

## Chapter 10

# Judging Because Understanding: A Defence of Retributive Censure

Thaddeus Metz

### Editor's Introduction

Thaddeus Metz defends the retributive theory of punishment against challenges mounted by some of the contributors to this collection (Kai Nielsen, Brian Penrose, Samantha Vice, Pedro Tabensky and Marc Fellman). People, he thinks, ought to be censured in a way that is proportional to what they have done and for which they are responsible. Understanding does not conflict with judging. On the contrary, according to him, the more we understand, the better we are able to censure appropriately. Metz's argument is Kantian insofar as he argues that 'respect for persons [victims, responsible wrongdoers and the community at large] requires condemning people proportionately to their responsible wrongdoing and hence that understanding a person merely indicates what would be proportionate, not that proportionality is unjustified'. His reason for thinking that Kantian respect requires retribution is that, as in non-retributive cases such as economic justice, compensatory justice, and justice in healthcare rationing, it requires imposing burdens on persons because of their responsible choices. Finally, Metz argues that *The Reader* supports his thesis rather than the thesis that understanding must temper judgement and punishment. He interprets *The Reader* to be a plea for appropriate retributive judgement. To use his slogan, 'judging is apt because of understanding'.

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### I. Introduction

Several contributors to this volume maintain that there is a tension between understanding another person and her wrongful actions, on the one hand, and judging her on retributive grounds, on the other. By 'retributive' reasons for judgement, I mean any consideration that could be invoked to justify censuring a person for, and in proportion to, wrongdoing for which he was responsible. For example, one (but not the only) retributive reason to condemn someone might appeal to the bare fact that he deserves condemnation because of, and to the same degree as, his having voluntarily done wrong in the past, which rationale appeals to no expected consequences of the

condemning such as the prevention of wrongdoing. A number of authors believe that the more one understands someone who has done wrong, the less reason one finds to blame the person merely on the basis of, and strictly proportionate to, the wrong he has done.<sup>1</sup> Now, these authors all find blaming for wrongdoing permissible; none even advocates abolishing punishment *in toto*. But what they have in common is the view that understanding another person shows that it is unreasonable to impose the sort of censure that a retributive theory would ideally require.

In my contribution to this volume, I maintain that there is no tension between retributive judging and understanding. I argue that, upon understanding another agent and his actions, one never thereby finds reason not to judge him retributively; instead, coming to understand another invariably helps a judge to ascertain precisely what is retributively warranted.

I begin the chapter by specifying with care what I mean by 'understanding' and 'retributive judgement' (II). I also clarify the principled tension between them that others see as one that is epistemic in nature: invariably, the more one understands another person (in a certain sense), the more evidence one has that a full-blown retributive judgement of her is morally unjustified. Then, I present an argument for thinking that there is no such tension between judging and understanding (III). My argument is Kantian in nature; it says, very roughly, that respect for persons requires condemning people proportionately to their responsible wrongdoing and hence that understanding a person merely indicates what would be proportionate, not that proportionality is unjustified. Next, I consider arguments for thinking otherwise, which come from the contributions of others to this volume (IV). I first address the claims that understanding another person reveals that retributive judgement is altogether disrespectful or otherwise impermissible because we learn that he is not an unmoved mover (Pedro Tabensky), he could not have done otherwise (Kai Nielsen), or we would have done the same thing in his position (Brian Penrose and perhaps Marc Fellman). I then address the claim that understanding another person shows that retributive judgement, while not altogether disrespectful or impermissible, must be tempered by mercy because we learn that this person, like everyone else, is frail (Samantha Vice and Marc Fellman). I conclude the paper by discussing respects in which, contra others' assessment, *The Reader* coheres with my thesis that judging is apt because of understanding (V).

<sup>1</sup> Note that this normative thesis about what one has reason to believe or do upon understanding differs from an empirical thesis about what happens to one upon understanding. In particular, Ward Jones, Brian Penrose and Samantha Vice discuss the claim that the more one understands another person, the less one will in fact be inclined to blame her on retributive grounds. I am not interested in any descriptive claim about how our psychology operates, focusing exclusively on the prescriptive claim about what our behaviour ought to be.

## II. The Terms of the Debate

In this section I aim to articulate the sort of conflict that one might suspect exists between judging a person retributively and understanding her and her behaviour. I first analyse the two major concepts, and then discuss the kind of conflict that others see between them and that I deny exists.

I believe that there is no conflict between retributive judging and understanding however 'understanding' another person or his deeds is construed, and I therefore construe 'understanding' in a very broad sense to mean any kind of empirical knowledge. Some authors in this volume focus on 'understanding' in a much narrower sense, e.g., some use it to denote merely an awareness of the agent's reasons for acting, an apprehension of the other's first-person point of view. Others use it to refer to knowledge that would accompany a more third-person point of view, e.g., an appeal to unconscious motives, psychological laws or social causes. When I speak of 'understanding' a person or her actions, I refer to any of the myriad ways of explaining why a person is the way she is or why she has done what she has done.

I also construe 'retributive judgement' of a person or her acts in a very broad sense, again more inclusively than some other contributors to this book. For me, the phrase denotes the following sort of cluster of cognition, conation and volition. First off, 'retributive judgement' includes a *belief* that if a person has done wrong and is responsible for the wrong, then he warrants a proportionate negative sanction at bottom for having done it. It also includes the belief that many times these conditions are fulfilled, i.e., that people often do wrongs for which they are responsible. These beliefs imply the claims that there are degrees of wrongful behaviour (from forgetting to return a borrowed book to engaging in crimes against humanity), degrees of responsibility (from being an insane child who accidentally pulled the trigger to being a clear-thinking adult who intentionally did so), and degrees of negative sanction (from wagging a finger to physical punishment). The worse the immorality and the greater the responsibility for it, the harsher the burden that ought to be imposed because of it. 'Retributive judgement' here also means a *desire* that the proportionate negative sanction be imposed on a wrongdoer for the reason that he has responsibly done wrong; it refers to an inclination to see an offender burdened in like degree to, and because of, his immorality. In addition, the phrase denotes an *action* proximately caused by this belief and desire, namely, the actual imposition of the proportionate negative sanction, or at least support for its imposition by someone else.

Retributive judgement, in short, is to censure a person to the same degree as, and basically because of, wrongful behaviour for which he is responsible. This definition of 'retributive judgement' is broad for referring to censure or blame as such, as opposed to a specific sort such as punishment. Since I am particularly keen to show that retributive punishment of a person by the state is consistent with understanding him, in the rest of this chapter I often focus on it, as opposed to censure in general.

The definition of 'retributive judgement' is also broad for including a variety of policies that are 'backward-looking' in the sense of basing the rationale for, and amount of, legal punitive censure solely on facts about the past. There are three

different reasons why the historical fact of having responsibly done wrong might be thought to warrant a proportionate negative sanction such as state punishment. First, there is the desert theory, which says that a person should be burdened for his wrongful behaviour because he deserves to be.<sup>2</sup> The worse the wrong and the more control he had over it, the harsher a penalty is deserved and hence should be imposed. Second, there is the fairness theory, the view that, by having broken a just law, a person undergoes fewer burdens than those who obeyed the law and yet benefits from the order produced by their obedience, and that he therefore should receive a burden so as to make his share of burdens equal to those of law-abiding citizens.<sup>3</sup> The worse the crime, the greater the liberty the wrongdoer has voluntarily taken at the expense of others, and hence the harsher the punitive burden must be to rectify the exploitation. Third, there is the (intrinsic) expressive theory, which claims that the point of punishment should be to treat the offender as responsible for his behaviour, to affirm the value of his victim, or to disavow wrongful actions.<sup>4</sup> The worse the offence and the more responsible the offender is for it, the stronger the expression of disapproval must be and hence the harsher the punishment should be.

Each of these three theories is on occasion called 'retributivism' in the literature, but I here use the word to denote the general backward-looking perspective that encompasses all three particular instances. Such a perspective differs from any sort of 'forward-looking' view that would fundamentally base the rationale for, and amount of, legal punitive blame on facts about the future. Three influential forward-looking theories are that state punishment is justified because it will: scare people from committing crime (deterrence theory), physically prevent people from committing crime (incapacitation theory), or reform people's values or their psychological abilities to act in accordance with them (moral education theory). Benthamite utilitarianism and Aristotelian *eudaimonism* are often invoked as theories of morality that would fundamentally ground a forward-looking theory of legal punishment, but one could hold a Lockean rights-based moral theory instead, claiming that the ultimate justification for state punishment is that it promises to protect citizens'

2 E.g., Andrew von Hirsch, *Past or Future Crimes: Deservedness and Dangerousness in the Sentencing of Criminals*, New Brunswick: Rutgers University Press, 1987; Robert Nozick, *Philosophical Explanations*, Cambridge: Harvard University Press, 1981, pp. 363-97; and Michael Moore, *Placing Blame: A General Theory of Criminal Law*, New York: Oxford University Press, 1997.

3 E.g., Jeffrie Murphy, *Justice, Retribution and Therapy*, Boston: D. Reidel Publishing Co., 1979; Wojciech Sadurski, *Giving Desert Its Due*, Boston: D. Reidel Publishing Co., 1985; and Michael Davis, *To Make the Punishment Fit the Crime*, Boulder: Westview Press, 1992.

4 E.g., Jean Hampton, 'An Expressive Theory of Retribution', in Wesley Cragg (ed.), *Retributivism and Its Critics*, Stuttgart: F. Steiner Verlag, 1992, pp. 1-25; Andrew von Hirsch, *Censure and Sanctions*, Oxford: Oxford University Press, 1993; Thaddeus Metz, 'Censure Theory and Intuitions about Punishment', *Law and Philosophy*, 19, 2000, pp. 491-512; and 'Realism and the Censure Theory of Punishment', *Archives for Philosophy of Law and Social Philosophy*, 85, 2002, pp. 117-29.

rights of self-ownership. The key point is that retributive judgement contrasts with any forward-looking theory of punishment by the government; it denies that the point of legal punitive blame is to achieve any state of affairs such as crime control that will obtain after the blaming. Instead, retributivism here is the view that punitive blame serves a morally sound function because it is in itself an appropriate response to what has happened in the past.

Having analysed understanding and retributive judging, I can now articulate the claim – which I aim to refute – that there is a tension between them. There are two different kinds of tension one might see between understanding and retributive judging, only one of which is really advocated by other contributors to this volume and is *prima facie* plausible. I mention both kinds simply in order to highlight my target.

The implausible sort of tension that other contributors do not advocate is this: the more one understands a person or his actions, the less *moral* reason there is to judge him or his actions retributively. According to this view, if one did not understand a person, then one could have strong moral reason to judge retributively. But none of those who sees a conflict between judging and understanding maintains this; all instead argue that, when one comes to understand a person, one *discovers* (instead of *creates*) a moral reason not to judge in the way a retributivist ideally would. In other words, these authors maintain that, if one failed to understand a person and judged her in a full-blown retributive fashion, one would be doing something immoral.

The proper way to articulate the putative tension, then, is to say this: the more one understands another person, the more *epistemic* reason one has to think that a perfectly retributive judgement of her is morally unjustified. This sort of tension implies that retributivism is a false theory of punishment, or at least should not be the sole factor informing one's decisions of whether to punish and how much to punish. Understanding a wrongdoer and his deeds provides evidence that retributivism should not guide one's behaviour solely, if at all. For instance, some contributors claim that, upon understanding another, one always becomes aware of the causes that necessitated her behaviour and that therefore make retributive punishment impermissible.

In the next section, I provide an argument for thinking that there is no epistemic tension between understanding and retributive judging. Upon understanding another person and his deeds, one never thereby finds evidence that retribution would be unjustified; instead, understanding invariably helps one to determine precisely what retribution requires in a given case. Afterward, I rebut arguments for thinking otherwise.

### III. Dignity, Respect and Tracking

I present a Kantian reason for thinking that the belief that one ought to retributively judge another person epistemically coheres with understanding him. The basic idea is that the principle of respect for the dignity of persons justifies punishing a

person because of, and in proportion to, his wrongdoing, so long as the person is in a certain, naturalist sense responsible for the wrongdoing.<sup>5</sup> Coming to understand a person and his deeds, one thereby discovers natural facts about whether and to what degree a person has been responsible for a wrongful act. Given the principle of respect, understanding him will reveal evidence of how much punishment, if any, is warranted from a retributive standpoint.

I appeal to a Kantian account of responsibility, one that differs from Kant's own.<sup>6</sup> Kant's non-natural account of retributivism is notoriously controversial, even implausible, and the account I offer avoids the more problematic features of his theory such as atemporal causation and noumenal freedom. Even though I offer a thoroughly naturalist argument, which comports with the worldview of my interlocutors in this volume, I should explain why an appeal to a Kantian perspective is dialectically appropriate. First, the principle of respect is an intuitively plausible moral foundation, one that survives the questionable metaphysics and epistemology of Kant. Second, it, or at least its corollary of not treating people merely as a means, is explicitly accepted by most of those I argue against (Tabensky, Nielsen and Vice), and otherwise does a good job of explaining the prima facie force of other objections (Penrose and Fellman). I of course do not have the space to argue for a Kantian outlook relative to, say, a utilitarian one. I instead take such a perspective as reasonable and as constituting some common ground between those who differ on whether there is a tension between retributive judging and understanding.

The principle of respect for the dignity of persons, as I understand it, instructs agents to treat other agents as having the highest intrinsic value in the world. An agent, or person, is a being that has the ability to act on the basis of ends it has adopted upon principled deliberation. It contrasts with a being who acts merely on instinct or by conditioning, a being that lacks the capacity to judge whether its desires are worth fulfilling and to act in light of such judgement. Call this capacity 'autonomy.'

<sup>5</sup> My account of respect and its implications for punishment are partially drawn from Thaddeus Metz, 'The Reasonable and the Moral', *Social Theory and Practice*, 28, 2002, pp. 277–301.

<sup>6</sup> Immanuel Kant, *Critique of Pure Reason* B560–86. Kant distinguishes between a theoretical standpoint from which we describe events and a practical standpoint from which we make a decision to act, and he argues that, from a practical standpoint, we must think that we have the ability to act independently of natural causes, which ability is, by the principle of respect for persons, necessary and sufficient for retributive judgement. I differ from Kant in that I: draw no distinction between viewpoints; do not entertain the possibility of non-natural free will or responsibility; and reject the idea that such a non-natural capacity is necessary for retributive judgement. I hold a naturalized metaphysics and epistemology, which still counts as 'Kantian' for maintaining that the fundamental moral principle is to respect the dignity of persons, where such dignity is a function of a certain capacity for autonomy.

If you were driving a bus and had to choose between running over a squirrel or a person, you must, morally speaking, run over the squirrel.<sup>7</sup> At least part of the best explanation of that moral requirement is that the person is worth more than the squirrel,<sup>8</sup> and, moreover, that the person is worth more than the squirrel in virtue of her personhood, that is, because she has autonomy.<sup>9</sup> This superlative intrinsic value, or dignity, warrants respect, which respect forbids sacrificing it for something worth less than it and, more generally, forbids treating it merely as a means to an end. Respect also requires treating persons as equals (since they by definition have the capacity for autonomy to the requisite degree) as well as helping them on occasion to develop their capacity to choose goals or to attain the goals they have chosen.

Furthermore, and of central concern to retributive judgement, respect requires at least institutions (if not individuals) to track the responsible actualization of the capacity for autonomy, even at substantial cost to the general welfare.<sup>10</sup> By 'responsible' choice I (roughly) mean the exercise of autonomy that has been undermined to a large degree neither by external factors such as duress, brainwashing and trickery, nor by internal factors such as psychosis, sleepwalking and being a minor. A choice for which one is responsible is not one independent of all natural laws, as in Kant's view; it is rather a choice that is within one's control or is a product of one's deliberation, which conditions are, for all we know, causally determined. By 'tracking' such choice I mean not merely reacting to a person in light of the decisions she has made, but also responding in kind, i.e., imposing burdens in reaction to wrong choices and not doing so (and perhaps offering benefits) in reaction to right ones. Finally, by such tracking coming at 'substantial cost to the general welfare', I mean that it would forgo a large aggregate of improved quality of life, whether that gets cashed out in terms of pleasure, desire satisfaction, happiness, *eudaimonia*, excellence or meaning.<sup>11</sup> In sum, when I say that institutions should track the exercise of autonomy even at the expense of the general welfare, I am claiming this: respect

<sup>7</sup> Some people might run over the person if the person threatens other persons. However, I am not considering such a case. And even if I were, a good explanation of why protecting persons is worth doing is that they have a dignity that demands respect (cf. the Other-Defence case discussed below). Others might be inclined to hit the person if he is guilty of having harmed others in the past (but poses no threat in the present). However, the best explanation of that inclination is a belief in the aptness of retributive judgement, which of course supports the thesis I aim to defend in this essay.

<sup>8</sup> Neither that the person or his relatives would suffer more, nor that you would get punished, be sued, or feel guilty. Imagine you are a heartless bastard in the middle of nowhere striking an orphan who will die instantly. It would still be wrong of you to do so.

<sup>9</sup> Not because she is a human being or part of our community. Imagine you are striking an intelligent Vulcan from afar or a 'swamp human', one who has spontaneously arisen from a mixture of chemicals in a bog. It would still be wrong of you to do so.

<sup>10</sup> Here I draw on material from Thaddeus Metz, 'Arbitrariness, Justice, and Respect,' *Social Theory and Practice*, 26, 2000, pp. 25–45.

<sup>11</sup> Quality of life here does not include the capacity for autonomy that is developed or provided resources. I believe that the strong reason to track responsible choice can be

requires placing burdens upon those who have done wrong as opposed to those who have not, if the wrongful deed was substantially within the agent's control and even if society would be less well off as a result. What follow are four non-retributive examples to illustrate and support this claim.

First, respect pro tanto mandates a court to make a tortfeasor pay compensation to his victims, if he can. Suppose that you, disliking my ugly sweater, intentionally spill yellow mustard and red wine on it to express your disgust. A judge has strong reason to make you bear the cost of buying me a new sweater, even if overall utility would be higher if I did so instead. Call this the 'Tort' case.

Second, respect in the normal case requires a soldier to harm aggressors when necessary to protect their potential, innocent victims. Suppose you are a United Nations peacekeeper in Rwanda and see five armed Hutus targeting a defenceless Tutsi merely because she is a Tutsi. Uncontroversially, you must shoot the assassins if required to protect the woman from getting hacked to death with machetes. Indeed, if it is necessary to defend the innocent women, you must kill all five assassins, and that is true even if we suppose that more intrinsic value of whatever sort would obtain in the long run if you were to let them kill her. For instance, imagine that the five assassins, who have lots of friends and family, would be happier in the long run than the woman, who is a loner, if they lived. Assuming for the sake of argument that letting the five aggressors kill one innocent person would eventually produce a better world than killing the five and saving the one, respect for persons still demands killing the five aggressors. This is the 'Other-Defence' case.

Third, *ceteris paribus*, respect obliges a hospital to distribute scarce medical treatment to those who have not brought about their need for the treatment by virtue of having made wrong choices. Suppose that a husband cheats on his wife, having unprotected sex with dozens of casual partners. Imagine that he acquires HIV, that he passes it on to his wife, and that a hospital has enough antiretroviral treatment for only one of the parties. It would be moral madness to suppose that a physician ought to give the treatment to the husband (or that she should flip a coin to decide who gets it). Instead, the physician has the most principled reason to give the wife the treatment, even supposing the husband would have a higher quality of life in whatever sense if he were the one to survive. For example, imagine that, upon being given the treatment, the husband would morally reform and add somewhat more excellence to the world than would be produced if the wife were to live. Even if that would be the outcome and were somehow known to the physician, she must save the wife instead of the husband. Let this be known as the 'Rationing' case.

Fourth, respect provides strong moral reason for a business to base wages on how long and hard a person qualified for the job has worked at it. Suppose that Abe works many hours and works diligently during them, while Brenda breaks her contract by rarely showing up for work and slacking off when on the job. All things being equal, it would be disrespectful of a boss to give more money to Brenda, even if she would

overridden when autonomy would be reduced in substantial ways. For discussion, see Metz, 'Arbitrariness, Justice, and Respect'.

live a more meaningful life with the money than Abe would with it and even if productivity would not increase if Abe were provided with more money (imagine he and his other colleagues have a strong work ethic, perhaps because of their religion). Let's make this the 'Wages' case.

In all four cases, what respect for persons requires is clear.<sup>12</sup> Furthermore, even many of those who might reject respect as a moral foundation will find their moral common sense inclined to think that burdens ought to be allocated in the way respect would require. The principle operative in the four scenarios is this: an institution has strong moral reason to place burdens upon those who have acted wrongly in a way for which they are responsible, even supposing for the sake of argument that so placing the burdens would fail to produce the most available well-being or other intrinsic value. Respect for the capacity to make decisions for good reasons requires distributing burdens in accordance with the way this capacity has been actualized, as opposed to some non-agency criterion such as the amount of welfare at stake. Compensatory, military, healthcare and economic justice are all a function of tracking responsible choice, at least from a Kantian standpoint.

Now, by analogy, so is criminal justice. I claim that the four non-retributive tracking cases above are analogous to instances of retributive judgement. Here, a judge imposes burdens on people in proportion to, and because of, wrongdoing for which they are responsible, even if doing so comes at substantial cost to the aggregate of improved quality of life available. Specifically, the desert theory says that the state should punish an offender in a fitting way because he deserves it for having done wrong over which he had control, even if such punishment would increase the overall amount of suffering in the world. Fairness theory says that the state should punish a criminal proportionately to his crime because in doing the crime he has voluntarily taken a free ride at the expense of law-abiding citizens; an offender gets the benefit of others' obedience without undergoing his fair share of the burden of obedience, with a punitive burden required to remove the unfair advantage he has obtained, regardless of whether society would be happier without that punishment being imposed. Finally, censure theory says that the state should punish a lawbreaker in proportion to his injustice for which he was responsible in order to stand up for the worth of his victims or to treat the lawbreaker as an agent with autonomy as opposed to an animal or automaton, again, even if the consequences for the general welfare would be better without such punishment.

Of course, these three kinds of retributive tracking are not identical to the relatively uncontroversial cases of non-retributive tracking considered above. The most striking difference is that the non-retributive tracking cases are ones in which burdens are unavoidable. Someone must suffer the monetary cost of a sweater, death, a lack of medical treatment, or a reduced amount of money, and the question is whether it should be the innocent or the guilty who undergo the burden. Retributive tracking differs from these cases in that it demands a burden be imposed even if such

<sup>12</sup> Barring extreme amendments to the cases, particularly in which the autonomy of third parties would be gravely compromised by tracking responsible choice.

burden is entirely avoidable. Retributivists do not demand the state to negatively sanction the guilty only when necessary to protect the innocent from crime; their defining point is prescribing harm to the guilty regardless of whether it will prevent harm to the innocent.

While this is a difference between the cases, it is not an unwelcome one. After all, an analogy works by comparing two different but relevantly similar sorts of cases, one of which is less controversial than the other. I cannot invoke a case that is too similar to retributivism, lest I beg the question by proffering one that is just as controversial as retributivism. So, I have suggested non-retributive cases that I presume those who reject retributive judgement would accept (at least if – but not only if – they also accept the principle of respect of persons), and I now point out that they are relevantly similar to retributive judgement; for they all involve tracking responsible choice at the expense of the general welfare.

It remains for me to point out how this argument undercuts any claim to a tension between understanding another person and her deeds, on the one hand, and having epistemic reason to believe that retributive judgement is morally appropriate, on the other. Suppose I am correct that respect for persons requires retributive judgement in response to responsible wrongdoing (strong evidence for which is that respect for persons requires analogous non-retributive tracking of responsible choice at substantial cost to the general welfare). If respect requires retributive judgement, and if respect for persons is sound, then one is justified in believing that retributive judgement is justified any time one comes to understand another agent and her actions. Understanding another person and her behaviour simply serves the function of indicating the degree of blame she warrants, if any, from a retributive perspective.

For instance, suppose that an agent has murdered his spouse for the insurance money, that one comes to learn this of the agent, and that one discovers in this agent's background no external or internal factors that substantially mitigate. That is, imagine one comes to understand the agent, in whatever sense one prefers, and learns that the agent made a choice to hire a hit man to kill his wife for the purpose of obtaining money, where such a choice was largely within his control in the sense that he was, say, neither brainwashed into doing so, nor had an abusive upbringing that irreparably damaged his capacity for empathy. One learns that he wanted some excitement in his life and calculated that the easiest way to obtain it would be by means of murder of someone whom he no longer loved. In such a case, respect for persons entails that, upon coming to understand the man, one will discover plenty of epistemic reason to judge retributively and therefore impose harsh punishment.

One might suspect that the thought experiment is incoherent, in the sense that trauma simply must underlie the man's caring about being able to afford to take a cruise in the Bahamas with a hooker more than his spouse's life. But such immoral behaviour is not invariably the product of trauma. In my ethics classes I routinely ask how many of my students would be willing to press a Button of Death™ if such existed and if they could get away with doing so. Pressing this hypothetical button would put a million dollars into a Swiss bank account in the button-presser's name but would cause an innocent stranger to die a painful and protracted death. In almost

every class I have taught, about 10 per cent to 15 per cent of the students are willing to raise their hands and publicly announce that they would commit murder for money if they would not get caught. Surely, not all of these students have been traumatized. Understanding the history of those who have not been traumatized would reveal no reason to refrain from harsh retributive censure if they pressed an actual Button of Death™.

In fact, my argument entails that understanding *never* undermines retributive judgement of persons. To see why not, consider those cases in which one might be tempted to think otherwise. Suppose that upon understanding another person, one discovers factors that have substantially reduced the control he had over his criminal action. For example, poverty, addiction, abuse, passion, neurosis, ideology and duress might cause a person to commit crime, and such causes can greatly reduce a person's control over the crime. Reduction of control over an action is a reduction of an agent's responsibility for it, where reduction of responsibility means reduced reason for the agent to bear a burden for having performed the action. When one comes to understand a person and thereby learns that control over a wrongful deed was weak, then one will obtain evidence that punishment is either out of place entirely or must be reduced.

Now, notice that it is *precisely retributive judgement* that most likely underwrites that evidence. Retributive judgement is the practice of imposing negative sanctions on people fundamentally because of, and invariably in proportion to, their responsible wrongdoing, where degree of responsibility is a function of degree of control.<sup>13</sup> If an agent did a wrong that he could not control at all and hence was not responsible for (or if he did no wrong), then retributive judgement would forbid any punishment of him. And if the agent did wrong over which he had less than full control, and hence was less than fully responsible for it, then retributive judgement would require less punishment of him than would have been required for a fully responsible act. To maintain that no or less punishment is justified because of uncontrollable factors that fully or partially excuse wrongful behaviour is best construed as a matter of judging retributively.<sup>14</sup>

<sup>13</sup> This identification of proportionate control with proportionate responsibility and warranted proportionate burden in retributive judgement is also found in the non-retributive tracking cases discussed above. In Tort, for example, if you have ruined my sweater simply because you wanted to express your disgust, then you were in control of your action and hence were responsible for it so as to warrant the burden of replacing the sweater. But if you dumped wine and mustard on my sweater because you were intentionally tripped, or because someone threatened your child if you did not, then the control over, and hence responsibility for, your action would be greatly reduced and you would not be liable to pay for the sweater (the tripper and kidnapper would be liable).

<sup>14</sup> Utilitarians can of course accept the concept of a mitigating factor, but they cannot conceive of the mitigating factor fundamentally in terms of facts about the past. Instead, any basic reason to lighten a penalty for a utilitarian must appeal to facts about the future, namely, the consequences of a light penalty.

In sum, it is of course true that understanding another person and his deed *sometimes* reveals mitigating factors requiring one not to punish him or not to punish harshly. However, that is quite different from the claim that understanding is ever evidence that one ought not *judge retributively*. And, in fact, it is retributivism that best entails and explains the claim that understanding sometimes reveals mitigating factors – those related to reduced control over the action – requiring one not to punish or not to punish harshly.

#### IV. Causality and Commonality in the Opposing View

I have argued that since respect for persons requires tracking responsible choice even at the expense of the general welfare, which includes retributive judgement, coming to understand a person will never provide evidence against retributivism, but instead will invariably provide evidence of what retributivism exactly requires in a given case. In this section, I consider four defences of the contrary view that understanding reveals the disrespectfulness or otherwise impermissibility of retributive judging, which defences are made by other contributors to this volume. My basic strategy against all four arguments is to advance this *reductio*: if understanding another person were to reveal full-blown retributive judging of him to be unjustified, then understanding would also reveal non-retributive tracking to be unjustified, which is absurd.

##### *Liberty of spontaneity: no unmoved mover*

Pedro Tabensky argues that retributive censure, particularly in its desert version, is justifiable only if people have libertarian free will. To be able to deserve blame, one must not only be free from antecedent natural causes, but also be an originating source of causes in nature. '(I)n order to be morally responsible one would have to be responsible for the first causes – the *causa sui* – of one's moves and that would involve situating the will, or a component of the will at any rate, outside of the causal chain of events that constitutes a human life.' When we understand people, we discover they are not unmoved movers; instead we become aware of the particular causes that have determined them to act. Hence, understanding people invariably reveals they are not responsible for their behaviour of the sort that could ground retributive censure.

The logic of Tabensky's argument oddly entails a rejection of the non-retributive tracking cases discussed above. Take, for instance, Tort, in which you have ruined my sweater merely out of aesthetic distaste for it. Surely the burden should be on you to replace my sweater, because you are the one responsible for having ruined it – and that is so even if we assume that more well-being would be produced if I paid for it. But Tabensky cannot say this, for you are not an unmoved mover. Since you did not start a causal chain, but were merely a cog in a causal chain that had already begun, you are not, in his view, responsible for your action in such a way as to warrant

the imposition of a burden. By Tabensky's reasoning, to decide who ought to pay for the sweater, we cannot appeal to something about the past action of the person who ruined it, but instead must appeal to something about the future such as utility, which, I submit, is patently unjust.

Similarly, Tabensky is forced to say that the wife is not clearly entitled to the scarce medical treatment in Rationing. Recall here that her husband has deceptively broken his vows by having lots of unprotected sex with other women, and has infected himself and his wife with HIV as a result. Common sense says not merely that, if only one party can receive antiretroviral treatment, it must be the wife since she is not responsible for her condition and her husband is, but also that the wife must be offered the treatment even if more *eudaimonia* or welfare would be produced in the future by giving it to the husband. But, again, Tabensky cannot make this judgement, since the husband's actions were not the product of a will that operates independently of antecedent natural causes.

In order to sensibly account for the non-retributive tracking cases, one must cash out responsibility of the sort warranting imposition of a burden in terms of an agent who is, in some naturalistic sense, in control of his behaviour. Control is, roughly, a matter of one's actions being determined by one's reflection, where one's reflection is of course determined in turn by antecedent natural causes. If control is sufficient for responsibility in non-retributive tracking cases, then it is also sufficient for responsibility in retributive tracking cases; being an unmoved mover is not necessary. With regard to people who have control over their behaviour, institutions ought to place burdens on those who have chosen wrongly, even at substantial cost to the general welfare.

I think the deep mistake that leads Tabensky astray is the common one of thinking that, for us to be responsible for having performed an act in such a way as to warrant the imposition of a burden, we must have been in control of the conditions that have put us in control of our behaviour.<sup>15</sup> Tabensky says that, to show that a retributive ethic is justified, one must specify 'not only some conditions that move us qua responsible agents, but also the conditions that move us to become responsible agents in the first instance'. I claim the second conditions are unnecessary for being responsible for a wrongful action of the sort that warrants a proportionate burden for having performed it. For one to be responsible in that sense, one need not have been in control of the fact that one has control over one's behaviour. This point is illustrated by the four non-retributive tracking cases. And it is fundamentally explained by the principle of respect for persons: since the ability to control one's choices has a dignity, it makes sense to honour it, and hence to track its exercise, wherever it happens to exist and however it was brought about, even if it was brought about (as it always is) by factors over which one lacks control.

<sup>15</sup> See my 'Arbitrariness, Justice, and Respect', for discussion of this claim in the context of economic justice.

*Liberty of indifference: no causal indeterminism*

Kai Nielsen's account of what is necessary for retributive censure to be permissible is somewhat weaker than Tabensky's. Unlike Tabensky, Nielsen does not say that one must be an unmoved mover; instead, Nielsen claims that one must have the ability to do otherwise than one does. And since the fact of determinism means that we lack this ability, retributive censure is disrespectful, or at least impermissible. Nielsen says,

When we come to clearly see that a person could not have done otherwise, no matter how hard he tried or because he was not capable of even trying or that he was so unteachably blinded that he could not see the wrongness of what he did, we, if we are reasonable, rational, reflective and have some of the milk of human kindness in ourselves, will withhold retributive blame. [quoted from Nielsen's piece in this collection. (Ch. 8, this volume, p.\*\*\*.)]

In sum, when one comes to understand a person, one always learns that he lacked the ability to otherwise than he did and hence discovers epistemic reason not to judge retributively.

Nielsen believes that a morality without retributive judging would still be attractive; we would have 'a kinder, gentler, more tolerant world'. Perhaps, but one would also have a morally upside-down world in which non-retributive tracking is out of place, since all choices are ones that have been necessitated. That is, one would live in a world in which, in the Other-Defence case, the peacekeeper lets the aggressors take machetes to the innocent Tutsi woman. Recall that I assumed in this case that protecting the innocent Tutsi would require killing all five aggressors and, further, that more intrinsic value (of whatever sort) would be produced if the five aggressors lived and she did not. I claim that killing the aggressors under these conditions is obviously the right act, but Nielsen cannot account for that claim since the aggressors cannot help themselves. Because the assassins cannot do otherwise, in his eyes, they are not responsible of a sort warranting imposition of a burden because of their aggression. I hesitate to call this a 'kinder', 'gentler' and 'more tolerant' world than a retributive one, but, if it is, it is also disrespectful, unjust and, to me, horrifying.

Nielsen's rationale for thinking that retributive tracking requires the ability to do otherwise than one does stems from the same mistaken reasoning I have suggested moves Tabensky. Both believe that, to be responsible, one must have been in control of the fact that one is now in control of one's behaviour. Nielsen says of someone who wants to do a wrong act,

(H)is very wanting to do it and thinking that it is right itself rests on his genetic constitution and acculturation. And for that he could not have been responsible. He can't be his own parents or the controller of his initial situation. It is finally something which is out of his control. (Ch. 8, this volume, p.\*\*\*.)

As I have said above, with a Kantian ethic, one is at bottom required to express respect for an autonomous will because it has a superlative intrinsic value. How the capacity for autonomy came to be in existence is irrelevant. One may not have had control over the fact that one now has control over one's actions, but merely having such dignified control is sufficient to make it morally correct to track it as a way to express respect for it.

*There but for the grace of god go I*

Brian Penrose and Marc Fellman suggest a third distinct reason for thinking that understanding a person reveals the inappropriateness of imposing a negative sanction on her fundamentally because of, and in proportion to, wrongdoing for which she is responsible. Although Penrose and Fellman seem more interested in explaining what is happening when our censorious judgement in fact changes upon understanding another person, their discussion occasions awareness of an argument for thinking that our censorious judgement ought to change upon understanding. When we become aware of a person's nature and nurture, then, Penrose says,<sup>16</sup> we recognize that 'despite our initial impulse to judge in a condemnatory way, our own moral capacity to have done otherwise than the person being judged is often tenuous at best'. I take this remark to mean that, because we would have done the same wrong deed had we been in the wrongdoer's shoes (which we discover upon understanding him), we lack moral reason to censure him as retributive judgement would require.<sup>17</sup>

Now, what is it about the fact that we would have done the same thing had we been in the wrongdoer's situation that makes it inappropriate to impose a penalty on him because of, and proportionate to, an immoral act over which he had control? Neither Penrose nor Fellman answers this question. One possible answer might be this: the fact that we could not have avoided performing the same act as the wrongdoer indicates that causal determinism is true. However, since I have already critically discussed that issue in the context of Tabensky and Nielsen, I here look for other plausible explanations.

I can think of two that merit discussion. They at bottom make the common point that we are objectionably being arrogant in some way, if we both would have done the same thing as the wrongdoer and censure him retributively for his wrongdoing. Here is one reason for thinking that arrogance is present here: to punish another person because of his wrongdoing, when you also would have done wrong, is to treat the other person as though he is worse than you, which he is not. If you would

<sup>16</sup> In his presentation at a conference devoted to Bernhard Schlink's *The Reader* that was held at the Johannesburg Goethe Institute in November 2004.

<sup>17</sup> Penrose and Fellman might hold the weaker view that Vice does, that retributive judgement is not altogether out of place but must be tempered by mercy. Even if that is their view, the best argument I can develop on their behalf entails the stronger view that retributive judgement is entirely inappropriate.



have done wrong in the wrongdoer's situation, then you are just as bad a person as he is, even if you haven't performed as wrong an action. And if you are just as bad a person as he is, then to punish him for wrongdoing is to disrespectfully (or otherwise objectionably) act as though he is a worse person than you.

This argument is unconvincing. For one, retributive censure is in reaction to actions, not agents, and so does not express the attitude that the person being censured is a worse person. To punish retributively, as construed here, is not to base punishment on how bad a person is, but rather on how wrong her behaviour was. Now, one might still suspect that retributive censure can indirectly express something about the worth of persons even if it is directed in the first instance towards their acts. Consider, therefore, that censure could easily avoid expressing the attitude that the person censured is worse than the person censuring, if the person censuring were to allow the other to censure him in return. (I whip your back, you whip mine.) Hence, there is nothing inherent to retributive censure that makes it arrogant in the manner this argument maintains.

Let us consider a second argument for the claim that retributive judgement is arrogant in some way. The previous argument maintains that, in censuring retributively, you are putting another lower than you are, which he is not. We might instead try the line that, in censuring retributively, you are raising yourself higher than you are. A Christian reason for thinking that retributive censure is arrogant is that we are not qualified to censure retributively if we, too, would have done wrong. 'Let he who is without sin cast the first stone', where sin is mainly a function of character (perhaps that one is born with), not primarily of actions one has willed. In order to have the authority to punish on retributive grounds, an agent must have a very good – perhaps perfect – character, which character we always rediscover that we lack upon understanding another person and seeing that we would have also done the wrong that he did.

This Christian rationale clearly sets too high a standard for having the authority to retributively judge another person's actions, for it absurdly entails that non-retributive tracking is impermissible. In fact, the previous rationale for finding arrogance in retributivism also faces this *reductio*. The principle operative in both arrogance rationales is this: it objectionably treats yourself as superior to impose a burden on another person for having made a wrongful choice that you yourself would have also made (either because you are deeming yourself to have a certain authority that you lack, or because you are wrongly treating the other as worse than you). That principle deeply conflicts with our firm considered judgements in Tort, Other-Defence, Rationing and Wages, where we believe that it is permissible for an agent to impose burdens on the guilty instead of the innocent (at substantial expense to the general welfare), regardless of whether the agent would have also been guilty in a proximate possible world.

Take Other-Defence, for instance. Suppose that, after pleading with and warning the five machete-wielding aggressors, the UN peacekeeper shoots them in order to protect the innocent Tutsi woman (thereby reducing the aggregate of long-term well-being). Suppose further that he, too, would have been an aggressor had he been

exposed to the xenophobic influences they had. It does not strike me as arrogant for the soldier to use force in such a case, or, at the very least, not impermissibly arrogant, but the principle of the arrogance rationales entails that it is. From that perspective, the soldier is either impermissibly assuming that he has the purity of heart required to impose burdens in reaction to wrongdoing or impermissibly treating the aggressors as worse than himself. Neither is inherently true of harming the guilty to protect others from becoming victims, and hence I submit that neither is necessarily true of harming the guilty, say, to affirm the worth of victims (censure theory), to remove the unfair advantage the guilty have taken at the expense of law-abiding citizens (fairness theory), or even to give the guilty the penalty they deserve as a matter of respect for their capacity for autonomous choice (desert theory).

#### *Frailty and fallibility*

Unlike the previous arguments that reject retributive censure in its entirety, Samantha Vice (following Martha Nussbaum<sup>18</sup>) accepts retributivism but argues that it invariably must be tempered by mercy. To act on mercy is to impose a disproportionately light sanction. So, Vice is clearly not merely making the *retributive* claim that there can be mitigating factors that reduce the punishment a person should receive. Instead, merciful judgement by definition involves reducing punishment below whatever would be proportionate to the agent's degree of responsibility or control. Being merciful does not abjure retributivism in general, for it is to punish in light of a proportionate benchmark, though not strictly in accordance with it.

Vice claims that we always find evidence that mercy is warranted when we understand another person, but, interestingly, never (or very rarely) when we understand ourselves. Consider the other-regarding case first, where a party understands the general human condition and how it has led a particular offender to commit his offence. 'Placing himself in the position of another, he realizes that his own, similar frailties could easily have led him to do the same in those circumstances, and he will therefore be inclined towards gentleness. This identification itself depends upon thinking of humans as prone to making such mistakes, and of the world as encouraging them.'

I detect two distinct claims in this quotation. One is the idea of the party thinking that he, too, would have done the crime had he been in a like situation. I set this rationale aside, having addressed it above in the context of Penrose and Fellman. The other idea is that, even if the party does not think that he would have done the crime had he been in a like situation, the party does come to see that human beings are imperfect. Upon learning about human nature, one realizes that persons are commonly fallible and hence finds reason to punish somewhat less than is proportionate to how wrong the offence was and to how responsible the offender was

<sup>18</sup> Martha Nussbaum, 'Equity and Mercy', *Philosophy and Public Affairs*, 1993, pp. 83–125 (Ch. 1, this volume, p. \*\*\*.) Marc Fellman's contribution, also in this volume, (Ch. 5) can also be read along these lines.

for it. '(I)f the human condition really is to be so frail, the circumstances of the world really so harsh, and people in general banal rather than extraordinary in their crimes, then imaginative engagement and mercy are indeed ideals for which to strive.'

Now, in the self-regarding case, Vice claims that mercy is not an ideal to pursue. Upon coming to understand oneself and one's wrongful actions in light of the human condition, according to Vice, one does not find reason to think one ought to temper one's guilt or to receive a disproportionately light penalty. Why not? It is important to quote Vice's two-part answer at length:

To think that my background could mitigate responsibility and guilt would be to renounce agency and authority over myself: I am no longer answerable to others for who I am and what I do. To be in this position is no longer to be a moral agent among others; it is to forgo citizenship of the moral kingdom. And second, when I am able to consider my weaknesses as those merely typical of humanity, this cannot be used as mitigation if it leads one to terrible acts. To be morally mature is precisely not to be overwhelmed by ordinary weaknesses to commit extraordinary (or ordinary) crimes. (Ch. 4, this volume, p. 103.)

In short, Vice is claiming that, since one must treat oneself as a responsible agent, one must not be merciful to oneself in light of the frail and fallible human condition.

I claim, in response, that what is good for the goose is good for the gander. One has a moral obligation not merely to treat oneself as a responsible agent, but to treat any responsible agent as such. If treating oneself as a responsible agent forbids disproportionately light guilt and punishment despite typically weak human nature, then, by analogy, treating others as responsible agents forbids disproportionately light censure despite typically weak human nature. Since we must treat others as citizens of the moral kingdom and acknowledge that others can be morally mature, we must judge them retributively in the same way Vice maintains we must judge ourselves. I can see no reason for thinking that respect for others does not require the same thing that respect for oneself does.

Now, someone other than Vice and myself might suggest that a parity does obtain between self and other, but not the one I have suggested. I have proposed that, just as one should not be merciful to oneself in light of the banality of evil, so one should not be merciful to others in light of it. However, a critic might instead think that, just as one should be merciful to others in light of the banality of evil, so one should be merciful to oneself in light of it. I need to offer a reason to reject this merciful parity in favour of the retributive one.

The reason to favour a retributive parity between treatment of oneself and others is that the merciful parity has counterintuitive implications about non-retributive tracking. For instance, if the generally frail and fallible human condition were sufficient reason to impose a disproportionately light punitive burden for a crime, then it would be sufficient reason to impose a disproportionately light compensatory burden for a tort. Concretely, because people are typically bad at restraining their impulses, a judge should reason that, in the Tort case, you need not pay for the entire cost of the sweater you have ruined. However, that is absurd. Surely, you must pay

for the total cost of the sweater, for you are solely and fully responsible for having ruined it.

The kernel of truth in Vice's discussion, I believe, is that, from a retributive standpoint, the scale of penalties for human beings should perhaps be less than that for other, possible agents who would not face so many temptations, pressures and obstacles. If intelligent creatures from Alpha Centauri had weaker ids and stronger empathy with strangers, then, generally speaking, the censure they receive for committing a given wrongdoing should be stronger than what we receive. Compared to these agents, humans are generally less responsible for their wrongdoing because we have less control over it. However, it remains the case that, with respect to the human scale of penalties, any one of us ought to receive the full penalty that is proportionate to his wrongdoing and degree of responsibility for it.

## V. Conclusion

I conclude this essay by quoting from *The Reader*.<sup>19</sup> Many contributors to this volume take *The Reader* to express a tension between understanding and retributive judging, but I claim (as Peta Bowden and Emma Rooksby do in their contribution) that there are strong themes and clear passages illustrating the thesis that understanding serves the function of helping one to retributively judge more accurately.

*The Reader* is about a relationship between Michael and Hanna. After their romantic relationships ends, Michael learns that Hanna had been a guard at a concentration camp in Nazi Germany during the Second World War. At the camp she selected which prisoners would be killed, and, in the process of moving prisoners from the camp, she allowed a group of them kept in a church to burn to death. Eventually, Hanna is put on trial for her crimes, and Michael observes the prosecution, the guilty verdict, and the sentence of life in prison handed down.

Michael often objects to the nature of the trial, but those passages from *The Reader* that might be deemed critical of retributive judging as such are, I think, better construed as critical of legalistic judging. In fact, Michael's central objection to the trial is one that a retributivist would make. Specifically, Michael complains of 'oversimplification' (p. 179). To make a well grounded retributive judgement, one should have an intimate knowledge of the complex character of the wrongdoing, the wrongdoer, and the extent to which the wrongdoer had control over the wrongdoing. Michael laments the fact that the court sometimes is not aware of mitigating factors such as Hanna's illiteracy (pp. 132-37), sometimes hurries things along and does not pay sufficient attention (pp. 136-37), and sometimes is aware of mitigating factors but refuses to treat them as such (pp. 128-29). All these are criticisms of a trial that is *insufficiently* retributive for not accurately appraising the true, intricate nature of the crime and the criminal.

<sup>19</sup> Bernhard Schlink, *The Reader*, Carol Brown Janeway (trans.), New York: Vintage Books, 1997.

Other cases where one might initially see tension between judging and understanding can also be fairly read otherwise. For instance, at one point in the text, Michael finds it hard to reconcile understanding and judging (p. 157). However, eventually Michael does judge Hanna. He believes it was right for her to be proportionately punished in light of what she had done in the past (not because of what punishment would bring about in the future), and he believes so in light of a fuller understanding of her and her background than the court had (pp. 137, 201).

For another example, at two points in the trial Hanna asks the judge what he would have done if he had been in her shoes (pp. 111, 128), which might be taken to suggest that he should seek to understand her rather than judge her. However, it is instead reasonable to see Hanna as requesting the judge to become better informed of her and the situation she faced before presuming to judge her. Consider that, toward the end of the story, when Hanna has completed her prison term, she says to Michael:

I always had the feeling that no one understood me anyway, that no one knew who I was and what made me do this or that. And you know, when no one understands you, then no one can call you to account. Not even the court could call me to account. But the dead can. They understand. They don't even have to have been there, but if they were, they understand even better (p. 198).

Setting aside the empirical assertion that no living person is capable of understanding – which Michael fairly questions (p. 201) – the normative principles expressed are that calling to account is appropriate and that it is facilitated by empirical information about a person and her deeds. Understanding Hanna would have involved apprehending, at bottom, poor judgement on her part. Becoming a guard to cover her illiteracy, she valued avoiding the embarrassment that would come from others learning of her illiteracy more than she valued avoiding participation in a sinister injustice. And she ranked maintaining order and being a good worker over a need to save the innocent lives of those trapped in the church. Here there are, from a retributive standpoint, factors warranting punishment as well as factors warranting mitigation in its imposition, which factors one discovers upon coming to understand the offender and her offence.

It is striking that it is the wrongdoer herself who expresses this viewpoint. Hanna does not say that to understand all is to forgive all; rather, her claim is that to understand all is to be in a position to call to account. If calling to account means retributively censuring, then she is saying that to understand is to be able to censure retributively. In short, judging is apt because of understanding.<sup>20</sup>

<sup>20</sup> For helpful comments on an earlier draft of this essay, I thank Ward Jones and Pedro Tabensky.

## Chapter 11

# Understanding Condemnation: A Plea for Appropriate Judgement

Peta Bowden and Emma Rooksby

### Editor's Introduction

Following Marion Smiley's pragmatic approach to moral responsibility and using *The Reader* as a case study, Peta Bowden and Emma Rooksby argue for the view that Michael's experiences, particularly regarding the tension between judging and understanding, are 'internal to social practices of condemning'. They choose to 'sidestep' issues relating to the metaphysics of free will for they do not believe that such an approach will truly capture the complex context-sensitive roles of our condemnatory practices; roles which are constitutive of 'socio-ethical' arrangements. Their pragmatic methodology aims at showing how it is that moral-responsibility-entailing practices are constitutive of our self understandings and define our 'socio-ethical' roles; roles which are 'the basis of social life'. Following Hannah Arendt, they believe that 'withdrawal from practices of condemnation, imperfect though they may be, is a betrayal both of our own responsiveness to the social relations in which we participate and of the potential responsiveness of those whom we would blame'. In light of this, they think that the tension between judging and understanding is part and parcel of our morally complex lives and does not diminish our need to condemn (when appropriate). Proper understanding of the full complexity and specificity of moral lives will lead to proper judging, including proper condemning. Not to condemn, when appropriate, would amount to taking a step outside of the moral space that defines human 'socio-ethical' life. Following a very different trajectory, Bowden and Rooksby reach relevantly similar conclusions to Thad Metz and to Andrew Gleeson as expressed in their contributions.

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# Judging and Understanding

Essays on Free Will, Narrative, Meaning  
and the Ethical Limits of Condemnation

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