation toward a criminal. To forgive a criminal from the perspective of a direct victim or an unrelated third party, the victim or third party must suspend their resentment or indignation toward the criminal by judging that the criminal has restored his trustworthiness by signaling his reform.

As a self-reactive attitude, the criminal himself is warranted in feeling guilty for committing his offense. Mutatis mutandis, the same presuppositions and demands constitutive of resentment and indignation are also constitutive of guilt. In feeling guilty for committing an offense, the criminal himself presupposes that he undermined his trustworthiness by committing the offense, and he demands himself to restore his trustworthiness by undertaking certain burdens in order to demonstrate to others that he has reformed. To forgive himself for committing his crime, I contend that the offender must suspend his feelings of guilt in response to his judging that he has signaled his reform to others. Thus, my restorative theory makes room for the idea of self-forgiveness, in addition to forgiveness by others.

D. Five Values of Forgiveness

Under my restorative theory, forgiveness could promote at least five related values. First, forgiving a criminal might itself make the criminal marginally more trustworthy because trust is marginally

46 Id.
47 Id.
48 Although some assume that only the victim of a crime can forgive the criminal, there is no principled reason to hold such a narrow view of who has standing to forgive an offender. See Eve Garrard & David McNaughton, In Defence of Unconditional Forgiveness, 104 PROC. ARISTOTELIAN SOC. 39, 45 n.6 (2003) (leaving room for forgiveness from third parties other than the direct victims of the wrongful acts).
49 See Strawson, supra note 14, at 15.
When others forgive a criminal, they increase their trust in him. People desire to be trusted because trust is an attitude of esteem and necessary for valuable personal relationships, such as friendships and employment. Hence, forgiving a criminal provides him with a personal benefit that he should desire to preserve by not doing anything to undermine it, namely committing additional offenses. Because forgiveness can provide a criminal with an incentive not to commit additional crimes, it could make the criminal marginally more trustworthy.51

Second, when others are warranted in forgiving an offender, they can rationally reduce the costs of insecurity they incur in response to the offender. So others can rationally fear the criminal less, rationally increase their activity levels, and rationally decrease their investments in protecting themselves from the criminal.

Third, since forgiveness involves suspending feelings of blame, it can benefit the relationships, projects, and commitments of those who felt blame. For the feeling of blame itself can be an all-consuming experience, impairing one’s capacity to sustain important aspects of one’s life.52

Fourth, forgiveness could promote reconciliation with the criminal, making possible many valuable relationships with him that require his trustworthiness, such as relationships of friendship or employment.

Fifth, a criminal’s self-esteem could improve as a consequence of forgiving him. People are usually ashamed to be the target of warranted blame, regarded as untrustworthy in such a serious way.


51 It is important to emphasize that the trust warranting effect of forgiveness is both marginal and contingent. Merely forgiving a criminal would not fully restore his trustworthiness to a minimally acceptable degree. Moreover, the trust warranting effect of forgiveness presumes that the criminal cares about people’s attitudes and relations to him. To prove that he cares, I suggest the criminal must signal his reform to at least a degree. See Kolnai, supra note 43, at 103 (stating that if a wrongdoer has provided no sign of a change of heart, then the reconciling or reforming effect of forgiveness would be “utterly dubious”).

52 See, e.g., Hampton, supra note 11, at 36-37.
VI. NEW IMPLICATIONS FOR THE FORGIVENESS OF CRIMINALS

A. Punishment and Forgiveness

1. A Constraint

As a consequence of my accounts of forgiveness, blame, and deserved punishment, I contend that we are standardly warranted in fully forgiving someone for committing a crime only if he has undertaken all the punishment he deserves. Hence, no one, including a state, would be justified in punishing an offender further after full forgiveness is warranted. Punishing a criminal more than he deserves would violate his rights, and no one would be justified in violating someone's rights.53

To illustrate, consider again the cross burners. By committing their crime, the cross burners undermined the minimally acceptable degree of trustworthiness that we are warranted in demanding them not to undermine. Their crime justifies our believing with an unduly high credence that they are disposed to commit crimes, particularly against African Americans. Their crime reveals a serious deficiency in their concern for the rights of others, especially the rights of African Americans.

Now suppose people blame the cross burners for their crime. In doing so, their African American victims feel resentment toward them, and other third parties feel indignation toward them. In feeling these attitudes, others demand the cross burners to restore their trustworthiness to the minimally acceptable degree by signaling their reform.

To signal their reform, the cross burners must apologize to their African American victims and provide them with compensa-

tion for the harm caused. But although necessary, that might not be sufficient to signal reform for reasons we have discussed. An apology is cheap talk, and providing compensation need not be burdensome, especially if paid by a third party on behalf of the cross burners, such as a friend or other benefactor. So even if the cross burners had not become at all benevolent, they could still be willing to provide an apology and compensation to their African American victims.

To provide a credible sign of reform, the cross burners must sacrifice some of their sufficiently important personal interests for a sufficiently long time for the sake of benefiting others. More specifically, for some small number $n$, the cross burners must engage in $n$ years of labor intensive community service, and they must do so under reasonably humane conditions of incapacitation, in a prison, to mitigate the costs of insecurity that others rationally must incur while the service is performed. That is punishment.

Now suppose the state sentences the cross burners accordingly, and they are cooperative, willing to restore their trustworthiness. The cross burners apologize to the African American family, provide compensation to them, and undertake the required punish-

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54 Cf. Griswold, supra note 4, at 49-50 (suggesting that warranted forgiveness requires the wrongdoer to communicate contrition and regret that she performed the wrongful act).

55 In the epilogue to Crime and Punishment, I suggest that Feodor Dostoevsky gestures at the personal sacrifice required of a criminal to signal reform. Dostoevsky writes that after Raskolnikov confesses to his crime, he is sent to prison. As Raskolnikov contemplates the new life he will lead after his release from prison, Dostoevsky writes that "the new life would not be his for nothing, that it must be dearly bought, and paid for with great and heroic struggles yet to come ... that is the beginning of a new story, the story of the gradual renewal of a man, of his gradual regeneration, of his slow progress from one world to another, of how he learned to know a hitherto undreamed-of reality." Feodor Dostoevsky, Crime and Punishment 527 (Jessie Coulson trans., George Gibian ed., 1964).

56 Although not necessary, a restorative punishment could also express an apology and provide compensation to any victims. Cf. R. A. Duff, Punishment, Communication, and Community 106 (noting that a criminal's undertaking a punishment for her crime can constitute a forceful expression of her apology). A mere apology or compensation, though, could be provided through non-punitive means that are distinct from a criminal's punishment properly understood.
ment for the sake of helping others. The cross burners undertake n years of labor intensive community service for the sake of benefitting others, particularly other African Americans.

In prison, the cross burners work to produce goods, such as clothes or medical supplies, that are distributed to African Americans in need. The cross burners are paid a small wage for their labor, and they consent to the state’s garnishing the wage and distributing it to their victims and other African Americans in need. After increasing their trustworthiness, the cross burners even work as tutors for African American prisoners, teaching them any special knowledge they might have to share about useful trades or subjects.

By the end of their n year sentences, the cross burners have restored their trustworthiness to a minimally acceptable degree. They have justified our believing with a minimally acceptable credence that they are no longer disposed to commit crimes, even against African Americans. The cross burners have demonstrated that they have rectified the revealed deficiency in their concern for the rights of others, particularly African Americans. The cross burners have fully fulfilled their obligation of restoration. So there is no unfair advantage that they stand to obtain if they are not punished more. Therefore, the cross burners do not deserve any additional punishment. Their n year restorative sentences were all the punishment they deserved for their crime of cross burning.

Others are now warranted in fully forgiving the cross burners. We are now justified in judging that the cross burners have fully restored their trustworthiness to a minimally acceptable degree by signaling their reform. So others should now suspend all their resentment or indignation toward the cross burners for committing their crime. To blame the cross burners more would either (a) presuppose the unjustified judgment that they are more untrustworthy than they really are or (b) express an unwarranted demand on them to increase their trustworthiness beyond a minimally acceptable degree. Thus, after others are warranted in fully forgiving the cross burners for their

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57 For a more detailed discussion of how a state imposed punishment could constitute a credible sign of an offender’s reform, see Staihar, supra note 17, at 287-92.
hate crimes, no one, including the state, would be justified in punish-
ing them more. Any additional punishment of the cross burners
would be undeserved, violating their rights and expressing too much
blame toward them.\(^{58}\)

\section*{2. The Electivity of Forgiveness}

Under my restorative theory of forgiveness, once others are
no longer warranted in blaming the cross burners because they have
signaled their reform, there is a sense in which forgiving them is not
elective. Unless we forgive the cross burners after they have restored
their trustworthiness to a minimally acceptable degree, we would
feel too much blame toward them, too much resentment or indigna-
tion. And it would be irrational to feel an unwarranted attitude of
moral blame toward the cross burners.

That said, there is still another sense in which forgiving the
cross burners would be elective even if they were to signal their
reform: Forgiveness is never obligatory.\(^{59}\) Forgiveness consists in
suspending attitudes of moral blame for the right reason. But there is
nothing directly harmful to anyone in merely feeling an unwarranted
attitude toward someone. Therefore, even if the cross burners were
to signal their reform, I suggest they would not be warranted in
demanding anyone's forgiveness. Instead, the cross burners should
merely request forgiveness. Their request would express a desire to
be trusted, and so would increase the trust warranting effect of
forgiving them.\(^{60}\)

To appreciate the limits on the elective nature of forgiveness,
though, attitudes of moral blame should be distinguished from the

\(^{58}\) See Joel Feinberg, \textit{The Expressive Function of Punishment, in DOING AND
DESERVING: ESSAYS IN THE THEORY OF RESPONSIBILITY} 95 (1970) (discussing
the conceptual connection between punishment and the expression of moral blame);
Scanlon, \textit{supra} note 10, at 267; Staihar, \textit{supra} note 3, at 131-32.

\(^{59}\) See Griswold, \textit{supra} note 4, at 67-69; David Sussman, \textit{Kantian Forgiveness}, 96
\textit{KANT-STUDIEN} 85, 87 (2005).

\(^{60}\) See Griswold, \textit{supra} note 4, at 50 n.8 (crediting Ken Taylor with noting that
when an offender requests or invites rather than demands forgiveness, he “shows
respect and sympathy for his victim”).
acts that they could motivate. I suggest that although irrational people are not obligated to suspend any unwarranted resentment or indignation toward criminals who have signaled their reform, such irrational people are nevertheless obligated not to punish or burden such offenders more on the unjustified assumption that they are still blameworthy. Thus, assuming the cross burners were to signal their reform, no one, including the state, would be permitted to hold their crimes against them in ways harmful to them. As a consequence, the following legal restrictions on the future liberty of the cross burners would be morally impermissible after they have signaled their reform: laws denying them the right to vote, laws restricting their employment opportunities, and laws mandating the public display of shameful badges akin to the Scarlet Letter, such as yard signs summarizing their criminal records.

B. The Unforgivable

1. A Contingent Sense

Under my restorative theory of forgiveness, criminals can be unforgivable in two distinct senses: one contingent, the other necessary. If an offender is contingently unforgivable, then she has the capacity to restore her trustworthiness by signaling her reform. But she simply has not. Perhaps the offender is defiant and chooses not to signal her reform by remaining defiant. A contingently unforgivable criminal does not warrant forgiveness. However, a contingently unforgivable criminal could warrant forgiveness if she simply chose to undertake the right kind of punishment in the right way as a means to signaling her reform.

61 For an explanation of why and how much a defiant criminal deserves to be punished under my theory of punitive desert, see Staihar, supra note 3, at 1224-26.
2. A Necessary Sense

If a criminal is necessarily unforgivable, then he is blameworthy and deserves to be punished for his offense. However, he lacks the capacity to restore his trustworthiness to a minimally acceptable degree.

In this necessary sense, we must further distinguish between being fully and only partially unforgivable. No one can be fully unforgivable in the necessary sense. If a criminal were, he would lack the capacity to restore his trustworthiness to any degree. But for a criminal to be at all blameworthy, others must be warranted in demanding him to restore his trustworthiness at least partially. People are not warranted in demanding someone to do something that he lacks the capacity to do. That would be unfair: ought implies can.

A criminal might, though, be partially unforgivable in the necessary sense. An offender might have the capacity to restore his trustworthiness to a degree, but not to a minimally acceptable degree. If a criminal is partially unforgivable in the necessary sense, then others could not cease blaming him in response to a warranted judgment that he has fully restored his trustworthiness to a minimally acceptable degree.

To illustrate, consider again the Caucasian farmer who committed an aggravated murder by burning to death his African

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62 As discussed earlier, blaming someone for committing a crime constutively involves both a) presupposing that the crime undermined her trustworthiness and b) demanding that she restore her trustworthiness to the minimally acceptable degree. See text accompanying supra notes 38-42.

63 See, e.g., David Copp, 'Ought' Implies 'Can', Blameworthiness, and the Principle of Alternate Possibilities, in MORAL RESPONSIBILITY AND ALTERNATIVE POSSIBILITIES 265, 271-75 (David Widerker & Michael McKenna eds., 2003); Immanuel Kant, THE METAPHYSICS OF MORALS 6:380 (Mary Gregor ed., 1996) (stating that "he must judge that he can do what the law tells him unconditionally that he ought to do").

64 Cf. Trudy Govier, Forgiveness and the Unforgivable, 36 AM. PHIL. Q. 59, 69-71 (1999) (emphasizing that even persons who commit atrocities can undergo some positive moral changes in their character).
Forgiveness, Blame, and Punishment

American farmhands. The murderer undermined his trustworthiness to an extremely bad degree by committing his crime. The crime justifies our believing with an extremely high credence that the murderer is disposed to commit extremely serious crimes. For the murder reveals an extremely bad deficiency in his concern for the rights of others.

Given the inevitable constraints on the duration of a human life, there might be nothing that the murderer can do to restore his trustworthiness to a minimally acceptable degree. It is possible that he cannot justify our believing with a minimally acceptable credence that he has fully rectified the revealed deficiency in his concern for the rights of others. Nevertheless, the murderer can still partially restore his trustworthiness. He can justify our believing with a range of higher credences that he has come to care increasingly more about the interests of others.

By partially restoring his trustworthiness, the murderer would mitigate the risk he poses to others. By mitigating the risk, the murderer would mitigate the costs of insecurity that others, such as prison officials and fellow inmates, rationally must incur in response to him. Thus, the murderer is obligated to restore his trustworthiness as much as he can. And to do so, he might need to undertake a life sentence of labor intensive community service under reasonably humane conditions of incapacitation, in a prison.

Given that the murderer is extremely blameworthy for his offense, suppose we feel an extremely high degree of indignation toward him. In blaming the murderer to such an extremely high degree, we justifiably presuppose that his crime undermined his trustworthiness to an extremely bad degree, and we justifiably demand him to restore his trustworthiness as much as he can by undertaking a sufficiently burdensome life sentence.

Now suppose the state sentences the murderer accordingly, and he is cooperative. He apologizes for committing his murder. He

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65 See Hampton, supra note 2, at 1675.
66 For an explanation of why we would not be warranted in demanding the murderer, or any other criminal, to undertake the death penalty, see Staihar, supra note 3, at 1227.
compensates the relatives of his African American victims for their suffering as much as he can. And he devotes the rest of his life, in prison, to labor intensive community service for the sake of benefiting others, especially African Americans.

While the murderer undertakes this lifelong restorative punishment, we are warranted in partially forgiving him for his crime on a continuous, gradual basis. As he undertakes his restorative punishment, we ought to mitigate the degree of blame we feel toward him, decreasing the degree of indignation we feel toward him. As he undertakes his restorative sentence, we are justified in judging that he has partially restored his trustworthiness to continuously higher degrees, signaling that he has partially rectified the extremely bad deficiency in his concern for the rights of others that he manifested in committing the murder.

Given the seriousness of his crime, though, we could never be warranted in fully forgiving the murderer. We could never be warranted in judging that he has restored his trustworthiness to a minimally acceptable degree, demonstrating that he has fully rectified the revealed deficiency in his concern for others. This is the sense in which the murderer is necessarily unforgivable in a way that the cross burners are not.

VII. CRITICAL DISCUSSION:
TWO COMPETING VIEWS OF FORGIVENESS

A. First Competing View: Epistemic Abstinence

Critics might object that my restorative theory of forgiveness is too narrow, and my conception of the unforgivable is too broad. When someone commits a crime without any exculpatory defenses, her crime is strong evidence of a standing deficiency in her concern for the interests of others. So if the criminal does not demonstrate her reform, we are epistemically permitted to infer that there is a motivational defect in her character at the time of assessment.

However, critics might contend that we are not epistemically required to draw this negative inference about a criminal’s character even if there is no sign of reform. We could rationally abstain from
inferring anything negative about a criminal’s character on the basis of her unexcused offense. So even if a criminal does not demonstrate reform, critics might claim that we could rationally regard the criminal’s character as being just as good as we could have regarded it if she had not committed her crime in the first place.

Under this competing account of forgiveness, critics might contend that forgiving a criminal could consist in simply abstaining from inferring anything bad about her character on the basis of her crime and not feeling hostile toward her as a result of her crime. On this competing account, one standard reason for forgiving a criminal would be her signaling reform. But this is not the only reason for forgiveness, even of a warranted kind. The class of relevant reasons is left open. As a consequence, a criminal is neither contingently nor necessarily unforgivable merely because she is unrepentant or lacks the capacity to restore her trustworthiness to a minimally acceptable degree.67

In response, I reject this more open-ended alternative account of forgiveness for at least two reasons. First, this alternative account is not psychologically possible or rational for normal people. To illustrate, suppose the racist murderer remains persistently defiant and unapologetic, after killing African American farmhands. We know his crime is strong evidence of an extremely bad deficiency in his concern for the rights of others. But on the critic’s alternative account of forgiveness, we might forgive the murderer by simply not updating our credences about the badness of his character. That is not psychologically possible, though, for normal people.

Beliefs aim at the truth. So conclusions about what is evidence for what typically close deliberation about what to believe with what credence. Once normal people understand the evidentiary significance of the murderer’s crime for his character, then in the absence of countervailing evidence, they will straightaway regard his character as worse. Insofar as abnormal people do not draw this negative inference about the murderer’s character, they are epistem-

67 See Allais, supra note 4, at 59-68 (endorsing a similar alternative conception of forgiveness that competes with my own).
ically irrational, and their purported forgiveness should be regarded as unwarranted.

Second, the critic’s alternative account of forgiveness does not capture the “honorific” nature of forgiveness, which is a key feature distinguishing forgiveness from mercy. Unlike recommending mercy for a criminal, I suggest that we convey something honorable about a criminal when we say that forgiving the criminal would be warranted. On my view, saying that forgiving a criminal would be warranted implies that the criminal has restored his trustworthiness. Under the critic’s alternative view of forgiveness, though, being warranted in forgiving a criminal entails nothing esteemable about the criminal. On the critic’s rival account, being forgiven might be no more honorable than having one’s crime forgotten.

B. Second Competing View:
The Hardship of Demonstrated Reform

Under a second alternative account of forgiveness, critics might accept that forgiving a criminal involves suspending a demand on him to restore his trustworthiness. However, contrary to my restorative theory, critics might deny that forgiveness essentially involves suspending this demand in response to the judgment that the criminal has signaled his reform. Instead, critics might contend that forgiveness could consist in releasing a criminal from his obligation of restoration because of the hardship that the criminal himself would suffer by reforming and signaling his reform. There is nothing necessarily irrational about releasing a criminal from his obligation to restore his trustworthiness out of a purely altruistic concern for the welfare of the criminal himself.

In response, I reject this competing conception of forgiveness on the ground that it too fails to capture the honorific quality of

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68 Cf. Bell, supra note 44, at 632 (referring to forgiveness as “honorific”).
69 See Cheshire Calhoun, Changing One’s Heart, 103 ETHICS 76, 91-96 (1992) (proposing a similar alternative conception of forgiveness that competes with my own).
forgiveness. I do not deny that in extraordinary cases, it can be rationally permissible to release a criminal from his obligation of restoration out of an altruistic concern for the criminal himself. I simply deny that such a release counts as forgiveness. Suspending the demand on a criminal to restore his trustworthiness out of a purely altruistic concern for the criminal conveys nothing estimable about him. Instead, I suggest that suspending blame toward a criminal for purely altruistic reasons should count as having mercy on him, not forgiving him. Unlike its rival, my restorative theory of forgiveness has the virtue of not conflating mercy with forgiveness.

VIII. TWO CONCLUDING REMARKS

A. Forgiving versus Condoning

Any plausible theory of forgiveness must distinguish the idea of forgiving from the idea of condoning. Condoning a crime involves expressing an attitude of moral approval toward the commission of the crime itself. Now under my restorative theory of forgiveness, forgiving a criminal does express an attitude of moral approval. But forgiveness in no way expresses approval of the crime he committed. Forgiving a criminal does not involve a change in judgment about (a) the seriousness of his crime or (b) the criminal’s initial blameworthiness for committing the crime.

Rather, under my theory, forgiveness expresses approval toward the way that a criminal has responded to his crime. Forgiveness involves a change in judgment about the moral quality of the criminal’s character at the time of assessment. For this reason, forgiveness makes reconciling with a criminal rationally possible without condoning the crime he committed.

70 See Kolnai, supra note 43, at 95-98 (emphasizing the distinction between forgiving and condoning).
B. Forgiveness and Human Solidarity

Some scholars contend that there is an important connection between the justification of forgiveness and the value of “human solidarity.”\(^7\) I suggest that my restorative theory of forgiveness best reflects the value of human solidarity. For any community to flourish, its members must satisfy some minimal standards of trustworthiness. Unless people can count on each other to respect their rights codified in core criminal laws, the resulting costs of insecurity would be intolerable. Hence, there are standing demands on all to manifest good will toward each other in the minimal sense of respecting each other’s rights.\(^7\) Once someone flouts this demand by committing a crime, the point of forgiving him just is to recognize and accept his subsequent restoration of the minimally acceptable degree of trustworthiness necessary to realizing the value of human solidarity in a community.

\(^7\) See Garrard & McNaughton, supra note 48, at 53-59.
\(^7\) Cf Strawson, supra note 14, at 14-15.