MERCY AND FORGIVENESS

By P. Twambley

MERCY and forgiveness are qualities with important similarities, but these features have not always been correctly identified. The accounts of mercy and forgiveness I will be contesting show a significant parallelism. Underlying both there is, as I will try to show, a view of morality which threatens our understanding, not only of mercy and forgiveness, but of generosity, kindness and the other miscalled 'duties of imperfect obligation'. In place of these incorrect accounts I will propose a positive account which I hope will bring out the genuine parallels between mercy and forgiveness. My discussion of mercy is indebted to a discussion-note by H. R. T. Roberts 'Mercy' (Philosophy, 1971).

The view of mercy I am concerned to contest is that of Alwynne Smart ('Mercy', Philosophy, 1968) and of forgiveness that of the late Aurel Kolnai ('Forgiveness', P.A.S., 1973-4). The latter's position is rather more complex than my discussion may suggest. But the emphasis is certainly as I describe and, in this case, it is the emphasis which I think it is important to readjust.

I

'A theory of punishment should give some account of mercy' is Mrs. Smart's opening contention, and throughout her discussion she construes mercy as a quality the exercise of which is peculiar to a judge, one who has authority to punish. Thus, the question she sets herself to answer is 'What are the conditions for the appropriate exercising of mercy, how do we decide how much mercy is appropriate, and when is a judge morally obliged to be merciful, if ever?' (p. 345). In seeking the answer to this question, Mrs. Smart concentrates exclusively on examples drawn from the criminal courts. The justice mercy is to temper is taken to be criminal justice.

In this first part of her paper Mrs. Smart correctly puts on one side such things as a jury's recommendation of mercy and pleas for mercy on the grounds of mitigating circumstances. She concludes that such cases of "mercy" are simply misnamed, for here 'mercy is nothing more than a way of ensuring that a just penalty is imposed and injustice avoided' (p. 349). In these cases "mercy" simply collapses into justice.

In the second section Mrs. Smart discusses what she believes to be genuine but inappropriate exercises of mercy. What then is a genuine case of mercy? 'When a man exercises mercy what he does is acknowledge that an offence has been committed, decide that a particular punishment would be appropriate or just, and then decide to exact a punishment of lesser severity than the appropriate or just one' (p. 350). The main
point of exercising mercy is to avoid suffering. Given this account it is scarcely surprising that the occasions on which mercy is justified are severely limited. Mercy is unjustified 'if it causes the sufferings of an innocent party, is detrimental to the offender's welfare, harms the authority of the law, or where it is clear that the offender is not repentant or not likely to reform' (p. 350). Further, a judge may be rightly criticized for showing favouritism and committing an injustice if he shows mercy to one man but not to another whose offence and circumstances are identical in the relevant respects. Thus it seems that at one extreme mercy collapses into justice, at the other its exercise is unjust.

However, Mrs. Smart does think that there are justified cases of mercy. The paradigm is where a judge shows mercy, not because the offender deserves it, but because it is necessary if he is to meet the claims that other duties have on him. Thus he may reduce an appropriate fine because it would impose an intolerable burden on the offender's wife and family. Mrs. Smart concludes 'If we regard mercy as deciding, solely through benevolence, to impose less than the deserved punishment on an offender, then the answer to the original question “when are we justified in being merciful?” must be: only when we are compelled by the claim that other obligations have on us’ (pp. 358–9). It is a corollary of this (according to Mrs. Smart) that mercy is intelligible only within a multi-principle conception of morality.

I disagree strongly with this account. Mercy, properly understood, has no essential connection with punishment. It is not the prerogative of a judge: on the contrary a judge has no right to be merciful. In accepting his office a judge places himself under an obligation to impose just sentences and to treat like cases alike.

What Mrs. Smart has in fact discussed is best characterized as leniency. The question of leniency does arise with respect to punishment, and Mrs. Smart has accurately located some of the difficulties to which it gives rise. In general, I think it is true to say that, though a judge is under obligation to deal justly, his office carries with it a degree of discretionary power to be lenient in cases of hardship such as Mrs. Smart describes. The reverse side of this coin is seen when a judge imposes a harsh sentence as a deterrent to would-be offenders.

II

Mrs. Smart was not altogether mistaken in going to court to understand mercy, but I suggest she has gone to the wrong court. Not the criminal court, but the civil court, is where we will find an adequate model for mercy. The model I propose takes as its centre-piece a plaintiff having a right over a defendant. The exercise of mercy consists in the plaintiff waiving his right over the defendant and thus releasing him from his “bond”. I have classical authority for this model. The Merchant
of Venice contains probably the most celebrated eulogy of mercy in the language, and in this it is Shylock, the plaintiff (not the judge), whom Portia bids temper justice with mercy. Shylock is *within his rights* to demand his pound of flesh, it is his 'in justice'. Portia begs him to waive that right, to exercise mercy. Thus we see that the justice which mercy tempers is not criminal, but what we might call 'civil', justice.

In contrast to this explicitly legal case, my second example of mercy is taken from Joseph Conrad's magnificent story, 'The Duel'. General Feraud and General d'Hubert have been at odds for years, duel has followed inconclusive duel. As Conrad writes, 'For years General d'Hubert had been exasperated and humiliated by an atrocious absurdity imposed upon him by this man's savage caprice'. It has been a blight on d'Hubert's life. In their final duel Feraud fires twice and misses, d'Hubert has his two shots remaining. By every rule of single combat Feraud's life belongs to him. But, despite all the injury done to him, d'Hubert waives his right, he leaves Feraud unharmed. The true nature of his act is brought out by the great delicacy of his behaviour: 'In anger he could have killed that man, but in cold blood he recoiled from humiliating by a show of generosity this unreasonable being . . .' In this concern not to make a show of his mercy d'Hubert illustrates the gratuitous nature of mercy. His manner of acting, his whole attitude, is totally different from that of a judge in being lenient to an offender for his family's sake. And d'Hubert's action does not end there. He goes on to support Feraud anonymously, to keep him from penury. He observes to his wife 'I had the right to blow his brains out; but as I didn't, we can't let him starve'.

To generalize, one man shows mercy to another when he waives his right over that person and thus releases him from his obligation, cancels the debt.

Keeping this in mind, we may see more clearly the following points:

(i) There is no essential relationship between mercy and punishment. One who exacts a debt does not *punish* his debtor: even d'Hubert would not have punished Feraud had he killed him.

(ii) Related to this is the fact that a man who is shown mercy may not have actively *offended* the person by whom he is shown mercy. It is enough that he *owes* him some form of debt, that the merciful man has a right over him.

(iii) There is no question of mercy being unjust nor, I would contend, is it ever unjust not to show mercy. It would only blur useful distinctions to say that Shylock was unjust in demanding his pound of flesh. He was hard, cruel, barbaric, certainly, but he was also "within his rights".

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1 I am grateful to Professor R. Holland for drawing my attention to this story; he discusses it at length and with great sensitivity in an unpublished paper.
(iv) Similarly, to talk of a man being under an obligation to be merciful is in most cases misleading. (An exception is where the plaintiff has made a promise to release the defendant from his bond.) Again it might show him to be a wicked, despicable, utterly immoral man if he does insist on his rights, but talk of 'obligation' tends only to obscure this. Talk of 'obligation' seems most in place where performance or abstinence can be demanded by right.

(v) Mercy is not in tension with treating like cases alike, the merciful man is no more obliged to do so than is the generous man.

(vi) All this, I hope, brings out a central feature of mercy: (in normal circumstances) mercy is freely given, it is not something to which a man is "compelled" by the claim of other obligations, as Mrs. Smart would have us understand (cf. pp. 358–9). Rather, as Shakespeare put it, 'The quality of mercy is not strain'd'.

It remains to clear away some apparent anomalies. It may be objected to this account that people ask for mercy from brigands, gunmen, assailants, etc., people who have no rights over them. This is true, though I think my account renders this practice intelligible, for there is a close link between having rights over someone and having power over them. But—and this brings out the difference—supposing the gunman accedes to the plea, has he been merciful? Surely not, for he had no right to injure his proposed victim. If the gunman had ignored the plea, we might well have called him 'merciless', but 'merciful' and 'merciless' are not true opposites. One who is not given to the exercise of mercy may be harsh but need not be altogether merciless. I think Mrs. Smart is correct in suggesting that now 'merciless' is virtually synonymous with 'cruel'.

The Merchant of Venice might seem to raise a more substantial difficulty. For, after Shylock fails to show mercy to Antonio, not only does Antonio show mercy to him by relinquishing his claim on Shylock's property, but the Duke does also by sparing his life. Yet the Duke is a judge. It might be possible to construe this as an act of leniency, but I am not sure that this would be correct. It is, I think, an act of clemency. But even as such it can be accommodated. For the Duke exercises mercy as the head of the Republic: by attempting the life of a member of the Republic, Shylock's life is the State's by right. The Duke (and he only) has the right to waive that claim. But note: the Duke has power to do so not as a judge, but as head of State. Similarly, in Britain the Home Secretary has the power to grant a pardon, to exercise clemency, not as a private individual, nor as a judge, but in his (fictitious) office as right-holder. (To repeat: judges have no right to be merciful because it is not to them that any obligation is due. And they have an obligation to impose the sentence the law prescribes.)
In discussion Stewart McNeilly observed that ours is a 'merciless society'. By this he drew attention to the slight absurdity of asking for mercy where (say) a small debt was in question. 'Mercy' does seem a term more appropriate to weighty matters, matters of life and death. But, though the term 'mercy' is not in great use, the quality does seem to me worth distinguishing and setting forth in its own right.

III

I suggested at the outset that there was a parallelism between both correct and incorrect accounts of mercy and forgiveness. I will now attempt to substantiate this with respect to the incorrect accounts.

Mrs. Smart's account of mercy and Dr. Kolnai's account of forgiveness both make the quality with which they deal appear paradoxical. On Mrs. Smart's account mercy at one end collapses into justice; at the other, is in danger of becoming a piece of injustice. Dr. Kolnai, in the section of his paper called 'The Paradoxy of Forgiveness' (pp. 95–9), sees forgiveness as at one extreme threatening to collapse into condonation, and at the other becoming pointless, for the wrongdoer has by his change of heart and reparation suitably annulled and eliminated his offence (pp. 98–9), so there is nothing to forgive. This 'paradoxy' is in both cases (I suggest) a sign that something has gone amiss in the accounts.

What vitiates these accounts is their yearning to make mercy and forgiveness somehow earned or obligatory. They both insist that there must be good reason to be merciful or to forgive; for both the onus is on the merciful or forgiving man to account for, to justify his action. As Dr. Kolnai writes, 'Forgiveness is objectionable and ungenuine inasmuch as there is no reason to forgive, the offender having undergone no metà-noia ("Change of Heart") but persisting in his plain identity quà offender', p. 97 (emphasis in original). Dr. Kolnai's forgiving man, no less than Mrs. Smart's merciful one, faces his fellow man in the guise of (criminal) judge.

I will now attempt to sketch a satisfactory account of forgiveness.

IV

Holborow¹ writes 'The respect in which forgiveness represents a refusal to hold the faulty action against the player brings into clearer focus what is involved in blaming him . . .'. Here, I believe, Holborow mistakenly takes forgiveness to be the opposite of blame. In doing so he is confusing blame and resentment. Resentment, like blame, does involve holding an action against someone, but one can only resent what one believes to be an offence done to oneself or persons near to one (family, close friends—people with whom one identifies, as we say). I can blame

Nero for fiddling while Rome burned, but no one now living could resent Nero's action.

Forgiveness is opposed to resentment, not blame (cf. Butler, Sermon IX, section 2). To put things in a somewhat Kenny-an manner, one can only forgive what one could resent. It is this that most clearly distinguishes mercy and forgiveness; forgiveness is essentially a response to one who has offended you. (Thus I think Dr. Kolnai is confused when he says 'I should see a meaning in, say, forgiving the misdeeds of Napoleon I, but not those of Napoleon III...' (p. 104)). It is important to separate blame and resentment, for one can forgive a person yet still blame him for what he has done. If this is so, it follows that there is not as great a danger of forgiveness collapsing into condonation as Dr. Kolnai suggests. The person you forgive may, perhaps rightly and inevitably, fall in your esteem, but (in another sense) you do not hold the offence against him, you "bear him no grudge"; his action is no longer such an impediment to your relationship. As Dr. Kolnai observes, in forgiving him you re-accept him.

The parallelism with mercy I see in this way: by offending you a man, as it were, incurs a debt (hence we talk of owing recompense, reparation and apology). You are within your rights to resent his action. In forgiving him, you relinquish that right, you readjust your relationship to one of equality. This central feature is, I believe, distorted by Dr. Kolnai's judicial model.

The right to resentment may appear a highly suspect "right". And perhaps the use of this term does involve an extension of the notion. But not a totally alien one. We quite naturally stigmatize the presumption of one who offers to forgive a person who has not offended him by declaring that he has no right to forgive. We take strong exception to such behaviour because the man is assuming an unjustified superiority, an unfounded position of power. (It is perhaps in the light of such cases that we should consider the claim that 'forgiveness is the one unpardonable crime'.)

If this account is correct, in broad outline at least, we see the mistaken emphasis of Dr. Kolnai's account. On his view metanoia is seen as the grounds for forgiveness, it is as though a change of heart earns forgiveness. It is true that he does note the gift-like quality of forgiveness, but the burden of his account tells against it; he seems to incline to the view that forgiveness is in the central cases a (quasi-)duty: "The fact remains that credible and perhaps "proven" change of heart constitutes the standard occasion to exercise and show forgiveness; it may be argued that genuine change of heart, and it alone, tends to make forgiveness a "duty"." (p. 101). (Substitute 'stop blaming' for 'show forgiveness', and this may well be correct.)

But is there not some link between forgiveness and change of heart? There is, but not as the grounds for forgiveness, forgiveness is not
something to be *earned*. The link is far more oblique than Dr. Kolnai suggests. (i) Metânoia is a highly relevant factor in deciding whether to *tender* forgiveness: if the offender does not think he has offended to tender forgiveness will be to insult him, if he has not repented the wrong it may only harden him. (ii) Metânoia is a necessary condition for a sincere *request* for forgiveness: it is mere hypocrisy to ask for forgiveness while really unrepentant.

Forgiveness then is *gratuitous*, but that does not (of course) make it merely arbitrary. One's reasons for forgiving someone may be far more diverse, however, than simply the recognition of repentance. One may forgive an offence for old time's sake, or in the hope of a future unity, or because of a deep awareness of one's own weakness and liability to offend.

V

In conclusion, I would diagnose the view of morality which distorts the qualities of mercy and forgiveness as an obsession with duty and obligation. These are essential moral notions, but they are not the only ones. In their proper sphere they have valuable force and precision. But there is a tendency to allow them to monopolize (a tendency enshrined in the classification of generous, merciful, forgiving and kind acts as 'duties of imperfect obligation'). It is, I would claim, an impoverishment of moral life always to harp on about duty and obligation. Many highly moral actions are not *demanded* of one; they are not *earned* by their recipients, nor are they acts to which one is *bound*. Rather they are *gifts*, actions freely performed, sacrifices freely made. Eminent among these are the gifts of mercy and forgiveness.

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