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# NOT PENAL SUBSTITUTION BUT VICARIOUS PUNISHMENT

Mark C. Murphy

The penal substitution account of the Atonement fails for conceptual reasons: punishment is expressive action, condemning the party punished, and so is not transferable from a guilty to an innocent party. But there is a relative to the penal substitution view, the *vicarious punishment* account, that is neither conceptually nor morally objectionable. On this view, the guilty person's punishment consists in the suffering of an innocent to whom he or she bears a special relationship. Sinful humanity is punished through the inglorious death of Jesus Christ; ill-desert is thus required, and an obstacle to unity with God is overcome.

The doctrine of the Atonement raises a number of difficulties, and there is no reason to suppose that a theory of the Atonement organized around a single idea—ransom, or satisfaction, or penal substitution, or whatever—will put paid to all of them. But it is nonetheless worthwhile to ask how much insight we can gain, and how many of our difficulties about the Atonement can be put to rest, with one or another of these ideas; and it is also worthwhile to ask to what extent a theory built around one of these ideas can incorporate the resources made available by the others.

Here I am going to argue for a *vicarious punishment* account of the Atonement, or, better, for an account of the Atonement that employs vicarious punishment as a central strand. I begin by criticizing the classic penal substitution view, showing that it is untenable not for moral but for conceptual reasons (section I). I then show how a vicarious punishment approach differs from a penal substitution approach, and thus is neither incoherent (section II) nor essentially morally objectionable (section III). With a defense of vicarious punishment in place, I employ that account to address some of the central difficulties regarding the Atonement (section IV). I then consider and solve a puzzle that arises within the vicarious punishment view (section V), and conclude by arguing that a vicarious punishment theory of the Atonement is fully compatible with, and indeed must be complemented by, an account of divine forgiveness (section VI).

## I

The penal substitution theory of the Atonement holds that human beings, on account of their sins, deserve to be punished, but that Jesus Christ was



punished in our place, so that we no longer bear ill-desert.<sup>1</sup> Some versions of the view hold that he was punished in the place of each and every human being; some hold that he was punished in the place only of those human beings that bear some special relationship to Christ.

An initial question that we might be puzzled by is why it should be an obstacle to human union with God, with our being at one with God, that we deserve to be punished for our sins. After all, it does not seem to be a particular obstacle to my union with my wife, or my children, that there are sins for which I deserve to be punished. I take it that the answer is that God is somehow—we need not pick a particular theory here—supposed to be the source of the law that we have violated and on account of which we bear ill-desert. So the mediating concept here is *divine law*. Because we bear ill-desert on account of our violations of the divine law, we cannot be at one with the source of that law until the ill-desert is removed. The penal substitution theory holds that this ill-desert is removed by punishment, and in particular, that Christ takes on this punishment for us, in our place. Christ is punished for our sins, and thus a necessary condition for unity with God is realized.<sup>2</sup>

The objections to the doctrine of penal substitution are familiar. On one hand, the objection is pressed that it is wrong to subject someone to hard treatment for the wrongs done by another. On the other hand, the objection is pressed that even if it were not morally abhorrent to punish someone for another's wrongs, it would nevertheless constitute a failure with respect to punishment's retributive aims if someone other than the evildoer were punished for the wrongful deed. Retribution, a legitimate and desirable aim of punishment, is unrealized if the wrongdoer is not him- or herself subjected to suffering on account of the wrongful deed; and a sinner's ill-desert remains if he or she does not bear the punishment for his or her sin.<sup>3</sup>

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<sup>1</sup>The penal substitution view, and the successor to it that I will defend, is thus to be distinguished from a satisfaction view of the sort defended classically by Anselm (*Why God Became Man* [*Cur Deus Homo*], trans. Joseph M. Colleran [Albany: Magi Books, 1969]); and more recently by Richard Swinburne (*Responsibility and Atonement* [Oxford: Oxford University Press, 1989], pp. 148–162). The satisfaction view connects the commission of sin to the generation of a debt to be repaid, and thus takes compensation as its guiding ideal; the penal substitution view connects the commission of sin to the generation of moral culpability, and thus takes retribution as its guiding ideal.

<sup>2</sup>So, as Calvin writes, "In order that all ground of offence may be removed, and he may completely reconcile us to himself, he, by means of the expiation set forth in the death of Christ, abolishes all the evil that is in us, so that we, formerly impure and unclean, now appear in his sight, just and holy. . . . Because the iniquity, which deserves the indignation of God, remains in us until the death of Christ comes to our aid, and that iniquity is in his sight accursed and condemned, we are not admitted to full and sure union with God, unless in so far as Christ unites us." See the *Institutes of the Christian Religion*, trans. Henry Beveridge (Grand Rapids: Eerdmans, 1997), II.xvi.3, p. 436.

<sup>3</sup>I take for granted the value of retribution, thus providing ammunition for critics of penal substitution-type views (for they allege that retribution must be unrealized if guilty parties themselves do not bear the punishment for their offenses)

I will return to these moral objections in more detail later. For the moment I want to put them to the side in order to argue that the problem with penal substitution is not, first and foremost, a moral problem; it is, rather, a *conceptual* problem. The problem is not that penal substitution is immoral, but that it is conceptually defective. Once its incoherence is brought to light, it is plain that recent philosophical defenses of penal substitution by Steven Porter and David Lewis are failures.

What, after all, is punishment? It is, all agree, an authoritative imposition of hard treatment upon one for the failure to adhere to some binding standard.<sup>4</sup> Punishment is *hard treatment*: it is, in itself, an evil, or perceived as an evil, by the person punished. Punishment is *authoritative*: it differs from vigilante justice or private revenge by its being imposed by someone who may legitimately impose such evils. Punishment is *for a failure*: one is subjected to punishment on account of something, in particular, on account of a failure to conform to some binding standard. No doubt one can ask questions about particular cases of punishment that fail to meet these conditions: perhaps the imposed punishment is not unwelcome by the punished, or is even a good; perhaps the party who imposes the punishment is not authoritative but a pretender; perhaps the standard for which one is punished is not genuinely binding, but spurious. That is all fine. What is agreed is that each of these three conditions is *characteristic* of punishment, so that punishment is, or is believed to be in conformity with, or is put forward as satisfying, these conditions. When a case of punishing is put forward as meeting these conditions, but fails to meet them, or is believed to be in conformity with these conditions, but in fact is not, we thereby have a case of *defective* punishment.

But it is plain that these three conditions, while each necessary for punishment, are not jointly sufficient. For there are cases in which hard treatment is authoritatively imposed for a failure, but which are clearly not cases of punishment. The common law imposes an authoritative duty of care not to negligently impose losses on others; when one violates this and thereby causes a loss, one is subject to liability to pay compensation to the victim. This is hard treatment, authoritatively imposed, for the failure to meet a standard. But this is not punishment: we don't call it punishment, and it is a matter not of criminal law but of private law. The rules of basketball require one not to take more than one step while holding the basketball; when one violates the rule, one is subject to having the ball turned over to the opposing team by the referee. This is hard treatment, authoritatively imposed, for the failure to meet a standard. But basketball games are not filled with punishments. Torts and penalties involve

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and for defenders of that view (for they hold that Christ's suffering death is to be understood by reference to the value of retribution). If one simply rejects the value of retribution, the arguments of this paper will leave him or her cold. But the value of retribution is too large a subject to be dealt with here. For a very helpful account of the various ways to defend its value, see Michael S. Moore, "The Moral Worth of Retribution," in *Placing Blame* (New York: Oxford University Press, 1997), chap. 3.

<sup>4</sup>See, for a systematic account of the nature of punishment, Joel Feinberg, "The Expressive Function of Punishment," in *Doing and Deserving* (Princeton: Princeton University Press 1970), pp. 95–118.

authoritatively imposed hard treatment for failures to adhere to a standard, but they are not punishments.

What more, then, is necessary? Feinberg suggests, extremely plausibly, that a fourth condition concerns the function of punishment, or what we might better call its characteristic activity: punishment *expresses condemnation* of the wrongdoer, of the wrongdoer as performer of the wrong.<sup>5</sup> The hard treatment is the mode in which this condemnation is expressed.

There are a number of virtues to this suggestion. The first is that it carves the cases properly. Basketball penalties and tort awards do not typically involve expression of condemnation of the rule-violator, whereas criminal cases do typically involve such expression. (Defendants are found guilty of crimes; they are not found guilty in tort cases.) The second is that the hypothesis that punishment involves condemnation makes intelligible the fact that crimes have *mens rea*—guilty mind—conditions as essential elements. If one performs a criminal deed unknowingly, or without the requisite blameworthy volitional state (e.g., intentionally, or recklessly, or negligently), then no matter how harmful one's deed, one has committed no crime.<sup>6</sup> It also explains the role of affirmative defenses—excuses and justifications—in the criminal law. An excuse grants that one satisfies the elements of the crime, but holds that for whatever reason (insanity, immaturity, duress), one is not to blame—not worthy of condemnation. A justification grants that one satisfies the elements of the crime, but holds that circumstances were such that acting in a way that satisfied those elements was the right thing to do, and so one is not to blame—again, not worthy of condemnation.

But if this fourth condition is correctly formulated, then punishment expresses condemnation of the person punished. And if that is right, then punishment will be non-transferrable: one cannot express condemnation via hard treatment of someone who one does not take to be worthy of condemnation. Or, perhaps, one can, but then the punishing act will be defective—and it will not do for the penal substitution account to hold not merely that the penal substitution was unusual, or nonstandard (we all knew that already), but that it was a defective case of punishing.

Here is a similar case. When someone wins an athletic contest, there is often an official honoring of that person. One must do something else in order to honor the winner—honoring isn't a basic action; it has to be done through some other action, say, by conferring a trophy, or by giving a ribbon, or just by declaring that the person is the victor. This honoring-through-conferring-a-trophy (for example) may even be something that the

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<sup>5</sup>We should hold neither that punishment simply condemns the wrongdoer as such (after all, the wrongdoer may be admirable in lots of ways) nor that it simply condemns the wrongful act (after all, even basketball penalties recognize the act for which the penalty is imposed as a failure, which is a sort of condemnation; and what's more, if punishment condemns only the act, it is hard to see why we are so set on ascertaining the precise identity of the wrongdoer if we already know that the act performed was a heinous one). The best way to characterize the condemnation, then, is that it is of the *wrongdoer in a certain respect*, that is, as performer of the wrongful action.

<sup>6</sup>There are some crimes of strict liability for which no mental state is an essential element. But these are unusual, severe outliers in the criminal law.

winner has a right to: if, to take the simplest case, it is part of what is undertaken by the competitors and the officials that the winner will be honored with a trophy, then the failure to do this honor would be a violation of the winner's rights, and something to which he or she could justly lay claim.

Now in 2005 Lance Armstrong won the Tour de France. No one other than Armstrong could be honored for Armstrong's victory, through conferring a trophy, giving a prize check, inscribing a name on a plaque. If they tried to honor Ullrich for Ullrich's winning the 2005 Tour, they would have failed, because Ullrich did not win. If they tried to honor Ullrich for Armstrong's winning the Tour, they would have failed, because to honor is to treat someone as praiseworthy in a certain particular respect, and Ullrich did not exhibit that praiseworthiness; Armstrong did. Now: Armstrong had a right to this honor, we may suppose. But the right is not transferable; even if Armstrong wished for Ullrich to be honored for Armstrong's victory, Ullrich could not have been intelligibly so honored.<sup>7</sup>

Praise substitution and penal substitution are in the same boat. To praise and to punish are expressive actions, and they presuppose that their targets are bearers of certain relevant evaluative properties. Praising presupposes that the object of praise exhibits particular virtues; so, even if one has a right to be praised for something, that right cannot be transferred so that someone else is to be praised instead. Punishing presupposes that the object of punishment has failed in particular respects; so, even if one (say, the victim, or some authority) has a right that someone be punished, that right cannot be transferred so that someone else is to be punished instead.

If (nondefective) punishment is essentially condemning of the agent who failed to live up to the standard the violation of which justifies the punishment, then penal substitution is unintelligible. We know that attempts to justify it will founder not for moral reasons but for prior conceptual reasons. Steven Porter's recent attempt to defend penal substitution notes that penal substitution may very well not undercut some of the purposes for which punishments are imposed, e.g., deterrence.<sup>8</sup> And that is of course correct: we cannot show that penal substitution must be objectionable because it will not meet any goal that punishment has been plausibly thought to serve. The objection will be to the very idea that punishing action can be intelligibly transferred from the characteristic target, the violator of the standard, to some other party. Porter makes his argument in terms of a retributive right—that the party who is wronged has the right to punish the offender, and so, if there is a transfer of that right that itself violates no parties' rights, then penal substitution could be morally defensible.<sup>9</sup> Now, I doubt that there is anything like a robust retributive right (as opposed

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<sup>7</sup>There are some cases, of course, when one wants to say that another person merits the honor that is being bestowed upon one—when someone else enabled the performance in one or another way, for example. Then one is claiming that honor bestowed solely on one is misplaced—the worthiness to be honored is *already* present in others. There is no *transferring* going on.

<sup>8</sup>Steven L. Porter, "Swinburnian Atonement and the Doctrine of Penal Substitution," *Faith and Philosophy* 21 (2004), pp. 228–241.

<sup>9</sup>*Ibid.*, pp. 234–237.

to, say, a right to compensation), but put that worry to the side for the moment. Nor do I think that, once the intelligibility of the transfer is granted, there is a problem describing a scenario in which no parties' rights are violated by such a transfer. The problem is that the transfer itself makes no sense, in the same way that Armstrong's transferring the right to be honored for winning the 2005 Tour de France makes no sense. No one can honor Ullrich for Armstrong's winning it, as he didn't. No one can honor Ullrich for Armstrong's winning it, as one can be honored only for one's own merits. Similarly, even if I have a right to punish you on account of your wronging me, this right would be nontransferable—not because it is in the classic sense 'inalienable' (i.e., that the right concerns such an important human good that no attempt to transfer it can be successful) but because any hard treatment that I took myself to have the right to impose on someone else as a result of this transfer would not be punishment at all.<sup>10</sup>

Lewis's qualified defense of penal substitution focuses on fines,<sup>11</sup> and he places a great deal of weight on the fact that we seem very tolerant of people who are punished by the imposition of a fine having that fine paid by someone else.<sup>12</sup> While I think that his arguments require multiple lines of response, the emphasis on the condemning character of punishment is also relevant here. It is important to keep in mind that penal substitution is not supposed to *eliminate* punishment, but rather to *re-direct* it. But in cases in which someone pays another's fine, the only ways to describe the situation coherently are either (a) that the criminal is punished, but painlessly, or (b) that no one ends up being punished. We could say, following (a), that

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<sup>10</sup>Porter responds to a version of this conceptual objection, in particular to Quinton's version of it, by noting that it is logically possible to punish people who are in fact innocent, and he infers from this that the objection to penal substitution must be moral rather than conceptual (Ibid., p. 236). This response fails. There can still be conceptual incoherence even when there is no logical inconsistency—take, for example, the Moorean paradox of asserting "I believe that p, but p is false," which is an incoherent assertion though it is logically consistent that one believe that p though not-p is true. But that is just the sort of incoherence that has to be present in penal substitution: that one who is doing the punishing is committed to holding that A is innocent but worthy of condemnation.

<sup>11</sup>David Lewis, "Do We Believe in Penal Substitution?," in *Papers in Ethics and Social Philosophy* (Cambridge: Cambridge University Press, 2000), pp. 128–135.

<sup>12</sup>Lewis thinks that, even when the possibility of others' paying one's fines is made very plain, folks will still not be significantly worried about the practice (Ibid., p. 133). For one counterexample, witness the following letter to the editor from the *New York Times*: "A Magistrate complained the other day—and the same complaint comes from Philadelphia also—of the defiant demeanor of some of the shirtwaist strikers arraigned before him, ascribing it to the fact that people of wealth were paying the offenders' fines. If this is the case, the Magistrates have only themselves to blame, for, as a fine is imposed as punishment, to permit an intervenor to assume the penalty by paying the fine is to remit the punishment on the part of the offender and defeat the purpose intended to be achieved. . . . This proceeding would be justifiable only if the sum were assessed as to the satisfaction of a debt or the reparation of an injury, which of course it is not. The vicarious paying of fines is farcical, if not unlawful, and it would seem to be the duty of Magistrates to make an end of it" ("Vicarious Punishment: Purpose of Law Defeated Where Rich Women Pay Fines of Strikers," *New York Times*, January 19, 1910).

what happens when someone pays another's fine is that the terms of the punishment require that the criminal be responsible for seeing to the outcome that the state be paid a certain sum of money; when one's rich relative pays the fine for one, the punishment is carried out, but without any difficulty for the criminal. Or we could say, following (b), that what happens is that the person fined is not punished, as the rich relative pays the required amount, and so there is no requisite hard treatment; the person who actually pays the fine is of course not punished, as there is no sense in which he or she is condemned for the wrongful deed for which the fine must be paid. In the former case, there is punishment, though we would be inclined to think it defective because the hard treatment wasn't so hard; in the latter case, there is no punishment at all, for the payment of the fine by the outside party resulted in there being no one over whom the conditions of punishment were all satisfied—we have a case of what we might call 'penal nullification.' But in neither of these cases is penal *substitution* going on. Since it is essential to the classic penal substitution view that there be punishment taking place and that there be substitution taking place, Lewis does not offer a successful defense of penal substitution.

I have focused my criticisms on this formulation of the penal substitution view because it has an air of intelligibility about it—one can see why bearing ill-desert under divine law would block unity with God, and thus why a transfer of punishment from humanity to Christ would overcome this obstacle. No doubt there are other views that one might classify as 'penal substitution' views, though, that are not subject to the objections that I have leveled against the view that Christ was punished for our sins. One might claim, for example, that somehow our sins *became* Christ's sins, so that Christ can be properly condemned, and thus there is no incoherence in punishing Christ in our place. Or one might claim that one is not punished for having done evil deeds but for the resultant guilt, and this guilt is something transferable, and it has in fact been transferred from sinful humanity to Christ. Of course I will object to each of these. With respect to the former, while we might have some experience of one person's sins really belonging to another (e.g., in cases in which parents raise children to be vicious), we have no such experience of *transfer* of moral responsibility for actions; so while we can use the words 'our sins became Christ's sins,' this sheds no light on how our ill-desert is relieved by Christ's suffering death.<sup>13</sup> With respect to the latter, again, we have no experience of guilt as such, cut off from its sources; one is always guilty for something done or undone, or some state of affairs realized or unrealized. We can use the words 'the guilt itself is transferred,' but again this will shed no light.

Now one may complain that I have given these alternative formulations of penal substitution short shrift. But I do not think that it can be denied that what these alternative formulations are calling for is a radical

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<sup>13</sup>We need to be careful here. The fact that, upon coming to know of the horrifying condition of a criminal's upbringing, we might come to judge the parents rather than the child to be blameworthy does not count as a transfer of moral responsibility in the relevant sense. This change is merely epistemic: we thought that the child was blameworthy, but it turned out the parents were. What penal substitution requires is not a shift in our judgment but a *normative* shift with respect to who in fact merits punishment.



transformation of our ordinary concepts of guilt, responsibility, and punishment, and if the aim is to make the Atonement intelligible, it is far from clear that such radical transformations can serve that purpose. If there were an account of the Atonement that captures some of the central ideas of the penal substitution view—that Christ’s suffering death is meant to rid us of our ill-desert, inflicting a punishment that is a necessary preparation for union with God—and that did not involve such conceptual innovation, then that view would merit serious attention from those inclined toward a penal substitution view. And that is just what I claim on behalf of the account of the Atonement that I am defending.

## II

The classic penal substitution view of the Atonement is incoherent. But there is a nearby theory of the Atonement that is not. (Indeed, I would not be surprised if some of those who take themselves to be inclined to defend a penal substitution view are instead inclined to defend some version of this near relative.) What is supposed to happen in cases of penal substitution is this. A deserves to be punished; but B is punished in A’s place; and so A no longer deserves to be punished. A’s ill-desert is removed by B’s penally substituting for A. This, however, is incoherent (section I). Consider, by contrast, *vicarious punishment*. A deserves to be punished; B undergoes hard treatment, which hard treatment *constitutes* A’s being punished; and so A no longer deserves to be punished.

The crucial difference between the cases of vicarious punishment and penal substitution is that in vicarious punishment, the wrongdoer is the one punished by having hard treatment imposed on him or her; there is no suggestion of penal *substitution*. What is the same is that in both vicarious punishment and penal substitution some other party’s being subjected to hard treatment is what constitutes the punishing and thereby allows for the requital of ill-desert.

It is plain that the conceptual incoherence present in the classic penal substitution view is not present in vicarious punishment, for on vicarious punishment the bearers of ill-desert are the ones who are condemned by hard treatment for their sins. The proof that this conceptual incoherence is absent is that we can give examples of vicarious punishment that both seem to be clear cases of punishment and which satisfy all of the criteria for punishment that we have made explicit. Suppose that under a legal system one who murders someone who is married is to be punished, if possible, by having one’s own spouse killed. The idea is not that the spouse is being punished in one’s place, *a la* penal substitution. Rather, the idea is that the criminal is punished *by having his or her spouse killed*. Think of it this way: One way that one can undergo hard treatment is to be deprived of one’s life. Another is to be deprived of one’s liberty, or one’s bodily integrity, or one’s property. We may call all of these ‘punishments *in propria persona*,’ for they are applied immediately to one’s own person. But not all punishments must be *in propria persona*. For surely one way that one can suffer hard treatment is for someone whom one loves to be made to suffer. If one’s good can, through special relationships with others, come to include these others’ good, then one can be made worse off by another

person's being made worse off. Indeed, the hard treatment imposed by vicarious punishment is even worse than the simple fact that one's loved one (e.g.) is suffering; it is that one's loved one is suffering *because of one's wrongful action*. So there seems to be nothing that bars a vicarious punishment from meeting the hard treatment condition.

And clearly the other explicit conditions for punishment may be satisfied here as well. In the case I described, that the punishment for one who murders a married person is to have one's own spouse killed is a part of the legal code, and so it is authoritatively imposed in the way that other legal punishments are authoritatively imposed. The hard treatment is imposed only for the failure to adhere to the legal duty not to murder. And it seems plain enough that such hard treatment can be essentially condemning—part of the criminal code, and limited by the variety of negative and affirmative defenses that block attributions of blameworthiness and so make condemnation inappropriate. Vicarious punishment *is*, then, genuine punishment. There is no conceptual obstacle to it. Indeed, one can not only imagine instances of vicarious punishment; one can imagine a whole criminal code built on vicarious punishment, in which the central mode of punishing legal wrongdoing is by imposing hard treatment on the wrongdoer not *in propria persona* but rather through someone whose good is characteristically wrapped up with the good of the wrongdoer.

### III

Vicarious punishment, unlike penal substitution, is not conceptually confused. But it may nevertheless be thought to be too morally objectionable to be worth bothering with. I will offer, then, a limited defense of the practice of vicarious punishment before turning specially to vicarious punishment and the Atonement.

*Vicarious punishment and injustice.* Vicarious punishment involves the subjection of an innocent party to suffering—I will call this party the 'suffering innocent'—in order to punish a guilty one. This it has in common with the penal substitution view, and it may simply be thought to be grossly unjust that an innocent would have to suffer because of someone else's wrong.

My answer to the charge that vicarious punishment is unjust is a simple one. It is possible for there to be a scheme of vicarious punishment to which all of the potential suffering innocents freely and informedly consent. A practice by which one party subjects another to some deprivation may no doubt be morally objectionable even if the parties involved freely and informedly consent, but the species of wrongness will not be that of injustice; *volenti non fit iniuria*. If the state, or whatever form of legal authority is in place, has instituted and is employing vicarious punishment for some crimes, the consent of all potential suffering innocents is sufficient to preclude the charge that if someone is made to suffer in order to punish a wrongdoer, then he or she is being treated unjustly.

One would not argue, I take it, that one should not undertake, and would not be bound by, agreements to undergo some deprivation of goods, at least if those agreements are made for a sufficiently worthwhile

purpose. Suppose, for example, that I have made an agreement with the state. In order to test the effects of limits to one's freedom, I agree to stay within a certain relatively small geographical area over a certain period of time, to honor constraints on my freedom of movement imposed by others, and so forth. Suppose that I indeed enter this agreement with full awareness and freedom, and later decide to refuse to honor it. It seems a very contentious claim that the state in no cases could require specific performance from me, especially if the state could not easily carry out its reasonable and important goals without my performance. But here we have a case in which I am, though not a wrongdoer, made to suffer, confined, deprived of an important set of human goods. What makes this legitimate is my free and informed agreement, and this seems to remove a basis for claiming that requiring compliance is itself unjust. If, then, retribution is itself a sufficiently worthwhile purpose, then there seems to be reason to suppose that one's agreement to be subject to becoming a suffering innocent in order to realize the ends of retribution would be sufficient to undercut the charge of injustice.

Two concessions. I concede that there may be some other sort of moral wrong here. Perhaps one might claim that it is *cruel* to do this. But claims of cruelty seem — when not backed up by a claim of injustice — to be rather global in their criteria of application: if an action is purported to be cruel (though not unjust), we would have to ask whether the action is justified by the ends the action pursues and the circumstances in which it is performed. So one might, I concede, sensibly say that while it is not unjust, vicarious punishment is cruel, because the ends of punishment can be realized using nothing but punishment *in propria persona*, without subjecting people to the possibility of becoming suffering innocents. We will have to ask, then, whether there might be adequate reasons to employ vicarious punishment rather than exclusively punishment *in propria persona*.

I also concede that it is possible that there is inevitably some injustice generated by schemes of vicarious punishment. It is *not* injustice between the legal authorities and the person who is made to suffer on account of someone else's wrongdoing; the consent I have imagined precludes that charge. If there is any injustice, it is between the wrongdoer and the suffering innocent. If a scheme of vicarious punishment has me slated to suffer if you commit a crime, in order to punish you (you love me), and you commit a crime, then you have likely done me an injustice. But this cannot be a criticism of the vicarious punishment scheme, or else it cannot be a serious one. For punishment schemes quite generally have the result that one who commits a crime and is subjected to punishment does an injustice to those with whom he or she has a special relationship.<sup>14</sup> If you and I love each other, and I commit a crime and am punished, I make you worse off through my having hard treatment imposed on me. I think that this counts as my doing you an injustice: you deserve not to suffer this, yet you do, because I acted wrongly. (This is not to mention the other more mundane sufferings loved ones can undergo when criminals have their lives, liberty, or wealth taken in punishment.)

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<sup>14</sup>This will be an important challenge to the vicarious punishment account of the Atonement I defend; see section V.

*Vicarious punishment and the legitimate aims of punishment.* Even if vicarious punishment need not do any injustice, it might still be criticized as inevitably failing to realize the legitimate goals of punishment. But the case for this seems weak. The typical aims of punishment in terms of which it is justified are retribution and deterrence. Retribution is realized by depriving the wrongdoer of a significant human good. Deterrence functions by motivating people to be less inclined to commit a crime because of the likelihood of what is perceived to be an unhappy consequence of doing so. But there is no reason on the face of it that vicarious punishment could not be effective with respect to retribution or deterrence. If retribution is realized through the deprivation of a human good, and the human good is in part constituted by the good of those with whom one stands in some special relationship, then retribution can be realized through vicarious punishment. As for deterrence, it is obvious that humans can be deterred by the prospect of the suffering of those close to them, and it is an empirical matter how extensive such motivation is.<sup>15</sup>

*The point of using vicarious punishment.* But isn't it *pointless* to use vicarious punishment, when the dominant aims of punishment can be realized by inflicting harm simply on the wrongdoer rather than through the sufferings of another? Doesn't this add needless cruelty to the act of punishing—bringing in two parties to suffer, one of whom is subjected to suffering without guilt, and generating needless anxiety in all those who may become suffering innocents? Doesn't the practice of punishment already have enough to worry about?

I do not need to argue that vicarious punishment is a generally good idea for legal systems to adopt. It is, generally, a terrible idea. Consent to such a scheme could probably not be freely and informedly acquired, and no doubt there would likely be so much anxiety about it that vicarious punishment would be an unpalatable option. Those who are disposed to rid themselves of certain persons to whom they bear a special relationship would be given perverse incentives to violate the law.<sup>16</sup> But it is nevertheless worth focusing on what there could be to say in favor of vicarious punishment over punishment *in propria persona* in certain cases, since, after all, the aim of this article is not to defend vicarious punishment generally but in the special case of the Atonement.

If there are cases in which vicarious punishment is justified, it is because through vicarious punishment the aims of punishment can be better served than through a scheme in which all punishment is *in propria persona* or there are distinct, further purposes that vicarious punishment can incorporate that punishment *in propria persona* cannot. Begin with the aims of punishment. In the previous subsection I argued that vicarious

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<sup>15</sup>I of course have no interest in denying that there could be other accounts of punishment for which vicarious punishment cannot serve. A theory of punishment that holds that punishment is permissible only if it places the wrongdoer under the immediate control of the state (for example, by execution, or by imprisonment)—imagine a theory of punishment in which incapacitation is the primary justifying aim—will have no use for vicarious punishment.

<sup>16</sup>Note that there are situations in which considerations of these sorts would also make a scheme of *in propria persona* punishment morally unpalatable.

punishment can serve the aims of retribution and deterrence. One might argue, then, that vicarious punishment might be justified if the aims of retribution and/or deterrence are better realized under vicarious punishment than under some other scheme.

With respect to retribution, it may well be that a way to make the suffering of a wrongdoer better answered, retributively speaking, is to punish him or her vicariously. If I were to do something horrible, for which retribution was called for, it may be that my imprisonment would not be as bad for me as would be my wife's, or my daughter's, imprisonment. If we think, as retributivists do think, that the gravity of wrongdoing should be answered by a correspondingly severe punishment, then a particularly grave wrongdoing by me might be better answered by punishing me through harm to a loved one than through unmediated punishing of me.

One might respond that even if that is true, this is not the crucial comparison to make. One might ask why we would not simply ratchet up the hard treatment of the wrongdoer directly, rather than turn to vicarious punishment. No doubt this is a feasible alternative in many cases. But there may be various limits to this strategy that might be overcome by way of vicarious punishment. I want to focus on a particular one here. It may be that retribution requires, or requires for its nondefective application, that the person punished be able to receive that punishment *as an agent*—with clear understanding, full capacity to respond rationally, and so forth. And there may be punishments that are so psychologically destabilizing, so undermining of our capacities to respond as agents, that they are inappropriate forms of retribution. (I am thinking of certain sorts of torture, in particular.) Vicarious punishment might make possible adequate, or more adequate, retribution by allowing the person punished to be able to endure the punishment as an agent though its severity is extraordinarily increased.

Consider next deterrence. At least in my own case, if introspection is at all reliable here, I would be more motivated by that deprivation's being imposed on one of my children than by that deprivation's being imposed on me. I do not think that I am particularly virtuous; this seems like the normal motivational state for humans with respect to their children. So it may well be that a scheme of vicarious punishment, at least for some offenses, would be a superior deterrent.

There may be other reasons for employing vicarious punishment, reasons that are not restricted to achieving the aims of punishment more adequately. To adapt an example of Porter's, consider an athletic team's captain being made to suffer (run laps, do pushups, etc.) in order to punish the whole team for their blameworthy infractions.<sup>17</sup> Assuming the justification of the punishing of the team, it might have served the legitimate 'internal' aims of punishment just as well for the coaches to have the whole team run some laps. But there is a good of unity that is being sought here. When everyone runs, the focus is on one's own discomfort, one's

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<sup>17</sup>Porter, "Swinburnian Atonement," p. 236. Porter's case involves a single late player rather than the whole team, but he appeals to the good of unity realized through having the captain suffer the consequences.

own pain. When the captain runs, there is a common focus, on the suffering of the one. So vicarious punishment might be chosen reasonably here for the sake of unity among those who are to be punished, if that unity is itself a worthwhile good. Or, with respect to deterrence, not all equally deterring deterrents are created equal with respect to their value. Some deterrents might, for example, reinforce morally valuable traits more successfully than others. So one might claim that it is better to be deterred by the prospect of a harm that is immediately inflicted on others rather than immediately inflicted on oneself; the former, but not the latter, reinforces altruistic modes of thinking and acting, and so is superior in that respect.

#### IV

The pieces are now in place of a theory of the Atonement that appeals to vicarious punishment—not, I think, as the sole gloss on that doctrine, but as contributing importantly to a full explanation. The view is simple to state. We human beings have sinned, have violated the divine law, in egregious ways. We thus merit punishment; and until this ill-desert is required, there is an obstacle to proper union with God. In order to exact retribution and requite this ill-desert, God chose to punish us vicariously. Because Christ accepted this scheme freely, and with awareness that he would indeed be called upon to undergo the suffering constitutive of the punishment, it does Jesus neither injustice nor cruelty that he was to suffer in the carrying out the punishment on sinful humanity.<sup>18</sup> So, on this view, the way that each of us is punished for our transgressions of divine law is that *his or her Lord is killed*. Each of us, for his or her sins, is subjected to the hard treatment of having his or her Lord made to suffer and die. What makes this hard treatment imposed on us sinners is that the relationship of *being Lord of* is a special relationship that makes the misfortunes of the Lord constitutive of bad for the subject. This is very hard treatment indeed.<sup>19</sup>

<sup>18</sup>As I noted above (section II), this is not to deny that there may be some injustice present in Christ's having to suffer that we might be adequately punished. I consider some difficulties raised by this below (section V).

<sup>19</sup>I do not plan to defend here one of the two possible interpretations of being in this special relationship to Christ such that one can be vicariously punished through Christ's suffering. On one reading, Christ's being my Lord is a special relationship that is contingent—even given Christ's life, death, and resurrection, Christ might failed to have been my Lord in the sense relevant to the vicarious punishment account. On this view, it is only those who enter into a special relationship with Christ whose sins are vicariously punished through Christ's suffering; those who do not enter into that relationship are such that their ill-desert remains, as yet unpunished. On another reading, Christ's being my Lord is a special relationship that is, given Christ's life, death, and resurrection, necessary—Christ is my Lord, and every other human's Lord, in the relevant sense. My sins have been punished through Christ's suffering, even though I might not even realize it yet. (This is not absurd. One can recognize only later that one was badly-off in a certain respect—for example, one who comes to recognize the value of family only halfway through a prison term will realize that, all along, he was being subjected to hard treatment by being deprived of free access to members of his family.) I will not enter into this issue here, because I do not think that the issue of whether a vicarious punishment account of the Atonement can be made to work turns on it; this is a general ques-

Why affirm this view? First: the vicarious punishment account has an answer to the question, forcefully pressed by Porter in his defense of penal substitution: Why did Christ's mission involve his horrible, inglorious death?<sup>20</sup> The vicarious punishment view has a straightforward answer. It is crucial to our being subjected to hard treatment that someone in a special relationship to us—our Lord—be deprived of these central human goods.

Second: much of the Scriptural basis for penal substitution is also available for the vicarious punishment account—though, as I have argued, the vicarious punishment account is at least an eligible theory of the Atonement, whereas the penal substitution view is conceptually incoherent. If one takes seriously the view that the Scriptural basis points toward something like a penal substitution account as being at least part of the story of the Atonement, then one should be inclined to look favorably on the vicarious punishment account. With respect to those passages that emphasize that Christ's saving us from sin happens through Christ's death,<sup>21</sup> it is clear that the vicarious punishment view succeeds as well as the penal substitution view on this score. Further: the vicarious punishment account captures as well as the penal substitution view the scriptural suggestions that Christ bore our sufferings for us, making it possible that we be reconciled to God. I cannot deny, of course, that there are texts that suggest that Christ was literally punished: that he was chastised,<sup>22</sup> or made sin,<sup>23</sup> or cursed.<sup>24</sup> But we have independent reason to think that this language cannot be meant literally (see the end of section II), and such formulations would seem to be poetically apt characterizations of vicarious punishment through Christ's sacrificial death.<sup>25</sup>

Third: The vicarious punishment view puts paid to the notion that by Christ's dying for our sins, we are thereby getting away with something. We are, rather, being punished for our sins, and indeed, worse than we would be punished if we ourselves died for them.

We can see some of the point of vicarious punishment through Christ's death for our sins by reflecting again on retribution and deterrence. I said above (section III) that in assessing the point of employing vicarious punishment, we should begin by asking whether the aims of punishment might well be better achieved if, in some case, vicarious punishment were employed. Begin with retribution. First, in terms of hard treatment, it is worse for me to have my son or daughter killed, and killed *for my offenses*, than it is for me to be killed, and killed for my offenses. But should we

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tion to be posed of any theory of the Atonement (ransom, satisfaction, and even exemplarist accounts admit of both interpretations).

<sup>20</sup>Porter, "Swinburnian Atonement," p. 232.

<sup>21</sup>See, e.g., Isaiah 53; Romans 5:10; Galatians 3:13.

<sup>22</sup>Isaiah 53:5.

<sup>23</sup>2 Corinthians 5:21.

<sup>24</sup>Galatians 3:13.

<sup>25</sup>On the vicarious punishment view, Christ was pierced for our offenses; he was crushed for our sins; he was smitten by God and afflicted; by his stripes we were healed. But I think it would be conceptually confused to say that Jesus was *literally chastised*—not by God, anyway.

not also say, *a fortiori*, that it is worse, incomparably so, for my Lord to be killed, and killed for my offenses, than it is for me to be killed for my offenses? Now, as I noted, one might say that there is always the possibility of ratcheting up the punishment of me in my proper person rather than carrying the punishment out vicariously through the sufferings of Christ. But, first, I am not confident that we know any such thing, when we reflect on how bad it is, not just impersonally, but for one, that one's Lord has been ingloriously killed, and ingloriously killed because of one's transgressions.<sup>26</sup> And, second, it may be that the sort of hard treatment that would be required if we were to ratchet up the deprivation *in propria persona* would be undermining of retributive aims—it might make one psychologically incapable of acting as an agent, and so vicarious punishment might be needed in order to have the appropriate level of deprivation along with the appropriate capacities as an agent.<sup>27</sup> Third, there may be other reasons for carrying out the punishment vicariously. Recall the variation on Porter's case, in which an athletic team's captain suffers on behalf of the whole team for their blameworthy failures. There is a good of unity realized when the punishment is a common deprivation—*our captain is suffering out there, and because of what we did* constitutes an evil, we can suppose, for each and every team member. So, too, independently of the question of the relative merits of vicarious and *in propria persona* punishment for achieving the internal aims of punishment, there may be other reasons for employing vicarious punishment—for example, this aim of unity. We humans, or we Christians, are unified through the fact that our punishment is through the suffering of our Lord, Jesus Christ.<sup>28</sup>

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<sup>26</sup>It may be that the answer to the question of whether the punishments that God could inflict on us *in propria persona* are more, less, or equally severe to the punishment that God imposes on us vicariously through Christ's death is: None of the above. For there may be distinct and incommensurable aspects of the severity of a punishment. So one might hold that *in propria persona* punishments are, as a class, worse than vicarious punishments in that they are borne immediately by one's natural person; vicarious punishments can be worse in that they can involve the suffering of one who less merits suffering, or whose well-being holds a more central place in the constitution of one's good, and so forth.

<sup>27</sup>This is one worry about how we characterize hell. If we take hell to be a place of retribution, the badness of it must be limited by the preservation of the capacity of the punished to respond to it as such.

<sup>28</sup>I claimed above (n. 19) that the vicarious punishment view is neutral with respect to the sort of special relationship with Christ that makes it possible for Christ's death to constitute our being punished. But one might nevertheless worry about whether my neutrality sits well with the fact that there are some humans who do not recognize Christ as Lord and thus who are utterly indifferent to Christ's suffering; such persons are neither punished, nor unified with others, through Christ's death. Perhaps this is the sort of consideration that should lead one to a specific view of the class of persons who are vicariously punished through Christ's death. But I am not totally moved by this point. If one believes that what is good and bad for one is not fundamentally a matter of what enters into one's experience, then it is possible for one to be punished without recognizing what one is receiving as hard treatment. And if one believes that there are important forms of unity with others that one can have without realizing it, then perhaps even unbelievers who



Now, while deterrence might play an important role in defending use of vicarious punishment within human legal systems, it has not played an important role in penal substitution accounts of the Atonement; what has mattered there has been retribution. But one might well appeal to deterrence in a vicarious punishment account of the Atonement.<sup>29</sup> Punishment, one might say, not only releases one from ill-desert; it can deter one from acquiring that ill-desert in the first place. One might doubt that this point could be brought to bear in a vicarious punishment theory of the Atonement. For one might point out that in my earlier defense of vicarious punishment as a deterrent (section III), the vicarious punishment to be avoided was in the future, and the deterrent mechanism was that one might be able to prevent that punishment by avoiding the wrongful conduct. But that of course is not at issue here: for us, Christ's death is past, and we cannot bring it about that it is not the case that our Lord has been ingloriously killed. But it would be too quick to reject vicarious punishment as deterrent in this case. For part of what makes for the badness of one's condition when vicarious punishment is carried out is that what is endured by the suffering innocent is present *on account of one's own wrongdoing*. But this is relevant to the deterrent value of Christ's inglorious death. For suppose that I am tempted to violate divine law and thus incur ill-desert. If I perform the action, it will be true that Christ's death occurred *in order that I might be adequately punished for that wrongdoing*. And this is the sort of fact that can be motivating, and which can help to deter one from acting wrongly. Indeed, this is the sort of deterrence made possible through vicarious punishment that may well be more morally uplifting than that which involves punishments inflicted simply *in propria persona*. For in the latter case one continues to focus on oneself, on one's own proper well-being. In the former case, what is the primary object of concern is the suffering innocent; one's focus is on someone else, and the deprivations that he or she suffers on account of one's acting wrongly.<sup>30</sup>

I have claimed that a vicarious punishment view avoids the difficulties of a penal substitution position while exhibiting its virtues. But a defender of a classic penal substitution view may claim that, regardless of whatever success my earlier arguments may have, it must be allowed that the move from penal substitution to vicarious punishment involves an important loss. On the penal substitution view, the notion that Christ is punished for our sins explains why we ought to have such gratitude to Christ for his undergoing this suffering: Christ was punished so that we did not have to be. On the vicarious punishment view, on the other hand, Christ

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would deny such unity are unified with believers through being freed of their ill-desert through vicarious punishment.

<sup>29</sup>I am not perfectly at ease with deterrence as a justifying aim of punishment. But as my discomfort with appeals to deterrence to justify punishment is not generally shared, it is worth asking whether, granting its legitimacy as a justifying aim, deterrence could play a role in a vicarious punishment account of the Atonement.

<sup>30</sup>The vicarious punishment account can, then, appropriate some of the value of the exemplarist theory of the Atonement by noting how vicarious punishment can serve to improve the character of those who reflect upon Christ's sacrifice.

was made to suffer so that we would be punished. Our punishment is not remitted, but imposed, though vicariously. And one might justly wonder whether a view that detracts from the gratitude that we owe to Jesus for his sacrifice could be a defensible view.

I think this objection fails. For first, and in my view most importantly, on both the penal substitution and the vicarious punishment accounts it is crucial to our well-being that our ill-desert is removed. On the vicarious punishment view, what makes possible the removal of our ill-desert is being punished through Christ's death. So even though we are punished, we have reason to be grateful to Christ for eliminating an obstacle—ill-desert—that stands between our sinful selves and full union with God. Second, even the penal substitution defender should allow that Christ's being punished makes it the case that we suffer: for, after all, that it is bad for one that one's Lord suffers, and suffers on account of one's wrongdoing, should not be what is at issue between the penal substitution defender and the defender of vicarious punishment; what is at issue between them is whether sinful humanity's suffering the death of its Lord constitutes punishment of sinful humanity for its wrongs. So the penal substitution defender cannot claim that what Christ's death made possible was the requital of our ill-desert without our having to undergo a serious deprivation. And, third, it is plain that the reasons for gratitude to our Lord for his earthly mission and inglorious death may go beyond the gratitude that we owe for the requital of our ill-desert. There is, as I said above, no reason to suppose that there is not more than one strand to a proper account of the Atonement.

## V

Before we turn to the question of vicarious punishment and divine forgiveness, I want to consider what may seem to be a paradoxical feature of the vicarious punishment account of the Atonement. Above (section II) I defended vicarious punishment from the charge of inevitable injustice by appeal to the consent of the innocent sufferers. I conceded, though, that there may well be injustice between the wrongdoer and the suffering innocent, and defended vicarious punishment by noting that the presence of such injustice is an inevitable feature of systems of human punishment.<sup>31</sup> But while it seems to me that this response is perfectly acceptable as a defense of the in-principle justifiability of vicarious punishment, it generates some difficulties in the case of Christ's death in the vicarious punishment of sinful humanity.

Here is the worry. Suppose that there is a scheme of legal punishment, vicarious in character, under which Joanne is made to suffer in order to punish Bob for his crime. Because all consent to the scheme, the legal authorities do Joanne no injustice. But Bob may very well have done Joanne an injustice. This is not a crucial objection to this scheme of legal punishment: there may be other legal means of addressing the injustice, or it may have been decided, reasonably, that some injustices are not to be addressed by the legal system.

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<sup>31</sup>At least, inevitable so long as humans stand in special relationships to other humans such that their good is in part constituted by others' good.

But things are not so easily resolved under a vicarious punishment theory of the Atonement. For I wrong Christ by sinning,<sup>32</sup> by making it the case that He is to suffer in order that I be punished for my sins. And that is a *further* wrong, for which punishment is called for. So in the very functioning of the economy of vicarious punishment in which our ill-desert is requited, more ill-desert is generated. What is supposed to be a desert-requital mechanism turns out to be a mechanism for generating more ill-desert.

The problem is not resolved by the fact that Jesus forgives us for this wrongdoing, any more than my ill-desert for battering you is dissolved by your willingness to forgo any claims in tort for damages. (More on this below.) Here we are not focusing on what Jesus is owed from us as a result of our wronging him, by way of compensation, apology, etc. We are focusing on what we deserve for wronging someone so dramatically. And this is just the unhappy situation, that bearing of ill-desert, that vicarious punishment is supposed to resolve.

Nor can the problem be resolved, as the problem might be resolved in an ordinary legal system, by allowing that not all such wrongs need to be answered. For the point of the vicarious punishment account of the Atonement is that the requital of the ill-desert that humanity bears is necessary to the proper union with God. To have this ill-desert remaining, because generated by, the operations of vicarious punishment would undermine the view.

Nor can the problem be resolved by positing that Christ not only consented to be a suffering innocent, thus making the suffering that befell him as our punishment not unjustly imposed, but also consented to our causing him to have to suffer thus in order that we be punished. It's not only that we lack any Scriptural basis for thinking that Christ consented to our causing him to have to suffer this way in order that we be adequately punished for our ill-desert — which contrasts rather sharply with the Scriptural basis that we have for Christ's accepting the suffering death itself. For even if we posit such consent, that does not itself preclude the charge that we act cruelly when we sin, for we thereby make it the case that only through Christ's suffering will we ourselves be punished for our sins. The charge of cruelty, as I argued above (section III), typically requires a global justification: it has to be shown that one did not have adequate reason to engage in the action that causes another to suffer. But we know that we will not be able to justify ourselves here, for the action that causes Christ to have to undergo suffering is sin, and we know that we do not have adequate reason to sin. So even if it were granted that by sinning we do Jesus no injustice, nevertheless we act cruelly, and thereby we add to our sin.

There is, however, a solution to the puzzle. We should claim that the operation of vicarious punishment generates an infinite series of vicarious punishments and ill-deserts, but it is an infinite regress that is non-vicious, as all ill-desert is requited. Christ suffers in order that we be punished for our sins. That we have caused Christ to suffer on account of our sins is itself

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<sup>32</sup>It is, however, necessary that the conditions for culpability are satisfied, including importantly one's knowledge that Christ is to undergo suffering in order that one will be punished for one's sins.

sinful, and calling for punishment. Christ thus suffers in order that we be punished for this sin as well. That we have caused Christ to suffer . . . And so on, *ad infinitum*. While this may look problematic, it seems to me that on reflection it is not an unfortunate feature of the view.

Consider the following comparison. Suppose that I owe a sum of money that I cannot repay. You pay it on my behalf. I owe you a debt of gratitude. You disclaim any such debts. We are now in a similar infinite regress. For any disclaiming of a debt of gratitude that you perform, that disclaiming will be a praiseworthy, free bestowal of a benefit on me. Thus I will owe you further gratitude, which is in turn disclaimed by you. What prevents this regress from being vicious, I suggest, is that there is a single normative stopper that precludes future such debts from taking hold, that is, your waiving any such debts. Similarly, if by divine institution God establishes vicarious punishment for all of our sins through the suffering death of Christ, then any such sins, including those realized through the punishing, can be borne through that suffering death and the vicarious punishment that results from it.

## VI

A vicarious punishment theory of the Atonement need not deny the desirability, even the need, for an account of divine forgiveness. Yet there are some who would wonder whether a vicarious punishment theory is even *compatible* with an emphasis on divine forgiveness. How can a view that emphasizes the desirability of retribution imposed through Christ's suffering death also emphasize the need for divine forgiveness?

There are some senses of divine forgiveness that are incompatible with the vicarious punishment account, but in my view, they are not senses of divine forgiveness that we should be particularly anxious to preserve. One might claim, for example, that an appeal to vicarious punishment ignores the possibility that our ill-desert could be dealt with by God in the way that an executive's power of pardon deals with the ill-desert of an offender under a legal system: that ill-desert, the liability to punishment, can under some constitutions be eliminated by executive prerogative. Wolterstorff describes this as a sort of forgiveness, an official sort, carried out through declarative speech-acts.<sup>33</sup> The notion that God forgives us could be interpreted as God's pardoning us for our offenses,<sup>34</sup> thus rendering vicarious

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<sup>33</sup>See Nicholas Wolterstorff, "Does Forgiveness Undermine Justice?," in *God and the Ethics of Belief*, ed. Andrew Dole and Andrew Chignell (New York: Cambridge University Press, 2007), pp. 219–247. I found illuminating Adam Pelser's criticism of Wolterstorff's paper in his "Does Punishment Preclude Forgiveness?" (unpublished manuscript).

<sup>34</sup>I think this sort of pardon is poorly characterized as forgiveness. (Pelser points out the divergence in terms of the attitudes that need to be manifested; see "Does Punishment Preclude Forgiveness?") It is important that in pardons the person wronged is not typically the one who is doing the forgiving. Even if we treat this person as a representative of the state, it is wrong to think that we wrong the state generally when we violate the law in the same way that we wrong our fellow citizens, or even the way that we wrong the state under specific legal norms, e.g., norms regarding treason.

punishment unnecessary (and as a result, cruel). After all, if human executive officials can employ the pardon power to release from ill-desert, then *a fortiori* God should be able to.

But this appeal to the power of pardoning as a way of God's releasing us from ill-desert is a bad idea, for two reasons. First, the reason that the pardon power in law is capable of releasing from ill-desert is that legal guilt is conventional, and so there is nothing to bar there being a legal rule under which those who are criminally liable can be, at will, released from their liability by executive intervention. But it is a large commitment to take on the view that *moral* ill-desert, which is what is at issue in the case of the Atonement, is conventional in that sense. If the divine law is either not a function of the divine will, or, if a function of the divine will, nevertheless necessary in some of its aspects, then moral guilt is not like legal guilt in the relevant sense, and so the *a fortiori* reasoning will not go through.

Second, even if God does have the power to simply pardon, we need an explanation as to what are those goods in terms of which God would exercise this power. For our ordinary experience of pardon is that it is a lesser evil—it is properly employed when the typical and appropriate ways of dealing with a wrongdoer have gone awry, or when the goods of punishing are in a particular case to be put to the side for the sake of more important goods. We can be confident that in the case of humanity's failings before the divine law, the divine law has not gone astray, nor has God's assessment of us as having failed before it missed the mark. So we must appeal to these rival goods. But what are they? They must be some goods that are blocked by carrying out punishment on those who bear ill-desert. But I don't know what these goods are supposed to be. We are supposed to be concerned here about the possibility here of unity with God. How is that unity blocked by God's punishing us righteously for our sins? That we are going to *resent* it? That looks like *our* problem, to be dealt with through sanctification, rather than by forgoing the retribution that we deserve.

So, it is true that an appeal to divine forgiveness as divine pardon is incompatible with the vicarious punishment account, but I do not see that this is a problem for the vicarious punishment account, for we should not be happy with a view on which God simply pardons us for our transgressions of divine law. But there could still be, indeed must be, a place for divine forgiveness within a theory of the Atonement. For it is by no means the case that being punished for our sins is sufficient to remove the obstacles to union with God, and it seems very plausible that forgiveness is a necessary part of the removal of these obstacles.

Consider the distinction between criminal law and tort law. Criminal law involves norms the violation of which is answered by punishment, and tort law involves norms the violation of which is answered by compensation. (Thus the idea of a victimless crime, regardless of whether it is morally defensible, is perfectly coherent; the idea of a victimless tort is incoherent, for with a tort there is always a harmed party, someone whose loss of well-being needs to be compensated.) The same actions can be crimes and torts, and having one's action dealt with under the system of criminal law does not at all make recourse under tort law less desirable or less accessible (and vice versa). Battery, for example, is a crime and a tort.

If you beat and injure me, you are subject to criminal prosecution by the state. But you are not free from legal liability simply by undergoing punishment. For in addition to the criminal liability you bear for hurting me, you also bear liability to me, personally, to compensate for my injuries. I could sue you, requiring you to pay damages; upon payment of damages, you would be free of legal liability—all would be right between you and me. But here is another way all could be right: I could waive the right to demand damages, freeing you from liability. The crucial point is that these are independent liabilities—one to punishment, one to compensation—and being freed from liability in one respect does not entail being freed from liability in the other respect.

Attending to this distinction between crime and tort can enable us to see how forgiveness could have an essential role even in a theory of the Atonement in which vicarious punishment has a central place. Sinful humanity bears ill-desert for crimes against divine law, and vicarious punishment could well be the way that God has instituted for that ill-desert to be requited. But sinful humanity has also, under the divine law, wronged God. What could we do, though, to make right, to undo, the wrong that we have done, to compensate for these failures? After all, everything that we have is God's; no compensation seems possible.<sup>35</sup> We will either remain at odds with God for our failures, punished though we may be, or be forgiven for our sins. So not only can one coherently claim that a vicarious punishment view of the Atonement is compatible with a role for divine forgiveness, one can coherently claim that a vicarious punishment view can be completed only when it includes a role for divine forgiveness.<sup>36</sup>

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<sup>35</sup>This is what drives Anselm toward his own particular account of the incarnation in *Cur Deus Homo*: as he writes, "Even when I am not in the state of sin, I owe Him myself and whatever I can do, in order to avoid sinning, I have nothing to offer Him in compensation for sin" (I, 20). These considerations in favor of God incarnate playing this role in the Atonement are also central to Swinburne's account, though without the necessity that Anselm ascribes to them (*Responsibility and Atonement*, pp. 157–162).

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