

## RETRIBUTIVISM AND THE OBJECTIVE ATTITUDE

– Sofia M. I. Jeppsson –

**Abstract:** It has been argued that a retributivist criminal justice system treats offenders with a *respect* lacking in alternative criminal justice systems; retributivism presumably recognizes that offenders are fellow members of the moral community who can be held responsible for their actions. One version of the respect argument builds on P.F. Strawson’s moral responsibility theory. According to Strawson, we may take either a participant or objective attitude toward other people. The former is the default attitude when interacting with other adults, whereas the latter is fit for children and the mentally disabled or ill, whom we merely try to manage and handle as best we can. The participant attitude also involves holding people responsible when they do wrong. Supposedly, a retributivist criminal justice system functions as a natural continuation of our everyday, participant, and responsibility-holding practices, unlike alternative systems that adopt an objective attitude toward offenders. I argue that this is wrong. The participant attitude requires reciprocity and, usually, some level of equality too. Even an idealized retributivist system has little room for this, not to mention the flawed versions of this system we see in reality.

**Keywords:** retributivism, participant attitude, objective attitude, P.F. Strawson, Michelle Ciurria, oppression, equality, moral responsibility

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### 1. Introduction: retributivism and respect

In this paper, I discuss a particular argument for a retributivist criminal justice system. According to this argument, retributivism functions as a continuation of our ordinary moral responsibility practices, and treats offenders with a *respect* lacking in alternative justice systems. I do not discuss other arguments for retributivism, such as direct appeals to retributivist intuitions<sup>1</sup> in this paper.<sup>2</sup> However, before explaining and criticizing what I label *the Respect Argument for Retributivism*, “retributivism” must be defined.

The criminal justice literature contains both wide and narrow definitions. Moore expresses a narrow view when he writes “retributivism is the view that we ought to

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<sup>1</sup> E.g. Moore (1997): ch. 4: II.

<sup>2</sup> I have done so elsewhere, see Jeppsson (2020).

punish offenders because and only because they deserve to be punished.”<sup>3</sup> In this view, whether any positive consequences follow from the punishment is irrelevant to its justification. However, according to Moore’s narrow definition, few real-world criminal justice systems might qualify as retributivist since most real-world systems seem to give *some* weight to, for example, social utility.

Morse provides a broader definition. “Retributivism is a form of deontological justice that holds that offenders should receive their just deserts. No one should be punished unless the agent deserves such treatment, and no one should be punished more than they proportionately deserve for their criminal conduct.”<sup>4</sup> This definition allows that other considerations may play a role – perhaps even a *big* role, in a retributivist criminal justice system.

However, I will follow Murphy’s intermediate definition of retributivism in this paper. Murphy writes: “[A] retributivist is a person who believes that the *primary* justification for punishing a criminal is that the criminal deserves it”<sup>5</sup> (italics mine). Similarly, I call a criminal justice system “retributivist” when its primary purpose is to give offenders the punishment they deserve.

Retributivists may be “tough” or “tender” in the sense that they may agree that offenders should receive the punishment that they deserve, but disagree about what that punishment may be.<sup>6</sup> I have previously noted how much disagreement can be found among retributivists, and how much overlap exists between anti-retributivists and some of the “tender” retributivists.<sup>7</sup> For instance, the retributivist Antony Duff argues that what offenders *deserve* is to feel sorry for what they have done, which is often better achieved through restorative justice processes and community service than, for example, a prison sentence.<sup>8</sup> The moral responsibility skeptic and anti-retributivist Gregg Caruso likewise embraces restorative justice.<sup>9</sup> Despite their different theoretical commitments, the criminal justice systems they argue for might look quite similar in practice.

In this paper, I am primarily interested in *tough* or *harsh* versions of retributivism.

A state has Harsh Retributivism if the primary justification for punishing offenders is the dealing out of just deserts. Deterrence and other considerations might still play some role, but desert is considered most important. Furthermore, crimes (at least the more serious ones) are punished harshly. Offenders receive long prison sentences in an environment designed to be punitive rather than rehabilitative; some crimes might even be punishable by death.<sup>10</sup>

I will mostly use the term “retributivism” in this paper, without adding “harsh.” Nevertheless, I remain interested in versions of retributivism that are harsh enough to make them different from proposed alternatives, not just in terms of some theoretical justification but also in practice.

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<sup>3</sup> Moore (1997): 153

<sup>4</sup> Morse (2013): 114.

<sup>5</sup> Murphy (2007): 11

<sup>6</sup> Morse (2013): 114

<sup>7</sup> Jeppsson (2020): 177.

<sup>8</sup> Duff (1986; 2003)

<sup>9</sup> Caruso (2022): 243.

<sup>10</sup> Jeppsson (2020): 177–178.

Of course, if *the Respect Argument for Retributivism* is unsound, it is a bad argument for tender and harsh retributivism alike. But insofar as the different camps in the debate can agree on what an ideal criminal justice system should look like, any remaining disagreement concerning its justification is purely academic. Such disagreement may make for an interesting discussion in a philosophy seminar or academic journal but would be of little political interest. The pressing political problem is whether to embrace Harsh Retributivism or something similar to what both anti-retributivists like Caruso and tender retributivists like Duff have argued for.

In the following discussion, I will focus on P. F. Strawson's version of *the Respect Argument for Retributivism*, set out in his famous paper *Freedom and Resentment*.<sup>11</sup> One may argue that retributivism is respectful via non-Strawsonian routes; for instance, Immanuel Kant argues in *The Metaphysics of Morals* that the importance of treating every person as an end in himself and never merely as a means implies retributivism.<sup>12 13</sup> Given this, there are two reasons for my focus on Strawson. First, he remains incredibly influential in present-day moral responsibility philosophy. Second, few Strawson-inspired philosophers – whether they ultimately accept retributivism or not – have questioned the claim that retributivist criminal justice functions as a continuation of our ordinary responsibility practices. This is an argument that needs to be made.

In brief, Strawson's *Respect Argument* claims that we can take either a participant or objective attitude to other people, i.e., treat them as either fellow rational agents and members of the moral community or just try to manage and handle them as best we can. The participant attitude is the default attitude among adults and is the respectful way to interact with others. I concur with this position.<sup>14</sup> However, I argue *against* the idea that a retributivist criminal justice system takes a participant attitude toward offenders and thereby treats them with respect.

The structure of this paper is as follows: In Sections 2-5, I explain what Strawson's participant and objective attitudes amount to and their connections to respect, equality, and reciprocity. In Sections 6-7, I argue against the claim that a retributivist criminal justice system takes a participant attitude to offenders and thereby treats them with respect. Section 8 deals with some objections and comparisons between retributivism and alternative systems. My arguments are summarized in the conclusion section.

## 2. Participant and objective attitudes

In his highly influential paper *Freedom and Resentment*, P. F. Strawson argues that philosophers who engage in the free will and moral responsibility debate should stop fretting over metaphysics.<sup>15</sup> Ultimately, it does not matter whether the universe is deterministic or not. The fact that we are profoundly social creatures who care about how others see us

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<sup>11</sup> Strawson (1962/2013).

<sup>12</sup> Kant (1797/1991).

<sup>13</sup> Kant's argument is *arguably* different from Strawson's, though Bennett (2008) sees important similarities and blends them.

<sup>14</sup> I *disagree* with Strawson's claim that the objective attitude is unproblematic when applied to children, mentally disabled or mentally disordered people, see Jeppsson (2022).

<sup>15</sup> Strawson (1962/2013).

and whether they respect us overrides any concerns regarding determinism. We cannot realistically cease to react with resentment when others display ill will toward us, and we cannot cease to feel gratitude over help and support. We cannot simply stop blaming and praising each other since we are wired that way. Moreover, even if we *could* abandon these practices, doing so would render our relationships with other people terribly bleak and impoverished. Philosophers have, of course, questioned these claims.<sup>16</sup> However, for the sake of argument I accept that we naturally display these reactions and engage in these practices with friends, family members, co-workers, and so on.

Strawson further distinguishes between two ways in which we can interact with other people: we may take up either a participant attitude or an objective attitude toward them. These attitudes need not be *exclusive* since they can sometimes be mixed and allow for in-between stances. Notwithstanding this, they are “profoundly opposed” to each other.<sup>17</sup> The participant attitude entails seeing the other as a fellow member of the moral community, whom we can hold responsible for his actions. If we adopt an objective attitude to him instead, we merely try to manage and handle him as best we can.

The participant attitude is the default attitude when one interacts with other adults, and Strawson believes that human beings are wired to interact with other people this way. Consequently, we cannot and should not adopt an objective attitude with everyone. We might *temporarily* regard another normal adult objectively if it becomes too emotionally draining to take what he says personally and/or try to argue with him, but we soon return to the participant attitude. The objective attitude, Strawson proposes, is only taken on naturally when we interact with little children and people with severe intellectual disabilities or mental disorders.<sup>18</sup>

Philosophers sometimes invoke the term *participant attitude* as if it meant nothing more than a readiness to blame and punish wrongdoers, and, conversely, the term *objective attitude* is employed for not doing that.<sup>19</sup> But if the participant attitude only means “a readiness to blame and punish,” it becomes *trivially true* (instead of being an argument in its favor) that a retributivist criminal justice system takes this attitude to offenders.

However, Strawson elaborates further regarding these attitudes. The participant attitude, he explains, is non-detached and involves emotions and reactions such as gratitude, resentment, forgiveness, love, and hurt feelings.

The central commonplace that I want to insist on is the very great importance that we attach to the attitudes and intentions toward us of other human beings, and the great extent to which our personal feelings and reactions depend upon, or involve, our beliefs about these attitudes and intentions.<sup>20</sup>

When we adopt a participant attitude toward another, we care about what they think of us. This is why Seth Shabo argues that fulfilling relationships would be denied us if we all took an objective attitude toward each other. He argues that we cannot be deeply

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<sup>16</sup> E.g. Pereboom (2014).

<sup>17</sup> Strawson (1962/2013): 69.

<sup>18</sup> Ibidem: 69–70.

<sup>19</sup> E.g. Sommers (2007): 323.

<sup>20</sup> Strawson (1962/2013): 66.

emotionally involved with someone and yet not take it personally if it turns out that, for example, this person has betrayed our trust and spread malicious gossip about us behind our back.<sup>21</sup>

The participant attitude is an integral part of inter-personal relationships as we normally understand them. Such relationships include instances of blame, anger, resentment, and indignation when others wrong us. Nevertheless, Strawson describes these reactions as *stemming from* the importance we place on what other people think of us and their intentions toward us. That is why they are *reactive* attitudes; we *react* to displays of goodwill, malice, or indifference.

However, when we take up an objective attitude toward someone, we *do not* care what they think of us, and we no longer take their views or actions personally.

To adopt the objective attitude to another human being is to see him, perhaps, as an object of social policy; as a subject for what, in a wide range of sense, might be called treatment; as something certainly to be taken account, perhaps precautionary account, of; to be managed or handled or cured or trained; perhaps simply to be avoided, though this gerundive is not peculiar to cases of objectivity of attitude. ... If your attitude toward someone is wholly objective, then though you may fight him, you cannot quarrel with him, and though you may talk to him, even negotiate with him, you cannot reason with him. You can at most pretend to quarrel, or to reason, with him.<sup>22</sup>

Strawson seems to regard each attitude as a “package deal.”<sup>23</sup> One might be able to tone down or amp up the extent to which one considers another person as a fellow adult and moral agent whose opinions one cares about, and tone down or amp up one’s reactive attitudes alongside one’s care. But one cannot, according to Strawson’s theory, care deeply about what the person thinks of one and, at the same time, extinguish any tendency to blame and resent him if he treats one badly. Thus, if we cease to blame someone and cease to hold him responsible, this isn’t wholly beneficial. Adopting such a position signals that we do not care what he thinks of us, and that we do not respect him as a fellow moral agent.

The bulk of Strawson’s text deals with everyday interactions between friends, co-workers and so on. Sometimes, he lets two characters called “the optimist” and “the pessimist” discuss moral responsibility back and forth with each other. The optimist thinks that our current moral responsibility practices can be justified regardless of whether determinism is true, whereas the pessimist worries that these practices might be undermined. Toward the end of the paper, Strawson turns to criminal justice, and reintroduces the optimist and the pessimist to discuss the matter. In this part of the text, he lays out a pro-retributivist argument which I have labelled *the Respect Argument for Retributivism*.

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<sup>21</sup> Shabo (2012).

<sup>22</sup> Strawson (1962/2013): 69–70.

<sup>23</sup> At least for people like us, in our present time and culture. He adds a caveat toward the end of his paper about the extent to which this might be culturally specific.

Reflecting a common line of argument at the time of writing, Strawson's optimist argues that the criminal justice system could be justified on purely utilitarian grounds since we must punish offenders to deter them and others from committing crimes in the future. However, the pessimist – with Strawson's obvious endorsement – objects to the optimist's position by claiming that such a system would *offend the humanity* of the offender. In Strawson's terminology, the optimist takes *an objective attitude* to actual and potential criminals when he argues that we must find a way to manage and handle them in a way that maximizes social utility. This is why the optimist's suggestion is offensive and inhumane.

Strawson is further concerned by the idea that if we embrace this attitude toward offenders, we (or rather those in power) will soon do so toward all of mankind, i.e., view *everyone* else as mere objects to be managed and handled instead of people to be reasoned with.<sup>24</sup> However, even if we can limit the objective attitude to offenders only, it would be regrettable to exclude them from our moral community. It is better to have a criminal justice system that, despite giving *some* weight to social utility, essentially functions as an extension of our ordinary, participant-attitude practices of holding each other responsible for the actions we take.<sup>25</sup> A retributivist criminal justice system presumably does that.

If someone wrongs me, this is sufficient to justify my anger toward him and the blame I attribute to his actions. I need not – indeed, I *should* not (since it would be perversely manipulative) – consider how to best influence his future behavior. I become angry and hold him responsible for his behavior: that is all. Similarly, according to retributivism, we can hold a criminal offender responsible in court and punish them for their crimes. We need not and should not consider how to best train or manipulate such offenders into engaging in good future behavior.

### 3. Strawson and modern criminal justice ethics

Strawson's theory has become enormously influential among philosophers interested in moral responsibility.<sup>26</sup> In the context of criminal justice ethics, Bennett builds much of his theory on Strawson's. Bennett quotes him extensively on moral responsibility in general, on the objective and participant attitudes, and on retributivism.<sup>27</sup> After presenting Strawson's argument for retributivism, he continues:

In this passage Strawson presents a version of the retributivist strategy that I have been calling the right to be punished. Strawson's claim is that the retributive attitudes are essential to a perspective in which we see people as subject to certain demands: the demands of some interpersonal relationship or moral community. ... A necessary part of seeing someone as a participant in characteristically adult interpersonal relationships, therefore, is that we see the withdrawal of goodwill as a fitting response to them when they fail to meet the demands of those relationships.<sup>28</sup>

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<sup>24</sup> Ibidem: 79.

<sup>25</sup> Ibidem: 79–80.

<sup>26</sup> For example, Russell (1992), Fischer and Ravizza (1998), McKenna (2016), Talbert (2019).

<sup>27</sup> Bennett (2008).

<sup>28</sup> Ibidem: 53.

Bennett then argues from “the right to be evaluated as a member of moral relationships”<sup>29</sup> to a “right to be punished.”<sup>30</sup>

The heart of this response – and what brings us to the idea of a ‘right to be punished’ – is the idea that it is somehow important to be subjected to the demands of relationships. We can argue that it is important to be subjected to the demands of relationships by seeing why not being treated as though one were subject to the demands of relationships would be intolerable. We can see this by looking at what Strawson presents as the alternative to the reactive attitudes: the objective perspective.<sup>31</sup>

As we have already seen, it is not pleasant to be on the receiving end of this attitude or perspective. After all, who desires to be managed, handled, and manipulated?

Fischer similarly appeals to Strawson in his defense of retributivism.<sup>32</sup> Reacting to wrongdoers with resentment, indignation and similar sentiments is part of ordinary human relationships, and retributivism is a natural continuation of such reactions.

Punishment can be thought of as at least in part a symbolic expression of such essentially reprobative attitudes. A world without such attitudes might at first seem appealing, but upon more careful consideration would appear to lack important features of our interpersonal human relationships – features that help to give these relationships the rich texture they have, and without which life might be significantly different and, arguably, less attractive.<sup>33</sup>

Morse appeals to Strawson’s naturalistic moral responsibility theory as a plausible underpinning for a retributivist criminal justice system.<sup>34</sup> He then refers to a somewhat older text by C. S. Lewis (*The Humanitarian Theory of Punishment* from 1953), that employs essentially the same argument as Strawson’s more influential paper. We can either treat people as objects to be managed, handled, and manipulated into better behavior, or we can treat people as moral agents. If we choose the latter, we hold each other responsible both in interpersonal relationships and in a retributivist criminal justice system.

[...] interpersonal life would be exceptionally impoverished if concepts of responsibility, including genuinely deserved praise and blame, were extirpated from our lives, even assuming that this is possible. If people came to be treated as objects to be manipulated rather than full agents, much that we most treasure would be lost.<sup>35</sup>

Thus, according to Strawson, Bennett, Fischer, Morse and many others, we should – barring special circumstances – adopt a participant attitude toward other adults. This

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<sup>29</sup> Ibidem: 62.

<sup>30</sup> Ibidem: 64.

<sup>31</sup> Ibidem.

<sup>32</sup> Fischer (2013).

<sup>33</sup> Ibidem: 5.

<sup>34</sup> Morse (2013).

<sup>35</sup> Ibidem: 125.

includes placing demands on each other and holding each other responsible. Doing so is respectful – it shows that we take each other seriously as moral agents. A retributivist criminal justice system functions as a continuation of these ordinary, interpersonal responsibility practices, and likewise expresses respect for the offender.

Few Strawson-inspired philosophers have questioned the above claims. However, Ciurria stands out as an exception.<sup>36</sup> She states that the criminal justice system, just like (coercive) psychiatric care, takes an *objective* attitude toward disruptive people and treats them as objects to be managed, handled, and controlled.<sup>37</sup> This is a highly controversial claim, which she nevertheless treats as a point so obvious that there is no need to argue for it.

In this paper, I argue that a retributivist criminal justice system, at best, takes on a mixed attitude toward offenders.<sup>38</sup> For practices of moral responsibility, blame, and punishment to express full respect for the other as a fellow moral agent, these practices must be *reciprocal*.

#### 4. The participant attitude, reciprocity, and equality

Strawson and his followers argue that holding another person responsible for their conduct shows respect, because we do not demand certain conduct from others unless we believe them capable of living up to those demands. At first glance, it might seem wholly bad to be the target of blame, punishment, and all the negative emotions that typically accompany them. However, they argue, being targeted with blame and punishment proves that others respect the wrongdoer as a fellow moral agent.<sup>39</sup>

But this view is mistaken. It is not just that nasty and sadistic people might deliberately demand the impossible from others to humiliate and punish them – the above view might make exceptions for such cases – but people might also place fairly realistic demands on others and punish them when they fail without respecting them.

Consider the following: When I got my first dog, it was commonly assumed that the process of teaching the dog must move through two stages: the learning stage and the demand stage. In the learning stage, the trainer teaches the dog what she wants him to do, and provides a verbal command for it. Once the dog has had what the trainer deems sufficient practice, she expects him to *know* the command and the associated task or trick. Now the demand stage begins, when the dog is punished for non-compliance.

In the present day, it is more common among dog trainers (though still far from universal) to reject punishment for non-compliance. Dogs, we now say, do not disobey

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<sup>36</sup> Ciurria (2020).

<sup>37</sup> Ibidem: 107–108.

<sup>38</sup> Nathan Hanna (2009) also argues that retributivist state punishment does not function as a continuation of our ordinary responsibility practices, at least not unless the latter are unnecessarily punitive to begin with. According to Hanna's view, this is because ordinary, interpersonal blame and moral critique need not involve an intention to make the blamee suffer. I have previously argued that ordinary blame and criticism *does* involve such an intention (Jeppsson 2016), but now I am uncertain of the merits of my previous arguments. Perhaps Hanna is right, and I was wrong in my earlier paper. Nevertheless, my arguments in *this* paper are independent of whether Hanna is right regarding what he says about ordinary blame and criticism.

<sup>39</sup> Strawson (1962/2013): 80; see also Shoemaker (2022).



commands because they enjoy messing with us. Perhaps the non-compliant dog needs more rehearsal of the verbal command word, needs to practice more in different environments, or needs better motivation. We do not expect people to perform boring jobs without pay. Thus, we should likewise not expect dogs to perform tasks that are not intrinsically rewarding without offering up an external reward. Nevertheless, regardless of what we think of traditional dog training methods, most trainers in the past were not sadists and would not move on to the demand stage unless they considered the dog capable of living up to the trainer's demands. Their use of punishment *did* indicate a positive appraisal of the dog's capabilities – but failed to show *respect* in the sense relevant to Strawson's participant attitude or related moral theories and concepts like Kantian ethics and Darwall's recognition respect.<sup>40</sup>

I do not suggest that treating a dog with the relevant kind of respect is impossible. For the purposes of this paper, I need not take a stand on the matter. Darwall writes that we may interpret noises and behaviors displayed by dogs or babies as *complaints* and *protests*. We can think of dogs and babies as "proto-persons" who are capable of doing something in the ballpark of holding us responsible.<sup>41</sup> The Kantian philosopher Korsgaard argues that animals are ends in themselves and ought to be treated as such.<sup>42</sup> However, a thorough investigation into Kantian animal rights lies outside the bounds of this paper. What remains crucial for my argument is that the dog trainer discussed above never thinks the dog would hold her responsible for crossing a moral line. If the trainer painfully twists the dog's ear as punishment for non-compliance, and the dog angrily snarls at her in response, she thinks that the dog is "uppity" and in need of further punishment. It does not cross the trainer's mind that the dog might have a legitimate complaint that ought to be attended to. Similarly, if the dog whimpers and tries to withdraw in fear, the trainer will not apologize. At most, she will judge the dog as too "soft" to deal with pain and will pragmatically rethink how to best manage and handle the creature.

So, what is missing from this picture? Why do the demands that she makes of the dog fail to amount to the participant attitude and respect? Is it because the trainer does not care what the dog thinks of her and does not take his disobedience personally? But some punishment-oriented dog trainers (or horse trainers, for that matter) clearly do so. They feel *insulted* when their animals disobey them. They talk about how the animals *disrespect* them, and so on. On more than one occasion, I have heard a dog trainer talk about dogs who "give them the finger."<sup>43</sup>

Notwithstanding the above, there is no participant attitude here (at most, a mixed attitude may be present) and no respect for the dog as a fellow member of the moral community, because there is no *reciprocity* in the interaction between the dog and his

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<sup>40</sup> Darwall (2006).

<sup>41</sup> *Ibidem*: 29.

<sup>42</sup> Korsgaard (2018).

<sup>43</sup> Moral responsibility philosophers often say, as if it were an obvious truth, that people do not *blame* non-human animals for bad behavior, even though some may punish an animal for behaviorist reasons. I have said such things myself in the past, unthinkingly echoing what I have heard from other philosophers. But if we actually look at what punishment-oriented dog trainers do, we see that this is often not true.

trainer. The trainer can blame and punish the dog, but the dog cannot attribute blame or punish back. Neither can the dog signal his protest – if he tries to, his protest is not responded to.

The dog training example shows that we cannot conclude, from someone's demands, blame, punishments, and insulted feelings (when disobeyed), that they also exhibit a respectful participant attitude toward the individual they blame and punish.

On reading Strawson and his examples, one might think that holding someone responsible always signals respect. His examples all feature relationships that are, at least ideally, equal and reciprocal in that they feature people who may *hold each other* responsible.<sup>44</sup> He discusses “sharers of a common interest, members of the same family, friends, lovers, chance parties to an enormous range of transactions and encounters.”<sup>45</sup> In such relationships, I care about what you think of me, and you care about what I think of you,<sup>46</sup> and we may communicate with each other when one of us has hurt the other's feelings.<sup>47</sup>

Today, I hold you responsible for forgetting that you promised to help me with an important task, but next week you may hold me responsible because I told other people a secret you told me in confidence. The relationship is not a one-way street. Sometimes, the tables may turn during the same conversation. I may object that I had no idea what you said was a secret because it was not information that most people wish to keep private, and you did not explicitly say it was a secret. Perhaps, in response to my objection, you take back your accusation. Or perhaps, more dramatically, we eventually realize that we hold such different values and different views on privacy that we should part ways. *Because* our relationship is respectful, equal, and reciprocal, these interactions may follow different pathways. In such a relationship, it is not predetermined that *you* are the one who must apologize to *me*, for example.

While these equal and reciprocal relationships exist, society is also replete with hierarchical and unequal relationships. Ciurria rightfully criticizes most moral responsibility philosophers for assuming that “our responsibility practices” are, *as a rule*, characterized by near-perfect reciprocity and equality. In reality, power asymmetries and oppression are commonplace, and create very different conditions for the allocation of praise and blame.<sup>48</sup>

## 5. A real-world lack of equality and reciprocity

In the real world, relationships exist that are so unequal and hierarchical that one party has *all* the power to *hold* the other responsible, while the other party is exclusively *held* responsible. Carbonell discusses a real-life case in which those in power look upon the marginalized and vulnerable much like the dog trainer might view her dog.<sup>49</sup> In less

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<sup>44</sup> Of course, we would be hard-pressed to find relationships that are perfectly equal in all regards, where neither party holds any power over the other. Yet, we can distinguish somewhat equal relationships from strongly hierarchical ones.

<sup>45</sup> Strawson (1962/2013): 67.

<sup>46</sup> Shabo (2012).

<sup>47</sup> McKenna (2016).

<sup>48</sup> Ciurria (2020): 5–8.

<sup>49</sup> Carbonell (2019).

extreme cases, marginalized people will still receive *more* blame than the privileged, whereas the privileged receive more praise of the truly beneficial kind.<sup>50</sup> Marginalized people are occasionally excessively praised when they exceed the very low expectations that others place on them,<sup>51</sup> but this rarely leads to any real advantages for marginalized people.<sup>52</sup>

In the philosophical literature on moral responsibility, it is usually assumed that any trait or circumstance that undermines moral responsibility does so for both blame and praise. If someone can be fully blameworthy for any harm they do, they can also be fully praiseworthy for the good they do. Conversely, if someone is too irrational, too out of control, insufficiently intelligent, etc., to be considered blameworthy for the harm they inflict, they are simultaneously not praiseworthy for the good that they do. Regarding such individuals, we take up an objective attitude toward them and merely try to manage and handle them as best we can. This picture is presented, not merely as a normative ideal, but also as an apt description of the responsibility practices people engage in. However, empirical research shows this is not how things work in unequal, hierarchical relationships. Unmitigated blame and unreserved praise are not, as mainstream moral responsibility philosophy will have us believe, two sides of the same coin. Instead, common moral responsibility practices give more praise and benefits to some, more blame and punishment to others.

It is not inherently *impossible* for moral responsibility practices to be respectful and reciprocal in hierarchical relationships, or for people to hold each other responsible and see each other as equal members of the moral community despite being unequal in other ways. Nevertheless, individuals at the top of the hierarchy and those at the bottom will be differently affected by the temptation to take up an objective attitude. Strawson observes that we may occasionally adopt the objective attitude toward other normal adults to deal with our emotional strain.<sup>53</sup> Suppose, for instance, that a co-worker constantly makes demeaning “jokes” about the minority group to which I belong and refuses to stop because “it’s just a joke, don’t you have any sense of humor?” Suppose I believe, quite realistically, that things will only get worse if I complain to HR or my boss about my co-worker. I might still deal with the situation by thinking of my co-worker as a hopeless jerk from whom nothing more can be expected, it is just the way he is, and ignore him. But, Strawson continues, we cannot really maintain this attitude for long with other normal adults. We soon return to the participant attitude and take their displays of ill will or objectionable indifference to our feelings personally.

However, if I am the jerk’s boss, I may not *have to* return to the participant attitude and feel insulted yet again. Instead, I may calmly present him with an ultimatum: get your act together or get out of here. If, on the other hand, the jerk is *my* boss, he does not have to wait for me to bounce back from the objective attitude to the participant attitude

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<sup>50</sup> Ciurria (2020): 7, 122, 146; Atkins-Loria et al. (2015): 9.

<sup>51</sup> For instance, racial prejudice may lead white people to expect low performances from black students at school. They might be surprised and praise these students when they pass a test, even if their performance was not stellar. However, this “surprise praise” is not accompanied by the kind of recognition and rewards normally associated with praise.

<sup>52</sup> Holroyd (2021).

<sup>53</sup> Strawson (1962/2013): 70

from some innate psychological tendency. My boss can use his power over me to *force me* to listen to him, talk to him, and engage with him, even if I would rather think of him as an annoying obstacle in my environment that I, unfortunately, must find some way to navigate around.

Thus, it is not *impossible* for people to take on a participant attitude and respectfully hold each other responsible across a hierarchy, but it is unlikely that this will happen. And it gets worse when we move to the context of the criminal court, where reciprocity is completely denied.

## 6. Ideal retributivism and the participant attitude

A retributivist criminal justice system or rather, the people working in the system (for example, judges), cannot take up a truly participant attitude toward offenders and treat them with the respect we ideally find between equals when they hold each other responsible. This is the case even in an idealized retributivist system. I discuss such a system first, before moving on to discussions of real-world retributivism.

However, my aim in this section is *not* to argue that we ought to abandon all forms of the criminal justice system because no criminal justice system can treat offenders with the same respect that people accord each other in ordinary relationships. (This might form the basis of an interesting philosophical discussion but lies outside the bounds of this paper.) My aim is merely to undermine *the Respect Argument for Retributivism* – since it is *not* the case that retributivism, unlike alternative systems, takes a participant attitude toward offenders and respectfully holds them responsible like we hold each other responsible in everyday life.

Consider the following thought experiment: imagine a retributivist criminal justice system in a society devoid of prejudice, where racism, classism and other biases that might distort the proceedings do not exist. Someone commits a crime in this idyllic society. According to retributivism, he should be punished primarily because he deserves it. He did wrong, and now the State, via the criminal court, holds him responsible for what he did. It remains the case, in this idealized setting, that responsibility-holding can only go in one direction, thus presenting a stark difference to ordinary, everyday responsibility practices.

As mentioned previously, when you hold your friend responsible for the harm she has caused, she may respond in a variety of ways. She may apologize, bring up some excuse, accuse *you* of being overly sanctimonious, admit to committing the harmful act but denying that it was wrong, and so on. You reconcile with your friend or go your separate ways. In court, however, the offender cannot throw accusations back at the officials (at least not unless there has been some egregious misconduct in the legal proceedings), and she cannot merely walk away from the proceedings. In this context, the responsibility-holding goes *one way only* – from the court to the offender. This is something that the offender is compelled to put up with. The offender's situation then continues to be hierarchical in nature during their stay in prison. The prisoner *must* adjust to the prison environment and obey the guards. She cannot walk away to pursue new relationships with people who better share her values.

When equals in non-formal settings engage in blaming and responsibility-holding, it remains possible that one or more of them will change their moral view as a result of this interaction. Suppose my neighbor's dog is left alone in the yard all day, barking out of misery. Eventually, I bring her home to my house so she may receive care and comfort. My neighbor may initially blame me for entering his property and taking his dog without permission. However, as I reason with him, he comes to agree with me that the dog has been left alone too much. Now, my neighbor stops blaming me and asks me to babysit the dog when he is not at home. Of course, people are often set in their views and become defensive when challenged, but the above story remains *possible*; this kind of thing may happen, though not in court.

In court, the accused (or his defense lawyer, acting on his behalf) might defend himself by offering up excuses or a series of justifications for their behavior. But those excuses or justifications must be recognized by the law already. If an animal rights activist stands trial for having stolen a number of pigs from a farmer and has rehomed them as pets, it is not just unlikely, but legally *impossible*, that he will convince the court that what he did was not an act of theft but a justified rescue operation of sentient beings with an inherent right to live out their lives in happiness and peace. The court can and is ultimately obliged to impose punishment upon the offender for doing what he considers morally right, but the offender cannot likewise force his moral view onto the court.

I do not suggest that the idealized retributivism discussed thus far, i.e., in an imagined society without prejudice,<sup>54</sup> need take an outright *objective* attitude toward offenders and see them merely as things to be managed, handled, and controlled. We can imagine the judge and other court officials respecting the accused enough to, for example, talk to them under the assumption that they can exercise reason and rationality, offer justifications for the punishment meted out, and so on. (And court officials in alternative criminal justice systems could do the same.) Their attitude would then be mixed rather than solely demonstrating a participant or objective attitude. Nevertheless, it remains the case that there is a profound lack of reciprocity between the accused and the court, showing how starkly different it is from everyday responsibility practices among peers at work or personal friends.

## 7. Real-life retributivism and the participant attitude

I have thus far explained three differences between the reciprocal responsibility-holding we see between people in informal settings without large power asymmetries, and a retributivist criminal court. First, responsibility-holding is uni-directional in court. Second, offenders do not have the choice to walk away from the court if they do not wish to participate in the court's proceedings. And third, the offender cannot possibly convince the court that her moral views are correct, the law is wrong, and she should be acquitted for that reason. As we move on to consider real-world retributivism, we find that a respectful participant attitude toward offenders is sorely lacking. Ciurria dis-

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<sup>54</sup> Unless we count speciesism as a form of prejudice, since I used an animal rights activist as an example above.

cusses how racial the U.S. criminal justice system is. For instance, the U.S. incarcerates five times more African-Americans than white Americans, despite the former being a minority. Furthermore, African-Americans are also significantly more likely than white Americans to be threatened and subjected to excessive force by the police.<sup>55</sup>

Although the idealized criminal court in my prejudice-free thought experiment fails to adopt a participant attitude toward the accused, a mixed attitude may still be present. However, by employing many references to empirical research, Ciurria shows that the real-world U.S. criminal justice system (as well as the systems of many other countries, of course) is *far* from a system that respects equality and reciprocity, and is likely to go much further in adopting an objective attitude.

Finally, the comments made by actual prisoners and guards in the U.S. prison system are of particular interest. After several clips from documentaries about Norwegian rehabilitation-focused prisons went viral online, many American ex-prisoners commented on the differences between Norwegian and U.S. prisons on YouTube. None of the ex-prisoners argued that the rehabilitative aims expressed by the Norwegian guards and wardens in the documentaries were manipulative, aimed at social control, or were generally objectifying. Nor did they claim that people are treated more respectfully in U.S. prisons. On the contrary, they were in agreement that Norwegian guards seemed to treat their prisoners like human beings, whereas American prisoners were treated like animals and beasts. In a video by Max Haddad, a former American prison guard spoke about how prison is a *punishment* so it *should be* bad.<sup>56</sup> Moreover, according to the same guard, American “criminal elements” have “predatory instincts” that make rehabilitative efforts pointless. It is evident from Haddad’s reaction that he considers this harsh retributivist stance to be (again, to paraphrase Strawson) offensive to the prisoners’ humanity, not a respectful expression of the participant attitude.

## 8. Retributivism and its alternatives

The scope of this paper is restricted to my argument against the Strawsonian *Respect Argument for Retributivism*. A retributivist criminal justice system *does not* take a participant, respectful attitude to offenders. At best, we can identify a mixed attitude in this context. This is not to say that a retributivist criminal justice system is necessarily horrible, with *no* room for respect. But it cannot be argued that it is *more* respectful than sensible alternative systems.

I have remarked on how unequal and asymmetrical court proceedings are (as opposed to when, for example, two friends hold each other responsible). However, an objection may be raised by claiming that an important kind of equality remains since the defendant and court officials are *equal before the law*.<sup>57</sup> If a court official were to commit the same crime as the defendant, they would also be treated by the court in the same way. Moreover, in an equal, prejudice-free society, a defendant could have studied law and become a lawyer or prosecutor instead of a criminal. While he is on one side of the

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<sup>55</sup> Ciurria (2020): 107–108.

<sup>56</sup> Haddad (2022).

<sup>57</sup> Objection from an anonymous reviewer of the paper.

fence, he *could have* been on the other. The situation here and now, as the court proceedings begin, might be asymmetrical with regard to responsibility-holding, but society as a whole is built on equal and reciprocal relationships between citizens.

Nevertheless, equality before the law is no argument for retributivism. *The Respect Argument for Retributivism* purports to show that retributivism is *more* respectful than alternative systems, and *more* similar to everyday, equal, and reciprocal responsibility-holding. But everyone who has engaged in the criminal justice debate, retributivists and anti-retributivists alike, embraces equality before the law.

It has been further suggested that a retributivist system is respectful in the sense that it will only punish people if their guilt has been established beyond all reasonable doubt.<sup>58</sup> But this criterion is not unique to retributivism either. First, I have commented on Harsh Retributivism in the sense proposed by Murphy and myself in this paper, i.e., as a criminal justice system *primarily* concerned with dealing out just deserts. A criminal justice system need not be retributivist in this sense if it invokes desert-based *side constraints*, like the principle of never punishing someone who does not deserve punishment. Second, one may argue for the importance of proof beyond all reasonable doubt via alternative, non-desert-based routes. If autonomy and freedom are highly valuable, the bar for when we are justified to incarcerate a person will be set similarly high.<sup>59</sup> Thus, high standards of evidence is not an advantage that retributivism enjoys over plausible alternatives.

Finally, Strawson argues that a criminal justice system that takes an objective attitude toward offenders and merely tries to manage, handle, and treat them as efficiently as possible will not only dehumanize criminals but also risks spreading to other areas of society. Those in power might soon regard every citizen this way.<sup>60</sup> We may start out with the intention of imposing a *Clockwork Orange* system for criminals, and end up with *A Brave New World* system for everyone. Unarguably, such a situation would be terrible and dystopian. Dehumanizing tendencies creep into public debates time and again, in criminal justice debates as well as other areas. It is vital that we remain vigilant and protest whenever this happens. However, the idea that the State must deal out just deserts and ensure that bad people suffer can and has *also* spread from the criminal justice system to the rest of society, with terrible results. For instance, according to a widespread and harmful narrative, poor people *deserve* their hardships. The poor *should* suffer and struggle as a well-deserved punishment for their alleged laziness, irresponsibility, and other sins.<sup>61</sup>

We are, therefore, fortunate that we do not have to choose between a dehumanizing *Clockwork Orange*-style system for treating criminals and a harsh retributivist system, since more options exist in both the philosophical literature and the real world.

## Conclusion

Strawson and his followers correctly point out that a participant attitude where we view each other as fellow moral agents and fellow members of the moral community is the default attitude we adopt when we interact with friends, co-workers, and many other

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<sup>58</sup> From the same reviewer.

<sup>59</sup> See Caruso (2022): 237, *the principle of least infringement*.

<sup>60</sup> Strawson (1962/2013): 79.

<sup>61</sup> See Waller (2014) for an extensive discussion.

people. We reciprocally and respectfully place demands on each other and hold each other responsible when we fail to meet these demands. However, Strawson and his followers are incorrect in claiming that a retributivist criminal justice system can function as a continuation of such ordinary and respectful responsibility practices. Even an idealized court in an idealized society without prejudice can, at most, exhibit a mixed attitude, where reasons are offered to the offender as to why she was wrong to break the law and deserves to be punished. However, the reasoning and responsibility-holding remain strictly one-way. In the real world, retributivist criminal justice systems are even more objective in their attitudes. Court officials, prison guards and so on might get angry with and resent offenders, but anger and resentment does not imply respect.

Alternatives to harsh retributivism might not fare any *better* when it comes to respecting offenders and taking a participant attitude instead of an objective attitude toward them. I have remarked on how uneven and one-way court proceedings are. This feature of criminal justice proceedings is clearly not unique to retributivism. Notwithstanding this, a lack of respect and a lack of a participant attitude is a much bigger *problem* for retributivism than for alternative systems, because the latter can often be supported by other arguments. Retributivism is really only argued for by claiming, first, that we (intuitively) ought to give offenders what they deserve, and second, that it treats offenders as fellow moral agents and with respect. I have previously countered the first argument.<sup>62</sup> In this paper, I have undermined the second.

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<sup>62</sup> Jeppsson (2020).



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