PUNISHMENT AS HELP AND THE BLAMING EMOTIONS

In this paper I argue that criminal punishment, devoid of all emotions of blame, is inhuman in relation to the offender and contrary to a morally robust justification for the criminal law. Increasingly, progressive philosophers of punishment, such as Hannah Pickard, Nicola Lacey and Martha Nussbaum, claim that emotions such as anger and resentment have no place in criminal punishment. Lacey and Pickard in particular argue that punishment should be carried out through an ethic of forgiveness.

I argue that these rejections of the emotions of blame in punishment, though they claim to be new and improved, are grounded in the ancient and Aristotelian idea that punishment to be different from revenge must be for the benefit of the wrongdoer. This conceptualization of punishment as help has also long been connected to a view of wrongdoing as illness and punishment as cure. I argue that Lacey and Pickard’s view is a distinctively twenty-first-century therapeutic version of these age-old ideas. I argue that the impulse to punish an offender with the expression of affective blame is not at all inconsistent with the intention to help the offender. Further, I question the assumption that being on the receiving end of affective blame is necessarily unhelpful to a wrongdoer. From there I argue that an ethic that eschews affective blame in favour of detached forgiveness deprives human relations of the Strawsonian good of unreserved mutuality and moral engagement. While such unreserved moral mutuality may be difficult within the relation between the state and the criminal-wrongdoer, a criminal sentence intended convey no affective blame would be morally unintelligible to both the offender and society.

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Professor Acorn’s main area of research interest is the theory of the emotions in the context of conflict and justice. She has published numerous articles in journals such as The Oxford Journal of Legal Studies, Osgoode Hall Law Journal, Valparaiso Law Review, and the UCLA Women’s Law Journal. In 1998-99 she was the president of the Canadian Association of Law Teachers. In the same year she was a McCalla Research Professor. She was a Visiting Fellow at All Souls College, Oxford, from 2014-15 where she worked on a book on resentment and responsibility.

FREE EVENT

DATE: Monday 26 September 2016
TIME: 6pm
VENUE: Law School Foyer, Level 2, New Law School, Eastern Avenue, The University of Sydney
REGISTRATION: Free and open to all with online registrations required historyofemotions.org.au/events/punishment-as-help-and-blaming-emotions/
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