

## **Responding to Wrongdoing: Comments on Christopher Bennett's *The Apology Ritual***

Sergi Rosell

### RESUMEN

En este artículo se presentan tres dificultades principales para la posición de Bennett. En primer lugar, ¿no está el retributivismo en una situación peor si se admite (como hace Bennett) que aquello por lo que somos moralmente responsables, y culpables, está en gran medida sujeto a la suerte? En segundo lugar, nuestras prácticas morales incluyen reacciones a las malas acciones, que consideramos apropiadas y a menudo admirables, en las que no parece haber presente ningún elemento de hostilidad. Finalmente, existen diferencias importantes entre la censura y el castigo que ponen en cuestión la meta de entender y justificar el castigo legal como una mera proyección de la censura.

PALABRAS CLAVE: *censura, castigo, retribución, responsabilidad moral, suerte.*

### ABSTRACT

I present here three main difficulties for Bennett's account. First, it seems that retributivism is in a worse position if we admit (as Bennett does) that that for which we are morally responsible, and blameable, is to some extent subject to luck. Second, our moral practices include reactions to wrongdoing in which no vindictive element seems to be present, and we still regard them as appropriate and often admirable. Finally, there are important differences between blame and punishment that make problematic the aim of understanding and justifying legal punishment as a mere projection of blame.

KEYWORDS: *Blame, Punishment, Retribution, Moral Responsibility, Luck.*

Christopher Bennett's aim in *The Apology Ritual* (2008) is to put forward a philosophical theory of punishment which is fundamentally retributivist, although it also includes significant insights from restorative justice. In particular, he offers an account of legal punishment modelled on the ordinary practices of blame and apology. So, a first key point is for him to show that there is an appropriate link between legal (formal, state) punishment and the

ordinary notions of blame (as a kind of moral or interpersonal sanction) and apology (as the wrongdoer's morally expected response to her own wrong in interpersonal contexts). Additionally, Bennett argues that blame involves adverse reactive attitudes by whose expression we withdraw our goodwill or respect to the wrongdoer, which in turn involves a commitment to retribution, i.e. to hard treatment or to making the wrongdoer suffer. On this view, when we genuinely blame someone, we are necessarily treating her harshly or intending to make her suffer, as something we owe to her. So, a second key point is for him to convincingly argue that blame is non-contingently connected to the idea of hard treatment or the willingness to see the offender suffer (in response to wrongdoing), since this connection seems essential for a theory to count as retributivist. Both points are crucial for the success of the book's overall argument.

I have to confess that I tend to sympathise with much of what Bennett has to say, especially regarding his account of moral responsibility and his reply to the sceptical Argument from Luck. But beyond this general sympathy, I have some particular reservations regarding the two crucial steps of his account that I have mentioned — i.e. the analogy between ordinary blame and apology, and state punishment, on the one hand; and the commitment to hard treatment, on the other — on which I want to press here. I will start by commenting on Bennett's answer to the luck argument and will then move on to discuss his account of blame, and will finish with the issue of the projection of this account to legal punishment.

### I. 'THE ARGUMENT FROM LUCK'

Both Bennett's articulation of the sceptical argument against moral responsibility and his answer to it are quite remarkable. Instead of framing the discussion about the possibility of moral responsibility in the traditional terms of whether this is or is not compatible with determinism, Bennett shifts the scenery and rephrases the debate in terms of luck — or lack of control, luck and control being antithetical. This has an evident advantage, which is the inclusion of cases of agents acting in indeterministic scenarios in which control is also absent. The real issue, at the end of the day, is the challenge that lack of (full) control poses on moral responsibility. Interestingly too, he puts the challenge in terms of fairness: 'only if we had ultimate control over ourselves could it be just or morally appropriate to treat us in that way: the presence of luck makes that [hard] treatment unjust' [p. 50].

In answering this challenge, Bennett puts forwards a novel defence of Peter Strawson's (1962) account of moral responsibility which relies on the idea of the wrongdoer's 'right to be punished' and is also an argument for the need of retribution. I will discuss this argument in the next section. At present

I want to propose a distinction regarding the role of luck in moral responsibility judgments which, subsequently, I will apply to Bennett's reply to the Argument from Luck.

One evident way in which the presence of luck is disturbing regarding moral responsibility is that it could undermine the kind of freedom or control required for moral responsibility. This is what is typically at issue in the sceptical challenges to moral responsibility and the point is that if we lack the kind of freedom or control required for moral responsibility we are not morally responsible at all, with the result that moral responsibility is an illusion. But there is another way in which luck can interfere in moral responsibility, which is the way involved in the so-called issue of *moral luck*. Even if we were morally responsible agents who were real originators of our actions and character, some accidental or circumstantial factors could still interfere with our actions and even our character, so that cases of moral luck could anyhow be presented. Take for instance the case of an influent libertarian like Robert Kane [see esp. Kane (1996)], who must accept that, in his self-determining and self-forming willings and actions, what action the agent specifically ends up performing is partially a matter of luck, even though she had good reasons for willing and performing any of the different actions at stake and is no doubt morally responsible for the one actually performed, independently of which one it is. Of course, compatibilists are in general supposed to be more ready to accept the existence of (at least, some kinds of) moral luck. The issues of moral responsibility scepticism and moral luck are thus partially independent, despite the fact that both questions are connected and the further back we go in uncovering aspects of agents' actions and character, the closer the sceptical challenge to moral responsibility and the moral luck issue become — to the extent that, at some point, both questions may rest on the same issue.

Now, it seems to me that Bennett mainly focuses on the first issue — his Argument from Luck is certainly a reformulation of the sceptical argument — and does not clearly address the second — the moral luck issue. But this second issue is also a potential problem for the fairness of retribution, independently of the first one. Let us accept that his reply to the Argument from Luck is sound (as I mainly regard it to be). Nevertheless it seems that moral luck — particularly, in the circumstances we face and in the consequences of our actions — raises extra doubts about the fairness of retributive responses, since agents may still not be equally in control of their actions and character or may be more or less lucky in the circumstances that they have to face or in the results of what they do.

I find difficult to infer from what Bennett says in the book what his position concerning moral luck (in its different kinds) is. Maybe we should conjecture from his answer to the sceptical argument (especially after its restatement on pages 59 to 62) a favourable disposition to endorse moral luck, given his acknowledgement that there is room for luck in the extent to

which people will be subject to the reactive attitudes, since these are responsive to the agent's exhibition of the character trait that reflects her response to the moral demands and having this trait or not may not be her fault [pp. 61-2]. Another clue, though it is not clear to me where it points to, comes from his remarks about the need to take some account of luck, in order to discount accidental action, action from ignorance and the like, or the lack of the capacity for full engagement in interpersonal relationships and moral capacities. The rationale for discounting these cases is that luck is conditioning features which are irrelevant to the assessment of *the quality's of a person's will* [p. 62]. So, in a plausible interpretation, this account would not exclude circumstantial moral luck, but would surely reject consequential moral luck, since consequences (at least those unforeseeable) may be supposed to be irrelevant to assess one's quality of will.

To restate my main point in this section, even if Bennett has successfully showed that the sceptical argument illegitimately infers from our absence of ultimate control that we are not morally responsible at all, he has acknowledged that a lot of luck enters into the sphere of moral agency; so that his opponent could just say: 'Ok, I accept that (a certain amount of) luck does not preclude moral responsibility, but it definitely calls for a milder reaction to wrongdoing, since luck is unequally distributed.' Therefore, a successful reply to the sceptic is still far from paving the way for retribution. I move on then to Bennett's direct argument for retributivism.

## II. BLAME AND RETRIBUTION

Building on Strawson's insights, Bennett argues for retributivism by presenting an interpretation and defence of the idea that a wrongdoer has 'the right to be punished' — or, more exactly, 'the right to be evaluated as a member of moral relationships' [p. 62]. Each of us, as rational and morally capable agents, has the right to be *taken seriously* as a member of moral relationships, and this involves not suspending expectations and demands toward someone who does not meet previous expectations or demands, but rather holding her accountable for her deeds. So, the proper reaction to wrongdoing is to *withdraw our goodwill*, which is the way we have of showing our disapproval of this person's not meeting the relationship's demands. Not to blame wrongdoers would amount to fail to recognise or respect them as full members of valuable social relationships. Moreover, we express this withdrawal through adverse reactive attitudes, such as indignation and resentment. And these reactive attitudes are retributive in nature. Thus, Bennett reconstructs Strawson's account as 'a normative argument in favour of retributivism, or at least in favour of certain emotional attitudes that we can see as the basis of our sense of retributive justice' [p. 51].

I tend to agree with most of this story. However, my doubt is whether it is not possible for us to blame (or to judge morally blameworthy) someone, without expressing (or just feeling) any kind of suffering-aimed adverse emotional reactivity towards her. Indeed some historical morally admirable figures, like Mahatma Gandhi and Martin Luther King, are supposed to have maintained this kind of non-vindictive response to wrongdoing — at least in certain crucial occasions. It is assumed that their condemnation of their oppressors or opponents lacked any adverse reactivity in the way retributivism requires. They apparently attempted to change their oppressors' behaviour by appealing to their conscience, i.e. through dialogue and mere moral argument, avoiding any wish of making them suffer.

Bennett presents a dilemma in understanding King's and Gandhi's attitudes: either their responses were retributive in a minimal sense, and this is the only way of recognising their adversaries as qualified members of some shared moral relationship; or they were not retributive at all, but then they were disrespectful to those towards whom they were addressed [pp. 109-110]. Certainly, this last interpretation would imply that Gandhi and King considered themselves as morally superior to their adversaries, but this seems contrary to our natural understanding of their conducts and the admiration they generate. So, it may seem that the first interpretation is the right one.

I agree that the second interpretation is inappropriate — it clearly contradicts our intuitions about the case — but also is Bennett's final judgment that King's and Gandhi's attitudes involved a minimal retributive aspect. The crucial point is whether we can interpret their attitudes as expressing the right respect owed to qualified members of the relationship, i.e. as taking seriously enough their actions as self-governing, without these attitudes having to involve any retributive element. On a non-vindictive view of blame, King and Gandhi did change their attitudes toward their oppressors, as a response to their abuse or deterioration of the relationship, but they did it with no need of expressing any retributive attitudes. If this characterization is plausible (and this is the issue), it seems that it clearly fits better with our shared understanding of King and Gandhi's attitudes and the merit we confer to them.

Let us consider the following speech, from Anton Chekhov's short story *New Villa*, which I take as representing a clear case of the kind of non-vindictive blame that I have in mind. The engineer Kutcherov and his wife arrive at a little village with the governmental mission of building a bridge. Once there, they get captivated by the countryside charm and decide to build their own house near the village. The Kutcherovs want to establish a good relationship with the villagers, but the villagers misuse the Kutcherovs' good will and, after some time of unfruitful trying, the engineer goes to meet the villagers and addresses them:

I've been waiting to talk to you for some time, lads,' he went on. 'The thing is, your cattle have been in my garden and woods every day since early spring. It's all been trampled up. Your pigs have dug up the meadow, they've ruining the vegetable plot, and I've lost all the saplings in my wood. I can't get on with your shepherds, they bite your head off if you ask them anything. You trespass on my land every day, but I do nothing, I don't get you fined, I don't complain. Now you've taken my horses and bull — *and* my five roubles.

'Is it fair, is it neighbourly?' he went on, his voice soft and pleading, his glance anything but stern. 'Is this how decent men behave? One of you cut down two young oaks in my wood a week ago. You've dug up the Yeresnevo road, and now I have to go two miles out of my way. Why are you always injuring me? What harm have I done you? For God's sake, tell me! My wife and I do our utmost to live with you in peace and harmony; we help the peasants as we can. My wife is a kind, warm-hearted woman; she never refuses to help. That is her dream—to be of use to you and your children. You reward us with evil for our good. You are unjust, my friends. Think of that. I ask you earnestly to think over it. We treat you humanely; repay us with the same coin.

[...] Rodion, who always understood everything that was said to him in some peculiar way of his own, heaved a sigh and said: We must pay. "Repay in coin, my friends"... he said [Chekhov (1998), pp. 210-1].

It is clear in the story that Rodion the blacksmith — leader of this side of the villagers — does not really understand what he and his fellows are being told. Kutcherov does not seem to be looking for retribution, but is just prompting them to think about all the wrong things they have been doing to him. Some may say that this is more a sort of complaint than proper blame, but it definitely appears to be a reaction that is responsive to the wrong done, but non-vindictive at all. My point is not that this kind of non-retributive response is the only appropriate one ever, but that non-retributive blame is also a genuine kind of blame, together with retributive blame.<sup>1</sup> And if this is so, then blame is not *necessarily* retributive (nor *characteristically* retributive, since cases like this are significant), although it might still be *typically* or *more frequently* retributive. Kutcherov just wants them to realize how badly they have been acting, and then to stop acting like that. I can't find this disrespectful to them as full, qualified members of the relationship.<sup>2</sup>

In short, I find Bennett's answer to the challenge arisen by King and Gandhi cases unappealing because either our praise for them is due to the kind of non-retributive dialogue that they propose; or, if this praise could be made compatible with a minimal retributive factor, then it would be a somewhat trivial one, in order for the case not to lose its intuitive appeal — an appeal which lies in the contrast between their *calm* attitudes (or low tone in adverse feelings where the retributive element, if any, is definitely negligible), and clearly overt retributive responses or 'vindictive sentiments.' It seems to me then that Bennett, in accordance with his own account, should rather conclude that the attitudes displayed by King and Gandhi are not ex-

amples of a superior or even appropriate form of blaming behaviour which merits imitation — or that Kutcherov's second reaction (see footnote 1) is always more appropriate than the first one. If our responses to wrongdoing ought to be proportional, in terms of showing the right amount of retributive reactivity or of making the wrongdoer suffer, then King and Gandhi responses are clearly inadequate.

An additional reason that Bennett offers for considering King and Gandhi's response as retributive is their thinking that their oppressors had the obligation to put things right in order to redeem themselves, 'for this would be a sign that, however they expressed it, they did blame their enemies in the sense of seeing distance between them that had to be made up before they could treat one another normally' [p. 111]. But this argument is unacceptably assuming that any recognition of an offence and of the obligation of *putting things right* involves a commitment to retribution. It sounds like taking for granted that only the presence of retributive aspects can make the difference, when we are precisely investigating whether a kind of blame that dispenses with retribution is viable.

### III. FROM BLAME TO PUNISHMENT

The final point that I want to address is that of the continuity between the notions of blame and apology, and state punishment — as an institutional version of the former [p. 152 ff]. Certainly, there exist both important analogies and disanalogies between them, and actually Bennett's argument relies on a shared general structure, modelled upon ordinary blame and apology, but it also stresses important differences which mean that that structure should be only ritualistically projected to legal punishment — resulting all together, it is fair to say, in a nicely and robustly articulated account.<sup>3</sup> However, it is still true that a crucial difference between them could turn out to be fatal for the project of grounding legal punishment on an account of ordinary blame and apology, so that they may require independent and distinct justifications. I will conclude, therefore, by putting forward a possible crucial difference regarding the distinct effect of blame and punishment on their receiver.

I find it plausible to assume that blame and punishment have different sorts of *success* or *felicity conditions*. In particular, I am thinking of the different role played by the recipient in blame and punishment. Even if blame and punishment are both ways of responding to wrongdoing, blame seems to depend upon the recipient's attitude in a way that punishment does not. This is because, in order to actually *impact* on the recipient, blame needs to be acknowledged by her. I do not mean that a person cannot actually be blamed unless she acknowledges the blame, but just that blame does not affect the blamed person if she does not perceive it as just or justified.<sup>4</sup> If someone in-

tends to blame me, but I regard this blame as unjust, I will not typically feel blamed. Punishment, however, does not depend to the same extent on the receiver's response to it. A person will be punished — in the sense that she will be hard treated, as retributive punishment implies — even if she does not recognise this punishment as justified. In this sense, and very roughly put, blame is subjective (or requires some kind of rational endorsement by part of the recipient), whereas punishment is objective (i.e. it is independent of the subject's appraisal). And this is surely related to the fact that blame calls for a kind of internal response to wrongdoing, which appeals to reason; whereas punishment is only externally connected to wrongdoing and not in the space of reasons.

Of course, there are some complications here. It is true that the same objective punishment can be differently experienced by different people, bringing about lower or higher rates of suffering. In addition, blame can also have a social force independent of an individual's endorsement. But putting these complications aside, the point generally holds: blame does not impose by itself a burden on the wrongdoer; it rather requires the addressee's grasping of its moral force, leaving it up (to a significant extent) to the wrongdoer's conscience coming to accept it or not.

Now, the consequence that I want to draw is that, because legal punishment has a more objective, externally imposed impact on the recipient than blame, which makes it potentially more harmful and less rationally controllable by its recipient, it is then not unreasonable to think that its justification cannot be a mere projection of the very justification of blame, but it rather requires a distinctive ground. If this is so, then Bennett's (and other blame-based punishment theorists') agenda should be radically amended.<sup>5</sup>

There is definitely a lot to praise in Chris Bennett's sophisticated book, which is much richer than what can surely be inferred from my comments here — featuring notable arguments for the importance of the restorative part of the cycle of blame and apology, or the ritualistic and expressive aspects of his account. I hope these comments may prompt him to further clarify some fundamental aspects of his view.<sup>6</sup>

*Department of Philosophy*  
*University of Sheffield*  
 45 Victoria Street, Sheffield S3 7QB, United Kingdom  
 E-mail: s.rosell@sheffield.ac.uk

#### NOTES

<sup>1</sup> In fact, after this first reproach proving useless, Kutcherov will utter a more outraged kind of blame some days later:



He fixed his indignant gaze on Rodion. 'My wife and I have treated you as human beings, as equals,' he went on. 'But what about you? Oh — what's the use of talking? We shall end up looking down on you, very likely — what else can we do?' Making an effort to keep his temper, in case he said too much, he turned on his heel and marched off [Chekhov (1998), p. 216].

Very likely, this is a more typical or overt blaming response, but I can't see why here the blaming person is more respectful to the addressee's standing in their relationship. Indeed, in this case no further expectation in recovering the relationship seems to be present, what surely makes more difficult subsequent apology and reconciliation.

<sup>2</sup> This sort of blame should not be simply understood as merely aiming at moral (re)education. In my view, the most plausible interpretation of Gandhi and King's appeal to conscience is as aiming at moral improvement, which can be construed as a cooperative task between equals, in which qualified participants are not prevented from engaging.

<sup>3</sup> Exploring and accounting for these analogies and disanalogies is Bennett's main task in Part III.

<sup>4</sup> I am not referring to the felicity conditions of the very speech act (of blaming) — i.e. those conditions that must hold for a speech act of a particular kind to count as such — but to the further conditions for the success of the particular kind of moral address which blame consists in.

<sup>5</sup> Bennett might acknowledge this disanalogy and consider it as actually conferring more support to the necessity of a merely ritualistic implementation of the blame model for punishment. My worry with this is that an account that takes every analogy as giving support to the projection and every disanalogy as supporting the different (ritualistic/non-ritualistic) implementation of the common model would be a non-falsifiable account.

<sup>6</sup> I am grateful to Chris Bennett and Josep Corbí for their comments on early versions of this paper, as well as to the audience of its oral presentation at the V Nomos Meeting. I also thank support coming from the research project 'Alternatives, Belief, and Action' (FFI2009-09686), funded by the Spanish Ministry of Economy and Competitiveness, and the Generalitat Valenciana's VALi+d Programme.

#### REFERENCES

- BENNETT, C. (2008), *The Apology Ritual. A Philosophical Theory of Punishment*, Cambridge & New York, Cambridge University Press.
- CHEKHOV, A. (1998), 'New Villa,' in his *The Steppe and Other Stories*; translation and edition by Ronald Hingley, Oxford, Oxford University Press.
- KANE, R. (1996), *The Significance of Free Will*, Oxford & New York, Oxford University Press.
- STRAWSON, P. (1962). 'Freedom and Resentment', *Proceedings of the British Academy*, 48: 1-25. Reprinted in his *Freedom and Resentment and Other Essays*, London & New York, Routledge, 2008.