Toward New Theoretical Perspectives on Forgiveness, Mercy, and Clemency: An Introduction

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We begin with the simple proposition that justice exerts, as it should, a powerful pull on the human imagination. And at least part of what constitutes a sense of justice is a world of rules and laws, responsibility, and fair punishment. Yet a world run strictly and solely in accordance with the dictates of the law would be a world in which few would want to live and few could truly thrive. A life lived as if the law were one's only guiding principle would be as much of a tragedy or a farce as a triumph of good over evil. To humanize the world in which we live, to make it possible for people to thrive and survive, the law needs the company of other virtues, such as mercy.

Such an assertion is, of course, hardly a lightning bolt of original insight. Arguments for forgiveness, mercy, and clemency abound; they flourish in organized religion, fiction, philosophy, and law, to say nothing of the conversations of daily life among parents and their children, teachers and their students, criminals and those who judge them, lovers, friends, business associates, and so forth. Yet as common as these arguments are, we are left often with an incomplete understanding of what we mean and do when we speak about forgiveness, mercy, and clemency. Are they different names for a single thing? Do they name attitudes or actions? Are they directed at persons or at the things people do? Can we have one without necessarily bringing the others along? Can we have any of them without committing ourselves to a religious perspective, without invoking some divine or supernatural presence? The purpose of *Forgiveness, Mercy, and Clemency* is to map the terrain on which such questions might be addressed; to examine various registers on which to chart the relations among forgiveness, mercy, and clemency; and to understand their place in our lives and the society in which we live. In this introduction, we offer an accounting of three such registers, what we call the registers of exception, of being, and of history.

We begin with a letter written by Hannah Arendt to W. H. Auden in February 1960 on the subject of forgiveness.[1] The letter was a response to a response: The previous year, Auden had reviewed Arendt's *The Human Condition* and further considered some of her arguments in an essay published later that year. From *The Human Condition* to Auden's essay and Arendt's response, we have a remarkable exchange between two of the great philosophical and poetic minds of the twentieth century on the very subject of this book. In *The Human Condition*, Arendt argues that forgiveness (along with the capacity to make promises) is a political faculty, as it facilitates our living with other human beings, allowing us to let the consequences of ill-conceived actions come to an end: "Without being forgiven, released from the consequences of what we have done, our capacity to act would, as it were, be confined to one single deed from which we could never recover."[2] Indeed, as she notes a little later, the capacity to forgive and be forgiven is what enables humans to dare something new, to initiate novel and necessarily unpredictable actions: "Only through constant mutual release from what they do can remain free agents, only by constant willingness to change their minds and start again can they be trusted with so great a power as that to begin something new."[3]

Auden's response to this argument, as was his response to much of *The Human Condition*, was one of enthusiastic interest and agreement. Nonetheless, he argues that Arendt elided a crucial distinction between forgiveness and clemency. In his essay on "The Prince's Dog," Auden considers whether drama can adequately capture and reveal the Christian command of love and forgiveness. Thus, in *Measure for Measure*, he claims, the only way for Shakespeare to show forgiveness in action is to show it through the decision of the Duke to forgive Angelo. This may suggest that forgiveness and clemency are the same, but they are not: "The law cannot forgive, for the law has not been wronged, only broken; only persons can be wronged. The law can only pardon what it has the power to punish . . . The decision to grant or refuse pardon must be governed by prudent calculation . . . But charity is forbidden to calculate in this way: I am required to forgive my enemy whatever the effect on him may be."[4]

Arendt answers Auden by admitting her failure to properly distinguish forgiveness from pardon. She does not, however, accept his notion of forgiveness, embedded as it is in the Christian commands of love and charity. "Of course I am prejudiced namely against Christian Charity," she writes, "but let me at least make a stand for my prejudices." Charity goes too far in its stance of humility and nonjudgment, or as she puts it, "it forgives uberhaupt."[5] This would remove from

forgiveness the quality that Arendt values most in it and what gives it for her a public character—namely, that forgiveness emerges from mutuality and judgment.

A number of questions emerge from this exchange. The first concerns what may be called the many names of pardon and the relationships between them. In the title of this volume, we use the term *clemency* to refer to the political capacity to reduce or remove any lawfully imposed punishment, but this power is also variously referred to as executive clemency, the sovereign prerogative of mercy, the pardon power, and so on. Nor is this merely a semantic issue. Does the more interpersonal term *forgiveness* share anything with the public act of pardoning? Or are they, as some scholars believe, mutually exclusive? Is mercy an act or an attitude? Could it function as the term that joins forgiveness and clemency?

The second part of the exchange between Auden and Arendt highlights the relationship of pardon to politics and history, understood as both the past and the internal specifically theological history of forgiveness itself. Arendt is suspicious of the theological heritage of both forgiveness and clemency. She believes that the tendency of Christian charity to forgive uberhaupt destroys the element of judgment that forgiveness invites and, indeed, even demands. Without such calibration and judgment, forgiveness would lack the mutuality and reciprocity needed for it to become a proper principle of public life. But what does it mean to try to make forgiveness or pardon into a systematic principle? Could one make forgiveness a moral principle but not a legal one? Indeed, do forgiveness, mercy, or clemency have any place in a political and legal system dedicated to the principles of formal equality and respect for rules?

It may seem self-evident that one way to begin to parse the differences in the many forms of forgiveness would be by making a clear distinction between a private interpersonal form of forgiveness and the public institutional form of clemency. And yet even this seemingly clear distinction does not hold up to scrutiny. On the one hand, there are different kinds of public pardons, each with a varying emphasis on the individual and the particular. Thus, Linda Ross Meyer opens her chapter in this volume with a catalogue of the various forms of pardon. While what Meyer calls the "pardon as equity" or the "pardon as compassion" often draws on a "sympathetic connection in a person-to-person exchange," the peace pardon, such as Lincoln's amnesty after the Civil War, is not individually oriented but rather foundational to the restoration of the body politic.

It is somewhat curious that even though all of us have forgiven a friend or lover at some point in our lives, we have such an inexact sense of how to define forgiveness.

In a well-known book on *Forgiveness and Mercy*, philosopher Jeffrie Murphy offers one detailed definition of forgiveness. Murphy takes his cue from Bishop Butler's teaching that forgiveness is the forswearing of resentment: "the resolute overcoming of the anger and hatred that are naturally directed towards a person who has done one an unjustified and non-excused moral injury."[6] But Murphy goes further than Bishop Butler by examining the quality of such resentment and by recasting it in a more positive light.

Resentment, Murphy suggests, is a passion directed at an unwarranted affront to the self and thus actually defends the value of self-respect. In this account, forgiveness without proper reason, too quick and forthcoming, is not the uncontested virtue it is so often taken to be. Murphy notes: "if I am correct in linking resentment to self respect, a too ready tendency to forgive may properly be regarded as a vice because it may be a sign that one lacks respect for oneself."[7] Nor does just any cessation of resentment amount to forgiveness. Forgiveness, Murphy notes, is not the same thing as excuse or justification. Thus, more stringently, he defines forgiveness as the forswearing of resentment for a moral reason. Such reasons can be guessed at from our own daily lives: Repentance and apology are the preeminent reasons, but there are others, such as when we forgive a single transgression in the name of a lifelong loyalty and friendship. Murphy has more to say about each of these "appropriate" grounds for forgiveness, but for our purposes, what is salient in his account is that forgiveness be earned and be granted on stated moral grounds.

Although we find this analysis somewhat convincing, we doubt that forgiveness will always fit with such a reasoned and reasonable account. Indeed, Jacques Derrida, in his work on pardon, articulated a similar skepticism. For Derrida, no reasoned accounting could ever fully anticipate or explain how or when we forgive. As such, the pardon is mad, belonging to a "hyperbolically ethical vision."[8] Contrary to Murphy's balanced accounting of sufficient conditions for earning and granting forgiveness, Derrida asks, "must not one maintain that a pardon worthy of the name, if there ever is one, must pardon the unpardonable and without condition?" For Derrida, the theological tradition from which pardon and forgiveness emerge as well as their current theological forms already hold within them an ambivalence and tension between two contrary positions of the conditional and the unconditional. On the one hand, the Christian conception of forgiveness is akin to an economic exchange, whereby the repentance of the sinner earns God's forgiveness. On the other hand, no amount of repentance can guarantee such forgiveness,

which, in the end, is an act of grace given and received without reason or explanation. Pardon, then, relays as if it were between the two poles of the conditional and unconditional, the relation between which Derrida says is "irreconcilable and indissociable."[9] For Derrida, pardon comes as a shock, an ultimately unaccountable disruption. This conception owes much to the work of philosopher Vladimir Jankélévitch, whose 1967 work, *Le pardon*, only recently translated as *Forgiveness*, is receiving long delayed and much deserved attention.[10]

It is certainly a testament to the difficulties in defining the term that Jankélévitch spends much of the book discussing what forgiveness is not. Although it may be associated with a "temporal decay," with a forgetting that accompanies the passage of time, forgiveness, he contends, is too conscious and too determined an event to be confused with such an accidental diminution of resentment. Nor is forgiveness the same thing as excuse.

In addition, the reasons for forgiveness should not, he argues, be aligned with some sense of mental or social hygiene, such as the sentiment that I should forgive because holding onto resentment is not good for me or that I should forgive to facilitate the rehabilitation of the offender. Forgiveness, then, is neither a reasoned action nor a process; it is *an event*. Forgiveness for Jankélévitch: "forgives in one fell swoop and in a single indivisible *élan*, and it pardons undividedly; in a single radical and incomprehensible movement, forgiveness effaces all, sweeps away all, and forgets all. In one blink of an eye, forgiveness makes a *tabula rasa* of the past, and this miracle is as simple for it as saying hello and good evening."[11]

In Jankélévitch's account, as in others, we find a consistent effort to distinguish the personal *attitude* of forgiveness from the public *act* of clemency. Thus, Kathleen Dean Moore notes that only the aggrieved party can forgive. Although an official may reduce a punishment, to call such an action forgiveness should strike us as a kind of moral usurpation. Somewhat ironically, in Moore's account, what maintains forgiveness as a personal rather than a legal condition is that only the aggrieved party has the right or the standing, as Moore puts it using a legal idiom, to forgive.[12]

Nonetheless, these efforts to distinguish clemency from forgiveness emphasize a common trait in forgiveness and clemency: their exceptional quality. The power to grant forgiveness and clemency is just that, a power, a capacity that is not, in the end, subject to rule and cannot be rendered regular or predictable. If Jankélévitch insists that the philosophical condition of forgiveness shows that the event in the end escapes all reason and rule, such a condition is intrinsic to the definition of the

clemency power. In a 1997 decision, the U.S. Court of Appeals for the Sixth Circuit explained the nature of clemency in stark terms: "The very nature of clemency is that it is grounded solely in the will of the dispenser of clemency. He need give no reasons for granting it, or for denying it . . . The governor may agonize over every petition; he may glance at one or all such petitions and toss them away."[13]

Such a magisterial disregard for rules is perhaps the reason the pardon power is so readily associated with monarchical privilege. Thus, in the inaugural texts of modern jurisprudence and the first systemic consideration of the pardon power in the Anglo common law tradition, William Blackstone's *Commentaries on the Laws of England*, Blackstone calls clemency "[o]ne of the great advantages of monarchy in general . . . that there is a magistrate, who has it in his power to extend mercy, whenever he thinks it is deserved: holding a court of equity in his own breast, to soften the rigour of the general law, in such criminal cases as merit an exception from punishment . . . . [T]hese repeated acts of goodness, coming immediately from his own hand, endear the sovereign to his subjects."[14] Like *all* sovereign prerogatives, its essence is discretionary, its efficacy bound up to its very disregard of declared law. Thus, more than half a century before Blackstone, Locke famously defined prerogative as "the power to act according to discretion, for the public good, without the prescription of the Law, and sometimes even against it."[15] It is little wonder, then, that despite his admiration for the monarchical prerogative of pardon, even Blackstone felt that such a power had no place in a democratic system of a rule of law; for "in democracies . . . this power of pardon can never subsist; for there nothing higher is acknowledged than the magistrate who administers the laws."[16]

James Wilson answered Blackstone's concerns by emphasizing that in a democracy the "supreme power" remains with the people who can hold those granting clemency accountable for their actions.[17] Placing the clemency power in an executive who could override the considered judgments of the magistrates did not mean that it would be a lawless power because it could be contained within a framework of law that, on Wilson's account, "is higher" than those who administer it. Yet Wilson conceded some territory to Blackstone by acknowledging that such a power, which allows executives "to insult the laws, to protect crimes, to indemnify, and by indemnifying, to encourage criminals," was indeed "extraordinary" in a democratic political system.[18]

We suggest that clemency is best understood as a form of "legally sanctioned alegality," or as we have elsewhere called it, a "lawful lawlessness." Theorists and

judges alike have identified the ambivalence and instability that clemency introduces into the fabric of legality and that neither jurisprudence nor legal theory can fully resolve.

In regard to executive clemency, law recognizes, albeit ambivalently, its own limits and concedes that it cannot regulate adequately what it authorizes. The existence of such a particular—and perhaps in a constitutional democracy, peculiar—form of sovereign prerogative serves as a powerful reminder of the still relevant distinction between lawfulness and the rule of law. Indeed, for us, absent such a reminder of the occasional gap between law and predictive rules, it is impossible to understand some of the anxieties that attend the exercise of sovereign prerogative in a modern constitutional democracy.

Some of those anxieties are surveyed by Carol S. Steiker in this volume. Steiker's chapter, "Tempering or Tampering? Mercy and the Administration of Criminal Justice," examines the paradox of mercy in the daily administration of criminal justice. As if to reaffirm Martha Nussbaum's well-known insistence on the role of stories in the production of judgment, Steiker begins by turning to two different stories by O. Henry: one that illustrates the redemptive potential in mercy and another that reveals its inherently unfair and uneven application. For Steiker, these two conditions correspond to two of the more salient features of the contemporary administration of criminal justice: the excessively harsh mandatory lengths of punishment and the strong racial disparity in prison populations. In such a system, there is a particular need for justice to be tempered with mercy, but the relation between the two terms is a difficult one. What is the place of mercy in a system dedicated to formal equality? And even if one demonstrates the need for mercy in a system of a rule of law, what sort of institutional design would best accommodate it?

Steiker goes through a few specific approaches to the relation, or lack thereof, between mercy and justice, each endorsed by a particular set of theorists. The first, which Steiker labels "the skeptical view," insists that mercy should have no place in the system of law and justice. This approach, most readily associated with retributivism, insists that offenders be given their just deserts, no more and no less. Moreover, to the claim that mercy brings a calibration and individuation necessary for justice to be done, those skeptical of the claims of mercy, such as Jeffrie Murphy, assert that this is an incorrect understanding of mercy and justice. To carefully calibrate, to consider individual and singular circumstances, is, in his view, not to exercise mercy but rather to do justice in the first place.

This may be a persuasive answer, but it does not address one of the more consistent critiques of retributivism—that is, how is one to know with such surety what a given offender's "just deserts" are? Punishment is a mixture of social norms, political pressures, and cultural assumptions, and there is no correct and ultimate answer waiting to be accessed.

Steiker considers other approaches to the disjunction between mercy and justice, such as that of the so-called "social welfare school," for whom mercy and justice are two distinct possibilities in the larger goal of promoting social welfare and deterring crime. In this view, Steiker contends, there is no conflict between justice and mercy because each is "subsumed on equal footing into the larger calculus of social welfare." But for Steiker, the problem with such an approach is the same as that which afflicts another approach—that of restorative justice—namely, each fails to account for any intrinsic moral good to punishment at all.

If Steiker shows us that the conceptual relationship between justice and mercy is a difficult one, Daniel T. Kobil opens his chapter by noting that such a relation is almost entirely absent in the daily practices of law and politics. While instances of executive clemency are on the decline everywhere, even in the rare cases when a pardon is granted, it is on the grounds of a miscarriage of justice and almost never by an appeal to mercy. For the retributivists, as we have seen, this is as it should be: a system in which pardons are only used to calibrate justice, adjusting a punishment that might not otherwise be just. But if we dispense with the idea of mercy as a public institution altogether, Kobil sensibly urges us to do so with at least some reflection. "What, if anything," Kobil asks, "are we giving up when we allow our leaders to set aside mercy as a basis for their actions?"

Kobil distinguishes between what he calls merciful acts and his desired objective of "mercy-based clemency." The latter would for Kobil be the result of reflection and judgment and would be taken "in order to achieve for society the benefits of benevolence and compassion." Thus, Kobil categorically dismisses the well-known and oft-cited pardon of Darrell Mease by Missouri Governor Mel Carnahan in 1999. Mease, guilty of a triple murder, was scheduled to be executed the same day that the pope was to visit St. Louis. When the pontiff faced the governor and asked him to spare Mease's life, Carnahan agreed. For Kobil, this was neither the result of deep reflection on the particulars of the case nor a way of showing society the benefits of compassion.

Kobil's insistence on the distinction between merciful acts and mercy-based clemency, although important, does not move us away from the problem of lawful

lawlessness that we identified earlier. One may recommend deep reflection and considered judgment to the executive in dispensing pardons, but there is no way to monitor such a recommendation without tampering with precisely the condition that gives clemency its power.

Having drawn out the distinction between merciful acts and mercy-based clemency, Kobil asks what it would take to convince politicians and a public increasingly hostile to acts of public mercy. He speculates about some "instrumental benefits," pointing to studies that have shown a link between the practice of forgiveness and better mental and physical well-being. But a surer case would need to rely on so called "expressive claims," ones that enact certain norms and moral behaviors for a society at large. Thus, Kobil argues that if the death penalty demonstrates, as its supporters contend, the strength of the law and the robust power of the state, the occasional grant of mercy would not reduce this power but rather would amplify it. Kobil quotes former Ohio Governor Celeste that mercy shows there is "strength as a community." Or as Justice Anthony Kennedy puts it, mercy shows "confidence."

Kobil's argument returns us to some of the concerns we mentioned at the opening of this introduction. It is extremely difficult to get away from theological and, indeed, distinctively Christian conceptions of mercy, conceptions that like all conceptions of mercy tie it deeply to the exercise of power. This is because the exercise of mercy is constitutively hierarchical: I can only show mercy to someone who is at my mercy. Moreover, Christian conceptions of mercy are implicated even in modern understandings of sovereign power. God's grace, it seems, is the ultimate sovereign prerogative. It is no wonder, then, that Blackstone believed the pardon most suited a monarch. In democratic cultures, however, this particular theological heritage of mercy is more troublesome. As Derrida astutely notes, "what renders the 'I forgive you' sometimes unsupportable or odious . . . is the affirmation of sovereignty."

Are we then to conclude that the legal question of clemency will not only remain part of an aporia in the law, a legally sanctioned power above the rules and procedures that make up modern law, but also will remain incommensurable to an understanding of forgiveness? If we are only to consider the role of clemency in theories of punishment, in arguments with retributivists, this would perhaps be an inescapable conclusion. But there are at least two other possible approaches to the question of mercy and to the possible relations between forgiveness and clemency. The first emphasizes mercy as not just an act, a decision, or an exception but as a

cultivated attitude among rulers and ruled. The second would consider the role of forgiveness and pardon in addressing the past.

For Linda Ross Meyer, arguments of various retributivists, while they could be answered in detail, rely on a foundational assumption that is, in the end, Kantian. Instead of offering us a point-by-point critique of the Kantian position, Meyer considers what happens if "we begin in a different place." To articulate this new point of departure, she turns to Heidegger and to his foregrounding not of reason but of a being-with others. Such a mode of existence is finite, practical, and based on complex and continuous interaction. Moreover, this is distinct from notions of empirical sympathy and so on. Rather, being-with is the first condition that motivates all thinking and feeling and, indeed, is prior to any emotional experience. Such an embeddedness has some distinct consequences for a theory of pardon. Meyer argues that it removes the objection that pardon must be discarded on the basis of a formal equality. Rather, the grounds for arguing for or against a theory of pardon shifts to our daily practices of living with one another. Thus, for example, Meyer suggests that only a being-with perspective rather than strict retributivism can account for the role of remorse and mercy.

This is clear in instances of what Meyer calls the "allegiance pardon." In the military, for example, a transgression may be forgiven by a superior officer, thereby creating a personal bond. A further transgression would then be not just a violation of the law but more saliently a personal breach of trust.

Meyer anticipates that we might object to all of this as too hierarchical, too personal, but one of the more compelling arguments that Meyer offers is that the role of discretion and mercy, power and forgiveness, is not subject to an abstract argument for or against, for discretion and mercy already exist in the legal system. The prosecutor who declines to file charges because it would ruin the life of a young first-time defendant or the jury who declines the ultimate penalty in response to the remorse of a defendant are already practicing the many forms of mercy that some theorists argue for or against in the abstract. "Moral luck pervades the system," Meyer argues, and we need to base our critiques of clemency on such an acknowledgment.

It is not that this leaves us with no basis for offering a criticism of clemency, but it does force us to draw on different norms that emerge from a foundation of being-with: norms such as respect. Thus, Meyer argues that what strikes us as repugnant in Justice O'Connor's infamous example of tossing a coin to decide to whom to grant a clemency decision is that such a mode of deciding someone's fate

shows no respect or consideration. Such a moral and political if not legal judgment is, for Meyer, the kind of organic, contextual, and richer conclusion that can only emerge from a being-with-others perspective.

The other condition that characterizes both forgiveness and pardon is their ability to undo the past, to cancel out the continuing consequences of a previous action. Recall that for Arendt this was the most valuable quality of both forgiveness and pardon (she uses the terms interchangeably perhaps because they both contain what was for her this desirable ability to perform a revision of the past). Thus, from the everyday proverbial counsel of forgiving and forgetting to the etymological link between amnesty and amnesia, there is, it seems, a deep connection between forgiveness–clemency and remembering and forgetting.

Indeed, in his chapter in this volume, Meir Dan-Cohen takes this link one step further by grouping even repentance with forgiveness and pardon as a distinct set of activities that he terms *revisionary practices*. These practices are for Dan-Cohen united by the common ability of bringing the negative response to a past transgression to an end. One may, of course, object that repentance does not bring anything to an end, as it merely facilitates the possibility of forgiveness that alone ends the past. But for Dan-Cohen, each of these activities is related in their activity, and the only real difference is the subject of each activity: In forgiveness, it is the victim; in clemency, it is the official; and in repentance, it is the wrongdoer.

Dan-Cohen, like Arendt, emphasizes the ability of both private forgiveness and public pardon to revise the past. But Dan-Cohen wonders *how* such a revision of the past is achieved and what it entails. The conventional wisdom on the topic would suggest that it is repentance that facilitates forgiveness and a new beginning by excising the offensive action, by making the wrongdoer anew.

Dan-Cohen asks if this could really be the case. If, in fact, repentance has made the wrongdoer into a "new person" (putting aside the question of if this is ever possible), who or what is one forgiving? "If we allow," he notes, "that as a result of the change in identity there is no one to resent or attach stigma to anymore, we must also recognize that for the very same reason there is no one to forgive or pardon either." What is required, then, is a theoretical model that can explain both continuity and change brought about by repentance and forgiveness in the wrongdoer's identity.

Dan-Cohen illustrates the temporal quality of forgiveness and identity by turning to a spatial hypothetical. His imaginary town of Arcadia contains within its borders a source of pollution. It might then be reasonable for us to assume that Arcadia

is responsible for the pollution. But if by treaty there is a redrawing of borders so that the source of the pollution is no longer in Arcadia's territory, we would feel it inappropriate to continue blaming Arcadia. What is key to the extension of this hypothetical to a wrong committed in a person's life, to the redrawing of the border's of the self, is the notions of responsibility or inappropriate responses, both of which Dan-Cohen insists are normative and not just psychological positions. Thus, in the give-and-take of repentance and forgiveness even between two private individuals, forgiveness redraws the boundaries of the wrongdoer's self by making it normatively inappropriate to demonstrate a negative response. Similar to the drawing of spatial borders, forgiveness for Dan-Cohen is a normative stand on the nonrelevance of a prior act. This does not actually excise the wrong from the wrongdoer's past, but it does oblige others to act as if that wrong had never happened.

Dan-Cohen's analysis of revisionary practices is useful in emphasizing forgiveness as a normative process and not just a more inchoate psychological one. The normative dimensions of remembering and forgetting become, in our time, a more urgent question. As Derrida notes, we live in an age of forgiveness. Every year, it seems, we are witness to an apology by a head of state for a past atrocity committed on a population more than a half-century ago. (Most of these reparations and apologies stem from the events of World War II though certainly not all of them; others include apologies for apartheid and colonialism and so on.) But just as compelling are the various idioms these apologies can adopt, the negotiations that can decide or derail an apology. And then there are those apologies that seem to be demanded but consistently refused, such as the United States' refusal to acknowledge a wrong, much less apologize for it, with the dropping of atomic bombs on Japan. Derrida thus notes, "we see not only some individuals but entire communities, professional corporations, church representatives and hierarchs, sovereigns and chiefs of state asking for 'pardon.' They do this in an 'abrahaminque' language which is not (in the case of Japan or Korea, for example) that of the dominant religion of their society, but which has already become the universal idiom of law, of politics." The theological idiom of repentance and the legal idiom of pardon merge in a global language of coming to terms with the past.

But this raises new questions. As Bruce Robbins asks in his chapter in this volume: Can countries forgive? Can entire collectivities be forgiven? Of course, a necessary prelude to these questions of national repentance and forgiveness is the question of how to assign national blame. Answering this question requires a complicated calculus that Robbins terms "comparative national blaming." How

and when do collectivities recall the atrocities they have endured? When do they indulge in what may be called strategic forgetting? Bruce Robbins explores these urgent questions through a reading of W. G. Sebald's *On the Natural History of Destruction*.

Sebald's work is animated by a single question: Why, after World War II, was there so little remembrance of the Allied firebombing of German cities? One possibility that Sebald entertains but ultimately dismisses is that the flames that instantly consumed Dresden, for example, went beyond what humans can grasp. In Sebald's account, what emerges as a more compelling rationale for the postwar silence is national shame. That is, German suffering of the fire-bombing could not compare to the horrors the country had been responsible for in the Holocaust. What Robbins wants Sebald and us to move toward, however, is a more sophisticated cosmopolitanism that understands national shame and pride in conjunction to reach a more nuanced reckoning with the past.

The final chapter brings together the numerous theoretical approaches we have been considering. Adam Sitze's "Keeping the Peace" not only addresses the role of mercy in the construction of a sovereignty but also its part in the role of memory and the possibility of a more participatory politics.

His chapter contains an intriguing illustration of the link between amnesty and amnesia, a general pardon and a forced forgetting. Sitze explores the shape and consequences of what he calls an "indiscernibility" between amnesty and the right of grace by first turning to Kant and then to Plato, and he considers the Athenian amnesty of 403 B.C. The rupture that this amnesty sought to heal was not so easily categorized in the extant terminology of *polemos* or external war, and it was more horrible because of fratricidal stasis or civil war. Moreover, drawing on the work of Nicole Loraux, Sitze shows how this restoration that the amnesty of 403 B.C. capped did not only involve Athenian citizens but was due in large part to the "democratic faction" of slaves and women. The amnesty thus involved a specific prohibition against recall: an oath taken by all that they would not raise past grievances. And although this is surely illustrative of Arendt's approval of the power of pardon—namely, its ability to unchain us from the past—Sitze shows us a less sanguine version of this power. The amnesty of 403 B.C. was in effect the mechanism by which democracy was defeated and silenced at the very moment of its victory. Political differences were put away, and all future legal recourse was closed once the amnesty was completed. In this way, the amnesty certainly did found the body politic, but it did so by curiously evacuating the political.

But if one part of Sitze's work shows the political limitations of pardon as a means of addressing the past, the other strand in his chapter speaks to our understanding of pardon as a form of decision and judgment. Sitze shows how a rupture in the organizational schema of the polity, introduced in Plato's *Laws* by the death of the intestate man, requires a particular use of *sungnômon*. This is a concept that designates a sense of flexible or nonruled-based judgment. It is a concept Martha Nussbaum uses to show how the later Roman clementia in Seneca accords with a sense of humanitarian sympathy. Sitze finds these accounts of *sungnômon* doubtful. Instead, he points to how the concept is used in the laws as a "constitutively divided judgment." That is, when the lawgiver must encourage a breaking of the laws to restore the mathematical harmony that is disrupted by the intestate man, *sungnômon* is required not only by the lawgiver in giving the laws but by the citizens in receiving them. Sitze thus begins to point us toward as conception of judgment and mercy that would not be solely an affirmation of a sovereign and his decision.

Taken together, the chapters in *Forgiveness, Mercy, and Clemency* map some of the crucial domains of inquiry into their complex relations, domains that link those concepts to judgment and exception, being and acting, history and forgetting. They point toward an enriched understanding of the links and disjunctures among forgiveness, mercy, and clemency and of the registers of individual psychology, religious belief, social practice, and political power that circulate in and around those who forgive, grant mercy, or pose clemency power. Finally, they collect and build on existing theories. They suggest that in many ways necessary theoretical work on the questions of forgiveness and pardon, on the connection between mercy and justice, are only just beginning. They invite scholars to renew and revitalize that work.

Notes

1. Arendt to Auden (February 14, 1960, no. 004864 and 004865) in *General Correspondence, 1938–1976* (Hannah Arendt Papers, Manuscript Division, Library of Congress, Washington, DC). A digitized version of this letter can be found at http://memory.loc.gov/ammem/index.html.

2. Hannah Arendt, *The Human Condition* (Chicago and London: University of Chicago Press, 1958), 237.

3. Ibid., 240.

4. W. H. Auden, "The Prince's Dog," in *The Dyer's Hand and Other Essays* (New York: Random House, 1962), 201.

5. Arendt to Auden, (February 14, 1960), 1.

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