

**Reconciliation Within Academe
(Being Unable To Practice What We Preach)**

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When one of us has harmed another, or when several of us are embroiled in bitter conflicts, achieving reconciliation and/or forgiveness are usually seen as desirable goals. Presumably, this is especially true in a university situated in a Christian faith tradition; in fact, it should apply to any university that aspires to be a “community.” Pragmatics alone would suggest that peace-with-justice (or at least the appearance of justice) is desirable, among people who may spend the rest of their active lives in next-door offices in the same department. Griswold characterizes forgiveness as “a vote for the victory of such values as respect, growth and renewal, harmony of self and reconciliation, affection, and love.”¹

Heroic or saintly individuals can transcend divisive structures, processes and situations and extend the hand of reconciliation to one another. For most of us, however, the achievement of community in the context of conflict can be influenced and even impeded by official policies/processes. The example I will draw upon is my own university's policy on harassment, with which I have vivid recent experience. You will have to make your own applications – including counterexamples, of course.

First, a description of the Policy on Harassment at St. Joseph's (sketchy); then, drawing especially on Griswold, some comments on the requirements for forgiveness; and finally, a proposal that this university policy incorporates aspects of two models for dealing with criminal offenses (adversarial and inquisitorial) and neglects a third (restorative). However, the model that best reflects the stated values of the university is precisely this neglected approach.

1. **Harassment Policy:** a person who believes s/he has been harassed on account of a protected category (race, gender, etc.), or sexually harassed, may consult a member of the Harassment Advisory Team. If the supposed victim wishes to pursue the matter, s/he then contacts the Resolution Officer [RO], for either an informal resolution or to initiate a Formal Complaint Procedure. In the case of an informal complaint, the RO may take whatever steps s/he deems necessary to bring about a resolution. In the case of a formal complaint, the RO – or someone appointed by the RO – investigates the complaint. Up to this point, note, no mention is made of notifying the person complained against.

¹ *Forgiveness: a Philosophical Explanation* (Cambridge U. Press, 2007), p. 71.

“The Resolution Officer will request written statements, which *may* [my emphasis] be provided to both parties.” Oddly, the statement goes on to say that the “alleged offender will have an opportunity to respond in writing to the allegations...,” which does suggest that s/he has received them. Both parties will be interviewed, and the RO can interview anyone else s/he deems necessary. After the investigation, the RO decides whether the evidence supports the complaints and informs both parties of his or her decision. If the accused person has been found in violation of the policy, the RO “will take immediate and appropriate action, including discipline.” Whether or not the person accused is found to have committed some form of prohibited harassment, that person is warned against retaliation. In a sense, a decision one way or another followed by non-retaliation is the best outcome envisioned.

I call attention to the glaring omission of a stated requirement that the alleged offender have a right to “confront” or meet with the accusing person, or even necessarily to be told who the accuser is. There is also no requirement that the accused person be provided the names of witnesses, let alone the content of their testimony.

2. What Forgiveness Is and Requires: Griswold, following a number of others, defines forgiveness as the forswearing of resentment, and resentment as the moral anger one feels at being treated unjustly. (39) Appropriate forgiveness requires that the one originally harmed or offended now recognizes that the offending party *qualifies*, so that resentment is no longer warranted. We can talk about his list of conditions for qualifying (about six); the gist of them is that a social exchange has taken place between the two parties in which the offender acknowledges responsibility, repudiates her deeds, expresses a commitment to changing, shows that she appreciates the damage she has caused from the victim’s perspective (having listened to the victim’s narrative with compassion), and gives her own account of how she came to commit the offense. (49 – 51) Thus the view each person has of the other, and of him or herself, is reframed. Griswold suggests that this reframing can be blocked, and in that case forgiveness is foreclosed. I suggest that one way of blocking it is to prohibit or prevent direct contact between the two individuals.

3. Criminal Justice Models: Retributive/Adversarial, Inquisitorial, Restorative. In the “retributive” CJ model, a criminal law has been broken; typically, someone has been harmed as a result. The state’s response to this is to assign responsibility to an offender, through a criminal trial, and to then administer “just deserts” (punishment) so that he “pays his debt to society.” The accused person is presumed innocent and has important due process rights, particularly to confront the witnesses and evidence against him. Through his legal representative, he has the right to cross-examine all witnesses. The offender is not required to speak at all in the trial, and the victim may not be permitted to speak. The proceeding is backward-looking: what was done in the past, by whom, with what degree of culpability?

I know less about the inquisitorial model (used in many European countries, with variations). Essentially, the evidence-gathering is done by a judge or magistrate (this includes questioning witnesses). Final judgment on conviction or acquittal is not made by this lone judge, however, but by “a certain number of professional judges and a small group of lay assessors.”²

² <http://law.jrank.org/pages/7663/Inquisitorial-System.html>

The defendant is required to answer all questions except concerning the crime itself. He is entitled to see the government's case against him before testifying (not the case to the same extent in the U.S. adversarial system). He is not presumed guilty, but also does not enjoy a presumption of innocence -- a case would not be brought in the first place unless there is some evidence of guilt. The inquisitorial approach is often contrasted with the adversarial approach as "truth-seeking" vs. protecting the rights of the accused.

A restorative justice approach begins with an offender willing to admit at least some responsibility for the law violation, and for the harm it has caused to direct victims and community. The core procedure is a mediated meeting between/among stakeholders, aimed at a full exploration of what happened and why, a face-to-face encounter between offender and victims in which the offender is held accountable and has the opportunity to grasp what he has done and to express remorse. All of the stakeholders together address the question of what must be done to make things right, and who has the responsibility to do what needs to be done. Ideally, an agreement is reached and a contract is signed reflecting the agreement and detailing how the agreement will be enforced. The fundamental aim is to make things right (as "right" as possible).

4. Conclusion and Invitation to Dialogue: My university's Policy on Harassment includes elements of the retributive model, in that its aim seems to be determining culpability and administering penalties. Like a criminal trial, the procedures force the parties to remain at a distance. However, it omits central balancing features of the retributive model, concerning the rights of the accused to confront his or her accusers, to know the names of witnesses and the content of their testimony, and to question them.³ In some significant ways the policy resembles the inquisitorial model, with the Resolution Officer in the place of the judge or magistrate conducting the investigation. However, if he or she chooses to do the actual investigating (rather than appoint someone else as investigator), then the RO also determines guilt and administers the penalty. Power is thus more highly centralized in this single person than in the general inquisitorial model. Further, the model does, but our policy does not, give the accused person the right to know all of the evidence against him or her, presumably including accusers' names.

The most promising model for addressing underlying conflicts (or possibly just misunderstandings) before they become truly malignant is the restorative (I believe). Restorative processes can assist the persons to whom the conflicts belong⁴ to resolve them together. Reconciliation, not just non-retaliation, can be the outcome.

³ "...it is beyond question that the right [of confrontation] is a central and defining feature of common law criminal procedure." David Lusty, "Anonymous Accusers: An Historical and Comparative Analysis of Secret Witnesses in Criminal Trials," *The Sydney Law Review* 24 (September 2002): 78.

⁴ Nils Christie, "Conflicts as Property."