

Jeffrie Murphy

Punishment and the Moral Emotions: Essays in Law, Morality, and Religion.

New York and Oxford: Oxford University Press 2012.

xxiii + 322 pages

\$74.00 (cloth ISBN 978-0-19-976439-6)

Jeffrie Murphy's latest collection of essays focuses upon a number of apparent conflicts that arise when thinking about the moral emotions, religious ideals, and the justification of criminal punishment. The book is a mixture of philosophy, theology and law. Much of its value comes from the inclusion of theology. As Murphy writes: 'When a person brought up a Christian becomes an atheist, he tends to become a Christian atheist' (44). The same is true of formerly Christian societies; western philosophy and penal theory owe much to their Christian heritage.

Murphy is not in the business of systematic theorising. Rather, his essays are akin to a series of sketches, outlining broad concepts and problems in general terms. Reading the essays individually, one might mistakenly think them to be insubstantial. But as the same ground is covered repeatedly from different angles, Murphy's sketch of the conceptual terrain is gradually shaded in. After a while, one finds one's thoughts automatically moving along the same lines as the author. This is a book that gets under one's skin.

For this reason, *Punishment and the Moral Emotions* is better read as a book than as a collection of separate papers. The first essay provides a general overview. It is hardly a chore to finish the 300+ pages. The text is accessible, clear and witty, and the likeable and self-effacing character of the author continually shines through the prose. Moving onto specifics, this book has many highlights, but the following deserve particular mention:

(a) The discussion of apology in 'Remorse, Apology and Mercy' is excellent—both funny and sharp. Murphy's bugbear is the ease with which apologies may be offered without repentance, regret, or any attempt at restitution or reconciliation. Reflecting on this fact may make one think twice about the emphasis placed, in political circles, upon public apology and, in legal circles, upon expressions of regret prior to sentencing.

(b) Similarly worthwhile is Murphy's discussion of the public enforcement of morals (69–76; cf. also 'Moral Reasons and the Limitations of Liberty'). Murphy argues, first, that Devlin's position in the Hart-Devlin controversy is not as indefensible as it is sometimes thought to be and, secondly, that what is usually most objectionable about using the criminal law to enforce morality is the moral vision being enforced.

Unfortunately, what strikes me as Hart's central argument is not discussed. If one's aim is to promote moral behaviour, it is unclear that this can be done by coercing people into acting morally, for moral action is often thought to require moral motivation.

(c) 'Shame Creeps Though Guilt and Feels Like Retribution' takes issue with the view that feelings of guilt are feelings directed at personal violations of authoritative rules or

commands. Such a view fails to explain why, for example, the driver who flouts the drink driving laws and inadvertently kills a child will feel a degree and a kind of guilt not felt by a drink driver who fortunately causes no injury. Feelings of guilt stem from the realisation that we have caused harm to someone or something that we value (99–100).

Murphy is, in my view, largely right. But his discussion misses one interesting avenue of investigation. Why is it that, while a person may well feel guilty for causing injury to another while sleepwalking, he is less likely to feel guilty if he causes injury by being thrown or pushed into someone else? Perhaps guilt is not merely a reaction to the causation of harm, but to the causation of harm through a particular species of agency. The harm I bring about when sleepwalking is *produced by me*. The harm I bring about when pushed or thrown is arguably not produced by me but by the individual doing the pushing or throwing.

(d) Finally, I regret that I do not have space to discuss properly Murphy's Nietzschean challenge to retributivism (21–7). The challenge starts with the recognition that our retributive instincts are often based upon vindictive emotions and a tendency to think of criminals as sub-human. In this vein, the volume contains an instructive discussion of the contemporary American attitudes towards punishment (225–32). All I will say is that Murphy's discussion of this point is both subtle and unsettling.

A number of general themes recur throughout Murphy's essays. In particular, there are repeated discussions of the nature and value of forgiveness and of the justification of punishment. These discussions are instructive, but not without difficulties.

Murphy adopts a conception of forgiveness championed by Joseph Butler according to which forgiving is understood to be the overcoming of intense negative reactive attitudes on moral grounds (6). This conception of forgiveness distinguishes it from reconciliation (56–7). A battered wife might forgive her husband, yet not wish to be reconciled if she knows that their relationship brings out the worst in him. Murphy argues that forgiveness is compatible with inflicting punishment, because forgiveness is principally a matter of change of heart, not of external practice (57). One may still inflict punishment for reasons of deterrence or justice (8). Lastly, because forgiveness is linked to the modification of the emotions, and because the extent to which we can control our emotions is unclear, it may be impossible for a person to forgive, although he might be able to take steps to develop a more forgiving character (217).

Murphy cites the South African Truth and Reconciliation Commission as an example of reconciliation without forgiveness. Those taking part have to accept responsibility for past misdeeds, but not apologise or show remorse. The Commission aims to enable the parties to work together, not to administer punishment for past wrongs. Murphy argues that participants in this process do not need to overcome their vindictive feelings of anger, resentment or hatred (57). But it is not clear to me that a victim can be reconciled with his former oppressor (reconciled to the prospect of working together) if he is still burning with resentment. My worry is that this would be a sham—that genuinely being reconciled is related to feeling reconciled. Yet it nonetheless seems right to claim that there can be reconciliation without forgiveness. If so, forgiveness must involve something more than the overcoming of resentment. I suggest that what it additionally involves is a change of *attitude* towards a wrongdoer, which may involve ceasing

to think ill of him, wiping the slate clean, coming to accept him despite his flaws, or (troublingly for Murphy) abandoning a demand for punishment.

If this suggestion is correct, it has a number of consequences for Murphy's account. First, it is not obvious that we have no direct control over our attitudes towards others, *even if* we have no direct control over our emotions. Secondly, it becomes clear why remorse is often a necessary counterpart of forgiveness. It is easier to re-evaluate one's opinion of another if his past deeds do not reveal his current character, and to feel remorse is to renounce and feel alienated from one's past deeds. Finally, it gives rise to a further reason why punishment may be incompatible with forgiveness. One key element of retributive punishment (or of punishing for reasons of justice) is that punishment aims to communicate to the wrongdoer one's disapproval of his misdeeds and to make him understand the wrongness of his actions. This is why the infliction of hard treatment is not really punishment if one doesn't give some indication of why the hard treatment is being inflicted. But if forgiving an individual involves accepting him as he is, thinking better of him, or giving him a blank slate, there is no longer anything one would wish to communicate to him through the infliction of punishment.

This last point is relevant to Murphy's discussion of the justification of punishment. Murphy argues that a significant portion of the harm caused by crimes is due to the message of contempt thereby conveyed to, and about, the victim (116). The punishment of the wrongdoer annuls this degrading message and vindicates the value of the victim (231).

Murphy indicates how punishment can partially nullify the message conveyed by a crime by showing that the message is not endorsed by society at large. Considering the communicative function of punishment mentioned earlier, however, shows how punishment can accomplish more than this. Punishment aims not only at expressing the outrage of society at criminal conduct, but also at bringing this outrage home to the criminal. The upshot of this process will ideally be the repentance of the wrongdoer. As Murphy argues (154), the subsequent repentance of an offender could be of relevance in determining his punishment, for the offender repudiates the message conveyed by the offence.

C. G. Pulman

University of Reading