



From Retributive to Restorative Justice

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Abstract

I am very grateful to Justin Coates, Adina Roskies, and Costanza Porro for their thoughtful and challenging comments on my book, *The Limits of Blame: Rethinking Punishment and Responsibility* (Cambridge, MA: Harvard Univ. Press, 2018). My response is organized around their discussion of four main topics: moral competence, proportionality, restorative justice, and excessive punishment.

Keywords Accountability · Blame · Culpability · Deterrence · Harm reduction · Mental illness · Mitigation · Moral competence · Moral desert · Morality · Overpunishment · Proportionality · Punishment · Responsibility · Restorative justice · Retributive justice · Stigma · Wrongdoing

1 The Limits of Blame

The Limits of Blame looks at the practice of assigning moral blame through criminal justice. I argue that the familiar practice of blaming criminal offenders for their criminal acts goes beyond a pragmatic need for protection from crime and a moral need publicly to repudiate harmful acts. It represents a desire for *retribution* that has no good public justification.

The legal practice of punishment has social meaning, especially in connection with incarceration. Incarcerated people are stigmatized as dishonored and contemptible. In fact, we see this contempt play out in many ways—through the brutal conditions of incarceration, including the punitive use of solitary confinement, sometimes for years at a stretch, draconian sentences that include life without parole, the lack of programming or support for the reintegration of former inmates into society, felon disenfranchisement, legal discrimination against formerly incarcerated persons, and the retraction of other rights and entitlements, like voting, normally associated with citizenship. I understand these practices and conditions to involve moral condemnation and the social rejection it is thought to warrant. Criminal offenders are branded

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as bad people who deserve harsh treatment, stigma, and exclusion from normal life in society.

Of course, any reasonable retributive view would reject excessive punishment. My interest is in how the retributive philosophy, and the notion of blame it depends on, is stretched and misused in our thinking about criminal justice, and why it is susceptible to this distortion. I return to the *why* question later.

Let me say a few words about how I understand blame. Blame adds something to a judgment of wrongdoing. What it adds is a negative evaluation and response to a wrongdoer's personhood, character, or will, in light of her wrongful behavior. We draw conclusions about a person's moral nature, based on her behavior, and we react to that personal assessment. I understand blame to involve the enactment of person-directed, negative moral attitudes. It marks a change in how we think, feel, or act toward a person who has done wrong, a change that marks the accountability we ascribe to her for her moral faults.

Blame can involve a variety of critical attitudes, for example, anger, hatred, pity, or disappointment. Not all of the negative attitudes associated with blame include a disposition to harm the wrongdoer. Nevertheless, the blaming behavior that is characteristic of the criminal justice system is typically hostile and harmful in nature. As the retributivist sees it, the justification of harming convicted persons is a function of their culpable wrongdoing and it does not depend on whether the consequences of punishment are beneficial. Nonretributive forms of blame, by contrast, are consequence sensitive. But all blaming responses, whether retributive or nonretributive, point to a wrongdoer's personal defects, on the one hand, and some deserved response, on the other. Blame is bound up with judgments of desert.

I rely in *The Limits of Blame* on a distinction between blameworthiness, which involves an expansive person-focused judgment, and wrongdoing, which is conduct-focused and largely abstracts from personal differences between wrongdoers. Judgments of wrongdoing adhere to a standard of behavior that morally motivated people normally meet. A standard of right and wrong generalizes across a variety of circumstances. This generality makes the action-guiding standards of right and wrong suitable for institutionalization, to the extent that the use of state coercion to enforce standards of behavior can be justified. A legal standard of right and wrong formalizes the rights and obligations persons can claim vis-a-vis one another as citizens of a political society.¹ Members of a political society reasonably hold one another to a certain standard of conduct, codified in just law, but the reach of this standard of accountability does not obviously or clearly extend into the realm of personal attitudes, which the state is not in a suitable position to monitor.

Judgments of blameworthiness, in contrast with a code of rightful and wrongful behavior, are highly context sensitive. They concern the meaning, in the domain of interpersonal morality, of a person's failure to meet standards of moral conduct. Criteria for assessing blameworthiness are not easily codified. They encompass features of individual psychology (such as the intensity of impulses or delusions) and circumstances (such as negative pressure from an authority figure)

¹ Thanks to Antony Duff for helpful discussion on this point.

that are relevant to deciding whether we can reasonably expect a wrongdoer to have overcome internal and external obstacles to proper moral judgment, motivation, and action. They engage the appraisal of attitudes, character, and personal values.

Noting the distinction between wrongdoing and blameworthiness clears the way for my position that we should use the criminal law as a system to dissuade people from committing certain wrongful acts, and to express condemnation of those acts, but we cannot and should not direct our practices of criminal justice to harm blameworthy wrongdoers according to their “just deserts.” I argue that we should reject retributive justice in favor of a “harm reduction” approach.

I make this argument in several ways. First of all, legal criteria for determining guilt—which are mostly focused on voluntary behavior, without regard to motive, individual psychology, or social context—do not align well with moral criteria of blameworthiness. Many incarcerated people, for example those who are mentally ill or desperately poor, might not be blameworthy, or as blameworthy, for their criminal acts, even when they are criminally guilty. People who are battling inner demons and hopeless social circumstances are held to standards of conduct they understandably have difficulty meeting. Their difficulties might reasonably be thought to mitigate their blameworthiness, yet, with few exceptions, the law does not permit mitigation. Legally recognized excuses are much narrower than morally mitigating factors. For example, the insanity defense covers only extreme cases of cognitive impairment and does not include many serious mental illnesses that impair a person’s judgment and self-control, including cases of bi-polar disorder, schizophrenia, and autism. The criminal law is also insensitive to the restrictions that unjust deprivations of resources and opportunities place on some people’s choices. The result is that, when we infer moral blameworthiness from criminal guilt, we exaggerate the moral meaning of criminal guilt.

Secondly, assessments of moral desert depend on evaluations of moral competence in ways that are difficult to defend against skeptical doubt. A person deserves blame for having acted badly only when it is true that the bad actor could have acted better, yet this judgment can be difficult to substantiate, since we are not well equipped to calibrate how difficult it would have been for someone to do something they didn’t do.

Thirdly, retributive justice fails as a *public justification* of punishment. There are a variety of reasonable responses to wrongdoing, not all of which involve the retributive sentiments, or even nonretributive forms of blame. Nonblaming, empathetic responses to wrongdoers, as evidenced by efforts at transformative justice, are not at odds with morality. The attractions of alternatives to retributive blame may lead some people reasonably to reject blame as a moral response to wrongdoing. But if retributive blame is not a morally required response to wrongdoing, the state should not organize the practice of punishment on its basis. The coercive use of state power must be justified on grounds that all reasonable citizens could support.

Fourthly, the state lacks moral *standing* to blame criminal wrongdoers. Whether or not criminal wrongdoers are blameworthy, an unjust state is not in a morally sound position to blame them. The reason is that the state is responsible for permitting unjust criminogenic conditions to persist. Since racially charged, unjust

socioeconomic conditions help to explain the crime rate, a retributive philosophy, with its focus on individual failings, objectionably distracts attention from the state's own failure to deliver justice.

I believe these arguments, taken singly and together, should lead us to reject retributive theories of punishment in favor of viable nonretributive alternatives, which include a harm reduction approach. It is my hope and belief that this will help us to endorse a humane, more limited, and more productive approach to criminal justice.

2 Moral Competence

Justin Coates takes issue with what he refers to as an “inscrutability argument” against judgments of desert. In particular, he is doubtful of my claim that the bases for moral desert—the capacities that underwrite an individual's status as a morally responsible agent—are inscrutable. As he accurately summarizes my view, “incapacities are frequently very hard, if not impossible to identify. Anxieties, dissociations, panics, traumas, and ‘morally disabling social influences’ (i.e., an agent's moral ecology; cf. Vargas 2013) all can offset the moral competence of agents who otherwise appear to be (and indeed in other scenarios are) able to recognize and conform themselves to moral requirements.”² Coates is correct to think that I maintain that the difficulty of discerning when a person's moral competence has been compromised by her psychological impairments and social influences presents a challenge to appraisals of blameworthiness and desert closely associated with criminal punishment.

This inscrutability argument is unconvincing, argues Coates, because we actually have a fairly good sense of when a person's actions reflect that person's underlying moral competence and when they do not. Coates thinks that when we are exposed to a pattern of behavior, we usually are able to draw sound conclusions about the nature and limits of a person's moral competence.

Apparently, the courts, and some psychiatrists, disagree. In *United States v. Lyons* (1984), a ruling that narrows the insanity defense, the court declared that “a majority of psychiatrists now believe that they do not possess sufficient accurate scientific bases for measuring a person's capacity for self-control or for calibrating the impairment of that capacity.”³ For this reason, the court opted to restrict the insanity defense to cases of extreme cognitive impairment, which it understands to be more open to view.

Skeptical doubt about evaluations of moral capacity is one of the main reasons I became uncomfortable with moral retributivism. I am bothered by the difficulty of discerning the limits of a person's self-understanding and self-control. I agree with Coates that it is possible to articulate a nuanced understanding of mitigating, excusing, and exempting conditions, in theory, but I think our understanding of

² D. Justin Coates, “Extending the Limits of Blame,” this volume.

³ *United States v. Lyons* 731 F. 2nd 243, 739 F. 2nd 994 (5th Cir. 1984).

these conditions does not equip us very well to identify their instances. For example, we might believe that post-traumatic stress disorder can disable a person's rational response to a threat, without being able to tell whether some particular person's disproportionate response to a threat exemplifies a crippling instance of that disorder or is better understood as her failure to exercise a capacity for self-control she was able to maintain, perhaps with difficulty, under the circumstances. Furthermore, it seems to me that we might continue to wonder about this, even when we are confronted with a person's pattern of behavior over time.

Individual psychology is difficult to understand. It is relatively easy to identify examples of someone successfully exercising a capacity she possesses, but it can be difficult to identify the difference between a person's (voluntary) failure to exercise a capacity she possesses, and the presence of a genuine incapacity. We have reasons to doubt the moral competence of people who do terrible things, like committing acts of mass murder, since a morally competent person is highly unlikely to do those things. But as the Lyons court recognized, reliable conclusions about incompetence, even regarding grossly wrongful behavior, are not readily established, based on available evidence. Even when behavioral patterns indicating a psychological problem exist, the conclusions they warrant are not clear.

One solution is to set a very high threshold for judgments of incompetence, which is, in effect, what the courts have done. Almost all criminal defendants are judged competent to stand trial, to be not insane, and to have no legally recognized excuse for their criminal behavior. But it is hard to square such a high threshold with a morally sensitive retributive philosophy.

In my view, it is not only the epistemic challenge of calibrating the difficulty a person faces in meeting ethical standards that makes it hard to determine her blameworthiness. There is also real disagreement about when obstacles to a person's moral understanding and motivation are too much to expect that person to overcome. That is, there is reasonable disagreement about how strictly to set the relevant normative standard for distinguishing blameworthiness from mitigation. As I have just indicated, the scope of the criminal law's understanding of incompetence is very narrow, permitting, for example, schizophrenics and intellectually disabled people to be convicted of murder. Morally speaking, this will seem unsatisfactory to many people.

I think disagreement about what counts as incompetence, and hence about the scope of morally excusing factors, makes blame a poor basis upon which to build a public justification for punishment, that is, a justification all reasonable members of society could be expected to accept. Since the use of threats and sanctions in the practice of criminal justice potentially affects people's most basic rights and liberties, public justification demands substantive and not merely procedural agreement about the justification of the state's conduct. The criminal justice stakes are high, and all members of society are owed a justification for the state's coercive conduct that appeals to values they could not reasonably reject.

Skeptical concerns about whether we can identify the limits of a person's self-awareness and self-control indicate that it will not be possible for retributivists to reform the criminal justice system to make it adequately responsive to moral desert. This conclusion is not fundamentally disorienting to morality. Unlike suspicions about whether those who claim to love us are faking it, or are actually robots, our

ordinary relationships can tolerate skepticism about moral desert and so can our social institutions. Skepticism about desert is compatible with love, friendship, promises, social solidarity, and just criminal law, or so it seems to me.

3 Proportionality

Both Coates and Roskies worry about whether a harm reduction view permits over-punishment. What prevents excessive punishment, on a harm reduction view? This is an important question to address.

One moderating set of considerations concerns what we owe to people who are convicted of crimes. I maintain that their suffering is not a moral good or something that is required by justice. On a harm reduction approach, the use of punishment is permissible only when it brings socially beneficial results at an acceptable price, a price that includes the harm punishment does to those who are made to suffer it. Still, what is to prevent punishment that has high social value but seems excessive, on moral grounds, in view of its cost to the defendant?

In my estimation, there are two appealing features commonly associated with the retributive theory of punishment. The first is that it is wrong to punish the innocent. This is important. It is wrong to punish the innocent, and people who have been wrongfully convicted should be exonerated. Yet we need not embrace a retributivist theory in order to insist that punishing the innocent is unjust. When we say that innocent persons do not deserve punishment, what we are saying is that they have not done anything that would justify our punishment of them. We do not thereby imply anything substantive about what would justify punishment, when it comes to actual lawbreakers. Perhaps penalties should be designed to dissuade them and others from committing criminal acts, to express our concern for people whose rights have been violated, and to facilitate restitution. These are elements of a harm reduction view.

Secondly, retributivists stress that punishment must be proportionate. As the retributivist unpacks the idea of proportionality, it is a function of two factors: wrongdoing and culpability. Retributivists argue that punishment be scaled according to the severity of a criminal offender's *culpable wrongdoing*. Serious crimes warrant harsher punishment and, for any given crime, persons who are more blameworthy for what they have done should be punished more harshly than those who are less blameworthy.

I have rejected moral culpability as a basis for punishment, but I have not rejected the relevance of wrongdoing. The idea that punishment should be scaled to reflect the wrongfulness of criminal acts should not be equated with the idea that punishment should be proportionate to blameworthiness. As we have seen, blame adds something to the assessment of behavior that is morally wrongful, and what it adds is not a viable public basis for punishment. Yet we can reject the idea of punishment as a form of blame and retain the idea that punishment should reflect the moral wrongfulness of crime. Harsher punishment for actions that more seriously wrong their victims makes sense, if punishment is to reinforce a set of action-guiding

norms and values. A system of punishment should reflect the values and priorities it is meant to serve.

This leads to Roskies's question: what difference would harm reduction make in practice? Would it really lead to less punishment? Might it, in fact, lead to more punishment?

Constrained already by an ordinal ranking on a scale of wrongfulness, punishment that has no positive effects in the registers of deterrence, rehabilitation, restorative justice, and the like, should not be imposed. In that sense, harm reduction puts downward pressure on any system of punishment. But what about people who commit serious crimes? Might harm reduction support punishing them harshly, and perhaps more harshly than they deserve, when doing so is effective for deterring or rehabilitating them, or restoring relationships? Might offenders reasonably be thought to deserve less punishment than what is expected to achieve these goals?

I am wary of the justice of general deterrence—punishing some people to deter others. The notion of special deterrence, by contrast, is attractive. Special deterrence involves using sanctions and other incentives to dissuade would-be offenders from offending or reoffending. Of course, special deterrence might also be rejected, but that rejection would involve a basic objection to coercion that is incompatible with the possibility of legitimate political state authority. Since I am supposing that the justification of punishment takes place within the domain of legitimate state authority, I will set that objection aside. If special deterrence measures are effective, and the sanctions imposed accurately convey a society's judgment about the relative badness of the crime and urgency of preventing it, then harm reduction permits them.

Suppose meeting these criteria produces punishment that seems undeserved. This could be because a criminal lawbreaker has psychological problems or is socially disadvantaged. Is harm reduction insufficiently sensitive to such problems and disadvantages? I think not. Harm reduction incorporates treatment and social support into its strategies of law enforcement and corrective justice. To that extent, it directs the criminal justice system to partner with other social institutions to address individual needs and to support social change. Furthermore, given the value harm reduction accords to each person's liberty interests, and its rejection of retribution as a public justification of punishment, a harm reduction approach supports effective policy alternatives to criminal punishment, such as mental health care, even at greater financial cost.

It is not clear what more a criminal justice system could do or why it should do less. Inadequate health care, the mistreatment of people of color, especially Black Americans, and socioeconomic injustice are serious problems that require a just scheme of institutions to resolve. The criminal justice system cannot resolve these problems on its own, but it bears some responsibility, along with other institutions, to address them and to refrain from making things worse.

Harm reduction is not really a punitive philosophy. It might better be described as a set of strategies to acknowledge wrongdoing, to contain behavioral problems, to enable troubled people better to manage the problems they have, and to repair the harm their criminal behavior has done. It also directs criminal justice institutions, with the vast resources our society has devoted to law enforcement and prisons, to avert crime by addressing the needs of marginalized populations who live under

socially unjust conditions. In that sense, I share much common ground with prison abolitionists.

4 Restorative Justice

This brings me to Porro's insightful and engaging remarks. Porro plausibly observes that there are varieties of blame in interpersonal life that do not carry the stigmatizing, totalizing, and excluding forms of blame associated with the practice of criminal justice. She makes a convincing case that it is the institutional context of criminal justice, in the setting of enduring historical injustices and with the moralizing state as the agent of blame, that results in criminal blame's devastating stigma. Rejecting criminal blame is, in her view, compatible with affirming the value of blame, in personal life, as an interpersonal response that is connected with the possibility of restoring and reconciling personal relationships in the aftermath of wrongdoing.

Attending to the difference between state-sponsored criminal blame and interpersonal moral blame leads Porro to propose that the state should give victims the *option* to blame criminal wrongdoers in restorative justice conferences that permit interpersonal dialogue and amends. In that setting, she argues, "[blame] could serve some valuable aims articulated by communicative theories of punishment, such as the restoration of moral relationships." She speculates that endowing expressions of blame with a restorative focus would counter the stigmatizing and excluding effects of blame. In this way, the aim of restorative justice might properly limit and shape the point of blame.

I agree with Porro that the interplay of blame and moral repair in a restorative justice setting is promising. It avoids assigning to the state the moral task of delivering blame as an aspect of punishment, a task which I have argued is not justifiable. Even considered apart from the unconvincing moral imperative of retributive harm, a state-directed practice of morally blaming individual defendants does not fit the generalized, conduct-guiding aspiration of law, and it does not function well as an expression of shared morality. It does not, therefore, belong to the proper role of the state. It is quite clear that the current American criminal justice system is poorly set up to facilitate interpersonal reckoning and repair. The conduct of criminal justice proceedings, orchestrated by the state and through lawyers, fails substantially to engage the agency of either responsible or affected parties.⁴ Confronting defendants with their own guilt, and hurting them on account of it, neglects the dialogical pursuit of the mutual understanding, acknowledgment, responsibility-taking, reparation, and reconciliation characteristic of moral practices of personal accountability. Moreover, there is no significant place in the procedures of criminal justice for apologies, remorse, or forgiveness. Restorative justice practitioner Danielle Sered powerfully sums up the situation:

⁴ Danielle Sered, *Until We Reckon: Violence, Mass Incarceration, and A Road to Repair* (New York: The New Press, 2019), especially chapter three.

When it comes down to it, being punished requires only that people sustain the suffering imposed for their transgression. It is passive. All one has to do to be punished is not to escape. It requires neither agency nor dignity, nor does it require work... No one in prison is required to face the human impacts of what they have done, to come face to face with the people whose lives are changed as a result of their decisions, to own their responsibility for those decisions and the pain they have caused, and to do the extraordinarily hard work of answering for that pain and becoming someone who will not harm again... Prisons render the most important kinds of human reckoning nearly impossible.⁵

A promise by the state to protect each person's rights naturally prompts an expectation that the state will facilitate a response to violation that is morally adequate. Since accountability is both political and personal, moral adequacy is complex. In its personal aspect, accountability is orchestrated by the particular persons who are most directly affected by moral wrongs. State-sponsored retributive justice is a poor substitute. Coercive practices of harm reduction do not fare much better. State violence in the service of harm reduction does not achieve the insight and closure of moral accountability.

Though the criminal justice system is not well set up to elicit interpersonal reckoning, it is understandable that persons who are hurt by crime seek it. The desire for accountability, in a reparative sense, is a natural, ethical response to wrongful injury. Restorative justice offers willing participants the possibility of engaging in accountability practices, with the aim of repairing and restoring relationships. Restorative justice exists in some jurisdictions as a diversionary program within the criminal justice system that presents accused or convicted defendants with an alternative to incarceration. Typically, it involves a mediated victim-offender encounter that aims to acknowledge and repair the harm a crime has caused. The moral objectives of accountability are accomplished through real dialogue and a joint plan formulated by the affected parties for navigating the aftermath of wrongdoing. Its victim-centered, healing approach includes coming to a restitution agreement that permits the wrongdoer to make amends. The theory is that restorative justice, as an alternative to criminal punishment, brings with it important benefits to victims, perpetrators, and the broader community.⁶ There is some evidence of its success.⁷

It is my contention that proponents of retributive justice knowingly or unknowingly confuse the political function of criminal sanctions—the importance of using the power of the state to enforce compliance with a shared moral standard—with the practice of moral accountability. Enforced compliance is presented as retributive justice, yet retributive justice is an impoverished form of moral accountability. The

⁵ Sered, *Until We Reckon*, 91.

⁶ See Sered, *Until We Reckon*. See also Marilyn Armour and Mark S. Umbreit, *Violence, Restorative Justice, and Forgiveness: Dyadic Forgiveness and Energy Shifts in Restorative Justice Dialogue* (London: Jessica Kingsley Publishers, 2018).

⁷ Heather Strang and Lawrence Sherman, "Repairing the Harm: Victims and Restorative Justice," *Utah Law Review*, Vol. 1 (2003): 25–33; Barton Poulson, "A Third Voice: A Review of Empirical Research on Psychological Outcomes of Restorative Justice," *Utah Law Review*, Vol. 1 (January 2003): 167–203.

personally meaningful dynamics of answerability, reconciliation, and repair call for dialogue, not the imperative of punishment. Instead of *banishing* offenders, moral accountability calls for *involving* responsible parties in an encounter with the people whose lives they have harmed or threatened.

Porro is correct. The personal dimension of accountability is not necessarily at odds with the political dimension of rights-protection and the public censure of law-breakers for their wrongful behavior. Empirical evidence indicates that the moral psychology of reconciliation and repair serves the aims of harm reduction. Responsible parties who complete a restorative justice contract are less likely to reoffend.⁸ But (and she would not disagree) the role of the state in the practice of restorative justice is limited. Moral accountability cannot be coerced by the state. Restorative justice demands the autonomy and voluntariness of moral dialogue. Integrating restorative justice into the criminal justice system means loosening the power of the state over outcomes. This poses difficulties, but the challenges may not be insurmountable, and the result could be of broad significance.⁹ Offering an avenue for restorative justice is a way for the state to moderate its overly punitive approach to criminal justice. The criminal justice system could minimize the use of coercive measures by relinquishing the aspirations of personal accountability to those parties most intimately involved with the aftermath of wrongdoing: responsible persons and survivors of criminal violation.

5 Excessive Punishment

Finally, I want to address Coates's important observation that, as he puts it, "the real explanation for over-punishment and for abuses of criminal justice—at least in [the United States]—is not our retributive natures leading us to racist policies but precisely the other way around." I agree with him. I do not think the blame industry, as we might call it, is responsible for the problem of mass incarceration. Practices of blame and moral condemnation, directed at people who have been convicted of crimes, do not explain why the American criminal justice system is so brutal nor why it so disproportionately affects certain social groups. To understand that, we must look to a multitude of factors that extend beyond our moral attitudes toward criminal lawbreakers as such—specifically, racial injustice and the demonization of Black men, excessive fear of crime, income and wealth inequality, retrenchment of the welfare state, and other political and social problems. The dynamics of blame that concern me intersect with those of racial and socioeconomic injustice, but the

⁸ Ellie Piggott and William Wood, "Does Restorative Justice Reduce Recidivism?" *Routledge International Handbook of Restorative Justice*, ed. Theo Gavrielides (London: Routledge, 2019), 359–376; David O'Mahoney and Jonathan Doak, *Reimagining Restorative Justice: Agency and Accountability in the Criminal Process* (Portland, OR: Hart Publishing, 2017), 175–195; and Heather Strang, Lawrence W. Sherman, Evan Mayo-Wilson, Daniel Woods, and Barak Ariel, "Are Restorative Justice Conferences Effective in Reducing Repeat Offending?" *Journal of Quantitative Criminology*, Vol. 31 (2015): 10–11.

⁹ See Adriaan Lanni, "Taking Restorative Justice Seriously," *Buffalo Law Review*, Forthcoming, Available at SSRN: <https://ssrn.com/abstract=3797755> or <http://dx.doi.org/10.2139/ssrn.3797755>.

popularity of the “retributive sentiments” is not the driving force behind overincarceration. Nevertheless, I believe the ideal of retributive justice and, more broadly, our society’s investment in blaming criminal lawbreakers serve to rationalize and to sustain the practice of punishment in a way that decreases empathy for people who are caught up in the criminal justice system by maintaining that they deserve to be hurt and cast out of society. The practice of blaming criminal offenders normalizes punishment, and it does so even when punishment is excessive, as it is in the American criminal justice system. The retributive theory—namely, the view that criminal offenders deserve punishment whether or not their punishment brings with it any social benefits—is a bad theory of punishment, *especially* under conditions of social injustice. It is also true that excessive fear of crime distorts what is reasonable about deterrence and incapacitation as rationales for punishment, but without depending on a judgment of personal moral inferiority, this would be harder to do, or so it seems to me.

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