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Jean Hampton's Theory of Punishment: A Critical Appreciation

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Jean Hampton's work first came to my attention in 1984, when the summer issue of *Philosophy & Public Affairs* appeared in my mailbox. Hampton's essay in that issue, "The Moral Education Theory of Punishment," did not persuade me—or many others, I suspect—that "punishment should not be justified as a deserved evil, but rather as an attempt, by someone who cares, to improve a wayward person" (Hampton 1984, 237). The essay did persuade me, though, that moral education is a plausible aim of punishment, even if it is not the "full and complete justification" Hampton claimed it to be (Hampton 1984, 209). It also persuaded me that I would do well to keep an eye out for further work by this gifted philosopher.

That judgment proved thoroughly justified when I read Hampton's *Hobbes and the Social Contract Tradition* (1986) and *Forgiveness and Mercy* (1988), which she coauthored with my then-colleague at Arizona State University, Jeffrie Murphy. In those books, as in her earlier essay, I found a rare and admirable combination of lucidity, analytical rigor, and social engagement. Here was a philosopher who cared deeply about ideas and how they can help us to live well. The news of Professor Hampton's sudden death in 1996 left me with a sense of personal loss, then, even though I had never met her. Like Jane Austen, from whose novels she drew examples, Jean Hampton died at the age of 41, leaving her admirers to regret, like Austen's, the loss of what she would have written had she lived longer.

What makes the regret especially poignant is the knowledge that Hampton had not reached a fixed position in her thinking. She had strong convictions, to be sure, but one never had the sense that she had thought her last thought or said her last word on any subject. In the case of punishment, in fact, she was clearly moving away from the moral education theory when she and Murphy published *Forgiveness and Mercy* in 1988, and subsequent publications confirmed her adoption of what she came to call the "expressive theory of retribution" (Hampton 1992). This shift was in part a response to others' criticisms of her attempt to justify punishment as a form of moral education, but it also reflected her own sense of the inadequacy of that justification. She was right to abandon the moral-education justification, in my view, and right to adopt a retributive theory in its place. There are two respects, though, in which I believe Hampton continued to be mistaken about punishment.

I

The first and more serious of these mistakes involves Hampton's criticism of an argument Herbert Morris advanced in his influential "Persons and Punishment" (Morris 1968). According to Morris, there is a close connection between the fair distribution of benefits and burdens in a rule-governed activity, on the one hand, and the justification of legal punishment, on the other. Someone who violates the rules, Morris reasoned,

> has something others have—the benefits of the system—but by renouncing what others have assumed, the burdens of self-restraint, he has acquired an unfair advantage. Matters are not even until this advantage is in some way erased. …[H]e owes something to others, for he has something that does not rightfully belong to him. Justice—that is, punishing such individuals—restores the equilibrium of benefits and burdens by taking from the individual what he owes, that is, exacting the debt. (Morris 1968, 478)

One need only think of the criminal law as a rule-governed activity or practice, as Morris did, to perceive the connection between the fair (or unfair) distribution of benefits and burdens and the justification of punishment. Those who followed Morris thus came to be known as advocates of the fair-play theory of punishment.

Hampton was not one of those who followed Morris down this path. She must have found something attractive in his reasoning, however, for she deemed "Persons and Punishment" one of the two "most persuasive brief presentations of retributive thinking" she had encountered—the other was P. F. Strawson's "Freedom and Resentment" (Murphy and Hampton, 95)—and she returned to it repeatedly in her writings on punishment. The attraction apparently resides in two features of Morris's theory: first, that it is retributive; and second, that it is at least potentially expressive or communicative. For if criminals deserve to be paid back for the wrong they have done in taking unfair advantage of the law-abiding members of society, as Morris argued, then society has a right to express its disapproval of the law-breakers' unjust conduct as it punishes them.[1]

These two features of the fair-play theory must have appealed to Hampton because they addressed what she came to regard as defects in the moral-education approach to punishment. One of these defects, as she said in acknowledging Joel Feinberg's criticism, is that there are "too many criminals on whom such a [morally educative] message would be completely lost; for example, amoral risk-takers, revolutionary zealots, sociopathic personalities" (Hampton 1992, 21). If moral education provides the "full and complete justification" for punishment that she once sought, then it would seem that there is no good reason to punish such people, no matter how heinous the crimes they committed. A second defect is that the moral-education approach neglects the victims of crime. By focusing on the "wayward person" who is to be improved through punishment, in other words, the moral education theory deflects attention from those who suffered at the hands of the offender. As she admitted in the course of her exchanges with Murphy in *Forgiveness and Mercy*, there is a sense in which criminals seek to lower, demean, or degrade their victims, and the law ought to do something in response to reaffirm the victims' human worth or value. She proposed, accordingly, that "retributive punishment is the defeat of the wrongdoer at the hands of the victim (either directly or indirectly through an agent of the victim's, e.g., the state) that symbolizes the correct relative value of the wrongdoer and victim. It is a symbol that is conceptually required to reaffirm a victim's equal worth in the face of a challenge to it" (Murphy and Hampton, 125-26).[2] In contrast to moral education, then, "retribution isn't about making a criminal better; it is about denying a false claim of relative value" (Murphy and Hampton, 133). Retribution is thus to be understood not only as a way of paying back the offender for the wrong he or she has done but also as an expression of society's refusal to accept the wrongdoer's implicit claim to be more important or valuable—of greater worth—than his or her victims. Hence Hampton's theory of *expressive* retribution.

In developing this theory, Hampton found it necessary to distinguish it from Morris's fair-play approach.[3] In doing so, she developed two criticisms of Morris's position. According to the first criticism, Morris's theory is insufficiently retributive. That is, Morris's reliance on the idea that punishment is a way of restoring the equilibrium between benefits and burdens upset by criminal wrongdoing leads him, and those who have followed, to a theory that "essentially makes retributive justice a species of distributive justice…" (Hampton 2007, 109). On such a view, punishment is nothing more than a matter of depriving people of undeserved advantages so as to return the benefits and burdens of social cooperation to their proper balance. Morris's theory is headed in the right direction, Hampton says, in that it attempts to provide an account "of what it is that makes an action wrong"; but the attempt fails because Morris's account "is simply incorrect" (Hampton 1991, 5; also Hampton 2007, 110).

This claim flows from Hampton's second line of criticism, which she shares with other critics of the fair-play theory. Morris's account of the wrongfulness of criminal actions is mistaken, Hampton argues, because it requires us to take an "odd, even disturbing view of crime" according to which rape, robbery, murder, and other criminal acts are nothing more than ways of gaining an unfair advantage (Hampton 1991, 4)—an advantage, moreover, that we would presumably wish to enjoy ourselves. Such a view is not only incorrect but "repulsive"; for "those who value right relationships with others do not find laws against extortion or rape or theft burdensome constraints that they would willingly throw off if only such constraints weren't

collectively rational" (Hampton 1991, 4). The wrongfulness of crime must reside elsewhere; and on Hampton's account, it resides in criminals' attempts to degrade or demean their victims.

These are cogent criticisms. Nevertheless, I believe them to be mistaken. To begin with Hampton's complaint that Morris's approach is insufficiently retributive, it is easy to see why she thinks that Morris in effect reduces retribution to a matter of distribution. But there is more to Morris's argument—and more that is helpful to Hampton's position—than Hampton acknowledges. As Hampton herself admits, Morris's approach more easily accounts for the wrongfulness of some crimes than her own theory does. It is much easier, for example, to conceive of tax evasion, shoplifting, and speeding as forms of free riding on the cooperative efforts of others than it is to see them as attempts to demean or degrade others. Yet Hampton tries to turn this difficulty into an advantage of her theory in the following way: "it is not so much the free-riding as what the free-riding symbolizes about the worth of the victim, that makes the tax evasion wrong" (Hampton 1991, 24, n. 11). In saying this, I take it, she means tax evaders and other free-riding criminals are doing something more, and worse, than simply seeking an advantage for themselves. They are also acting on the belief that they are of greater value or worth than those nameless, faceless people whose law-abiding cooperation makes it possible for them to enjoy the benefits of the legal order without bearing their fair share of its burdens. These criminals are not only free riders, in other words; they are wrongdoers who must be defeated in order to deny the false claims their actions imply about the relative value of the wrongdoers and their victims.

This position is, I believe, correct. But it is also, contrary to what Hampton says, substantially the same as Morris's position. Hampton draws the contrast between her position and Morris's in this way: "Morris thought that we objected to free riders merely because they got something for nothing and we did not. I am arguing that this situation bothers us in a morally significant way because of how it represents them as superior to us—with entitlements to goods and services that we cannot claim" (Hampton 2007, 130). To characterize Morris's argument in this way, however, is unfair.

If Hampton were right, then Morris would be saying that criminals are on a par with the person who is simply lucky enough to enjoy a windfall, for both get something for nothing. But Morris says nothing of the kind. One need only look to the passage from "Persons and Punishment" reproduced above to see that he takes the rule breaker to be "*renouncing* what others have assumed, the burdens of self-restraint" (Morris 1968, 478, emphasis added). Moreover, the rule-breaker must *act* to take unfair advantage of others, thereby *acquiring* something that does not "*rightfully* belong to him" (Morris 1968, 478, emphasis added). Other passages from "Persons and Punishment" make the point even more clearly, beginning with Morris's striking claim that "we have a right to punishment" that "derives from a fundamental human right to be treated as a person…" (Morris 1968, 476). This claim Morris develops by way of a contrast between punishment and therapy, with the former being the appropriate treatment for a *person* who violates "the core rules of our criminal law"—rules "that prohibit violence and deception and compliance with which provides benefits for all persons" (Morris 1968, 477). But these benefits, as we have seen, are possible only because enough people bear the burden of exercising self-restraint "over inclinations that would, if satisfied, directly interfere or create a substantial risk of interference with others in proscribed ways" (Morris 1968, 477). The lawbreaker does not simply *happen* to enjoy an advantage over others, in short. He takes steps to gain this advantage without regard to the rights that others have, as persons, to fair treatment. That is why the punishment of lawbreakers is "associated with resentment, for the guilty are those who have done what they had no right to do by failing to exercise restraint when they might have and where others have" (Morris 1968, 483). It is also why we try to make the punishment fit the crime by aiming at "some equivalence between the advantage gained by the wrongdoer—partly based upon the seriousness of the interest invaded, *partly on the state of mind with which the wrongful act was performed*—and the punishment meted out" (Morris 1968, 483-84,emphasis added). On Morris's account, in sum, the rule breaker is not merely someone who, in Hampton's words, "got something for nothing and we did not." For Morris, as for Hampton, the rule breaker is wrong, and deserving of punishment, because his actions reveal that he holds himself to be superior to, or more important than, those whose cooperation he is exploiting and whose value as persons he is demeaning.

Hampton is wrong, then, to characterize Morris's theory as insufficiently retributive. She could concede this point, however, while continuing to insist that her expressive retributivism is superior to the fair-play theory of punishment. After all, Morris and other advocates of the fair-play theory are still in the embarrassing position of reducing rape, murder, assault, and other terrible crimes to the status of free-rider offenses, such as tax evasion and littering. But are they? Elsewhere I have responded to others who have raised this criticism (Dagger 1993, 2008), but for present purposes two brief comments seem to be in order. The first is that Hampton's attempt to indicate how her expressive retributivism can account for tax evasion and other crimes of free riding is a kind of philosophical two-way street. That is, if Hampton can appeal to "what the free-riding symbolizes about the worth of the victim" to explain how the free riding is wrong (Hampton 1991, 24, n. 11), then Morris and the advocates of the fair-play theory can appeal to similar considerations when they apply their theory to murder, rape, and other crimes that are more than merely matters of free riding and unfair play. If free riding expresses a kind of contempt or disrespect for others, then it differs only in degree from the egregious crimes that bespeak, according to Hampton, a false claim about the relative value of victim and wrongdoer. There is also the question—and this is my second point—of who is to do the punishing. As we have seen, Hampton holds that "retributive punishment is the defeat of the wrongdoer at the hands of the victim (either directly or indirectly through an agent of the victim's, e.g., the state) that symbolizes the correct relative value of wrongdoer and victim" (Murphy and Hampton, 125). But what is it that makes the state the victim's agent? To answer this question we shall need a theory of legal authority; and that is something Morris's approach can supply by reference to the state as the agency that maintains the cooperative, rule-governed enterprise that we call the rule of law.

II

In my view, then, Hampton's criticism of Morris's theory rests on a misunderstanding of his enterprise—an enterprise that is grounded, like hers, in the idea of the equal worth of persons. Playing fair is in large part a matter of respecting the equal worth of others, and punishment is justified, for Morris as for Hampton, as a way of denying the wrongdoer's implicit claim to superior status. Hampton's theory of punishment would be stronger, therefore, if she had built on, rather than rejected, Morris's insights. I shall try to substantiate this claim shortly, but it is necessary first to identify the second mistake in her writings on punishment.

This mistake occurs in the course of Professor Hampton's movement from the moral-education theory of punishment to

expressive retributivism. I believe, as I have said, that she was wise to move in this direction, but I believe she erred in adopting a pluralistic approach to punishment as a result. In "The Moral Education Theory of Punishment" Hampton not only argued that moral education "can provide a full and complete justification" for punishment; she also criticized "patchwork" approaches to punishment that draw on more than one justificatory reason (Hampton 1984, 209).[4] When she concluded that moral education cannot provide the "full and complete justification" for punishment that she was seeking, however, she apparently decided that no unitary justification is to be found. Retribution thus came to be the "primary justification" of punishment in a theory that also includes deterrence and moral education as "moral obligations of states"—obligations that "can affect, *and sometimes override*, the obligation to inflict retributive punishment" (Hampton 2007, 149, emphasis added).

The problem here is not that Hampton tried to find room for considerations of deterrence and moral education in her theory; the problem is that she did not try to integrate them into the kind of unitary or unifying approach she had endorsed in "The Moral Education Theory of Punishment." As a result, her theory offers no clear way of accommodating the sometimes conflicting demands of retribution, moral education, and deterrence. Hampton has not been the only philosopher to take a pluralist approach to punishment, of course, and it may be that some kind of awkward, *ad hoc* juggling is the best we can do when these considerations seem to be at odds with one another. Relying on juggling of this kind is not the most elegant or desirable theoretical posture, however, and Hampton would have done well to look for a way to provide greater unity to her theory. Had she lived longer, I suspect that she would have done so. But she had already dismissed, as we have seen, the theory that I believe can bring retribution, deterrence, and moral education into harmony—that is, the theory of fair play.

In brief, the fair-play theory conceives of the legal order as a cooperative enterprise in which the members have a duty to one another, *ceteris paribus*, to do their part in the enterprise by obeying the law. Punishment under law serves as a means of assuring the law-abiding members of the enterprise that those who would take advantage of their cooperation by breaking the law will be subject to sanctions if they do. Those who do not play fair thus open themselves to punishment. In this way the fair-play theory incorporates both forward-looking elements and the backward-looking point of view characteristic of retributivism. Fair-play punishment is backward-looking, or retributive, in that it is to be imposed only on those who have committed an offense; no other consideration, such as deterrence, is a sufficient warrant. But punishment on the fair-play account is also forward-looking in two respects. First, it aims to deter the commission of crimes, thereby providing a measure of assurance to those who are willing to obey the law that others will not take unfair advantage of them. And second, fair-play punishment looks to the future by aiming at the reform or moral education of those who break the law. One of the purposes of punishment, in other words, will be to support the cooperative enterprise by helping those who have not played fair to see the error of their ways.[5] By doing so, punishment can help to secure the cooperative enterprise as it pays back wrongdoers for actions that, in one way or another, to lesser and greater extents, have failed to respect the equal worth of other members of the enterprise.

Such an approach to punishment will not eliminate the occasional tensions that arise when considerations of retribution, deterrence, and moral education pull in different directions. Fair play is not a unitary theory in the sense that classical utilitarianism is, with a single, (supposedly) simple principle supplying the standard according to which all judgments and decisions are to be made. But neither is it a theory that requires independent and rival considerations to be patched together, case by case; nor does it provide a "primary justification" for punishment that other considerations may "sometimes override," as Hampton's expressive retributivism does. When the tensions do arise among retribution, deterrence, and moral education—and perhaps other considerations—the fair-play theorist will have resources for reconciling the tensions. In the case of the desire to enhance the deterrent or educative effect of punishment, fair-play theory requires us to look for ways in which greater deterrence or better moral education can strengthen the cooperative enterprise by bringing the benefits and burdens of the enterprise into a better balance. Perhaps stricter sentences will reduce the number of certain offenses, for example, and thus provide greater assurance to law-abiding people that their cooperation is not in vain; or perhaps efforts to promote reparation and reintegration will contribute to this assurance by leading to a decline in recidivism and a rise in the number of law-abiding members of society. Cooperative enterprises are not static, after all; they require adjustments and adaptation. But if investigation reveals that enhanced deterrence or improved moral education are only to be achieved at the expense of the fairness of the enterprise, then those demands must be rejected; they cannot override the basic commitment to fair play. Whether such demands should or should not be rejected will not always be easy to determine. Judgments will differ, and debate may persist. Even so, fair-play theory offers valuable guidance in these matters, including standards that set the terms of the debate. In this respect, it is clearly superior to a patchwork approach to the justification of punishment.

III

I have argued that Jean Hampton was mistaken when she rejected the fundamental insight of Herbert Morris's "Persons and Punishment" and mistaken when she gave up her attempt to develop or discover a unitary rather than a pluralist justification of punishment. I do not mean to suggest, though, that Hampton's writings on punishment are fundamentally misguided or unworthy of serious consideration. On the contrary, Hampton's writings on punishment, as on other subjects, are rich with insight and far more often right, in my view, than wrong. To illustrate this point—and to indicate how Hampton's theory of punishment would be strengthened by grounding it in fair play—I shall turn in conclusion to an essay published two years after her death.

This essay, "Punishment, Feminism, and Political Identity: A Case Study in the Expressive Meaning of Law" (Hampton 1998), is a product of the invitation Hampton received in 1995 to testify as an expert witness in a case in Canada. The case involved the Canadian practice of suspending voting rights of prisoners serving sentences of two years or more—a practice that some prisoners challenged as a violation of their rights under the Canadian Charter of Rights and Freedoms adopted in 1982. Hampton accepted the invitation, testified on behalf of the government, and subsequently elaborated her reasons for doing so in this fascinating essay.

These reasons, not surprisingly, are drawn from her theory of expressive retributivism, with nods to deterrence and moral education. In particular, she argues that Canada is justified in denying voting rights to serious offenders during their prison terms as a form of *expressive punitive response*. It is justified because those who commit crimes that damage their victims' ability to live as free and equal members of the political society are in a sense attacking the core political values of a democratic society. It is fitting, then, that society respond with an expression

of its refusal to countenance such actions by, among other things, disenfranchising these offenders. As Hampton puts the point,

> When we vote, we do something. …Our hands are on the levers of political power. Now we would not give that lever to an enemy of our state—someone who would want to destroy it, or who wants to undermine the values animating it. We would not do such a thing because it would be a betrayal both of our country and of the values we believe it stands for, especially the values of freedom and equality. (Hampton 1998, 41)

Because serious offenders have acted in ways that "undermine the values animating" the democratic state, it is entirely proper that their punishment include disenfranchisement while they are imprisoned.

Hampton also appeals to moral education and deterrence to support this conclusion. In the former case, her claim is that "[e]xpressive punitive responses, such as the suspension of voting rights, have the potential for provoking thought that can bring about a change in the wrongdoer's way of thinking about himself and his society" (Hampton 1998, 43). Moreover, this policy has the salutary effect of telling not only offenders but every member of the society that "this law links the exercise of freedom with responsibility for its effects" (Hampton 1998, 43), thereby extending its value as a form of moral education to the entire population. With regard to deterrence, Hampton acknowledges that the standard arguments are not likely to apply, for there is no reason to believe that the prospect of losing one's right to vote by itself would deter anyone from committing the kind of serious offense that leads to a sentence of two years or more in prison. Still, she argues, the policy of disenfranchisement "hopes to achieve an *educative deterrent effect*, based upon its ability to make us think. Whether or not prisoners in penitentiaries reflect on what this law means, perhaps the rest of us will, reaching conclusions about what society expects of us in our conduct and attitudes toward others that will make us better citizens" (Hampton 1998, 43-44, emphasis added).

In addition to these appeals to the three considerations she identified in her earlier essays as the elements of a satisfactory justification of punishment—retribution, moral education, and deterrence—Hampton also draws on two other considerations important enough to feature in the title of her essay: feminism and political identity. Feminism is important to her position here largely as a means of countering an argument made by expert witnesses who testified on behalf of the plaintiffs in this case—that is, on behalf of the convicted offenders who were seeking to have their voting rights restored while serving their sentences. According to Hampton's account, these witnesses maintained that the offenders were themselves typically the victims of oppression and abuse, so that suspending their voting rights amounted to adding insult to the injuries they had already received. In response, Hampton argues that serious offenders are overwhelmingly male and many of their offenses have been directed against women. In these cases, their crimes are "forms of hate crimes—ways not only of hurting particular women but also of subordinating women as a whole. To hand the levers of political power over to someone whose behavior manifests an intention to accomplish the subordination of women to men undermines not only the democratic value of equality but the status and safety of women in that society" (Hampton 1998, 41-42). She thus links feminism to "political identity," and particularly the identity of a polity committed to democratic values, which "not only helps to hold the pluralist society together but also helps people to have a sense of themselves as members of that political community" (Hampton 1998, 23).

Is Hampton right to defend laws that suspend the voting rights of serious offenders? I believe so. But I believe that the position she defends would be even stronger were it couched in the terms of the fair-play theory of punishment. For one thing, as I indicated in the previous section, these terms would provide her with a more coherent basis for her arguments than the various considerations she invokes. For another, fair-play theory points to a second conclusion about the voting rights of felons that I am confident Hampton would want to endorse—that is, the conclusion that these offenders must regain the vote when their sentences come to an end. Once the debt to society has been discharged, it is only fair that the ex-offender be restored to full membership in society. Finally, fair-play theory provides a firmer basis for Hampton's position than does her appeal to "political identity." Law, as she says, can be "a significant expressive force" in a community by "symbolizing the community's sense of its values and (what I will call) its 'political personality'" (Hampton 1998, 23). This appeal to political identity or personality, however, will produce the results Hampton wants only when the values of the community are democratic values that respect everyone as a free and equal citizen. In a thoroughly hierarchical and highly traditional society, Hampton's attempt to link concerns about the domination and oppression of women to the society's "political personality" would be a nonstarter. What she needs is a conception of the political and legal order that is grounded not in identity or personality but in the conviction that the properly functioning order is a cooperative enterprise in which the members enjoy rights and incur duties to one another as free and equal citizens. Such a conception is at the heart of the fair-play theory of punishment.

IV

How would Jean Hampton respond to the points I have raised in this essay? I like to think that she would recognize their merits and conclude that the fair-play theory draws together and harmonizes all of the elements that she thought necessary to the justification of punishment. But even if she were to grant this much, I suspect that she would also insist that the advocates of fair-play theory have paid too little attention to the sufferings of victims and the moral improvement of offenders. And she would be right.[6]

References

Dagger, Richard. 1993. "Playing Fair with Punishment." *Ethics* 103:473-88.

———. 2008. "Punishment as Fair Play." *Res Publica* 14:259-75.

———. 2011. "Playing Fair with Recidivists." In *Recidivism and Punishment: The Philosophers' View*, edited by Jesper Ryberg and Claudio Tamburrini. Lanham, MD: Rowman & Littlefield.

Hampton, Jean. 1984. "The Moral Education Theory of Punishment." *Philosophy & Public Affairs* 13:208-38.

———. 1986. *Hobbes and the Social Contract Tradition*. Cambridge: Cambridge University Press.

———. 1991. "A New Theory of Retribution." In *Liability and Responsibility*, edited by R. G. Frey and C. W. Morris, 377-414. Cambridge: Cambridge University Press.

———. 1992. "An Expressive Theory of Retribution." In *Retributivism and Its Critics*, edited by Wesley Cragg, 1-25. Stuttgart: F. Steiner, Verlag.

———. 1998. "Punishment, Feminism, and Political Identity: A Case Study in the Expressive Meaning of Law." *Canadian Journal of Law and Jurisprudence* 11:23-45.

———. 2007. *The Intrinsic Worth of Persons: Contractarianism in Moral and Political Philosophy*, edited by Daniel Farnham. Cambridge: Cambridge University Press.

Morris, Herbert. 1968. "Persons and Punishment." *The Monist* 52:475-501.

———. 1981. "A Paternalistic Theory of Punishment." *American Philosophical Quarterly* 18:263-71.

Murphy, Jeffrie, and Hampton, Jean. 1988. *Forgiveness and Mercy*. Cambridge: Cambridge University Press.

Strawson, P. F. 1974. *Freedom and Resentment, and Other Essays*. London: Methuen.

Endnotes

1. Morris's commitment to the expressive or "communicative component" of punishment is clearer in another essay of his that Hampton frequently cited (Morris 1981).
2. The quoted passage also appears on pp. 398-99 of Hampton 1991, which pulls material from chaps. 2 and 4 of Murphy and Hampton into a single essay.
3. In addition to Murphy and Hampton, pp. 114-16 (and the corresponding pp. 384-86 in Hampton 1991), see Hampton 1992, pp. 4-5, and pp. 109-110 of her essay, "Righting Wrongs: The Goal of Retribution" in Hampton 2007. This last essay originally appeared as "Correcting Harms and Righting Wrongs: The Goal of Retribution," *UCLA Law Review* 39 (1992): 1659-1702.
4. The reference to the "patchwork approach to punishment" occurs in n. 2, which begins on p. 208 of Hampton 1984. Hampton refers in particular to Herbert Morris's endorsement of such an approach in Morris 1981.
5. For elaboration of this point, see Dagger 2011.
6. Thanks to Herbert Morris, Jeffrie Murphy, and the editors for helpful reactions to an earlier draft of this essay.