SAVING FACE: THE BENEFITS OF NOT SAYING I’M SORRY

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I

INTRODUCTION

Nearly every day some public figure—from Don Imus1 to John McCain2 to Miss America3—offers, or is called upon to offer, an apology. But it’s not just in politics and Hollywood that apology reigns. Apology fever is everywhere. At your local bookstore, you can buy any number of recent self-help books espousing the benefits of apology and teaching you how to say the magic words.4 Or, if you prefer, a number of new Internet ventures offer workshops designed to teach you, or your employees, to apologize.5 If you haven’t heard, it’s good for warding off lawsuits.6 It’s good for business too. So good, in fact,
that at least one commercial airline employs a full-time “apology officer” whose sole job is to craft apologies to deliver to disgruntled customers.\footnote{Jeff Bailey, \textit{Airlines Learn to Fly on a Wing and an Apology}, \textit{N.Y. Times}, Mar. 18, 2007, available at \url{http://www.nytimes.com/2007/03/18/business/18sorry.html}.


11. See White, \textit{supra} note 9, at 1295.}
Roger Conner and Patricia Jordan’s account of resistance to apology in *Never Being Able to Say You’re Sorry* is thus refreshing and important. As they explain, people strongly resist apologizing when doing so would run counter to their deeply held beliefs. This resistance can be particularly evident in group conflicts in which the issues are often unbounded, the groups ill-defined, and both sides of a conflict often have a viable claim that they deserve the apology. In such cases, Conner and Jordan rightly suggest that the best road to reconciliation may be to skip apology and forgiveness altogether, or to at least put them aside for awhile, and to focus instead on acknowledgment and cooperation.

Conner and Jordan do not account, however, for those who refuse to apologize even when they have violated their own belief systems and who make no claim to deserve an apology from the other. This situation has also received scant attention from other legal academics. Nevertheless, it has been suggested—without much empirical support—that many otherwise well-intentioned individuals do not apologize because they fear the apology will be used against them in a lawsuit. In response, a number of states have in recent years adopted legislation intended to encourage apology by disallowing the use of apologies as evidence of wrongdoing. Other scholars have viewed an individual’s refusal to apologize as evidence of his or her faulty character and incapacity for remorse. So, for example, judges tend to punish criminal

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13. Of course, apology is also elusive in many dyadic conflicts—where there can also be a multitude of issues, where each party has at one point or the other deeply injured the other (divorce cases for example) and where the attitude toward apology of each side might also be, “You First.”

14. See Conner & Jordan, *supra* note 12, at 253 (explaining that apologies are not effective unless leaders work to soften negative attitudes and to create windows of opportunity to apologize). This suggestion seems a reasonable one in the types of group conflicts that Conner and Jordan describe. But often conflicts—both group and individual—are reasonably well-bounded and there is an identifiable offender and victim. In such cases, skipping the apology might not only be ill-advised, but might also make reconciliation impossible. Additionally, in a wide range of public conflicts, the goal of seeking an apology is not reconciliation at all, but rather setting the public record straight and thereby restoring the public face and dignity of the injured individual or group. In such cases, the demand for an apology defines the conflict, and skipping it is not an acceptable option. See White, *supra* note 9, at 1262–65, 1272–73, 1295.

15. To be fair, Conner and Jordan do not purport to offer an exhaustive account of resistance to apology.

16. See Orenstein, *supra* note 8, at 246 (noting people are afraid apologizing will qualify as an admission usable in court); Robbennolt, *supra* note 8, at 465 (noting that fears of apologies establishing legal liability discourage people from apologizing).

17. See Cohen, *supra* note 8, at 820 (noting that, as of 2002, eight states were considering bills that would exclude from admissibility apologetic expressions of sympathy); Shuman, *supra* note 8, at 188 (discussing Massachusetts evidence rules rendering inadmissible evidence related to “benevolent gestures” to show liability in a civil action).

18. See Marti Hope Gonzales et al., *Pardon My Gaffe: Effects of Sex, Status, and Consequence Severity on Accounts*, 58 J. PERSONALITY & SOC. PSYCHOL. 611 (1990) (“When behaviors deviate significantly from witnesses’ assumptions about what most people would do or should do, witnesses are more willing to make assumptions about the character or disposition of the actor.”).
offenders who refuse to apologize with harsher sentences or, conversely, to reward offenders who do apologize with lesser ones.\(^{19}\)

A body of experimental research by psychologists and sociologists suggests, however, that explanations for resistance to apology that focus on offender remorse and secondary material concerns, such as legal liability, are incomplete at best. This socio-psychological research suggests that humans invest significant emotional stake in “face”—or their “claimed identity as a competent, intelligent, or moral persons”—and apologize only when they can do so without significant “face threat.”\(^{20}\)

This comment briefly considers this research—which seems to have been wholly neglected by legal scholars—and offers some preliminary conclusions as to what legal academics and practitioners might draw from it.

II

OVERVIEW OF THE RESEARCH

When one social actor injures another, the offense potentially threatens the faces of both the offender and the victim.\(^{22}\) First, the offense calls into question the offender’s claim to a positive social identity, and, second, the offense suggests that the victim is a lesser human being somehow deserving of mistreatment.\(^{23}\) Thus, both offender and victim feel lowered self-esteem and suffer “face damage.”\(^{24}\)

For this damage to be repaired, the offender must engage in “corrective facework,” which typically takes the form of an “account”—a verbal-remedial strategy explaining the victim’s injury.\(^{25}\) Accounts are generally mitigating or

\(^{19}\) See Bibas & Bierschbach, supra note 8, at 93 n.19 (citing UNITED STATES SENTENCING COMMISSION, GUIDELINES MANUAL § 3E1.1, comment (n.3) (2003)) (authorizing judges to consider defendants’ acceptance of responsibility when determining sentences); see also United States v. Fagan, 162 F.3d 1280, 1284 (10th Cir. 1998) (“The commentary to Section 3E1.1 of the Sentencing Guidelines also indicates the Commission intended remorse to be a component of acceptance of responsibility.”); United States v. Hammick, 36 F.3d 594, 600 (7th Cir. 1994) (affirming a district-court decision to deny sentencing reduction because the defendant lacked genuine remorse, evidenced by her incomplete explanation of her offense).


\(^{21}\) See id. at 297 (explaining that individuals apologize only when apologizing does not pose an intolerable face threat).

\(^{22}\) See Marti Hope Gonzales et al., Explaining Our Sins: Factors Influencing Offender Accounts and Anticipated Victim Responses, 62 J. PERSONALITY & SOC. PSYCHOL. 958, 958 (1992) (noting predicaments threaten the face of all interactants).

\(^{23}\) See id. (describing how accidents, negligence, and intentional acts affect victims’ and offenders’ faces).

\(^{24}\) See Holley S. Hodgins et al., Getting Out of Hot Water: Facework in Social Predicaments, 71 J. PERSONALITY & SOC. PSYCHOL. 300, 300 (1996) (noting all parties’ faces are threatened when one party fails to observe accepted conventions).

\(^{25}\) Id.

\(^{26}\) Gonzales et al., supra note 18, at 610.
aggravating to victims. An account mitigates to the extent that it ameliorates the victim’s face concerns; it aggravates to the extent that it further threatens the victim’s face. Accounts generally fit into a four-part typology: concessions (or apologies), excuses, justifications, or refusals. This typology is a continuum, with concessions being the most mitigating to victims but the most threatening to offenders, and refusals being the most aggravating to victims but the most protective of the offender’s own face. Victims who receive concessions or valid excuses from offenders usually feel better, frequently forgive, and rarely file lawsuits. Victims given justifications or refusals often respond with anger. Some sue.

Perhaps because offenders’ failing to apologize carries a significant risk of future harm, studies have demonstrated a “vigorous human preference to apologize.” Such studies suggest a “shared norm of apologetic discourse as the appropriate response when another is harmed.”

But this preference for apology has important caveats. Much evidence, for example, suggests that “[f]ace needs for the self and others seem to compete, and when [one’s] own face threat increases above some [tolerable] threshold . . . , [a] defensive motivation [dominates].”

Although various factors may increase face threat above this threshold for all individuals, on a basic psychological level, individuals have different tolerances for face threats. Some people “respond defensively at even the suggestion of their imperfection, whereas others remain calm” even under harsh criticism. An individual’s tolerance for face threat corresponds roughly with his or her level of inner-directed self-esteem. Individuals with high inner-directed self-esteem can more easily acknowledge their flaws because they believe fundamentally that they are reasonable and decent people. When such people apologize, they are merely admitting, in their minds, that they made a mistake,

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27. Id.
28. “Concessions take full responsibility without offering extenuating circumstances.” Excuses acknowledge harm but “offer qualifying factors that reduce responsibility.” Justifications admit the behavior “but seek to redefine the behavior as legitimate.” Refusals deny any responsibility. Id.
29. Id.; Gonzales et al., supra note 22, at 959.
30. See Shuman, note 8, at 184 (offering empirical evidence that injured patients are dramatically less likely to sue when their doctors sincerely apologize).
31. Hodgins et al., supra note 24, at 312.
32. Id.
33. Hodgins & Liebeskind, supra note 20, at 298.
35. Hodgins & Liebeskind, supra note 20, at 298.
36. See Knee & Zuckerman, supra note 34, at 118 (citing research that shows people who are self-determined do not tend to employ avoidant strategies when confronting negative events).
which does not threaten their identity.\textsuperscript{37} In psychological jargon, such nondefensive individuals are highly self-determined—or are high on autonomy-motivation orientation and low on control-motivation orientation.\textsuperscript{38}

In contrast, some individuals find it nearly impossible to apologize—even when they feel terrible about their actions. For these individuals, verbally acknowledging they behaved in a hurtful manner makes them hurtful people.\textsuperscript{39} Concerned about “feeling weak, incompetent, defeated, guilty, ashamed, emotional, [or] like a loser,”\textsuperscript{40} they use such defensive and self-protective “avoidant strategies” as denial or disengagement to “defend the[ir] fragmented sel[ves] from personal awareness.”\textsuperscript{41} Such actions often make them appear unremorseful.\textsuperscript{42} In actuality, however, such individuals are low in self-determination, or low on autonomy-motivation orientation and high on control-motivation orientation, which makes apologizing especially difficult—even, and especially, when they feel great shame about their actions.\textsuperscript{43}

Apart from personality differences, however, certain socio-psychological factors increase face threat for all individuals, thereby making them less likely to apologize. These factors include blameworthiness, reproach-severity, public exposure, and relative offender–victim status.

First, all offenders are less likely to apologize when they are especially blameworthy. Some offenses—such as unavoidable accidents—“reveal nothing noteworthy about the offenders.”\textsuperscript{44} In contrast, other offenses—such as sexual assault—are “highly diagnostic of the offenders’ defective character.”\textsuperscript{45} Individuals who intentionally wrong others are much less likely to apologize than those who negligently do so because “undeniably guilty perpetrators [of intentional wrongful acts] cannot claim positive social identity.”\textsuperscript{46} Thus, they

\textsuperscript{37}. See Engel, supra note 4, at 48 (noting those with healthy self-esteem bounce back quickly from remorse or shame).
\textsuperscript{38}. See Knee & Zuckerman, supra note 34, at 116. Autonomy orientation refers to the tendency to initiate behavior out of choices based on an awareness of one’s needs, feelings, and integrated goals.” Hodgins et al., supra note 24, at 301. “[C]ontrol orientation describes the tendency to seek out external controls and experience events as pressures that determine behavior and feelings.” Id.
\textsuperscript{40}. Id.
\textsuperscript{41}. Knee & Zuckerman, supra note 34, at 118 “Denial involves denying that the event is occurring, behavioral disengagement involves ceasing to try to deal with the event, and mental disengagement involves immersing oneself in other activities to avoid thinking about the event.” Id. at 119.
\textsuperscript{42}. See Engel, supra note 4, at 48 (noting that people with low self-esteem may rapidly put up emotional walls “of steel” that make them appear unaffected by the pain of those they hurt).
\textsuperscript{43}. See Knee & Zuckerman, supra note 34, at 117–19 (noting that self-determined individuals will stray away from using strategies that deny negative, self-actualization events). Every human has “both autonomy and control motivation orientations.” Hodgins & Liebeskind, supra note 20, at 299. Individual differences in defensiveness “are a function of differing strengths of these two orientations.” Id. But the “use of defensive attributions” to some degree characterizes everyone, except perhaps those few with “optimal psychological development.” Knee & Zuckerman, supra note 34, at 117.
\textsuperscript{44}. Gonzales et al., supra note 22, at 958.
\textsuperscript{45}. Id.
\textsuperscript{46}. Hodgins et al., supra note 24, at 301.
often “feel especially threatened and provide defensive, self-protective accounts” rather than suffer further loss of face by apologizing.\textsuperscript{47}

Additionally, offenders who are harshly reproached, whether by victims or others, are less likely to acknowledge wrongdoing than those given the opportunity to apologize of their own accord. This is because severe reproach directly challenges the offender’s behavior and squarely calls into question the offender’s social identity.\textsuperscript{48} “When victims deliver scathing reproaches, perpetrators may experience face threat beyond the taint of their own ill behavior. An apology that might have been given freely by a perpetrator willing to acknowledge ineptitude comes more difficult after being labeled a cad or a louse.”\textsuperscript{49} Alternatively, a gentle rebuke that conveys belief in the offender’s inherent goodness may enable him “to respond from the protective orientation, offer mitigation for the victim’s face threat, and provide the best hope for reconciliation.”\textsuperscript{50}

Under this “symbolic interactions” framework, a victim who severely reproaches an offender and so ignores her “face needs” will likely receive “an aggravating account.” This will lead to the victim’s own “harsh evaluation” and further reproach.\textsuperscript{51} “[A]t each phase, one person’s lack of facework for the other escalates conflict and decreases the likelihood of [apology and] forgiveness.”\textsuperscript{52} Paradoxically, though apologies are especially critical for victims of intentionally grievous acts, offenders who commit such acts are the least likely to willingly express contrition—leading to severe victim reproach, further defensiveness, and further escalation of the conflict.\textsuperscript{53}

Relatively, when grievous acts unfold in the public domain, victims often feel they need an apology to restore their public face and are thus more likely to issue a severe public reproach.\textsuperscript{54} Yet a transgressor who is publically reproached suffers collective judgment, and a public apology risks leaving them naked, defenseless, and open to the multitude’s scrutiny.\textsuperscript{55} The “movement from

\textsuperscript{47}. Id. Offenders who are highly culpable often resort instead to “extreme” accounting strategies.\textsuperscript{Id.} One study found that in the face of having committed blameworthy acts, approximately one-third of individuals told “outright fabrications.” Id. at 308. However, despite its prevalence, lying is a particularly hazardous strategy for refusing responsibility because if exposed it becomes “extremely difficult for liars to restore face.” Id. Thus, having lied, offenders become even less likely to come clean and apologize. Id.

\textsuperscript{48}. See id. (noting that an apology is harder to give after the offender has been negatively labeled).

\textsuperscript{49}. Id.

\textsuperscript{50}. Id.

\textsuperscript{51}. Hodgins & Liebeskind, supra note 20, at 313.

\textsuperscript{52}. Id.

\textsuperscript{53}. Hodgins et al., supra note 24, at 311 (noting that high-blame offenders took defensive postures because they “envisioned negative repercussions of predicaments for future relationships with victims”).

\textsuperscript{54}. Id.

private to public thus radically alters the interaction,” increases the offender’s face threat, and leaves less “discursive space” for apology or forgiveness.56

Finally, whether the offense is public or private, offenders are more likely to apologize to high-status victims than to low-status ones.57 Offenders “expend more effort to preserve relationships with high-status victims” because high-status victims “have social power and control potentially important outcomes.”58 On the other hand, high-status offenders have little incentive to attend to low-status victims’ face needs. Indeed, a victim’s low status likely played a role in an offender’s decision to inflict harm in the first place. In such situations, the victim’s and offender’s relative social status may be the decisive factor in whether the offender apologizes.59

III
CONCLUSIONS

The above research on the role of face concern in offender willingness to apologize offers several lessons to legal scholars and practitioners.

First, criminal offenders, many of whom are likely to be low on self-determination, may resist apology to victims out of psychological fragility and the psychological need to preserve face rather than lack of remorse. Thus, the criminal-justice system should be cautious about punishing offenders more harshly because they fail to show external remorse—or even when they are openly defiant. This caution should be exercised whether the system explicitly punishes offenders more harshly—for example, as Professor O’Hara advocates, by giving victims power to extend offender’s sentences for not apologizing—or implicitly, by giving lighter sentences to those who publicly apologize. Such practices not only risk unfairness in the treatment of equally remorseful offenders but also effectively coerce apologies—which, because they are involuntary, are unlikely to promote healthy psychological growth among offenders and may instead elevate an offender’s psychological resistance toward accepting responsibility.

Second, because highly blameworthy offenders resist apologizing primarily to preserve face, statutes excluding apologies from evidence in order to encourage private apologies are unlikely to increase the incidence of apology when offenders are grossly negligent or reckless or intentionally harm another. For example, although statutes excluding apologies from evidence may

56. Id. at 70.
57. See Gonzales et al., supra note 18, at 619 (noting offenders are less concerned with the faces of low-status victims); Hodgins et al., supra note 24, at 303 (noting offenders should expend more effort to preserve relationships with high-status victims).
58. Hodgins et al., supra note 24, at 302–03.
59. Id. at 313.
60. See Erin Ann O’Hara & Maria Mayo Robbins, Using Criminal Punishment to Serve Both Victim and Social Needs, 72 LAW & CONTEMPPROBS. 199, 208 (Spring 2009) (proposing portions of sentence terms be enforced at the victim’s option).
encourage doctors to apologize when negative medical outcomes were beyond their control, these statutes may have little effect when the doctor was grossly incompetent or reckless or provided care below widely accepted standards. In such cases, apologizing would call into question the doctor’s identity as a competent and caring professional—a claimed identity that is likely central to his sense of self and also to his standing in the medical community. From a socio-psychological standpoint, denial rather than apology may be the better strategy. In other words, most doctors will find it more beneficial to claim a valid lawsuit is groundless (thereby benefiting from the popular animosity toward “frivolous” lawsuits), than to lose face by admitting to medical malpractice.

Third, because harsh reproach increases offender face threat and thus decreases the likelihood that the offender will apologize, legal practitioners who represent victims who ultimately desire a sincere apology and reconciliation should reproach offenders in a manner that conveys an underlying belief in the offender’s inherent goodness. It is also preferable, when possible, to issue reproach in private rather than in public.

Finally, because high-status offenders are unlikely to apologize to low-status victims, particularly when reproached publically, government officials are unlikely to voluntarily apologize when they injure marginalized groups or individuals. Thus, although forced apology may be ineffective in changing individual behavior, courts should consider ordering government officials to apologize when a public apology is necessary to set the public record straight or to restore the dignity of the injured person or group.

61. See Gonzales et al., supra note 18, at 619 (“[T]ransgressors who knowingly and willingly violate widely held norms . . . have relatively more to lose by accepting full or partial responsibility for a predicament and acknowledging the accuracy of victims’ interpretations and their right to issue reproaches.”).

62. Public apologies, unlike private interpersonal apologies, serve an essential function in defining both social reality and official truth. See TAVUCHIS, supra note 55, at 71 (noting that the overriding interest in public apology is, “to put the apology ‘on record,’ that is, to extract a public, chronicled recantation that restores those aspects of the collectivity’s [or individual’s] integrity and honor called into question by the offense.”).