Punishment as an Expression of the Indignation of the Community

We can understand punishment as blame, on the reactive account of blame, if we can understand it to express the reactive sentiments. In this excerpt from my dissertation, I argue that acts of punishment can be understood as externalized expressions of the indignation of the community in societies where systems of punishment reflect the will of members of the community. The criminal law sets out a set of moral demands on members of the society in which it applies. In societies where the criminal laws are enacted by procedures that are answerable to the will of the community, the moral demands enshrined in the law are normative expectations to which citizens hold one another. According to the reactive account of moral responsibility, this stance of holding one another responsible is to be understood in terms of the reactive sentiments. When citizens hold all their fellow citizens to the normative expectation of following the laws, they believe it would be appropriate to feel the reactive sentiments when their fellow citizens violate those laws. The criminal law also delineates the punishment for those who violate its demands. In democratic societies, acts of punishment that deprive their objects of important goods, such as liberty and property, can be conceived of as expressing the indignation the community has endorsed as appropriate in response to the crime. Acts of punishment thereby blame criminals for their crimes.

Punishment can be understood to express indignation, because the disposition to punish, or, more precisely, to approve of punishment, is among those that are characteristic of the reactive sentiments. Contemporary conceptual analyses of emotions typically count dispositions to action among their defining characteristics. All other things being equal, those who feel

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1 See, for example, Goldie, Peter, 2000, *The Emotions*. Oxford: Oxford University Press, pp. 12–13: “An emotion is complex in that it will typically involve many different elements: it involves episodes of emotional experience,
compassion are disposed to act in ways that relieve the suffering of those they feel compassionate toward, for example, and those who feel love are disposed to promote the interests of their beloved. The reactive sentiments, on the other hand, typically dispose those who feel them to act in ways that are objectively bad for the blamed. Punishment is continuous with such actions that we are disposed to perform in the interpersonal context, where those responses are not mediated through state institutions, in that they characteristically dispose those who feel them to act in ways that are objectively bad for the blamed. This limits the field of actions which express resentment and indignation. It explains why applause and gifts of large amounts of cash do not express those emotions except in very exceptional cases. Resentment and indignation always deny their objects something objectively good, a certain sort of social regard. For most people, this makes it distressing to be the object of the reactive sentiments. Objects of blame often feel guilty and feel the sting of the attitudes others feel toward them. People who feel indignation and resentment are characteristically disposed to perform actions that are typically bad for the objects of blame, even when those who feel them do not desire that those objects suffer. Even when one is the target of a merely verbal expression of blame, one often becomes painfully aware of his standing with others. Expressions of the reactive sentiments sometimes take the form of the denials of further social goods that come with other people withdrawing goodwill that they would otherwise have toward you. Examples of these

2 This idea can be found in Strawson, P. F., 1962, “Freedom and Resentment”; reprinted in Watson, Gary, 1982, Free Will. New York: Oxford University Press, p. 77: “The partial withdrawal of goodwill which these attitudes entail, the modification they entail of the general demand that another should, if possible, be spared suffering, is, rather, the consequence of continuing to view him as a member of the moral community; only as one who has offended against its demands. So the preparedness to acquiesce in that infliction of suffering on the offender which is an essential part of punishment is all of a piece with this whole range of attitudes of which I have been speaking.”
harm include being excluded from a social circle or not being able to receive aid with one’s projects.

We can see the harms that punishment involves as continuous with these interpersonal responses. Though we are not typically disposed to deprive one another of liberty of bodily movement by our own hands, we are disposed to approve the state carrying out such punishment. This is a generalization, but I believe that it fits the way most people experience indignation when their minds are emotionally fixed on an act of serious wrongdoing. I invite the reader to take a moment to imagine some terrible crime with which they are familiar and muster up indignation toward the person who has committed that crime on behalf of the victim of that crime. While in the grip of indignation consider how you are disposed to go in for the punishment of the serious criminal and how naturally you are so disposed from within the emotional experience. That we are not generally disposed to punish with our own hands, I believe, can be explained by the function of modern states. Depriving the goods characteristic of punishment usually requires a credible threat of force. We can exclude someone else from our social circle without accounting for his will, but in order to limit his bodily movement we need him to decide to go along with the limitations or force him to follow them against his will. In the modern societies in which we are emotionally educated, states have monopolies on the legitimate use of force. The actions that our indignation in response dispose us toward are shaped by the recognition of this fact.

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3 It seems that typical, interpersonal expressions of the reactive sentiments are sometimes de facto deprivations of property. When some community ensures, “he’ll never work in this town again” this has social and financial consequences. Taking property that someone already possesses, however, usually does require the threat of force.

4 The idea that the actions to which our emotions dispose us is partly a consequence of the societies we are emotionally educated in is pursued further in the next chapter.

According to the reactive interpretation of systems of punishment I have been advocating, we can understand those that are the product of democratic procedures as expressive of the indignation in those communities, because most people are disposed to approve of punishment when they feel indignation in response to serious crimes. This account conceives of punishment as blame in a way that is consistent with Wallace’s reactive account, which defines blame in terms of the reactive sentiments. One might worry, however, that this understanding faces a dilemma. Either systems of punishment express the indignation that people in society feel or it does not express any indignation at all. People feel indignation inconsistently. They do not feel indignation toward all crimes, and whether they feel indignation toward particular crimes is often determined by factors that do not, and certainly should not, determine whether someone who commits a serious crime is punished. For instance, media coverage can make a large difference in whether members of the community feel indignation toward some serious criminal. Even independent of media coverage, the extent to which people in the community feel indignant in response to various criminal actions might depend on whether they are partial to some criminals or crime victims. But systems of punishment typically prescribe the same punishment to those who commit the same crimes, so punishment does not express the actual indignation members of the community feel in response to crimes. Thus we must avoid the first horn of the dilemma. If it does not express the actual emotions that people feel, however, how can it be expressing any emotion at all? We do not usually think that actions that people perform without feeling emotions express emotions, even when people act in ways to which people feeling those emotions are disposed. For instance, someone who is dreadfully bored at a party who smiles to give his friends the false impression that he is happy does not express joy.\(^6\)

\(^6\) Sometimes actions can be expressive of an emotion that is not occurrently felt. A parent who spends his days running errands for his family might feel stress rather than love. It seems like these actions could still express love
I believe that the reactive understanding of systems of punishment can evade the second horn of this dilemma because there is at least one sort action which may express emotions that people do not actually feel: when they are expressed in someone else’s name. Imagine that before leaving for Antarctic seclusion, I ask my neighbor to have flowers sent to my grandmother should she become sick. My grandmother falls ill and my neighbor follows through, sending the flowers with a sympathy card. The flowers express my sympathy, or the sympathy that I have endorsed as appropriate. It is in this way that political institutions express the emotions of community: in democratic societies, state actions speak on behalf of citizens. Consider a recent resolution proposed in the United States Congress, described by its authors as “a resolution calling on Congress to formally acknowledge and express regret for the passage of a series of laws during the turn of the 20th Century that violated the fundamental civil rights of Chinese-American settlers.” If passed the resolution would serve to express an emotion of the community of American citizens for the treatment of early Chinese American settlers, even if a small percentage of Americans feel such regret at the time of passage. It does so in virtue of being the product of democratic procedures. In the representative system, elected officials speak on our behalf. When in their role as representatives, they authorize an action that would clearly express regret were it performed by an individual disposed to do so by his regret, like formally saying “I express regret,” they express regret in our name.

Emotions can be expressed by the state, not only through official declarations, but also through the day to day operations of institutions. Consider, for example, the attitude of those in

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for his family. However, it does seem strange to understand these actions as expressions of love if he never experiences feelings of love.

the community toward those who enlist in the armed forces and put themselves in harm’s way for the interests of the community as a whole. Most of us think we have reason to feel gratitude toward those who serve in the military and there are laws in our society that prescribe actions to which those who feel gratitude are characteristically disposed targeting military members. For example, among other things, the G.I. Bill offers benefits to veterans who attend college and start businesses.\(^8\) It is not necessary for members of the community to actually feel gratitude toward each individual military member in order for these benefits to express the gratitude of the community. Members of the community do have a role in seeing that the emotions they find to be appropriate are expressed by institutions in holding accountable elected officials. When, as for instance happened in the case of the Walter Reed Army Medical Center, it comes out that men and women injured in combat get worse medical care than other members of society, it is a matter that politicians ignore at their own electoral peril.

I conclude that the indignation of the community expressed by punishment need not be the actual emotions that members of the community feel, but is instead a normative notion, the indignation that they have endorsed as appropriate through their (often implicit) endorsement of systems of state punishment. When we are indignant toward serious crimes, most of us are disposed to approve of state punishment, so acts of punishment can be understood to express the indignation members of the community have endorsed as appropriate. Thus, systems of punishment hold criminals accountable in a way that is consistent with the reactive account of blame.

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\(^8\) It might be thought that such programs aim at recruitment not expressing gratitude. I think that such programs can consistently do both. The state has reason to express gratitude in a way that encourages others in society to pursue actions for which we are expressing gratitude. Following a similar line of thought, in the next chapter I will argue that we have reason to express indignation through forms of treatment that deter.