

Jeffrie G. Murphy, *Punishment and the moral emotions: essays in law, morality, and religion*. Oxford & New York: Oxford University Press, 2012, 322pp, ISBN: 978-0199764396 (hbk).

Many retributive thinkers are eager to demonstrate that bad practices and negative interventions can produce something good or have some worthwhile ends. But the principles that retributivists have invented to justify punishment—annulling the crime, taking away benefits, lowering the status of the criminal, etc—remain vague, imaginary and ambiguous. Some retributive theories reveal a ‘principled objectivism’: the allocation of a just measure of pain is elevated to a sublime principle of justice. Even if nobody would hold suffering appropriate, still one is obliged to follow that principle. A familiar example is Kant’s judgment that even when the world would perish the last criminal should be hanged. In his *Genealogy of Morals* Nietzsche criticises this ‘black magic’. In his opinion there is no need to transform a nasty but indispensable punishment practice into a higher principle. Unfortunately his advice fell on deaf ears, because—at least since the 1970s—there has been a revival of retributive armchair philosophies in which nice benefit-burden balances are conjured up, of course miles away from the expanding punishment industry.

The distinguished philosopher Jeffrie Murphy criticises many of these retributive follies to great effect. He calls himself a ‘reluctant retributivist’. *Punishment and the Moral Emotions* is a collection of 13 of his recent essays. The author discusses many controversial issues in a lively, elegant and committed way, avoiding philosophical jargon. As in previous work, such as the classic *Forgiveness and Mercy* (1988; with co-writer Jean Hampton), Murphy is displaying himself as a superb essayist, using a sovereign style. Although he does not explicitly deal with mediation and conflict management issues, his philosophical insights are most relevant for restorative justice scholars and practitioners.

The essays in this collection reveal a shift in focus from earlier work, involving an increasing interest in the moral emotions: the emotions tied to moral judgments such as love, guilt and resentment. Murphy also expresses a more positive view about forgiveness, although he warns that hasty or casual forgiveness might testify a failure to show proper self-respect. The author points out that forgiveness is a burdensome moral struggle and presupposes a change of heart. He regrets that there is so much uncritical boosterism of forgiveness in much of the literature on the topic: ‘There has in recent times been much cheap and shallow chatter about forgiveness and repentance—some of it coming from high political officials and some coming from the kind of psychobabble often found in self-help and recovery books’ (17).

The shift in focus also involves a ‘softening’ of his belief that punishment is justified by what wrongdoers deserve rather than a projected future good: ‘I now try to make place for the future good of character reformation and even the common good in what is still, in its essence, a softened version of retribution’ (ix). Murphy no longer felt com-

fortable with his strong versions of retributive theory, including the idea of ‘retributive hatred’ that he defended earlier. Influenced by Jesus, Freud and particularly Nietzsche, he started to question his ‘high-sounding philosophical talk about justice and desert’ (xii). Nietzsche argued that just resentment can easily slide into evil *ressentiment* (viewed as spiteful and malicious envy) and a corrupt morality of law. Several times he quotes Nietzsche’s phrase: ‘Mistrust those in whom the urge to punish is very strong’. Nietzsche was very well aware that the idea of just and deserved punishment may be a mask for cruelty. The possibilities of self-deception are enormous: ‘Whoever fights with monsters should take care that in the process he does not become a monster’ (42).

Within retributive theories the standard answer to the question ‘Why punish?’ is: to give criminal wrongdoers the punishment that they deserve. But what is moral desert? Paying back a debt? Restoring a balance? Murphy does not believe in these metaphors. The moral core of retributivism is respect for the dignity of human beings as free and responsible agents. Wrongdoers should not be treated in inhumane ways. Murphy stresses that some aspects of retributivism still make good sense: the moral message of the public censure, warranting rights to offenders, proportionality. He also points out that retributive feelings, no matter how disappointing, are a vital part of our emotional life.

At the same time Murphy believes that retributivism does not pay enough attention to the poor and other outsiders. Societies of radical inequality seem to be societies in which the ‘sweet delight’ folks are imposing punishment on the ‘endless night’ folks, thus adding insult to injury by telling the ‘endless night’ folks that they owe this sacrifice to the community as a kind of debt (80). No surprise that Murphy is deeply mistrustful of the American system of ‘so-called’ criminal justice. That system has become to a great degree ‘a moral and administrative mess—a great bloated monster driven by competing and sometimes inconsistent values, and sometimes by no values at all but simply by cruelty or indifference or institutional inertia’ (174).

Murphy’s reflections on the vindictive emotions are very insightful. Resentment stands as emotional testimony that we care about ourselves and our rights. If we do not show some resentment to those who, in victimising us, flout the norms of respectful treatment, we run the risk of being ‘complicitous in evil’ (12). On the other hand, vindictiveness can get out of control: it can become a kind of malice. The language of justice and crime control can be used as a rationalisation for what is really sadism and cruelty. Murphy is frequently critical of the self-righteous perspective that ‘we are pure’ and those who wrong us are ‘evil incarnate’ (18). People who hate wrongdoers often take on a kind of self-importance that makes them not only unforgiving but dangerous (in demanding draconian punishments). They cannot imagine that those who do not comply with the law have had an unfavourable upbringing or have been placed in situations where they have been tempted. Neither do they admit a process of self-examination in which they might discover the potential for evil within themselves. If possible—and here

Murphy is embracing Christianity—we should view the wrongdoer as ‘a child of God’ or ‘the innocent child he once was’ (18).

Murphy points out that repentance is a great moral and spiritual good. He also pleads—*contra* retributivist thinkers such as Duff and von Hirsch—for repentance as a relevant ground for a reduction in criminal sentence. He argues that repentance repudiates the insulting message of contempt and degradation for the victim which the criminal act conveys. If one presumes that grievance is based on this symbolic message, one might reason that the wronged feelings of the victim diminish after repentance.

But the difficulty with repentance is that it is often a faked response to a demand or external incentive. The grounds for suspecting fakery only increase when a reward (such as a reduction in sentence, pardon, etc) is known to be granted. The contemporary ‘culture of apology’ ‘where apologies automatically appear on the lips of people trying to avoid responsibility ... may have undercut to a substantial degree the social value of the apology ritual’ (177).

Murphy is sceptical about relying on judgments about offender remorse at the time of sentencing. Such judgments are more appropriate during the stage of execution of punishment. Those making clemency decisions have more time and a lot more information upon which to base their decisions. There are fewer chances of making mistakes.

Apology is something quite different from remorse and repentance. An apology is a public linguistic performance that tells us nothing at all about mental states. Still, it may be seen as a ‘promise’: it forms legitimate expectations. The public expression of an apology—even if insincere—may also provide retributive satisfaction to victims. But Murphy is sceptical about introducing repentance into the justice system: ‘A truly sincere apology can be a wonderful, even blessed, thing since it involves the kind of remorse and repentance that often marks a step on the road to moral rebirth, can sometimes provide legitimate comfort to victims, and in the proper sort of cases can indeed lead to a valuable kind of reconciliation. Turn all of that over to the American system of assembly line justice and we will—I fear—do little more than cheapen the currency of the real thing and add to the cynicism about our system of criminal law’ (172).

Murphy criticises the ‘trendy celebration of apology’ and the ‘uncritical extension of that celebration into criminal law’ (174). Apology advocates often have too rosy a picture and many embrace a sentimental ideology of healing. They talk of reintegration and reconciliation through rituals but they do not realise that in the modern world there is not much genuine community left.

While raising these critical notes, is Murphy arguing against restorative justice proponents? That is difficult to say. It is a pity that Murphy did not study restorative justice practices in detail. Although he would discount the non-punishment ethos of restorative justice and would reject any ‘soft-on-crime, bleeding heart sentimentalism’ (32), he would surely value the restorative justice ethos of voluntariness and responsibility. He would also concur with the aim of conferring a positive meaning on the burden

that is imposed upon the offender, oriented at self-reform and reparation. He would also recognise the importance of censuring the conduct of offenders by the stakeholders themselves. But whether he would embrace mediation and conferencing as proper settings to express apologies remains the question.

Although Murphy does not reflect upon restorative issues explicitly, many of his thoughts are of great interest for restorative justice theorists. He is using the language of repentance and metanoia: the future good of character reformation. Although he could endorse Duff's slogan 'restoration through retribution', Murphy is not claiming that imposing punishment is always a necessity. Restorative justice protagonists and retributive thinkers such as Murphy also share the same interest in revalorising emotions in response to offending. But in the end Murphy is a sceptic, criticising the tendency to make judgments about the wrongdoer's 'deep character', the 'repentance industry' and the rash promotion of therapy and healing.

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