

The Power of an Appropriate Apology

By Jennifer K. Robbennolt

Conflict is pervasive. We experience it everywhere — in our personal relationships, with family members, work colleagues, neighbors, and friends, and in the larger society. Political conflict is currently front and center, manifesting between political parties, countries, individuals, and groups and creating both societal and interpersonal divisions. Many people feel increasingly polarized in discussing difficult issues such as policing, #MeToo, elections, immigration, COVID-19, and many others.

People experience a wide range of injuries and an array of justiciable problems.¹ Many such disputes are handled outside the legal system; others result in litigation, make their way to mediators or arbitrators, are addressed by regulators, or are handled through other formal processes. Each of these types of conflict has different dimensions, but they raise common questions: Is reconciliation possible? Is restoring productive relationships possible? Reconciling conflicting perspectives? Can people find middle ground or a shared understanding? Can amends be made, legal settlement be reached, or individuals reintegrated into the community? And, if so, how?

One possible road to reconciliation runs through apology. We often think of apologies as relevant primarily to our interpersonal conflicts, such as disagreements with family members and friends. But apologies can be relevant to resolving conflicts, repairing relationships, and finding reconciliation in many different types of conflicts. This is so whether the rifts are interpersonal, based in ideological conflict, involve emotional or physical injury, stem from recent conflict

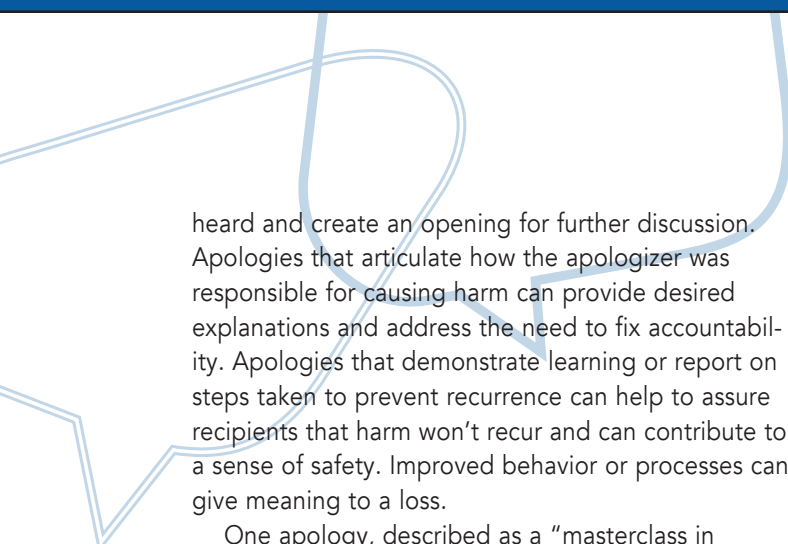
“ One possible road to reconciliation runs through apology. ”



or historical injustices, or arise between individuals or groups or countries. Apologies can be an appropriate response to legal conflicts that arise across domains, including family disputes, criminal cases, tort claims of all kinds, contract disputes, employment cases, attorney discipline, and regulatory enforcement.² Apologies can arise in mediation or settlement negotiation, be given formally or informally, be spontaneous or negotiated for, and even occur post-settlement.

In the midst of conflict, people often feel disrespected, angry, betrayed, or guilty, and listening to and hearing each other can be difficult. Trust might be in short supply. When injury occurs, people often want to understand what has happened and why. They may seek accountability. And they often want to make sure that similar harm doesn't happen — to them or to others — ever again.

At their best, apologies can speak to these needs.³ Apologies can demonstrate respect for their recipients, affirm their dignity, and acknowledge their suffering. Good apologies can make the recipient feel

An abstract graphic consisting of several overlapping, hand-drawn style blue lines that form a complex, organic shape, resembling a stylized 'S' or a series of connected loops. It is located in the upper left corner of the page.

heard and create an opening for further discussion. Apologies that articulate how the apologizer was responsible for causing harm can provide desired explanations and address the need to fix accountability. Apologies that demonstrate learning or report on steps taken to prevent recurrence can help to assure recipients that harm won't recur and can contribute to a sense of safety. Improved behavior or processes can give meaning to a loss.

One apology, described as a "masterclass in how to apologize" by its recipient, was an apology offered by showrunner Dan Harmon to television writer Megan Ganz for workplace harassment. On his podcast, Harmon articulated a lengthy apology that was very specific about the ways in which he had harassed Ganz, created a toxic work environment, gaslighted her, and engaged in retaliatory behavior. He expressed understanding of the power he had as a boss, the gendered nature of his behavior, and the impact his behavior had on Ganz. While Harmon's apology lacked details about how he would do better in the future, it demonstrated that he had grappled with and regretted his behavior and its effects.⁴

When well constructed and carefully delivered, as Harmon's was, apologies afford an opportunity to express and reaffirm shared values and can be important for trust repair. Apologies might alleviate the recipient's anger and the apologizer's guilt, result in positive physiological effects for both parties, and decrease aggression and the need to punish. Sometimes it is appropriate for apologies to flow in one direction; in other instances, reciprocal apologies are warranted. Ultimately, apologies can contribute to the healing of relationships, facilitate the resolution of legal cases, and pave the way toward reconciliation.

Consider, as one example, the role of apologies in potential tort litigation. As many lawyers and mediators know, plaintiffs often want apologies from those who have caused their harm,⁵ a recognition and resolution

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that the traditional tort remedy of a monetary judgment or settlement cannot provide. Apologies can also affect how tort claimants approach settlement, influencing their reservation prices, aspirations, and assessments of fairness.⁶ In some cases, apologies might help to repair relationships. Experimental studies of patients' responses to medical errors, for example, have found that when the medical provider apologizes for the error, patients are less inclined to change providers.⁷

Not all apologies result in reconciliation. Some apologies are delivered poorly or perceived as insincere, and others are conditional and even cast doubt about whether the wrongdoing actually occurred ("I'm sorry if I hurt you") or vague ("I'm sorry for what I did"). Contrast Harmon's apology with the classic case of former Senator Bob Packwood, who in 1992 refused to acknowledge his behavior, saying only, "I'm apologizing for the conduct that it was alleged that I did."⁸ Harmon himself had to work to get to his more robust apology, first offering apologetic statements that included vague allusions to misconduct, made excuses, and claimed that he hadn't realized what he was doing. Perhaps not surprisingly, these early attempts fell flat.

At times an apology can be undermined by later conduct that is inconsistent with the apology.⁹ Some apologies may be limited, enough to allow the parties to release their resentment and go their separate ways, reach a legal settlement, or agree to disagree but not sufficient for deeper reconciliation. What is enough in any particular instance depends on the nature and extent of the conflict, the parties' prior relationship, and other dynamics. Individual disputants should always be allowed not only to accept an apology but to reject it — or accept it but choose not to re-engage or reconcile.

Sometimes, however, apologies can help enable the possibility of reconciliation. When they acknowledge harm, express remorse, take responsibility, provide information, seek to prevent harm, and facilitate repair, apologies can open the door to reintegration. The listening that is part of (or the precursor to) a good apology is one of the keys to reconciliation. Apologies tend to be more effective when the apologizer has really listened to the other person, taken time to understand the other's perspective, appreciates and has reflected on the complexion of the harm or division, and is able to convey that understanding in the apology.¹⁰ When people feel that they are understood, they are able to

be more trusting, approach the other with more positive intentions, and be less defensive.¹¹

In a world in which conflict of all shapes and forms is rampant, apologies are one means by which that conflict can be addressed in a way that can foster settlement, further dispute resolution, and reconcile relationships and ideas. ■

Endnotes

1 Rebecca L. Sandefur, *What We Know and Need to Know about the Legal Needs of the Public*, 67 S. CAROLINA L. REV. 443 (2016).

2 See, e.g., Stephanos Bibas & Richard A. Bierschback, *Integrating Remorse and Apology into Criminal Procedure*, __ 114 YALE L.J. 85 (2004); Craig W. Blatz et al., *Government Apologies for Historical Injustices*, 30 POLITICAL PSYCHOL. 219 (2009); Leslie Levin & Jennifer K. Robbennolt, *Apologies in Attorney Discipline*, 34 GEO. J. LEGAL ETHICS __ (forthcoming 2021); Colleen Murphy et al., *#MeToo, Time's Up, and Theories of Justice*, 2019 ILLINOIS L. REV. 45; Robbennolt, *Apologies and Medical Error*, 467 CLINICAL ORTHOPAEDICS & RELATED RES. 376 (2009); Lesley Wexler & Jennifer K. Robbennolt, *Designing Amends for Lawful Civilian Casualties*, 42 YALE J. INT'L L. 121 (2017); Verity Winship & Jennifer K. Robbennolt, *Admissions of Guilt in Civil Enforcement*, 102 MINN. L. REV. 1077 (2018).

3 See generally Jonathan R. Cohen, *Advising Clients to Apologize*, 72 S. CAL. L. REV. 1009 (1999); Lee Taft, *Apology Subverted: The Commodification of Apology*, 109 YALE L.J. 1135 (2000).

4 *Don't Let Him Wipe or Flush*, HARMONTOWN (Jan. 10, 2018), <http://www.harmontown.com/2018/01/episode-dont-let-him-wipe-or-flush/>; *Get a Spine*, THIS AMERICAN LIFE (May 10, 2019), <https://www.thisamericanlife.org/674/transcript>.

5 See, e.g., Kathleen M. Mazor et al., *Health Plan Members' Views About Disclosure of Medical Errors*, 140 ANN. INTERNAL MED. 409 (2004).

6 See, e.g., Jennifer K. Robbennolt, *Apologies and Settlement Levers*, 3 J. EMPIRICAL LEGAL STUD. 333 (2006).

7 Mazor et al., *supra* note 3.

8 Martin Tolchin, *Packwood Offers Apology Without Saying for What*, N.Y. TIMES (Dec. 11, 1992), <http://www.nytimes.com/1992/12/11/us/packwood-offers-apology-without-saying-for-what.html>.

9 C. Harry Hui et al., *The Impact of Post-Apology Behavioral Consistency on Victim's Forgiveness Intention: A*

Study of Trust Violation Among Coworkers, 41 J. APPLIED SOC. PSYCHOL. 1214 (2011).

10 See, e.g., Cynthia McPherson Frantz & Courtney Bennigson, *Better Late Than Early: The Influence of Timing on Apology Effectiveness*, 41 J. EXPERIMENTAL SOC. PSYCHOL. 201 (2005); Amy S. Ebesu Hubbard et al., *Effects of Timing and Sincerity of an Apology on Satisfaction and Changes in Negative Feelings During Conflict*, 77 W. J. COMM. 305 (2013); Michael Wenzel, Ellie Lawrence-Wood, Tyler G. Okimoto & Matthew J. Hornsey, *A Long Time Coming: Delays in Collective Apologies and Their Effects on Sincerity and Forgiveness*, 39 POL. PSYCHOL. 649 (2018).

11 See, e.g., Guy Itzhakov et al., *I Am Aware of My Inconsistencies but Can Tolerate Them: The Effect of High Quality Listening on Speakers' Attitude Ambivalence*, 43 PERSONALITY & SOC. PSYCHOL. BULL. 105 (2016); Andrew G. Livingstone et al., *"They Just Don't Understand Us": The Role of Felt Understanding in Intergroup Relations*, 119 J. PERSONALITY & SOC. PSYCHOL. 633 (2020).



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