Chapter 5 from David Vogt's book manuscript in progress: "Punishment in an Unjust Society: Why social injustice undermines criminal justice" – May 2024.

Part II: Social injustice and the state's right to punish

Chapter 5: Standing to punish

[Part I looked at the types of injustice that cause the social disparity of the incarceration rate. The following three chapters, which constitute Part II of the book, will consider the question of whether social injustice might undermine the state's moral right to punish. Part III will then deal with the questions of the amount and type of punishment that may be just for a victim of social injustice, if the state retains the right to punish them.]

The moral right to punish may be said to have three conditions: (1) that the institution doing the punishing has the normative power to inflict punishment, (2) that there is a punishable offence, and (3) that the offender is punishable. The current chapter addresses the first condition, asking whether the state has moral standing to punish persons who are victims of severe social injustice. The next chapter addresses the second condition, asking whether an act which would normally constitute a crime may be justified when committed by a victim of severe social injustice. Chapter Seven then addresses the third condition, asking whether severe social deprivation may provide an excuse, such that an offender ought not be punished for their crime. All three conditions are usually considered necessary for the state's moral right to punish: the state must not lack standing to punish, the offender's act must not be justified, and the offender must not be excused from criminal responsibility for the act. But without revealing too much at the outset, this chapter will cast doubt on whether it really is necessary to view standing to punish as a separate condition on the right to punish.

As we shall see, the concept of standing explains an important feature of private moral relations, like blaming relations, as well as of some legal relations between private parties. It pertains specifically to relations where a person demands something of another or

provides a moral reason for another, and its function is to set conditions on the source of the demands or reasons, as opposed to on their content. The usefulness of the concept of standing therefore presupposes that source and content can come apart, such that deficiencies in the source can occur without it affecting the content of the demands or reasons. I believe that is possible in private moral relations and in private legal relations, but that it is not possible in the context of criminal law. Standing in criminal law is inextricably tied to the law's legitimacy.

5.1. Lack of standing as bar to trial and punishment

The state may lack the moral right to punish an offender, the standing argument goes, not because the offender is not culpable of a criminal wrong, but because of the state's own conduct. The conduct of the state creates a *bar to trial* or a *bar to punishment*, on par with other such bars that are well-established in criminal law doctrine. When, for instance, the offender is mentally impaired or otherwise "unfit to plead", there is a legally recognized bar to trial in most jurisdictions. The offender may still be guilty of a crime, but a trial against them is barred, and thereby also punishment for their crime. There are also other bars to trial, such as a lack of jurisdiction in the territory where the act was committed, or the act is subject to a statute of limitations. Finally, there may be a bar to trial due to misconduct toward the defendant by the state, such as when there is coerced testimony, illegal acquisition of evidence, or entrapment.

Several scholars have argued that this latter group of bars to trial due to state misconduct should be expanded to include a bar to trial of severely socially deprived offenders. The reason, first proposed by Antony Duff, is that the state (or the polity on whose behalf the state acts) lacks *moral standing to blame* an offender when the same state has previously neglected its responsibilities toward the offender.

> Suppose that he has been excluded – politically, materially, and normatively – from an adequate share in the community's goods; and that his exclusion has not been recognized as a wrong done to him. Could he not with justice say to the court that, whether or not he is bound by the criminal law, the court lacks the standing to call him to answer for his alleged crime?[1]

[1] Duff, 2001, 186. Note that the argument applies "whether or not he is bound by the criminal law", i.e. whether or not he did wrong in committing the act for which he is called to answer. Green, 2011, 363, makes the

The argument is based on an analogy with non-legal ways of communicating blame. "The trial", Duff argues, "can be seen as a formal, legal analogue of the informal, moral process of calling another to answer for an alleged wrong, and blaming her for it if she cannot offer a suitably exculpatory answer".[2] When criticized for doing wrong in our everyday lives, we are not always prepared to answer to just anybody. If a person is *meddling* in our affairs, we might think a proper response to be, "That's none of your business". If that person is being *hypocritical*, or worse, if she is *complicit* in the same act as she criticizes, we might think it sufficient to respond, "Look who's talking". In such cases, the person blaming does not have the required moral standing to blame. Her criticism may be objectively correct (i.e., the criticized conduct really *is* blameworthy), but she is not in a position to call the other person to answer for that conduct. As G. A. Cohen explains,

> Admonition may be sound, and in place, but some may be poorly placed to offer it. When a person replies to a critic by saying: "Where do you get off criticizing me for that?", she is not denying (or, of course, affirming) the inherent soundness of the critic's criticism. She is denying her critic's right to make that criticism, in a posture of judgment.[3]

The argument from standing analogously says that the state has compromised its standing by its hypocrisy, its complicity in the crime, or by previously excluding the offender from full membership in the polity.

5.2. What is standing?

Before considering these arguments for why the state lacks standing to punish severely deprived offenders, we should clarify the notion of standing. The word "standing" is sometimes used merely as a synonym for "status", as when one says that "Bob has high standing among his fellow folksingers". The meaning of standing that concerns us here, however, identifies standing as a right or an entitlement.[4] As such, the concept of moral

following comment about this aspect of Duff's theory: "Indeed, what is striking about Duff's account is his lack of concern, one way or the other, with the moral status of the offender. Rather, his focus is on the moral status of *society* in judging the offender."

[2] Duff, 2010, 130.

[3] Cohen, 2006, 118.

[4] The view of standing as a right or an entitlement is the standard view in the literature on blame, and although the view is not always explicit, one often finds expressions of it, for example in Roadevin, 2018, 137; Bell, 2012, 269; Wallace, 2010, 317; Isserow & Klein, 2017, 202; Fritz & Miller, 2018, 118; Todd, 2019, 359; Cohen, 2006, 120; Vogt, 2024, 173.

standing is analogous to the concept of legal standing.[5] "Legal standing" means the right to hold someone legally to account. "Moral standing" means the right to hold someone morally to account. And just like there are conditions on legal standing, such as the condition that the suing party must have been harmed by or otherwise have sufficient connection to the law or action in question, so there are conditions on moral standing, such as the conditions of non-hypocrisy, non-complicity, and non-meddling.

Standing is a particular type of right, namely a power.[6] It is, in other words, a second-order right, according to Wesley Hohfeld's schema of rights.[7] As such, it is a right to change the rights of others, or more generally, to alter the normative landscape of others.

The correlative legal position to a power is a *liability*. Hence, a person has a power to alter the rights of another person only if that person is liable to having their rights altered in the given way. A policeman has the normative power to issue a speeding ticket only if the driver is liable to incur the obligation to pay the speeding ticket.

When we are talking specifically of blame, a person has moral standing to blame only when the blamed person is liable to blame; in other words, when the blamed person is *blameworthy*. The ground of a person's blameworthiness is their fault (having culpably committed wrong without justification or excuse), and the normative significance of their blameworthiness is that they are liable to blame.[8] However, the blamed person's blameworthiness is not sufficient to make them liable to blame from a particular other. Liability and power come in a pair, which means that the blamed person is liable to blame from a particular blamer only if the blamer has the normative power (standing) to blame. If the blamer lacks power to blame, for instance due to their hypocrisy, then their blame will violate the blamed person's right not to be blamed when they are not liable to blame and will thus constitute a pro tanto wrong against the blamed.[9] Since being blamed is usually a

[5] Bell, 2012, 269.
[6] Vogt, 2024. For similar views, see Fritz & Miller, 2022, and Edwards, 2019, although they see it also as a privilege, whereas I see it as essentially a second-order power, which of course, like all second-order rights can be regulated by a first-order right or duty, including a privilege.
[7] Hohfeld, 1913.
[8] Berman, 2021, 1: "Blameworthiness serves a liability function (removing a bar to otherwise impermissible treatments)".
[9] Fritz & Miller, 2018; Herstein, 2020; Lippert-Rasmussen, 2022, 230.

negative experience for the blamed[10], and since it also places a normative demand on the blamed for an appropriate response (e.g., to apologize or to provide an explanation)[11], standing norms serve a valuable normative function by protecting the right not to be blamed when one is not liable to blame.

Why, then, should we think that the blamer's hypocrisy or complicity undermines their standing to blame? This has been a much-debated topic in moral philosophy in recent years.[12] One theory that has several adherents, including myself, is the so-called Moral Equality Account.[13] It explains the hypocrite's lack of standing by the fact that they do not afford others the same protection from blame as they grant themselves. Hypocrites take another's fault as sufficient to make them liable to blame, but they treat their own fault as insufficient to blame for an equivalent violation. They thereby fail to treat the person they blame and themselves as moral equals. On the one hand, this means that they implicitly deny the second-order standing norms that regulate liability and standing to blame, because according to those norms, they and the blamed person are equally liable to blame. On the other hand, they rely on those very same norms to claim standing to blame in the first place.

---

[10] We find different expressions of the negative experience of blame in the literature, such as public "disapproval" (Roadevin, 2018, 138) or "opprobrium" (Wallace, 2010, 318), which then constitutes a form of "harm" (Todd, 2019, 350; Telech & Tierney, 2019, 30), "unpleasant experience" (Isserow & Klein, 2017, 217), and "negative social effect" (Wallace, 2010, 329).

[11] As James Edwards says, speaking in terms of responsibility: "To hold someone responsible […] is not merely to describe the state of the world as we see it. It is also to demand something from those who are held responsible." (Edwards, 2019, 448). Blame constitutes a "demand for an uptake from my blamee" (Lippert-Rasmussen, 2021, 667). The blamed person is called to answer; to apologize, to give an explanation (Duff, 2010), or to otherwise act on the directives that blame provides (Herstein, 2017). "By blaming, one creates an obligation for the blamed" (Fritz & Miller, 2022, 771). And because blame creates an obligation, it restricts the blamed person's choices of morally acceptable actions. The blamer "imposes one's will" on the blamed (Herstein, 2020, 15) by making them set aside other projects to respond to the blame. Standing thus protects both the freedom and the interests of the person who may be held to account.

[12] There may be said to be three main theories, of which the moral equality account explained in the main text is one. The two other main types of theory are skeptical theories and the commitment theory. The skeptics doubt that standing is required for justified blaming and, hence, that hypocrisy and other moral faults of the blamer might undermine their right to blame (King, 2019; Dover, 2019; Bell, 2012). Hypocrisy is like other moral faults a blamer can display, such as pettiness, stinginess and arrogance, that do not cause the blamer to lose standing, but that may detract from the value of the blame (Bell, 2012, 275). The second group of philosophers say that hypocritical blame is deficient because the hypocrite claims to be committed to the norm that they are blaming the blamed person for violating, but they aren't truly committed to norm, since they themselves flout the norm without acknowledging their blameworthiness for doing so. This "commitment account" or "taking norms seriously account" does provide an explanation for the vice of hypocrisy (dishonesty, pretense, bad faith), but it does not explain why the hypocrite lacks standing. Todd (2019, 371), a proponent of the view admits as much, and opts for a bedrock view, saying "he just does". Riedener's (2019) commitment account takes a different route. It does not focus on the badness of hypocrisy, but on the failure of hypocritical blame to adhere to the constitutive rule of blaming. However, it seems that Riedener's account cannot explain why such failure would create a pro tanto wrong toward the blamed.

[13] Vogt, 2024; Wallace, 2010; Fritz & Miller, 2018. Tadros (2009, 402) argues briefly in a similar way.

It is these norms that make a blameworthy person liable to blame, which thereby grants others a right to override their right not to be blamed. The hypocrite thus undermines their own standing by implicitly denying its normative basis.

Complicity to wrongdoing undermines standing to blame for the same reason. A complicit blamer who fails to blame themselves, implicitly denies the standing norms that could have granted them the right to blame if not for their complicity.

5.3. Standing in criminal law

It makes sense upon some, but not all, criminal law theories to frame the discussion of this chapter in terms of the state's moral standing to blame. On some theories, however, including the one I advocate and have expounded in Chapter Two, criminal law is not properly concerned with moral blame, but with criminal responsibility, which usually, but not always overlaps with blameworthiness for a crime. A modern-day Robin Hood, for instance, would be criminally responsible for theft and robbery, but not necessarily morally blameworthy – indeed, some might think him morally praiseworthy, but nevertheless criminally responsible.

It follows, if criminal law is not properly concerned with expressing blame, that the state does not need moral standing to blame in order to justly administer punishment. However, the state does need standing to hold the offender criminally responsible. Perhaps, then, the issues that are normally discussed in terms of the state's moral standing to blame might apply equally to the state's moral standing to hold an offender criminally responsible.

To consider this, let us recapitulate what it means to be responsible and to hold someone responsible. To *be responsible* for an act simply means to have incurred obligations due to the act. If I am responsible for running my mother's car off a cliff, it means I have incurred obligations, for instance to pay my mother for the value of the car, to pay the municipality for its expenses in retrieving the wreck, etc.

If I am being *held responsible* for my act, it means I am being demanded to fulfill the obligations I have incurred due to my act. For a person to be able to issue such a demand and thereby to successfully provide a reason for me to fulfill my obligations, the person must have the normative power to do so. My mother, the owner of the car, would normally

have such power. She would have the power to provide me with a moral reason to pay. Perhaps the reason she provided would make no difference, because I would already take the fact that I have ruined her car as sufficient reason to pay. But assume it was not. Assume I was in doubt, say, because she was the one who told me to take the car out driving in the first place. If she then says I should pay, and thus holds me responsible for the obligation to pay, that act of asking or pleading or demanding would in and of itself provide me with an additional reason to do so.[14]

Turning to criminal responsibility, the act of holding responsible is all the more important, because only a few of the obligations that the offender has incurred due to their crime can be fulfilled independently of being held responsible. Among independent obligations may be the offender's moral duty to apologize or to undertake penance or to provide restitution. But the offender may also be required to stand trial, to pay a fine, to serve time in prison, or to participate in restorative justice processes, or in drug treatment programs, or in anger management programs etc. These obligations cannot be fulfilled if they are not created in and through the act of holding the offender criminally responsible. You cannot go to prison if you are not sentenced to prison. Being guilty of a crime is not enough.

The act of sentencing thus alters the normative landscape of the offender.[15] They are now under obligation to submit themselves to being punished. In one sense, this is a strictly legal obligation. They are liable to legal sanction if they do not fulfill the obligation, say, if they try to escape from prison. In another sense, however, they are also under moral obligation to let themselves be punished, such that it would be morally wrong not pay the fine or to try to escape from prison.[16]

The state's standing to punish is thus in one sense a legal power and in another sense a moral power. If our topic here was whether an offender's severe deprivation actually functions as a bar to trial or a bar to punishment in a current criminal justice system, we

[14] Herstein, 2017.
[15] I will concentrate on the standing to punish, which I take to include the standing to put the offender on trial, since a trial is a condition on justified punishment (at least as a possibility, even if not always actually carried out, such as when a police officer issues a fine). I will not consider distinct conditions on the standing to put on trial (e.g., probable cause) compared to standing to punish.
[16] Cf. Shelby, 2016, 230: "To have legitimate authority is to have a special kind of prerogative: a right to demand that others comply with a command or rule one has issued. It is the right to create obligations for others, obligations they wouldn't have if not for the command or rule."

would be concerned with the state's legal power. Our topic is the state's moral right to punish, however. The question, then, is whether the state may lose its moral standing to hold a severely deprived offender criminally responsible. If that is the case, the state will not be able to provide the offender with moral reasons to submit themselves to being punished.

5.4. Does social injustice undermine the standing to punish?

I shall now consider three potential reasons why the state might lack moral standing to punish severely deprived offender: (1) the state is hypocritical, (2) the state is complicit in crime, and (3) the offender has been excluded from the polity prior to their offense.[17] These reasons have been much debated in the literature on the state's moral standing to blame.

5.4.1. Hypocrisy

Hypocrisy is typically thought to undermine a private person's moral standing to blame, but does it also undermine the state's standing to punish severely deprived offenders? There are several difficulties with this notion, as we shall see. The first difficulty concerns whether the state can even be hypocritical in the same way that a person can. Some, like Victor Tadros, think it can. If the state shows insufficient concern for victims of crime, it is hypocritical when it holds others accountable for *their* insufficient concern for victims of crime.

> One reason not to perpetrate distributive injustice is that distributive injustice is criminogenic. In perpetrating distributive injustice, the state shows itself to have insufficient concern for the victims of crime. Hence, in holding the poor responsible for what they do, the state claims that the poor should be held responsible for violating their moral obligations while denying the entitlement of the poor to hold it responsible for failing to adhere to those

[17] Of the typical conditions on moral standing to blame mentioned above, *meddling* is not relevant here, as we are concerned with criminal offenses, which are public wrongs and not simply "one's own business". The Stanford Encyclopedia of Philosophy's entry on "Blame" lists *meddling, hypocrisy,* and *complicity* as ways in which moral standing to blame is undermined. There is a fourth way, dubbed "moral fragility", which expresses the common notion that "There but for the grace of God, go I". The authors call this "subjunctive hypocrisy", for it undermines one's position to blame similarly to hypocrisy, but in the following way: "If I were as bad as him, I'd have no standing to blame him. But the difference between us is simply a matter of luck, and surely my good moral luck can't serve as the basis for my moral standing to blame. So I lack the standing to blame even though I've never done the terrible things in question." Tognazzini & Coates, 2016.

very obligations.[18]

The state thereby acts in a way that betrays its own avowed values, which, essentially, is what hypocrisy is.[19] There are, nevertheless, some thorny issues related to this idea of state hypocrisy. I shall briefly mention some of them.

One issue concerns *who the state represents*. Peter Chau has argued that the courts might be thought of as acting only on behalf of those who do retain the standing to blame. The courts might thus reply to a deprived offender: "You may not owe a duty to account for your crimes to the polity as a whole now, but you still owe a duty to account to the just citizens, and I am now calling you to account on behalf of them."[20] Against Chau's view, Jeffrey Howard has argued that such a claim to act only on behalf of some citizens is illegitimate under normal circumstances: "State officials are morally permitted to see themselves as acting on behalf of a subset of the citizenry, I argue, only in circumstances of *democratic crisis*: circumstances in which a moral community can no longer be plausibly said to exist."[21] What should we then say of a state that is nominally democratic, but that consistently treats some members of society as second-class citizens? Do the courts represent all citizens, as the nominal respect for democracy suggests, or do the courts represent only those who are actually treated as equal citizens – or do they represent only those who are just, as Chau suggests, whether of first- or second-class status?

In addition to the issue of who the state represents, there is also a question of *who represents the state*. Matt Matravers points to the potential difference it makes that in a public setting, as opposed to in a private setting, a person acts in the capacity of an official role.[22] It is unclear whether the hypocrisy of the person filling the role is sufficient to cause the institution she is part of to be hypocritical. Is, for instance, a university that holds students accountable for missing deadlines hypocritical if a member of the grading committee does not herself uphold deadlines? Presumably, not. It would take more for an institution to be hypocritical than the failure of one or a few of its officials to live up to its avowed values. But perhaps it would suffice if there was a widespread tendency among officials to violate

[18] Tadros, 2009, 405.
[19] See Yankah, 2019 for a similar definition of hypocrisy.
[20] Chau, 2012, 249.
[21] Howard, 2013, 121.
[22] Matravers, 2006.

the norms and values of the institution. It seems more reasonable to identify what is then a general practice with the institution itself, making it true that the institution "does not practice what it preaches". Even more clearly, if the rules of the institution, and not merely the practice of its officials, are inconsistent with its avowed values and norms, the institution is hypocritical.[23]

It may not always be easy to determine what the institution's avowed values and norms are, of course. Again, the question of who represents the state comes up. Most obviously we might take it to be the democratically elected legislature that expresses the state's values in the act of giving laws. But legislative intent is notoriously hard to determine.[24] Therefore, instead of identifying the state's values with the values held by the lawgivers, we might interpret the laws themselves as containing a commitment to certain values and principles. To find out what those values and norms are may then be a matter of interpretation in the Dworkinian sense of identifying the underlying principles that best explain and justify the laws.[25]

Even if we grant that the state can be hypocritical, the next and more difficult question is *how the state can be hypocritical in the act of punishing a criminal offender*. Recall that hypocrisy means to act in a way that betrays one's own avowed values or norms. One way of being hypocritical, then, is to hold others accountable for acts that violate certain values or norms, while the hypocrite commits *the same type of act* without holding themselves equally accountable. Can the state be said to commit the same type of act as a criminal offender? If "same" is construed narrowly, as an act that has the same outward characteristics and results as the crime, then obviously not. The state does not rob banks or rape or commit insurance fraud. On the other hand, if "same act" is understood very broadly, here simply as "the act of wrongdoing", then the state would indeed be hypocritical when holding an offender to account for their wrongdoing. However, this would then apply to wrongdoing by all offenders, and would not supply a specific argument for lack of standing

[23] Ekow Yankah provides an example in his article "Legal Hypocrisy" (2019, 9): "By way of example, think of the "separate but equal" doctrine. The end of the Civil War and the adoption of the Thirteenth and Fourteenth Amendments announced a new political moral vision of equality under the law. In spite of these newly avowed norms, the southern states created a legal system pretending to recognize the equality of the newly freed slaves while designed to subjugate them."
[24] Shepsle, 1992.
[25] Dworkin, 1997.

to punish severely deprived offenders.[26] In any case, the broad construal is implausible. Using the university example again, the broad sense of hypocrisy would entail that if the institution has failed to hold staff members to account for not upholding deadlines, then the institution would be hypocritical in holding students to account for plagiarism. Failing to uphold deadlines and plagiarism are hardly the same, though, except that they are both wrong.

A better understanding of "same act" would instead require that the *same values or norms* had been violated through the act. Upholding deadlines and respecting other people's copyright are not acts that instantiate the same values and they are therefore not relevantly the same acts. Likewise, an adulterer might unhypocritically blame someone for being stingy but not for being an adulterer.

Even with this scope for "same act", which seems plausible in private blaming contexts, it is still not evident that the analogy holds for the context of state punishment. Matravers offers an illustrative example: Assuming that it is true that the UK Government lied about the facts that were provided as grounds for the Iraq War, does that mean that the UK Government would be hypocritical to hold a person accountable for lying to her insurance company about the goods stolen from her in a robbery?[27] In both cases, the value of truthfulness in legal relations has been flouted. The criterion for "same act" has thus been fulfilled.

The argument is still too broad, since it would apply to all offenders of insurance fraud, and not just to severely deprived offenders of insurance fraud. But regardless of scope, and assuming the UK Government can properly be called hypocritical, it is still not intuitive that it would lack moral standing to punish insurance fraud. In fact, I do not think it does lose moral standing to punish by being hypocritical.

The first argument I shall supply is based on a comparison with other acts of holding someone legally to account. Assume that I last year ran someone over with my car, whereupon I shirked the obligations I had thereby incurred, such as the obligation to pay the expenses that the victim had procured due to my fault. Assume further that I this year

[26] Ewing (2023) makes a similar argument about scope.
[27]Matravers, 2006, 325-26.

get run over by someone else and thereby procure certain expenses. It would be hypocritical of me to demand that my expenses be paid when I did not myself fulfill the equivalent obligation last year. However, my hypocrisy has no bearing on my legal standing to sue the driver. And from a moral perspective, it is at best unexplained why my right to damages should depend on my character (my hypocrisy) or my history in fulfilling my duties. Analogously, if the state's hypocrisy undermines its standing to punish, we require an explanation for why its standing to hold someone legally responsible for a crime differs from its standing to hold someone legally responsible for a tort.

The second argument is based on the fact that the moral equality theory, which unlike other theories explains not just why hypocrisy is bad, but why it may undermine standing, would not yield the conclusion that the state lacks standing to punish.

Recall, the moral equality account says that a hypocrite implicitly denies the validity of the standing norms that apply equally to all violators of an act. Standing norms are second-order norms that governs the right to blame for violations of first-order norms. These second-order norms entail that equal violations of first-order norms make violators equally liable to blame. When the hypocrite implicitly denies the validity of the second-order norms that entail equal blame for equal violations, they thereby deny the validity of the second-order norms that grant the right to blame someone in the first place. The hypocrite thus undermines the normative basis that, but for their denial of the norm, would have justified their standing to blame.

In the case of state hypocrisy, however, the state has not violated second-order standing norms. The state has (if we grant the argument) violated the same first-order norm as the offender (e.g., the "do not lie"-norm in the example). But there is no second-order norm that specifies that the state's violation of the norm is equal to the private person's violation of the norm (even if the violations would otherwise equal, that is, equal in their content). Indeed, such second-order norms, which protect an individual's right not to be burdened by blame when they are not liable to blame, would not serve a useful normative function when applied to the state.[28] There is, therefore, no violation of a second-order norm when the state holds the offender and not the state itself accountable for its violation of a first-order norm.

[28] On the function of standing norms as a protection of a person's interests and freedom, see subchapter 5.2. above, as well as Vogt, 2024, and Wallace, 2010.

And if there is no violation of a second-order norm, the state does not thereby implicitly deny the validity of a second-order norm that grants it the right to hold criminal offenders to account. The performative inconsistency of a hypocritical private blamer does not therefore arise for a hypocritical state that holds a person legally responsible.

I shall return to this issue at the end of the chapter, to further substantiate that the state's right to punish is entailed by the validity of the *first-order* norms of its criminal laws, and hence, that there is no second-order norm that the state's right to punish follows from, and which it violates when it is hypocritical.

5.4.2. Complicity

Recall the case from the introduction chapter, where Belinda, Arne, Chris, Dagfinn were accomplices in buying and selling 10 kilos of methamphetamine. Imagine that during the trial, Dagfinn turned to Belinda and said: "Shame on you for dealing drugs and exploiting the addiction of drug-users to make money!" Belinda would likely reply, "Who are you to blame me? We did this together!" And most theorists on blame would say that Belinda would be within her moral rights to dismiss Dagfinn's blame, precisely because his complicity undermines his moral standing to blame Belinda (unless, perhaps, he had made it clear that he blames himself equally much). The moral equality account can explain why, in the same way as we have seen that it explains why hypocrisy undermines standing, namely by the fact that the blamer does not treat the blamed and themselves as moral equals. Indeed, complicity and hypocrisy are structurally almost the same, the difference being that the complicit blamer is partly responsible for the very same act as they blame for, while the hypocritical blamer is responsible for a normatively equivalent act.

Imagine now that Belinda's defense attorney turns to the prosecutor and the judge and says: "The state has failed to show equal concern for Belinda as for other citizens. It should have done more to help Belinda when as an adolescent she suffered sexual abuse, dropped out of school, started injecting amphetamine, and became part of a criminal environment, as well as later, when she has lived in poverty and with untreated trauma and drug addiction. If not for the state's injustice toward Belinda during the last thirty years, she would not now be a desperate drug-addicted woman in her early forties, and she would not have undertaken the

act for which she is being prosecuted. The state lacks standing to hold her criminally responsible because it is complicit in her crime".

Is it plausible that the state's standing to hold Belinda responsible is undermined in the same way that Dagfinn's standing to do so is? Some theorists answer yes. "A person cannot act as judge when he ought to be a co-defendant", Tadros writes.[29] The same applies to the state when it prosecutes crimes that are the result of the state's own unjust policies. Writing specifically about poverty, Tadros says: "The state is complicit insofar as the economic injustice it perpetrates creates criminogenic conditions."[30] When the state is responsible for economic injustice, it creates the conditions under which more crime will occur. If it were not for the state's role in economic injustice, then, some of the crime that is being committed would not have been committed. "This claim provides a powerful reason why the state should not hold the poor responsible for the crimes they commit", Tadros concludes.[31] Christopher Lewis similarly concludes that "when we, as a society, incentivize a subset of our citizenry to cultivate subcultural norms and values that condone lawbreaking, our position to blame them for breaking the law is greatly weakened".[32]

We have already seen in the previous chapter a considerable amount of evidence substantiating the claims of Tadros and Lewis that economic injustice and cultural norms are causes of crimes that would otherwise not have occurred. For these facts to suggest a bar to trial or a bar to punishment in a specific case, however, more must be shown. First, one would have to establish that the state's conduct was *a contributing cause* of the specific crime, and not just of "more crimes" statistically speaking. After all, it might be that the state's unjust policies have contributed to other crimes but not to the specific crime, which would have happened regardless of the state's policies. If the state should be seen as complicit in Belinda's crime, the defense would have to show precisely how the state's conduct contributed to the crime; a general claim that poverty or lack of treatment for

[29] Tadros, 2009, 393.
[30] Tadros, 2009, 405. See also Ewing (2023, 258): "I believe an argument along the lines of the above is the most plausible route to the conclusion that an unjust state lacks the moral standing to blame the victims of its injustice for certain crimes."
[31] Tadros, 2009, 405.
[32] Lewis, 2016, 174.

trauma is criminogenic would not suffice to establish causality, not least because many people who experience similar things do not commit crimes.

There is already an established defense in criminal law doctrine according to which the state's conduct creates a bar to trial or to punishment, namely entrapment. Entrapment is, analytically, a form of complicity by the state. In entrapment cases, however, the causality condition is strict. It is generally not enough that the state's conduct was a contributing cause; it must have been a necessary cause. There is a "but for"-test for entrapment, such that if the crime would not have happened *but for* the state's conduct, then the entrapment defense may be valid.[33]

Second, there are conditions for complicity beyond causality, as there are also for entrapment. One such condition is a certain degree of *mens rea* or *intention* on the part of the complicit agent. While entrapment is often understood to require "the conception and planning of an offense by an officer"[34], intent to such a degree is highly implausible for the state's supposed complicity to the crimes of the socially deprived. As Tadros remarks, "Only conspiracy theorists believe that our political leaders, in perpetrating economic injustices against the poor, intend that the poor will commit crimes."[35] A lower degree of intentionality might be sufficient for complicity, however, such that it would suffice that the state knowingly, recklessly, or negligently contributes to the commission of a crime. The problem again, however, is that even though the state may know that its policies are criminogenic in general, it may not know that it's policies can contribute to a specific crime.

Third, there is a condition that the state must act wrongly if it is to be complicit in wrongdoing. That is not the case if the criminogenic effects of the state's conduct can be seen as "proportionate foreseen harm".[36] We would not call the state complicit in a plane crash because it allows air traffic, even though few or no plane crashes would occur if air traffic were prohibited. In the case of air traffic, the state's conduct can be said to fulfill the first two conditions of complicity: It is a contributing cause of plane crashes, and the state

[33] We find this "but for" test in many jurisdictions, for instance in European human rights law, as developed by the European Court of Human Rights, especially in *Romanauskas v. Lithuania*, paragraph 55, which states that the police cannot "exert such an influence on the subject as to incite the commission of an offence tht would otherwise not have been committed."
[34] Sorrells v. United States, 287 U.S. 435 (1932), Justice Roberts' concurring opinion.
[35] Tadros, 2009, 405.
[36] Tadros, 2009, 408.

knows that allowing air traffic will result in plane crashes. But since the state does no wrong by allowing air traffic, it is not complicit in the plane crashes.

In the same way, one might argue that the state is not complicit in crimes caused by those who lose out on the free market. That there will be economic losers is a proportionate foreseen harm of allowing a free market, some would say. Indeed, free-market proponents would argue that *more poverty*, and therefore *more crime*, would result if the market were restricted so as to prevent any poverty at all. A counterargument is provided by the freedom theory expounded in Chapter Two, upon which the state does act wrongly if it fails to take steps to ensure everyone's access to equal freedom, including by failing to protect persons from the unfreedom of poverty. I shall return to this issue of the state's obligations to the poor in the next chapter.

Even if the state does fulfill all three criteria for complicity to a crime, it is not clear that it therefore lacks standing to prosecute or to punish. Consider as an example a state where rape within marriage is criminalized but rarely prosecuted. The causality criterion of complicity is fulfilled: The absence of an efficient sanctioning system is a contributing cause of the rape of married women. The intentionality criterion is fulfilled: The fact that lack of efficient sanctions causes more rapes is so obvious that it seems reasonable to impute knowledge or acceptance of risk to the state's powerholders and/or to the polity that has failed to ensure legislation. Finally, the wrongness criterion is fulfilled: The state's failure to provide legal protection from rape for married women is clearly wrong. The state's conduct thus fulfills all three criteria for complicity, and it would indeed seem an appropriate use of words if, say, a women's rights activist gave a speech to parliament where she denounced the state's complicity in the rapes of married women. Nevertheless, it is implausible that a husband who rapes his wife could claim that the state's complicity causes it to lose standing to punish him.

We might compare with entrapment again, where the entrapped person seems to have a much stronger claim against being punished. As we saw, the causality criterion and the intentionality criterion are more demanding for entrapment: There is entrapment only if an officer of the state induces a person to commit a crime (with the aim that the person be punished for it), and the person would not have committed the crime but for the entrapment. Entrapment thus entails a form of manipulation that is not inherent to complicity. Jeffrey

Howard explains this manipulation as the subversion of the moral capacities of the entrapped person: "To subvert an agent's moral capacities is to interfere with the agent's practical reasoning in ways that increase the likelihood she will culpably choose to act wrongly."[37] By tricking or tempting a person to do something one knows is wrong in order to sanction the person for it, one shows disrespect for that person's rational agency, and thereby directly contradicts the purpose of punishment as an instantiation of respect for the offender's rational agency. If, on the other hand, the state has "merely" failed to provide assistance to a person who experiences poverty or trauma, then the state's disrespect, if it qualifies as such, is indirect and normally less serious.

Even though entrapment is disrespectful and thereby undermines the purpose of punishment, that fact does not explain its initial wrongness. Irrespective of whether subsequent prosecution and punishment is morally undermined, there is something wrong in the very act of inducing someone to commit a crime in order to sanction them for it. Howard asks us to consider a case where the FBI encouraged a group of men to plot to bomb two New York City synagogues. "It is highly counterintuitive to think that entrapment would have become morally unproblematic in our example case, if only the FBI had neglected to press charges once the men were prevented from detonating the bombs."[38] Hence, the primary wrongness of entrapment does not reside in the fact that it undermines the standing to punish offenders. That would be to put the cart before the horse. Rather, the right to punish the offender is undermined *as a consequence of* the wrongness of entrapment. That is why the wrongness of entrapment does not disappear if the state forfeits the right to punish, as Howard's example shows.

The right to punish is undermined as a consequence of the initial act of subverting the agent's moral capacities and creating a crime that would otherwise not have happened. The reason is simple: If the state through its officials has intentionally caused the crime, then it is the state, and not the defendant who is (primarily) culpable. Entrapment is thus relevant for the *culpability* of the defendant, at least by reducing it and thereby warranting a mitigated sentence, or by negating it and thereby undermining the state's right to punish.[39]

[37] Howard, 2016, 25.
[38] Howard, 2016, 27.
[39] Howard (2016) also talks of "structural entrapment", where there is no single entrapping agent, but where entrapment nevertheless undermines culpability. I will return to this issue in Chapter 8 on mitigation.

With complicity more broadly, it can usually only reduce culpability, and often not even that, as when two accomplices are equally culpable.

The upshot is that complicity and entrapment are best understood as pertaining to culpability and not to standing. Even if the state is complicit in the crimes of deprived offenders, then, we have not found reason to believe that it undermines the state's standing to punish.[40]

5.4.3. Exclusion

In the passage I quoted from Duff above, he asks us to consider an offender who has been excluded – politically, materially, and normatively – from an adequate share in the community's goods. Could not this offender legitimately challenge the court's standing to call him to answer for his alleged crime, Duff asks. This basis for the challenge to standing is different from that of hypocrisy and complicity. In a private moral setting, it has some affinity with what is often called the *non-meddling condition* or the *business condition* on standing.[41] Suppose a group of friends have a beer-tasting club and they each buy the other members an exotic beer for Christmas every year. Suppose also that one of the members has forgotten to buy the others beers for Christmas the last couple of years. The members of the beer-tasting club would have standing to call the forgetful member to answer for his fault, the meddling argument goes, but someone who is not part of the club would not have standing, say, a colleague of one of them.

Now, to make the example into an exclusion example, imagine that one of the friends stopped receiving invitations to the beer-tasting parties, say, because the others felt he got too drunk at them. Being now effectively excluded from the club's meetings, he no longer feels like buying his friends exotic beers for Christmas. If his other friends blame him for it, he might legitimately say: "Since I have stopped receiving invitations to the parties, I no longer feel I receive an adequate share in the beer-tasting community's goods. For that reason, I do not think I am obliged to answer to the members of that community for failing to uphold its norms."

---

[40] Garvey (2015, 54) reaches the same conclusion, saying of the famous Murdoch case: "The state's sins do not (for what it's worth) appear to be so grievous as to open it to a charge of hypocrisy. Nor does it make much sense to say that the state should be portrayed as an accomplice in King's murder. I have a hard time seeing how the state's wrongs sabotage its standing to call Murdock to account."
[41] Tognazzini & Coates, 2016.

An analogous situation in the context of criminal law would be when an offender has been excluded from equal membership in the society to which the criminal law belongs. It is easy to come up with historical examples, such as Jews in Nazi-Germany or blacks in Apartheid-South Africa. Today, it might apply to residents of urban ghettos or members of indigenous groups, depending on one's threshold for counting someone as excluded from society.[42] I shall not try to determine the threshold, but shall rather assume that there are cases, at least historically, that meet the threshold on any plausible conception of it. What, then? How does exclusion undermine the state's right to punish?

The most plausible answer is that a person who is excluded from society is not bound by the rules of that society. A Jew in Nazi-Germany was in no way morally obliged to respect the laws of a state that so thoroughly denied them rights and equal freedom. As Matravers writes, "There is a point at which the state fails to function to such a degree that its citizens can properly think of themselves as having returned to a state of nature".[43] Other theorists say the same: Exclusion from society is complete when one is not protected by its laws, as one is in a state of nature.[44] Some theorists also say that a person so excluded will not receive their part of the benefits of law, and will therefore to a lesser degree have reason to comply with law, even to the extent that they are not under obligation to do so.[45]

If a person is not under obligation to follow the law, then their legal responsibility is negated. This means, however, that exclusion is not an argument for the state's lack of standing, but an argument for the offender's lack of culpability. The discussion of exclusion is therefore properly located in the following chapters on defenses (justifications and excuses), and not in the current chapter on standing.

Incidentally, we ought to reach the same conclusion in cases of private moral blame, such as in the beer-tasting example above. The excluded member is no longer bound by the norms of the club. It is true, then, that the other members cannot properly blame him for not buying the traditional beer-gifts for Christmas. The reason, however, is not that the club members lack standing, i.e., the power to blame, as it would be if a colleague blamed a forgetful

[42] See e.g., Shelby, 2016.
[43] Matravers, 2006, 327.
[44] Garvey, 2015, 61.
[45] For an early argument along these lines, see Murphy, 1973. See also Shelby, 2016, and Kelly, 2022.

member. The reason is that the excluded member is not blameworthy, i.e., not liable to blame, which means that nobody has standing, club members or not.

Someone might object to my classification of exclusion as a culpability-issue by distinguishing between acts where the law provides the sole moral reason for not committing the act, and acts that have moral reasons against them in addition to the legal prohibition. The distinction is between *mala prohibita* acts and *mala in se* acts. There is a long philosophical tradition going back to Kant, according to which mala in se acts would be morally prohibited even in a state of nature, while at least some mala prohibita acts are inconceivable in the absence of a legal order.[46] Thus, John Rawls distinguishes between a natural duties and obligations, the latter of which flow from institutional arrangement voluntarily accepted.[47]

Shelby and others have taken this distinction to suggest that an excluded member of society will not be culpable for *mala prohibita* acts, while they will be culpable for mala in se acts. When they are culpable for the latter, possibly the state still lacks standing to punish them. Exclusion will then be both a culpability-issue (regarding mala prohibita acts) and a standing-issue (regarding mala in se-acts). For the latter issue, the problem then arises as to what the state may legitimately do if it does lack standing to punish culpable offenders of rape and murder and other mala in se acts. Several scholars opt for a solution whereby the state has "enforcement legitimacy" even though it does not have "legitimate authority" to provide the excluded person with moral reasons to refrain from the act.[48]

I do not think this objection to my view has bite. First, the distinction is itself controversial between acts where the law provides the sole moral reason for not committing the act, and acts that have moral reasons against them in addition to the legal prohibition.[49] Even a clear example of a *mala prohibita* act, such as driving on the right in England, can have additional moral reasons against it once the prohibition is in place, such as the moral reason not to put other drivers in danger by driving on the right. Hence, even a person so excluded as a Jew in Nazi-Germany could have moral reasons to refrain from mala prohibita acts, and could thus be *morally culpable* for such acts, just like they could be for mala in se acts like murder.

[46] For Kant, property rights are "aquired rights" which are conceivable only within a legal order.
[47] Rawls, 1999, 93-101.
[48] Duus-Otterström & Kelly, 2019; Shelby, 2016.
[49] Moore, 2010.

The point, however, is not that one cannot be morally culpable in the state of nature. The point, rather, is that one cannot be legally responsible in the state of nature, neither for mala prohibita acts nor for mala in se acts. If a person really is excluded to the extent that they are living in a state of nature, then nothing that person does can make them *legally* responsible. Hence, even if a Jew in Nazi-Germany murdered someone in cold blood, they would not be *criminally liable*, because the law was not valid for them. And since they would not be criminally liable, the question of the state's legal standing to punish them would not come up.

If the person was dangerous, one might think that the state could have an enforcement right against them, to secure the safety of others. If so, it would be a purely moral right, indistinguishable from a general moral right of self-defense that applies to all in the state of nature. There could be no morally justified *legal rights* against a person who is excluded from the legal realm. Hence, the question of the moral standing to uphold such a non-existent legal right would not come up.

As with complicity, then, exclusion raises questions of the extent of a person's obligations, and hence, of their culpability in committing acts that under normal circumstances violate those obligations. This is the topic of the next chapters.

5.5. Conclusion on standing

The question that has motivated this chapter has been whether the state's own conduct can cause it to lose the right to punish severely deprived offenders. The notion is a familiar one in private moral relations, where it is commonly thought that a blamer's hypocrisy, complicity, or meddling undermines their moral standing to blame. In such cases, the blame is flawed because of an issue pertaining to the source of the blame, and not to the content of the blame or to the blamed person's capacity to be blamed. To sum up this chapter, I have not found there to be an equivalent source-related reason that might preclude justified punishment. Neither the state's hypocrisy, complicity, nor exclusion of the offender has provided a reason why the state would lack moral standing to punish a culpable offender. Rather, I have found that if these issues are relevant to the right to punish at all, they are so indirectly, by undermining the culpability of the offender. Such might be the case if the state's complicity is so clear as to reduce the importance of the offender's role in the act, as

it would in a case of entrapment. Such might also be the case if the state has previously excluded the offender from society to the extent that they are not bound by the criminal law of that society, and are not therefore legally responsible. In both cases, then, the reason for the state's lack of right to punish lies with the offender's lack of culpability, and not with the source, i.e., the state's moral standing to punish.

More generally, we can conclude that *if* the state's criminal law is valid for severely deprived offenders, and *if* such an offender is criminally responsible for violating the law that they are bound by, then the state will also have the moral right to uphold that law by sanctioning the offender. There is no source-based condition on the right to punish that does not also affect the validity of the criminal law and the culpability of the offender.

This conclusion also follows from the freedom theory developed in Chapter Two, which, as we saw, builds on the Kantian notion that "right and authorization to use coercion […] mean one and the same thing".[50] The law is valid only if it is at the same time valid to uphold the law by hindering violations to the law. Without the right to protect one's rights, those rights would be empty, and as such they would not even qualify as proper rights. Hence, if the state's laws are morally legitimate, so is the moral legitimacy of upholding the laws. There are no source-based reasons why the state could not uphold law, given that the law applies to the act in question.

Here, then, is a conceptual argument against the notion that the state lacks standing to punish severely deprived offenders. The concept of a valid criminal law does not allow the possibility that the state can give a valid law that it has no legal right to uphold. The argument thereby differs from other arguments that have been made against the standing argument, which tend to focus on the scope of the argument and its practical relevance for the issue at hand.[51] If I am right that as a matter of conceptual truth the issue of standing to punish does not come up given that the law is valid and the offender is culpable, then it will be all the more important to identify the limits of the law's validity and the offender's culpability. It is to these questions that I devote the next chapters.

[50] Kant, 1996, 6:232.
[51] E.g. Matravers (2006, 329) who sees a problem in that "standing is an all-or-nothing affair", and Ewing (2018, 52) who for similar reasons bemoans "the underinclusive scope and the underwhelming force of standing to blame".

Literature

Bell, M. (2012). The Standing to Blame: A Critique. In D. J. Coates & N. A. Tognazzini (Eds.), *Blame: Its Nature and Norms* (pp. 0): Oxford UP.

Berman, M. N. (2021). Blameworthiness, desert, and luck. *Nous*. doi:https://doi.org/10.1111/nous.12405

Chau, P. (2012). Duff on the Legitimacy of Punishment of Socially Deprived Offenders. *Criminal Law and Philosophy, 6*, 247-254.

Cohen, G. A. (2006). Casting the First Stone: Who Can, and Who Can't, Condemn the Terrorists? *Royal Institute of Philosophy Supplement, 58*, 113-136. doi:10.1017/S1358246100009334

Dover, D. (2019). The Walk and the Talk. *The Philosophical Review, 128*(4), 387-422. Retrieved from https://doi.org/10.1215/00318108-7697850

Duff, R. A. (2001). *Punishment, Communication, and Community*. New York: Oxford UP.

Duff, R. A. (2010). Blame, Moral Standing and the Legitimacy of the Criminal Trial. *Ratio, 23*(2), 123-140.

Duus-Otterström, G., & Kelly, E. I. (2019). Injustice and the right to punish. *Philosophy Compass, 14*(2).

Dworkin, R. (1997). *Taking Rights Seriously*. London: Bloomsbury.

Edwards, J. (2019). Standing to Hold Responsible. *Journal of Moral Philosophy, 16*, 437-462.

Ewing, B. (2018). Recent Work on Punishment and Criminogenic Disadvantage. *Law and Philosophy, 37*(1), 29-68. doi:10.1007/s10982-017-9305-5

Ewing, B. (2023). Do Unjust States Have the Standing to Blame? Three Reservations About Scepticism. *Oxford Journal of Legal Studies, 43*(2), 249–272. doi:https://doi.org/10.1093/ojls/gqac031

Fritz, K. G., & Miller, D. J. (2018). Hypocrisy and the Standing to Blame. *Pacific Philosophical Quarterly, 99*(1), 118-139. doi:https://doi.org/10.1111/papq.12104

Fritz, K. G., & Miller, D. J. (2022). A Standing Asymmetry between Blame and Forgiveness. *Ethics, 132*(4).

Garvey, S. P. (2015). Injustice, Authority, and the Criminal Law. In A. Sarat (Ed.), *The Punitive Imagination*. Tuscaloosa: The University of Alabama Press.

Green, S. P. (2011). Just Deserts in Unjust Societies: A Case-specific Approach. In R. A. Duff & S. P. Green (Eds.), *Philosophical Foundations of Criminal Law*. New York: Oxford UP.

Herstein, O. J. (2017). Understanding Standing: Permission to Deflect Reasons. *Philosophical Studies: An International Journal for Philosophy in the Analytic Tradition, 174*(12), 3109-3132. Retrieved from http://www.jstor.org/stable/45094034

Herstein, O. J. (2020). Justifying Standing to Give Reasons: Hypocrisy, Minding Your Own Business, and Knowing One's Place. *Philsopher's Imprint, 20*(7).

Hohfeld, W. N. (1913). Some Fundamental Legal Conceptions as Applied in Judicial Reasoning. *The Yale Law Journal, 23*(1), 16-59.

Howard, J. (2013). Punishment, Socially Deprived Offenders, and Democratic Community. *Criminal Law and Philosophy, 7*(1), 121-136.

Howard, J. (2016). Moral Subversion and Structural Entrapment. *Journal of Political Philosophy, 24*(1), 24-46. doi:https://doi.org/10.1111/jopp.12060

Isserow, J., & Klein, C. (2017). Hypocrisy and Moral Authority. *Journal of Ethics and Social Philosophy, 12*(2).

Kant, I. (1996). *The Metaphysics of Morals*. Cambridge: Cambridge UP.
Kelly, E. I. (2022). The Ethics of Law's Authority: On Tommie Shelby's, Dark Ghettos: Injustice, Dissent, and Reform. *Criminal Law and Philosophy, 16*(1), 1-12.
King, M. (2019). Skepticism about the Standing to Blame. In D. Shoemaker (Ed.), *Oxford Studies in Agency and Responsibility Volume 6* (pp. 1-33 downloadable pdf-version). Oxford: Oxford UP.
Lewis, C. (2016). Inequality, Incentives, Criminality, and Blame. *Legal Theory, 22*(2), 153-180. doi:10.1017/S1352325217000052
Lippert-Rasmussen, K. (2021). Why the moral equality account of the hypocrite's lack of standing to blame fails. *Analysis, 80*(4), 666-674. doi:10.1093/analys/anaa009
Lippert-Rasmussen, K. (2022). Praising Without Standing. *The Journal of Ethics, 26*(2), 229-246. doi:10.1007/s10892-021-09374-2
Matravers, M. (2006). 'Who's Still Standing?' A Comment on Antony Duff's Preconditions of Criminal Liability. *Journal of Moral Philosophy, 3*(3), 320-330.
Moore, M. S. (2010). *Placing Blame: A Theory of the Criminal Law*. Oxford: Oxford UP.
Murphy, J. G. (1973). Marxism and Retribution. *Philosophy & Public Affairs, 2*(3), 217-243.
Rawls, J. (1999). *A Theory of Justice* (Revised Edition ed.). Oxford: Oxford UP.
Riedener, S. (2019). The Standing To Blame, or Why Moral Disapproval Is What It Is. *Dialectica, 73*(1-2), 183-210. doi:DOI: 10.1111/1746-8361.12262
Roadevin, C. (2018). Hypocritical Blame, Fairness, and Standing. *Metaphilosophy, 49*(1-2), 137-152. doi:https://doi.org/10.1111/meta.12281
Shelby, T. (2016). *Dark Ghettos: Injustice, Dissent, and Reform*. Kindle Edition: Harvard University Press.
Shepsle, K. A. (1992). Congress Is a "They," Not an "It": Legislative Intent as Oxymoron. *International Review of Law and Economics 12*(2), 239-256.
Tadros, V. (2009). Poverty and Criminal Responsibility. *The Journal of Value Inquiry, 43*(3), 391-413.
Telech, D., & Tierney, H. (2019). The Comparative Nonarbitrariness Norm of Blame. *Journal of Ethics and Social Philosophy, 16*(1).
Todd, P. (2019). A Unified Account of the Moral Standing to Blame. *Nous, 53*(2), 347-374. doi:https://doi.org/10.1111/nous.12215
Tognazzini, N., & Coates, D. J. (2016). Blame. *The Stanford Encyclopedia of Philosophy*. Retrieved from https://plato.stanford.edu/entries/blame/
Vogt, D. C. (2024). Why the Moral Equality Account of Hypocrisy Does Not Fail After All. *The Journal of Ethics, 28*, 171–186.
Wallace, R. J. (2010). Hypocrisy, Moral Address, and the Equal Standing
of Persons. *Philosophy & Public Affairs, 38*(4).
Yankah, E. N. (2019). Legal Hypocrisy. *Ratio Juris, 32*(1), 2-20. doi:https://doi.org/10.1111/raju.12234