

RESEARCH ARTICLE

# Apologies and Law: Empirical Legal Studies Across Domains and Disciplines

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## Abstract

The role of apologies in law is offered as an example of a topic that cuts across legal fields, and one that is quintessentially interdisciplinary. Because apologies are an often-desired response in the wake of a wrongful act, they can be significant in many legal settings. Apologies or the lack thereof affect attributions of responsibility and blame, provide information, and alter relationships. Apologies play a role in motivating or forestalling legal action, shape settlement in civil cases, influence punishment in criminal cases, provide alternate or complementary means of accountability, and impact relations among parties to conflict from the interpersonal to the geopolitical. An understanding of apologies is enriched by research conducted by legal scholars, sociologists and psychologists, economists and political scientists, historians and linguists, and criminologists, using methods drawn from each of these fields. This range of empirical research is necessary to successfully develop a better understanding of the desire for, effects of, and limits of apologies across varied legal contexts and the implications for client counseling and legal strategy, for legal reform and systems design, for political decision making, and for procedural, restorative, and transitional justice.

The European Society of Empirical Legal Studies and the *European Journal of Empirical Legal Studies* are welcome new developments in the landscape of empirical research in law. The society and the journal each endeavor to foster empirical research in law as an essential part of legal scholarship and to embrace the breadth of scholars and methods in empirical legal studies.<sup>1</sup> I have no doubt that each will contribute in important ways to building conversations and connections among scholars in an interdisciplinary way.

This inclusive and broad approach to engaging empirical legal research speaks to me as an interdisciplinary scholar. My own work draws on the theories and findings of a variety of disciplines and values the contributions of doctrinal scholarship. And I know that different methods can provide complimentary insights into complex social and legal problems and a path to a better understanding of the law on the books, the law on the ground, and the places where the two meet.

In the spirit of that inclusivity, I want to focus our attention on the role of apologies in law as an example of a topic that cuts across legal fields, and one that is quintessentially

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interdisciplinary. Because apologies are an often-desired response in the wake of a wrongful act, they can be significant in many legal settings. Apologies or the lack thereof affect attributions of responsibility and blame, provide information, and alter relationships. Apologies play a role in motivating or forestalling legal action, shape settlement in civil cases, influence punishment in criminal cases, provide alternate or complementary means of accountability, and impact relations among parties to conflict from the interpersonal to the geopolitical. An understanding of apologies is enriched by research conducted by legal scholars, sociologists and psychologists, economists and political scientists, historians and linguists, criminologists, and surely others. My own understanding of apologies is shaped most primarily from my perspective as a social psychologist, but draws on work from these other disciplines, and is complicated by thinking about the pressures of the legal context and interesting questions of legal doctrine.

## 1 Apologies and Their Effects

As a starting place, it is useful to think about what we mean when we talk about apologies (see, e.g., Goffman 1971; Kirchhoff, Wagner, and Strack 2012; Lewicki, Polin, and Lount 2016; Scher and Darley 1997; Smith 2008; Tavuchis 1991). Good apologies recognize and articulate the wrong that has been done and the harm that has resulted. They admit fault, take responsibility, and communicate regret for having acted in a way that has caused harm. Apologies may also include promises to refrain from engaging in similar harm-causing behavior in the future, which may also entail reform of underlying systems and processes. Even when such promises are not explicit, apologies tend to implicitly communicate assurance that the offender will not reoffend. Apologies may also be accompanied by appropriate compensation for the harm caused or other efforts to restore those who have been harmed. These signals of commitment to making amends and engaging in reform are not always present, but ultimately play a significant role in shaping the effects that apologies can have.

Of course, we all know that not all apologies are created equally and that many apologies fall short of this ideal standard (Wexler, Robbennolt, and Murphy 2019). You can likely think of apologies that you have given or received that weren't entirely satisfactory. Certainly, you've seen examples. Some apologetic statements hedge or offer excuses ("I'm sorry, but . . ."). Some apologies are conditional (e.g., "I am sorry, if . . ."; Lazare 2004). Some apologies shift the blame to the recipient ("I'm sorry that you are having a problem."). And many apologies are vague, failing to appropriately acknowledge the harmful behavior or demonstrate an understanding of its wrongfulness or its effects ("I'm apologizing for the conduct that it was alleged that I did."; Tolchin 1992).

But the nature of the apology *matters*. The existing empirical research makes clear that higher quality apologies – apologies that are more comprehensive in the ways that I have described – elicit more favorable reactions than do lower quality apologies that lack some of these features (see e.g., Scher and Darley 1997; Robbennolt 2003). This means that apologies have the potential to play a role in easing tension and resolving conflict. There is also room, however, for the failure to apologize or an inadequate apology to make things worse (e.g., Miller 2001; Robbennolt 2003).

Experimental studies across a variety of conflict domains have found that apologies can have affective, physical, cognitive, and behavioral effects on parties to conflict. Apologies can temper negative emotion and foster positive emotion. Apologies, for example, tend to reduce anger (Gold and Weiner 2000; Ohbuchi et al. 1989; Weiner 1991), while the failure to apologize tends to increase it (Mazor et al., 2013; Thomas and Millar, 2008). Giving or receiving an apology has a variety of positive physiological effects on the body as well – affecting

things like muscular tension and the cardiovascular system. This can be true for both the offerors and the recipients of apologies (Whited et al. 2010; Witvliet et al. 2002).

Apologies can change injured people's perceptions of, and reactions to, harm-causing incidents, favorably influencing perceptions of the wrongdoer, changing attributions of offender responsibility, and reducing estimates of the likelihood that the behavior will recur (Davis and Gold 2011; Gold and Weiner 2000; Hodgins and Liebeskind 2003; Pace, Fediuk, and Botero 2010; Weiner et al. 1991; see also Schumann 2019). Apologies can also affect behavior, increasing forgiveness, reducing aggression, and resulting in more lenient punishment (Darby and Schlenker, 1982; Ohbuchi et al., 1989; Robbennolt, 2013; Weiner et al., 1991).

In articulating the wrongful behavior and its consequences, apologies can also help inform a shared factual record, providing information about what has happened (Smith 2008). And apologies can also implicitly affirm the importance of the rule or norm that was violated and communicate respect for the standing of the injured person (Wexler, Robbennolt, and Murphy 2019).

## 2 Apologies Across Contexts

One of the things that has become particularly interesting to me is the range of legal contexts in which apologies might have some import. Apologies have the potential to play a role in civil and criminal justice, in cases involving individuals and entities, and in domestic and international contexts.

### 2.1 Tort Law

My primary field is that of tort law, a field in which sustained interest in apologies began in the late 1990s and early 2000s. Interest in the role of apologies in tort law has piqued the interest of practitioners, theorists, and researchers and has generated much discussion – particularly in the area of medical malpractice, but also in tort law more broadly.

Research has found that tort claimants often want apologies. Indeed, many of the things that claimants hope to accomplish are related to various aspects of apologies. Interview studies, for example, find that claimants frequently want to know more about what happened to cause their injuries, seeking information that will help provide an account (see e.g., Relis 2007). Many claimants also seek accountability, wanting defendants to acknowledge their responsibility or to be found responsible by a court (Relis 2007). Experimental work has identified the nonmaterial needs of injured persons, finding responsibility-taking to be a central focus (Reinders Folmer, Desmet, and Van Boom 2019). Claimants find value in public recognition of the wrong, acknowledgment of the consequences of that wrong, and reaffirmation of a set of underlying values (Relis 2007; van Dijck 2018). At times, the public may also desire this kind of accountability (Robbennolt, Bregant, and Winship 2023). Claimants also tend to want assurance that similar harmful conduct will not be repeated, seeking behavior change and institutional reform (Hickson et al. 1992; Relis 2007; van Dijck 2011; Vincent, Young, and Phillips 1994; see also Friele and Sluijs, 2006).

These desires for apology can play out in a variety of ways as settlements are negotiated in civil cases. There is evidence that failure to apologize may motivate the initiation of legal action (e.g., Relis 2007; Vincent, Young, and Phillips 1994) and that receiving an apology may dissuade claiming, reducing injured people's inclination to turn to lawyers and the legal system for redress (Mazor et al. 2004; see also Hobgood, 2005). Among those who do claim, it is not uncommon to hear about claimants who need apologies before they can engage in

settlements talks, who would like apologies to be part of any settlement agreement, or who are disappointed when their cases conclude without apologies. Apologies can also change people's approach to settlement, affecting their aspirations, their perceptions of fair outcomes, and their bottom-line goals, creating conditions that might make it easier to reach a settlement (Robbennolt 2003; Robbennolt 2006). Other aspects of the harmful behavior, the injury, the apology, and the evidence can influence the ways in which apologies may play out in a particular case (Robbennolt, 2003).

Interestingly, there is evidence that lawyers – at least lawyers in the U.S. – have a different perspective on apologetic statements than do claimants. In contrast to claimants, for whom apologies are associated with somewhat lower aspirations, bottom-lines, and perceptions of fair outcomes, lawyers evaluating apologies given to a client tend to have *increased* aspirations, perceptions of fair outcomes, and bottom-line goals in response to apologies (Robbennolt, 2008). To the extent that attorneys pay particular attention to apologies as admissions, they may be well-positioned to advise clients about the legal risks of giving or accepting apologies but may discount the significance of apologies to claimants.

Much of the attention to apologies in the tort arena has focused on apologies for adverse events in medical cases. This is an area in which there has been interest in apologies by both patient groups and health care providers (see, e.g., [sorryworks.net](http://sorryworks.net)). As a consequence, a variety of “communication and resolution programs” (CRPs) now focus on transparent communication with patients, the disclosure of adverse outcomes to patients, and commitment to investigating and explaining what happened. Apologies are a key feature of these programs: apologies and compensation are offered when the relevant treatment is found to have been below the standard of care. Intriguingly, case studies of these programs have tended to find either no changes or decreases in the rate of claiming, the time to resolution, and liability and legal costs (see Adams, Elmunzer, and Scheiman 2014; Boothman et al. 2009; Kachalia et al. 2010; Kachalia et al. 2018; Kraman and Hamm 1999; LeCraw et al. 2018). Studies have also begun to explore best practices and barriers to adoption and effectiveness (Gallagher et al. 2018; McDonald et al. 2018). But rigorous evaluation of these programs and their effects is still developing.

## 2.2 #MeToo

Another area in this domain in which apologies have gotten some recent attention involves cases of sexual harassment – particularly in the wake of the #MeToo movement. This area has generated quite a few public apologies by public figures accused of harassment – some of them good, but many of them not so good (Wexler, Robbennolt, and Murphy 2019). Some of these cases have laid bare that how someone responds in the aftermath of an incident can foster healing or can create secondary injury (see, e.g., McNamara, 2023).

Empirical researchers have begun to use text analytics to investigate the content of the public responses given by those accused of sexual harassment. While apologies are sometimes given, many of them are conditional. Even more common are statements focused on denial and defense, questioning what is or should be considered harassment, and bolstering the accused's own credibility (Alexander, 2020). Other authors have used experimental methods to show that apologies can be a useful response, particularly when they are robust, but that they tend to be less effective when the allegations are more serious (Schumann and Dragotta, 2020).

### 2.3 Institutional Apologies

Medical malpractice and sexual harassment may be the most prominent categories of cases involving apologies in the tort arena. But there are countless other legal contexts in which apologies are offered as well. There are many examples of corporations offering apologies for failures, big and small (see, e.g., Halperin et al. 2022; O'Hara O'Connor 2011; Page 2014). The Catholic church has, on a number of occasions, offered apologies for its behavior or policies (Carroll, 2000; Meyer and Smith, 2022) and has also been an important site for empirical exploration of nonmonetary remedies, including apologies (van Dijck 2018).

Policing agencies, too, are an interesting site to consider. While there has been much work by empirical legal scholars that has focused on procedural justice in policing (e.g., Hollander-Blumoff 2016; Tyler, Goff, and MacCoun 2015), the role of apologies or other reconciliatory gestures in communication between law enforcement and communities has largely been missing from these conversations. That is starting to change. Recent work has begun to explore the effects of acknowledging problematic practices, recognizing existing distrust, and signaling a desire to build relationships (Benton 2022; O'Brien, Meares, and Tyler 2020; O'Brien and Tyler 2019; O'Brien, Tyler, and Meares 2020). This work has found that these sorts of reconciliatory gestures – when they are perceived to be sincere – can increase trust, perceptions of legitimacy, and willingness to cooperate (O'Brien, Tyler, and Meares 2020; O'Brien and Tyler 2019).

There has been relatively little empirical focus on apologies in policing beyond these initial looks at the effects of apologies for historical injustice, with little research into the effects of apologies when policing causes harm in individual cases. Policing agencies are usually thought of as being relatively disinclined to apologize. But, even here, there are examples of apologies that are worth studying (Farmington Police Department 2023; Jackman 2018).

### 2.4 Criminal Law

Beyond these tort (and tort-adjacent) contexts, apologies are also surely relevant in criminal law. Here apologies are perhaps most likely to arise in the context of restorative justice practices. Many restorative justice programs require offenders to admit fault, and apologies are often encouraged as part of the restorative process (Choi and Severson 2009; Dhimi 2012; Dhimi 2016; Menkel-Meadow 2007). But apologies are also relevant to the criminal law more generally (Bibas and Bierschbach 2004; Petrucci 2002).

Apologies can be important to victims of crime (Etienne and Robbenolt 2007). And there is evidence that apologies can influence sentencing decisions (e.g., Eisenberg, Garvey, and Wells 1997), as well as decisions about probation and parole (Berryessa 2022; Young and Chimowitz 2022) – even outside of the restorative justice context. Recent research in this area has also begun to explore the ways in which judges, probation and parole officers, and other decision makers interpret the remorse displayed by offenders, the expectations these decision makers have about how defendants should appropriately show remorse, and the role of stereotypes in coloring these interpretations (Hanan 2018; Zhong et al. 2014).

### 2.5 Administrative Law

In the quasi-civil, quasi-criminal world of administrative law, many administrative agencies have struggled with whether to elicit apologies or admissions from regulated individuals or entities. In one study in this context, Verity Winship and I examined settlement agreements entered into by the U.S. Securities and Exchange Commission (Winship and Robbenolt 2018). We looked at agreements across a period when the agency had self-consciously

shifted from a policy that allowed the targets of enforcement to “neither admit nor deny” the allegations against them, to a policy under which the agency would “require admissions when doing so would further public accountability.” We found that the agency did elicit an increasing number of admissions after the policy shift in 2013, but that the overall number of instances in which the agency obtained an admission was still strikingly low. Only about 3% of the cases that were filed by the agency resulted in settlements that contained admissions, and even fewer of the settlement agreements included apologies. Nonetheless, there were a few settlement agreements that included an explicit apology.

In other instances, it is not the regulated, but the regulators who fall short. One example is the Child Care Benefit Scandal in the Netherlands in which the Dutch tax authority, using an algorithm, incorrectly accused parents of fraud, demanded that families pay back benefits received, and took thousands of children into care. There were a variety of responses to the incident, including apologies to those impacted by the scandal by both the Dutch government and the Netherlands’ high court (Dutch PM 2020; Highest Dutch Court 2021).

## 2.6 International Law and International Relations

On the international stage, there are also ample examples of the role of apologies in international relations, in armed conflict, and in transitional justice. Consider the famous image of former German Chancellor Willy Brandt kneeling at the monument commemorating the Warsaw Uprising, a gesture that has been widely understood as an apology. Or apologies offered by countries for their involvement in slavery and kidnapping (e.g., Paravicini 2019; Schaart 2022) or their treatment of indigenous peoples (Carlson 2022; Schneider 1998). But there are many other examples as well of countries and public officials who have offered apologies for historical injustices or diplomatic incidents in recent years – both internationally and domestically (see generally Blatz et al. 2009).

To take another sort of example, many countries have processes by which they might offer condolence or solatia payments to injured persons, families, or communities when their armed forces have caused civilian casualties in combat zones (Wexler and Robbennolt 2017). These payments are often offered even though, and in many instances are designed especially for, instances in which the military action that led to the casualties was not unlawful under international law. They are usually discretionary, and typically consist of a monetary payment offered in “sympathy” rather than as “compensation.”

As part of our thinking about how these processes might be mechanisms for offering amends, Lesley Wexler and I surveyed a group of current and former members of the U.S. military and found substantial support for amends making – including apologies – in the wake of civilian casualties (Robbennolt and Wexler 2021). That a particular use of force was lawful, did not preclude feelings of remorse, nor was it seen as something that should be a barrier to offering amends for civilian casualties. That is, service members were generally supportive of amends-making even when the military action that led to the civilian casualties was allowed by international law.

As a last example from international law, apologies are also among the tools that are used in situations calling for transitional justice – as communities consider responses to wrongdoing in contexts of transitions away from extended periods of conflict or repression or civil war, and toward some form of democracy (David 2017; Murphy 2017). Truth and reconciliation commissions are one example of how disclosure and apology might be part of transitional processes; but there are surely other mechanisms as well.

### 3 Cross-Disciplinary Contributions

Across all of these disparate legal domains and others, contributions to our understanding of the role of apologies have been made by scholars drawing on the foundations of multiple disciplines and using a variety of empirical tools. In addition to good doctrinal and theoretical work (e.g., Carroll 2013; Cohen 1999; Orenstein 1998; Vines 2007), contributions have been made by scholars using experiments – conducted both in the lab and in the field (e.g., De Cremer, Pillutla, and Reinders Folmer 2011; Halperin et al. 2022; Robbennolt 2006), surveys and interviews (e.g., Reinders Folmer, Desmet, and Van Boom 2019; Relis 2007; Witman et al. 1996), archival data on claiming or on case outcomes (e.g., Ho and Liu 2011a, Ho and Liu, 2011b; McMichael, Van Horn, and Viscusi 2019), case studies (e.g., Boothman et al. 2009; Kachalia et al. 2018), systematic analyses of case law (e.g., Wijntjens 2022), and text analytics (e.g., Alexander 2020). The contributions from this array of methods have added to our understanding of apologies and how they operate generally, as well as how they function within particular legal contexts. But there is certainly much more interesting research yet to be done.

Law provides a particularly interesting context in which to consider apologies. On the one hand, apologies have the potential to contribute to dispute resolution, to remedying harm, and to meeting the interests of parties. On the other hand, the legal context is one in which apologies raise complicated questions about legal risks and consequences. To the extent that an apology discloses information or constitutes an admission, it can have negative implications for civil liability and criminal guilt decisions. Parties, then, may well not apologize because they fear those consequences. Legal contexts are also environments in which facts are often contested and interpreted differently by different parties (Adams and Inesi 2016; Kearns and Fincham 2005; Stillwell and Baumeister 1997), such that the parties may view the need for an apology or the meaning of a particular apology very differently (Leunissen et al. 2013). The legal setting also raises the possibility of apologies that are offered strategically or insincerely, leading to questions about the risks, harms, and value of apologies so offered (Cohen 2002; Taft 1999). All of these conflicting pressures mean that legal settings provide a particularly rich environment within which to study the provision of apologies, their effects, and the boundaries of those effects.

As we go forward, there are a number of topics that I think deserve even more research attention. Interesting research has begun on each of these, but each provides fertile ground for further exploration.

First, I think it will be important to better understand how apologies interact with other remedies, such as monetary compensation, punishment, and other forms of making amends. These relationships can be complicated. Monetary compensation for harm can itself sometimes be understood as an apology (Haesevoets et al. 2013). Conversely, a monetary settlement might acquire added, or different, symbolic meaning when it is accompanied by an apology (Okimoto 2008). Offering compensation or accepting punishment may give an apology more credibility (Bottom et al. 2002; DiFonzo, Alongi, and Wiele 2018; Jeter and Brannon 2017; Zechmeister et al. 2004). And there is evidence that apologies are most likely to have an effect on judgments when settlement offers only partially compensate claimants for their harm (Haesevoets et al., 2013; Reinders Folmer, Desmet, and Van Boom 2019). Since settlement agreements are typically compromises that only partially compensate harm, this suggests that there is quite a bit of room for apologies to matter. But more research is needed on the boundaries of this interaction.

It is important, too, to better understand the contours of apologies in a context in which they are often negotiated, offered by attorneys and other proxies, and even sometimes

ordered by courts. These nuances of apologies manifest in distinctive ways in legal conflicts and court processes, with implications for how apologies are generated, what they communicate, and how they are understood. There is preliminary evidence that negotiated and delegated apologies can be effective when they are of otherwise high quality (Robbennolt 2013). And there is evidence that compelled apologies can be valued by their recipients (Jehle et al. 2012; Robbennolt 2013; Saulnier and Sivasubramaniam 2015). But more research is needed to fully understand the nuances of these somewhat unique aspects of apologies in law.

So, too, is there a need for more empirical work focused on the offerors of apologies (and those who choose not to offer them). Much of the research on apologies in law has focused on the effects of apologies on their recipients. But additional exploration of what motivates offenders to apologize (Leunissen, De Cremer, and Reinders Folmer 2012), what barriers they face (Shumann 2018), what psychological benefits there are in choosing *not* to apologize (Okimoto, Wenzel, and Hedrick 2013; White 2009), the content of the apologies that are actually offered (Leunissen, De Cremer, Reinders Folmer and van Dijke 2013; Reinders Folmer, Mascini, and Leunissen 2019), and the effects of apologizing on offenders' perceptions and future behavior (Zaiser and Giner-Sorolla 2013) would be quite useful.

Finally, empirical research should explore all of these topics across jurisdictions, comparing how apologies operate in different legal systems and cultures, and how they interact with different legal processes, rules, and approaches (e.g., Wijntjens 2022; Zwart-Hink, Akkermans, and van Wees 2014). Thinking about why and how we might expect apologies to function differently in common law countries as compared to civil law countries, or in Poland as compared to Japan or South Africa, or in different kinds of transitional societies, and then rigorously testing those hypotheses, could make real contributions to a more sophisticated understanding of the circumstances under which apologies will function in particular ways.

Ultimately, empirical research is necessary to developing a better understanding of the desire for apologies, the barriers to apologizing, how apologies are communicated and understood, the array of effects that they have and how they relate to other remedies, and how they function in particular legal contexts. Exploring the boundary conditions on the effects of apologies, the conditions under which apologies might have positive or negative effects, and the social pressures around giving and responding to apologies are also of interest (e.g., Bennett and Dewbery 1994; Risen and Gilovich 2007). A robust, interdisciplinary, and empirically informed understanding of these underlying dynamics has implications for client counseling and legal strategy, for legal reform and systems design, for political decision making, and for procedural, restorative, and transitional justice.

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