

CONCLUSION

The basic philosophical movements of this book have been the following. First, a general analysis of responsibility was set forth, one that was grounded in and based on some of the fundamental concepts of contemporary moral responsibility theory, and one which can be used in criminal justice contexts and is congruent with the basic elements of criminal responsibility under U.S. law. The analysis provides philosophical substance to the content of the notion of desert. Desert is not some ephemeral or primitive concept that is understood only by way of retributivist intuitions. Rather, the notion of desert is based at least in part on the concepts of moral and legal responsibility. I stopped short of discussing and ensnaring readers in the quagmire of brilliant philosophical discussion that separates various contemporary philosophers of moral responsibility theory. Instead, I provided a view of responsibility with which most such philosophers could concur. Even if it turns out that the analysis provided herein is incomplete or somewhat incorrect, the retributivist position I present and defend herein is not contingent on the plausibility of a particular analysis of responsibility anyway. For whatever (positive) responsibility theory is in the end the best (most plausible) is the one to which my version of retributivism and desert must subscribe. Moreover, my theory of responsibility and punishment does not assume that there must be responsible agents, only that there are, in all likelihood, some. For all I know, each case of wrongdoing is such that it is so mitigated that punishment would rarely be justified. My purpose herein has been to articulate and defend analyses of responsibility and punishment for individual and collective agents such that, to the extent that any such agents are sufficiently responsible for harmful wrongdoings, they are to be punished in proportion to the harms they wrongfully caused to others. In other words, persons who commit harmful wrongs against others ought to get what they deserve within the confines of practicality and reasonableness. For what a harmful wrongdoer deserves just is a function of what she is responsible for, considering possible mitigating factors obtaining, and what measure of hard treatment (both in kind of punishment and amount of it) ought to be meted out to her. Thus my theory of retributivism is positive in the sense that it holds that only those who are deserving of punishment ought to be punished. Yet it is also a form of negative retributivism in that it holds that the innocent should never be punished.

Following the outline of a theory of responsibility for use in a reasonably just criminal justice system, I set forth and assessed some of the competing theories of punishment, and more fully articulated a version of retributivism that I believe best withstands criticism. It is a retributivism that defines “desert”

in terms of responsibility for harm caused to others and the extent to which an offender ought to be punished (if at all), and it does not make room for forgiveness or mercy except as a prerogative of individuals in the state. Indeed, forgiveness and mercy are supererogatory actions of such persons, morally speaking, as there is no requirement or duty of the state to forgive under any circumstance. However, unlike Immanuel Kant who argues that the state has a right and perfect duty of justice to punish criminals, my version of retributivism holds that the state indeed has a right, but not a perfect duty, to do so.

I provide a desert-based responsibility and proportionality argument in favor of capital punishment for certain heinous crimes, assuming, of course, conviction of offenders under a legitimate and well-functioning system of due process of law. For under such conditions, to not punish by death strongly responsible offenders who commit such crimes is a violation of proportional punishment, which is crucial for any plausible theory of punishment. Moreover, failure to inflict capital punishment on those who deserve it can sometimes lead to an unintentional over-burdening of those who reside in poor neighborhoods of color. Furthermore, the proper and fair execution of deserving offenders may assist in the strengthening and maintaining of just democratic institutions.

Turning from individuals to collectives, I set forth and defended an analysis of collective moral responsibility that I believe is useful in the criminal law. The analysis is consistent with the one found in Chapter 2 concerning individual offenders, at least, insofar as the basic conditions of responsibility are concerned: guilt, intentionality, knowledge, voluntariness, and fault. This analysis was extended to apply to corporate-collectives and the wrongdoings they commit.

Finally, the matters of responsibility and punishment were extended to address wrongs committed by states against persons and groups. The example used was that of the U.S. and its evils committed against Native American nations. The U.S. is in a particularly vulnerable moral position along these lines, as it has chosen to, over the years, award reparations to Japanese Americans, but not to Native Americans (except in a few instances where meagre compensation was offered to some Native Americans, and sometimes rejected due to the inadequate nature of the reparative proposals), even though the latter groups have experienced far worst human rights and criminal violations by the U.S. government than the former group. Indeed, the manners in which Native Americans have been treated by the U.S. would arguably make the U.S. among the most unethical and evil societies in human history! And no amount of passage of time or social or political improvements in U.S. society (absent adequate reparations) can overturn this judgment. In light of this fact, I have set forth a philosophical and ethical foundation for the justification of reparations to Native Americans. I have even set forth some possible reparations policies. But the fact that the U.S. and its citizenry fails to take even

the most modest of these proposed policies seriously perhaps makes it irreparably evil, and that is beyond reasonable dispute.

Perhaps the U.S. has resolved that it cannot even begin to repay Native Americans for the atrocities it has inflicted on them, and bygones ought to be bygones. However, this fails to count as anything akin to a serious consideration of the complexities of justice and fairness. And countries that fail to take seriously major crises of justice are hardly those that ought to be considered humane, no matter how much their constituents speak of themselves as being even reasonably just. The fact that the U.S. deliberately fails even today to take seriously considerations of reparative justice to Native Americans speaks volumes of its evil nature, its willingness to at most provide extremely limited forms of compensatory justice to Native Americans only subsequent to its thorough invasion and plundering of their lands and lives in the name of greed, caprice, and racism beyond the imagination.

Recall from Chapter 5 that forgiveness is of two kinds: attitude forgiveness and action forgiveness. For genuine forgiveness of either kind to obtain, there must be an apology. Yet an apology entails that the wrongdoer communicate effectively to the victim: *what* she did to the victim that was wrong; *why* what she did to the victim was wrong; *that* and *in what particular ways* she is *committed* by way of action to rectifying the wrong; *good reasons* why she will not harm the victim again.

The U.S. government, much less its morally wayward citizenry, has not admitted that the complex movements (military, religious, economic, etc.) toward the fulfillment of Manifest Destiny were morally wrong, even evil in many ways. So it is unsurprising that it has yet to explain why its treatment of Native American nations was and remains wrong. It comes as no surprise that the U.S. government has failed to seriously broach the problem of reparations to Native Americans, except in some isolated legal cases where a few Native American nations sued the U.S. government for damages and were awarded meagre settlements. Thus it would be naïve to expect such an unrepentant country as the U.S. to promise to not harm Native Americans again, which explains why Native American nations have yet to be granted full sovereignty, and why the U.S. Internal Revenue Service even today considers itself legitimate in treating Native American nations in the ways that it does. Perhaps it is asking too much of a society founded on racist murder, hate, theft, and other forms of violent oppression to do the right thing about its own unrectified evil history. Perhaps, then, a country founded on its own unrectified evils against others remains evil still.

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